

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

CRL.A.No. 862 of 2015 ()

AGAINST THE JUDGMENT IN SC 576/2013 of SESSIONS COURT, THODUPUZHA
DATED 10-07-2015

AGAINST THE ORDER/JUDGMENT IN CP 56/2013 of J.M.F.C.-I (FOREST
OFFENCES), TPA DATED
CRIME NO. 131/2013 OF KARIMKUNNAM POLICE STATION, IDUKKI

APPELLANT/ACCUSED:

BHAVANI, W/O.VARGHESE
PUTHENPURACKAL HOUSE
PARAKKADAVU LAKSHAM VEEDU COLONY, KOLANI KARA
KARIMKUNNAM VILLAGE.

BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
SMT.K.VIDYA

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE
KARIMKUNNAM, THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR: SMT. M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.A. No. 862 of 2015

Dated this the 6th day of November, 2015

JUDGMENT

This is an unfortunate incident in which a 13 year old girl died due to burn injuries sustained by her and her grand mother aged around 60 years, who was living with her and had groomed her up, stands convicted.

2. The prosecution case was that the accused was living in her house in a colony with the accused. On 3/3/2013 at about 3 p.m. the neighbours heard loud scream and cry of a girl and saw smoke coming from the house of the accused. They rushed to the spot, and forcefully opened the house and found the girl on flames, rolling on the floor. Water was poured on her body, fire was extinguished and she was taken outside. Ghee was applied on her body and was rushed to the nearby hospital. Since she had suffered substantial burn injuries, she was thereafter referred to the Medical College Hospital, Kottayam. Later she was shifted to Specialist

Hospital, Ernakulam for expert treatment. In the meanwhile, on 6/4/2013 her dying declaration was recorded. On 12/4/2013, she died due to the complications arising out of the burn injuries. On 3/3/2013 itself, PW1, who is a neighbour and a public spirited person, had laid Ext.P1 FIS. Ext. P12 FIR was registered for offence punishable under Section 307 IPC. After the death of the girl, charge was altered to Section 302 IPC. The accused was arrested and produced before the court on 4/3/2013. After committal, she was produced before the Sessions Court who denied charges and faced the trial in S.C. No.570/2013. She was aided by a counsel on state brief. On the side of the prosecution, PWs1 to PW13 were examined and Exts.P1 to P20 were marked. MOs 1 to 8 were identified. The learned Sessions Judge, on an evaluation of the available materials, held that the facts disclosed did not make out the offence punishable under Section 302 IPC. However, found the accused guilty under Section 304 Part II IPC, convicted and sentenced to undergo RI for four years.

3. This is assailed in this appeal. Heard and examined the records.

4. It is an admitted fact that the accused was the paternal grand mother of the deceased. The accused had one son by name Selvan, who had got married and the deceased was born in that matrimonial relationship. Immediately after her birth, the mother eloped and thereafter the father re-married and shifted to Tamil Nadu. Hence, the child, even from her infancy period, was taken care and brought up by the grand mother. It is also on record that except for a brief period, during which period the child was at Tamil Nadu, during the remaining entire length of her life she was under the care and protection of the accused and living in the house in a colony. It is further admitted that she was doing the sundry scrap business and rearing the child.

5. The specific allegation of the prosecution, as seen disclosed in the FIS and later in the final charge, was that the accused and the child used to pick up quarrel. It was further alleged that the accused used to consume alcohol. On the relevant day, it is alleged that, the accused scolded the girl for not doing the household work. The child went to the bed and slept. The accused, who got angry, poured kerosene on her body and set the child on fire, locked the door from outside and went

away. The drunkenness and the quarrel with the girl was stated to be the alleged motive and the cause for the incident.

6. Even though PW1 and PW2, were projected by the prosecution as eye witnesses to the incident, the evidence tendered by them only shows that they reached the home after she caught fire. Hence, the motive and the allegation that the accused actually poured kerosene on the girl and set fire on her is sought to be established through circumstantial evidence. The learned Public Prosecutor contended that the essential circumstances, which supported the prosecution case, were that the accused was present in the house or in the locality during the incident and immediately thereafter, that her behaviour was strange, as noticed by PW1 and PW2, that while being taken out, the child had declared that it was the grand mother who had poured the kerosene and set her ablaze, that kerosene was found on the lungi worn by the accused during the relevant time and finally the dying declaration given by the girl to the Magistrate implicating the grand mother. The learned Public Prosecutor further vehemently contended that the above facts lead to the conclusion that the grand mother had committed the

heinous crime. These facts seem to have been taken into consideration and accepted by the trial court also for finding the accused guilty.

7. Regarding the cause of her death, the prosecution heavily relied on the evidence of PW1, PW2 and that of PW6. PW1 and PW2, who had rushed to the spot, uniformly stated that they had seen the girl on flames. When they entered the house, they had found the girl in flames rolling on the ground. Flames were doused and she was immediately rushed to the hospital. Thereafter she was removed to a specialty hospital at Ernakulam for expert management, wherein she succumbed on 12/4/2013. PW8, PW9 and PW11 are doctors through whom Exts.P6,P9 and P11 were marked, which show that she was admitted in various hospitals with burn injuries and seen by the concerned doctors. The fact, that she sustained burn injuries, is not seriously challenged. PW6 was the Doctor, who conducted autopsy and issued Ext.P6 postmortem report. He had recorded that the child had sustained 35 to 40% burns. He deposed that the child died due to the burns and the complications arising therefrom. The available materials clearly establish that the

child died due to burn injuries in the circumstances as alleged by the prosecution.

8. The specific allegation of the prosecution was that the accused used to consume alcohol and that even at the time of incident she was drunk. PW1 and PW2 in their evidence had deposed that the accused used to drink alcohol. PW1 and PW2 asserted that on the date of the incident also she was fully drunk. However, there is nothing to show that they had interacted with or talked to the accused, immediately after the incident. PW2 deposed that he had seen a half filled liquor bottle on the kitchen slab. It is pertinent to note that Ext.P3 mahazar, which gives a descriptive details, does not refer to the finding of a liquor bottle in the kitchen. The above liquor bottle was not recovered. The accused, though was taken into custody immediately after the incident and was taken for a medical examination on next day after her arrest, was not subjected to any test to confirm that she was under the influence of alcohol or even smelled alcohol, in spite of the specific allegation in the FIS that accused used to consume alcohol. There is absolutely no evidence, except the assumptions of PW1 and PW2 that she was

drunk, to prove that the accused was drunk at the time of the incident.

9. Another circumstance strongly marshalled by the prosecution against the accused was that she had exhibited strange behaviour immediately after the incident. According to prosecution accused was without any emotion. Version of PW1 and PW2 only shows that the accused was present in the house, when they reached there. There is scanty evidence regarding her demeanour when PW1 and PW2 reached the spot and her behaviour immediately after the incident. There is also absolutely nothing to show that the accused was crying or that she had actively involved in taking the girl child to the hospital. On the other hand, the evidence of PW1 and PW2 only show that the accused was present there. According to PW1, she was standing outside of the house when he reached there. PW2 stated that the accused was standing on the southern side of the house. Except the above, there is absolutely no evidence to show that the accused was emotionless, that she was not crying or what exactly was her actual demeanour. Absence of any evidence to show that the accused was not crying or that she did

not actively involved in taking the girl to the hospital, by itself cannot lead to the conclusion against her on the ground that her behaviour was strange. On the other hand, at the time of cross examination, PW13 the investigating officer admitted that CW2 Baby had given a statement that he heard the cries of the accused and rushed to the spot. However, the said witness was not examined. This solitary version of PW13 is sufficient to demolish the version of the prosecution that the behaviour of the accused was strange. Further, it cannot be expected as to how one person would react in a given situation and there cannot be any hard and fast rule regarding it.

10. The defence set up by the accused was one of total denial. According to her, she was absolutely innocent and that she loved the victim girl like her own child. She further stated that considering her relation with the child, she could not have done such a crime. She stated that the incident occurred when she had gone for bathing and that the child did this by herself. This defence was carried forward through out in the course of cross examination and reiterated by her not only in her reply under Section 313 Cr.P.C. questioning, but even at the time of

sentencing, she struck to her stand that she was absolutely innocent.

11. The evidence of the prosecution has to be evaluated in the background of the relationship between the accused and the child, as spoken by PW1 and PW2. PW1 had stated that the parents of the child had abandoned her even when she was infant. She was looked after by the accused and was called as mother by the girl. The accused looked after the child with more love and affection than that by her own mother. He further stated that the girl had a good character and everybody liked her. Even in the chief examination, PW1 asserted that he did not know why the accused did such a crime. In the course of the cross examination also, he reiterated that he does not know the reason for commission of such a crime and asserted that the accused loved the child. This was reiterated by PW2 by deposing that the accused loved the child like her own kid and he does not know the motive or reason for committing such a crime. Thus, the crucial witnesses have uniformly stated that apparently the accused loved the child like her own and they could not believe that the accused did crime and also did not

directly know the motive for that.

12. Even though the child asserted that the accused had poured kerosene on her and set her to fire, she, at the same time, had reiterated that the mother should be spared. PW1 in his evidence has deposed that when the police came, the child told to spare the mother. The father had also stated that when he met the child in the hospital, the child told him that she wanted to meet the accused.

13. The trial court has also correctly concluded that the motive has not been established by the prosecution. PW4 is the father of the child. He admitted that immediately after the birth of the child, the mother abandoned her and thereafter he himself got married and left to Tamil Nadu. He admitted that the child was looked after and taken care of by the accused. He further admitted that the child liked the accused like her own mother and preferred to stay with her, rather than living with the father. He deposed that when she was in the hospital, he had gone there and met the child. Even at that time, she wanted to meet the accused. He asserted that he does not believe that the mother had poured kerosene on her and set the child on fire. This has

to be appreciated in the background that this version is spoken by the father of the deceased child himself .

14. In this background, the evidence of crucial witnesses have to be evaluated. As mentioned by PW1 in the chief examination, the motive for commission of crime was that the accused got angry with the child for not doing the household work and for sleeping. Evidently, source of such information is not spoken by PW1. In the chief examination, he narrated the incidents as if he had witnessed the entire incidents prior to the actual incident . He deposed that the girl was asked by the mother to do certain works, which she did not and went to the room and slept on the cot. After she had feel asleep, the accused got wild, took bottle of kerosene, sprinkled it on the body of the child and using a match box, lit the child. She thereafter locked the room from outside and went away. This part of the version is projected as the motive for committing the crime. This part of the version spoken by PW1 cannot be accepted nor relied in evidence since he has not seen any of this part of the incident. Admittedly he came to the spot in an autorickshaw, 2-3 minuets after he was telephonically informed

about the screaming of the girl and the smoke emanating from the house. Hence, the version spoken by PW1 regarding incidents prior to his arrival are only to be eschewed. PW2 also has no direct knowledge about the motive and came to the scene after hearing the cries.

15. Since the entire allegation against the accused is sought to be proved through circumstantial evidence, the motive assumes great significance. The prosecution also proceeded on the basis that the accused poured kerosene on the girl out of a fit of anger and out of drunkennesses. These two facts are not proved by any direct evidence. Hence, one has to search for a circumstantial evidence to find out whether the allegation stands proved. Even according to PW1, he got telephonic information and rushed to the spot. He took two three minutes to reach the spot. He came in an autorickshaw. Evidently, by that time, about 50 people had assembled outside the house and they forcefully opened the door. The child was found in flames, rolling on the ground. This was the stage at which PW2 also came to the scene and evidently both the witnesses have no direct knowledge regarding the motive and the genesis of the

incident. No other eye witnesses were examined by the prosecution to establish the guilt of the accused. PW1 in the chief examination reiterated his statement in the FIS as if he had seen the incident, which, as mentioned above, is unbelievable. Admittedly, his house is only three meters away from the house of the accused. PW2, the neighbour of the accused, also reached the spot on hearing the cries. However, his version is to the effect that when he reached the spot Johnny and Vimila were already there. Evidently, both the above persons would have been more competent persons, to throw light on the genesis of the incident being the first who reached the spot. But they were not examined by the prosecution. The versions of the available witnesses neither show that they have heard of any quarrel between the accused and the child or the actual act by which the child sustained injuries. Since the motive is not established, the culpability of the accused has to be gathered from the other available materials.

16.It is pertinent to note that the child was initially taken to Taluk Hospital, Thodupuzha and seen by the doctor at 4.15 p.m.. Ext.P8 is the wound certificate proved by PW8, the junior

consultant of that hospital. The cause of injury stated therein is that the mother had poured kerosene and set the child on fire. PW8 deposed that history of the incident was given by the child herself. The injured was referred to the Medical College Hospital and she was admitted there on the same day at 6.p.m.. Ext.P9 is a certificate issued from the Medical College Hospital proved through PW9 gazetted officer. It shows that the child was discharged, on request, on the next day i.e.4.3.2013. Thereafter, she was taken to the Ernakulam Medical Centre and admitted there on the same day. Ext.P11 is the discharge certificate issued by that hospital marked through PW11, the Chief Casualty Medical Officer of the Hospital. It shows that the alleged cause was mentioned as homicide attempt by the grand mother by pouring kerosene. Ext.P11 further indicates that the child was discharged from that hospital on 12/3/2013 on request. Thereafter, the child was taken to the specialist hospital, Ernakulam and treated there. Ext.P10 wound - discharge certificate shows that she was admitted on 12/3/2013 and died on 12/4/2013. Virtually, she was under the treatment there for one month. Absolutely, no reason is forthcoming as to why she

was being taken from one hospital to another and at whose instance she has been shifted, evidently not on the advise of the doctors, but at the instance of some others.

17. Another instance seriously marshalled by the prosecution to connect the accused with the incident was the alleged detection of kerosene on the lungi worn by the accused on the relevant day. According to the prosecution, the accused was arrested on 4/3/2013 at 8 a.m. which is evidenced by Ext.P13 arrest memo, Exts.P14 inspection memo and P15 examination certificate were issued by the doctor after examining the accused at 2 p.m. on 4/3/2013. The dresses worn by her were seized by PW2 on 4/3/2013 at 3.p.m. and marked as Ext.P2 seizure mahazar. It appears that the seizure was effected at the police station by giving her other dress to wear. It clearly shows that the dresses which were seized, viz. blouse, lungi and underskirt, were one which were worn by the accused, at the time of arrest, which according to the prosecution, was same worn at the time of the incident. It indicates that according to the prosecution, she was wearing the same dress even at the time of arrest. Ext.P16 is the property

list and thereafter it was forwarded to the chemical examination along with the other material objects recovered from the scene of occurrence. Ext.P19 is the chemical analysis report with reference to lungi(MO1), underskirt(MO2) and blouse (MO3) mentioned in the chemical analysis report as item Nos. 5, 6 and 7. The report clearly shows that the kerosene was seen in lungi (MO1), but not in the underskirt (MO2) and blouse(MO3). The learned counsel for the accused seriously doubted on placing reliance on the the chemical analysis report, stating that the material objects were purposefully planted to wrongly implicate the accused. It was contended that the available materials itself indicate that the evidence was planted for the purpose of creating a link between the accused and the incident. PW13, the investigating officer, had admitted that on the same day of the incident, the accused was brought to the police station. There was no body search at that time. Evidently, even at the time when she was brought to the police station and till she was arrested on the next day, the prosecution case seems to be that she was wearing the alleged kerosene stained dress. This is evident from the fact that even at the time of seizure, she was

wearing the same dress. There is nothing on record to show that when she was taken to the police station on the date of the incident and till she was arrested, anybody had noticed the stain of kerosene or the smell of the kerosene on her dress. However, PW1 in his evidence has given contra version than found in Ext.P2 seizure mahazar. He deposed that, next day after the incident, the accused was brought to the house. The dress worn by her at the time of the incident was produced. It appears that this totally contradicts with Ext.P2, which states that the seizure was effected at the police station after giving her alternate dress to wear. In cross examination of PW13, a specific suggestion was put to him that kerosene was sprinkled on the dress of the accused, which was denied. It is pertinent to note that though MOs 1 to 3 were seized on 4th, the seizure mahazar reached the Court only on 11th and the list of property on 13th. Evidently, there was a considerable time lag. The most crucial aspect, as evident from the chemical analysis report is that, though the lungi allegedly worn by her at the time of the incident was stained with kerosene and detected on the chemical analysis, there was not even a trace of it on the underskirt which

also she had worn beneath the lungi. This makes the search, seizure and consequent report highly doubtful to be used against the accused, especially when there was allegation of artificial creation of evidence by the prosecution and the case that the accused was wearing the same dress from the date of the incident, till the date when she was arrested.

18. Two circumstances, specifically relied on by the prosecution, were that the child herself had spoken that the mother had poured kerosene on her, and the reiteration of it in her dying declaration also. PW1 and PW2 have uniformly stated that when the child was being taken out, she had stated that the accused had done it. In the FIS, PW1 has stated that, on enquiring with the child, she stated that the mother had sprinkled kerosene and set fire on her. Thereafter, she locked the room and went out. At the time of the trial, PW1 did not depose to that extent. In the chief examination he only stated that when the child was being taken out, she stated that the accused had poured kerosene. According to him, this was heard by all persons who had assembled. In the cross examination this version was reiterated by him. PW2 deposed that when he went

to the spot, the child was in flame. They poured water and thereafter she stated that the accused had done it.

19. In the light of the unreliability of other materials, the only evidence that remains incriminating the accused is the utterances made by the child, the version conveyed by her to the doctors and her dying declaration. In short, it is the version spoken by the child to various persons at different stages. PW1 and PW2 have uniformly stated that after fire was doused, the child stated that it was done by the accused. Exts.P8 and P11 also indicates that she told the respective doctors that the incident was caused by the accused. The above versions are in conformity with what she disclosed to the Magistrate in her purported dying declaration recorded by PW7 on 6/3/2013, at the Ernakulam Medical Centre. Evidently, she gave the statement after three days of the incident. It is pertinent to note that during the above period, she was being shifted from one hospital to another. The doctor had certified that the child was conscious to give her declaration, as evident from Ext.P7. PW7, the Magistrate who recorded her dying declaration, had also stated that she had sufficient mental faculty to give cogent

replies. It is pertinent to note that she died one month after the above incident. There is absolutely no indication that she was anticipating death at that point of time, though she had sustained severe burn injuries. On the other hand, PW4 had stated that when he met the girl, he understood that she did not anticipate death at that point of time. To a specific question put by magistrate regarding the cause of the incident, she had stated that the grand mother poured kerosene on her. To the next question, she explained the circumstance. According to her, while she was sleeping in the cot, the grandmother poured kerosene and set her on fire. When she opened her eye and cried, the grand mother was standing near her. She did it, after consuming alcohol. When she cried aloud, neighbours came to the spot, doused the fire and took her to hospital.

20. The law regarding the dying declaration is well settled. In the recent decision reported in **Prem Kumar Gulati v. State of Haryana [2014 (1) SCC(CR) 486]**, the Supreme Court reiterating the earlier decisions has held that though a truthful and reliable dying declaration may form the sole basis of the conviction, however, the reliability of the dying declaration

should be subjected to close scrutiny and the court must be satisfied that the dying declaration is truthful.

21. Thus, in the above circumstances, version spoken by the girl has to be analysed carefully and closely to find out whether it gives sufficient indication about its reliability and has a ring on the truth around it.

22. Version spoken by the girl specifically indicates that kerosene was poured on her while she was lying on the cot. When she woke up, accused was near her. It clearly indicate that she caught fire when she was lying on the cot. PW 1 in his evidence had specifically deposed that the child was lying in the cot in the room leading from the varanda. He further stated that the accused took the kerosene from the kitchen, poured on her and let her on fire and thereafter door to the varanda was locked from outside and she went away. The version of PW1 specifically indicates that the scene of occurrence is the central room. In the cross examination, PW1 deposed that when they forcefully opened the door, he found the child rolling on the floor. He had specifically stated that the child was in the central room. This specifically shows that according to PW1, the

incident happened in the central room.

23. Ext.P3 scene mahazar and Ext.P5 sketch gives clear idea regarding the lie of the various rooms. From veranda, there is a door opening to the central room. The only cot in the house is located in the central room. On either side of the central room, there are two other doors, leading to the northern and southern portions. Ext.P5 sketch indicates that both the doors are not lachable. On the northern side of the central room is the kitchen, which has a door on the northern wall to the outside.

24. Version of the girl as well as that of PW1 was that while she was lying on the cot, the accused poured kerosene on her body and lightened with a match stick. The girl stated that when she woke up, she saw the accused near her. PW1 is categoric that the incident happened in the central room. This is reiterated by him specifically in the cross examination by stating that he saw the girl rolling on the floor of the central room. Water was poured on her, according to PW1. As mentioned earlier, the cot is in the central room. According to the version of the girl and PW1, the incident happened in the central room.

Most strangely, there was no burning indications on the cot or anywhere near the cot. Ext.P3 shows that at the time of inspection, dresses were found lying on the cot. There was absolutely no indication of any burning of the cot, the floor or anywhere in that room. No traces of burning were also noticed in that room, by any of the persons, who had tendered evidence in the court. There is absolutely no piece of evidence to indicate that any incident had happened in the central room.

25. On the other hand, most strangely, as per PW2, scene of occurrence was in the kitchen. He had specifically stated that when they went inside, the child was found rolling in the kitchen. The entire evidence of the prosecution corroborates his version that the incident happened in the kitchen. Ext.P5 sketch indicate that the kitchen as the scene of occurrence. Ext.P3 mahazar also shows that the scene of occurrence was kitchen. The burnt dress parts and the burnt tuft of hair were collected from the floor of the kitchen. Water was also found lying on the floor. It was found that MO4, a bottle containing 650 ML of kerosene, MO5, the match box with five sticks and a burnt match stick were found from the kitchen. Report of the

examination of the scene of occurrence, which form part of the forwarding note, also indicates that all the MOs were collected from the kitchen. These matters on record unequivocally prove that the incident happened only in the kitchen. This makes the version of PW1, that the genesis of the incident was when she was lying on the cot, is unbelievable and is contrary to the evidence let in by the prosecution. Even assuming that the victim shifted to the kitchen after she got burnt, definitely there should have been trails of burning in the main hall. This is absent. The prosecution is absolutely silent as to how the girl who was sleeping in the central room reached the kitchen.

27. Another version of the girl was that when she woke up, the mother was there. The version of PW1 was that accused had locked the door from outside and left. Uniform version of PW1 and PW2 was that the door of the kitchen was forcefully opened. Ext.P3 mahazar shows that the door of the kitchen could be latched. PW2 had stated that the door leading to outside from the kitchen was found locked. If the incident has happened while the injured girl was lying in the central room, it is impossible to pour kerosene over her body and thereafter

shift the kerosene bottle, and the match box and even the burnt stick to the kitchen. If she was lighted with match box while she was on the cot, burnt match stick could not have been found in the kitchen. Match box also was found in the adjoining room. It is further unbelievable that after committing the alleged act, accused closed the door, came out from the central room and went out. Evidently, the entire evidence lead to an irresistible conclusion that the entire incident happened in the kitchen alone. Another significant fact is that PW2 had stated that the kitchen door was latched from inside. The girl could not have opened it. PW2 has not mentioned as to which of the door to kitchen was locked. In the light of the ambiguity the benefit should go to the accused. If the kitchen door was latched from inside, an outsider pouring kerosene on the girl is only to be ruled out. This does not tally with the version of the girl that accused poured kerosene and lighted with match box while she was lying on the cot. There is absolutely no evidence to show that the child sustained burn injury in the central room.

28.It is also pertinent to note that PW1 had stated that major portion of the kerosene from the bottle was poured on her

body. On the other hand, the kerosene bottle that was found in the kitchen had a capacity of 650 m.l. with $3/4^{\text{th}}$ still remaining in the bottle. This means that only $1/4^{\text{th}}$ quantity of kerosene alone was used. This also does not support the case of the prosecution that kerosene was poured on her body while she was lying on the cot. It is also pertinent to note that the portion of the body affected with burns were from her head downwards till the legs , essentially on the front part alone. This also does not tally with the version of the girl that kerosene was poured on her body while she was sleeping.

29. The entire evidence show that the only incrementing evidence of the girl does not tally with the evidence let in by the prosecution. The court below seems to have been carried away by the dying declaration of the girl. One question that looms large is why should the girl tell falsehood to implicate her grandmother. Equally strong is the counter question as to why should the grand mother burn the girl whom she lovingly brought up. Doubts howsoever strong it may be, cannot be a substitute for legal proof. Hence, the version of the girl does not inspire confidence and cannot be the sole basis to convict

the accused. She is entitled to the benefit of doubt.

In the result, the judgment and the conviction imposed by the court below is not sustainable. The impugned judgment is liable to be set aside giving the benefit of doubt to the accused. She is acquitted. She shall be released forthwith from jail, if her continued custody is not essential in connection with any other crime.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

