

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05/01/17

DELIVERED ON : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.Nos.998 and 1435 of 2016

Crl.M.P.Nos.12496/16 & 8026/16

Crl.R.C.No.998 of 2016

Dr.Sister Thresia

D/o.Late Mathai

.... Petitioner/A2

vs.

1.CBCID represented by its
Inspector of Police,
The Nilgiris Unit,
Ootacamund.

2.Sasi Thomas
S/o.Thomas

3.Joju Thomas
S/o.Thomas

....Respondents

(impleaded as respondents 2 and 3
as per order of this Court dated
05.07.2016 in Crl.M.P.No.7125 of 2016
in Crl.R.C.No.Sr 22205 of 2016)

Crl.R.C.No.1435 of 2016

1.Sasi Thomas
S/o.Thomas

2.Joju Thomas
S/o.Thomas

.... Petitioners

vs.

1.Dr.Sister Thresia

2.The Inspector of Police,
The Crime Branch Criminal Investigation Department,
C.B.C.I.D., Nilgiri Unit,
Nilgiri District.

3.Jose Paul
S/o.Stansilaus

....Respondents

Criminal Revision Cases filed under Section 397(1) r/w 401 Cr.P.C. against the order of Mahila Court (Fast Track), Ootacamund, The Nilgiris, passed in Crl.M.P.No.100 of 2014 in S.C.No.62 of 2005 on 06.06.2015.

Appearance:

For Petitioners in Crl.R.C.No.998 of 2016
and R1 in Crl.R.C.No.1435 of 2016 : Mrs.Bhavani Subbarayan
for Mr.K.V.Sajeev Kumar,
M/s.Royan Law Associates

For R1 in Crl.R.C.No.998 of 2016
and R2 in Crl.R.C.No.1435 of 2016 : Mr.M.Mohammed Riyaz,
Government Advocate
[Crl.side]

For Petitioners in Crl.R.C.No.1435 of 2016
and for R2 and R3 in Crl.C.No.998 of 2016 : Mr.Joju Thomas,
Party-in-Person

C O M M O N O R D E R

For the purposes of convenience, parties are referred to by their respective names.

2. The body of the deceased Achamma, wife of the first accused in this case, was brought to Pushpa Mission Hospital, Nilgiris, on 25.01.1998. The hospital record there regards and in the hand of Dr.Sister Thresia, petitioner in

Crl.R.C.No.998 of 2016 reads as follows:

' PUSHPAGIRI MISSION HOSPITAL

Gudalur Bazaar P.O.	Nilgiris	Tamil Nadu
Name	Address	Age 44 Sex F I.P.No.
		O.P.No.
Achamma	W/o.Jose Paul Therathil	
	Padanthara	57674 D
25/1/98	12.35 A.N. BP Pulse }	now recordable

Patient was brought by the husband.

The H/o:

Chest Pain from about 6 p.m -
Breathing difficulty After giving bath to
Giddiness the child
Profuse sweating

Vomited once after taking jeera water at that time.

Not speaking since 10 p.m.

O/E patient found cold and clummy; pupils dilated;
not reacting to light. Heart sounds not heard.

Respiratory movement absent. BP not recordable.
Pulse not felt not responding to painful stimuli.
Attempted Revival suspecting death on the way to
hospital.
ECG run - Blank in all leads
External cardiac massage
mouth to mouth respiration
Nasal oxygen
Inj: Adrenalin 1 amp I/U
Rpt ECG done - Blank in all leads.
Patient declared dead at 12.50 a.m.
Probable cause of death - Acute M.I., based
on history. '

The deceased was buried at about 3.30 p.m. on 25.01.1998. Suspecting foul play in her death, her brother Sasi Thomas preferred a complaint to the Superintendent of Police, Nilgiris, and marked a copy thereof to the Sub-Inspector of Police, Devarshola Police. On receipt of the complaint, a case was registered in Crime No.18 of 1998 u/s.174 Cr.P.C. The Inspector of Police, Devarshola Police, took up investigation and on his request, the body was exhumed on 22.04.1998 and an inquest was held. At the inquest, Panchayatdhars unanimously opined that the deceased had led a happy life with the husband and children but had suffered several physical ailments, had undergone as many as nine surgeries and had died of a heart attack. The postmortem revealed no external or internal injuries but the Chemical Analysis of the viscera indicated that she died of Organo Phosphorous Insecticide Poisoning. Finding no evidence of possible administration of poison and on the opinion of Doctors that the case probably was one of suicidal poisoning, further action was dropped treating the case as one of suicidal death. The brother of the deceased Sasi Thomas filed W.P.No.17613 of 1998 before this Court and an order was passed directing the CBCID, to verify the investigation conducted by the local police and to take further action u/s.173(8) Cr.P.C., if necessary. Eventually, further investigation was conducted by the Inspector of Police, Crime Branch, CID. This Court may now incorporate the body of the final report :

'The accused Josepaul (A-1) S/o. Stainslavos has been residing at Therattil, 4th Mile, Padanthurai. His wife Achamma (since deceased) was also living with him in the above said address since January 1996. The said residence is located within the jurisdiction of Devershola PS. They had three children. They are Jaimie-13, Jaisie-19 and Sunny @ Jaikuttan aged (5). All of them were studying in Morning Star Higher Secondary School at Gudalur.

The deceased Achamma hailed from a middle class family, born and bred at Irutti Village, Kaserkode District, Kerala State. She was the eldest daughter of the family. She had four brothers and four

sisters. She completed her nurse course at Bangalore and got her placement at Jordon. Subsequently after one year she got appointment at United States of America. During that time on 30.05.1979 she got married to the accused Josepaul (A1) at Trissur. The marriage between them was being arranged by their parents. Thereupon they went to USA where Josepaul (A1) also got appointment in a Bank.

For about 15 years the accused (A1) Josepaul and deceased Achamma were working at United States of America. The accused Josepaul (A1) has been working as Vice President in a reputed Bank at "Wall Street" in USA. The deceased Achamma had been a nurse and served at USA. They got naturalized citizenship in USA. Deceased Achamma's life with her husband at USA was not cordial and peaceful as the accused Josepaul (A1) gained illicit intimacy with one divorcee namely Lissy P.C. Thereupon the said Achamma decided to come to India. Accordingly the deceased Achamma with her children came back to India in the year 1991 on a five year visa with due recommendations of Counsellor General of India at New York. She purchased a house at Trissur in the year 1994 from herself earned money. Parents, brothers and sisters of Josepaul stayed in the house with Achamma. In the year 1996 Josepaul also returned to India and settled with Achamma and children at Trissur.

Father Edakkara was known to Achamma's family even before she married Josepaul (A1) and later became very close to Josepaul than Achamma's parents and brothers. Edakkara was at Gudalur as Principal of Morning Star Higher Secondary School. Josepaul and Achamma purchased a house and estate at Padanthurai near Gudalur on the arrangements made by Father Edakkara for which Josepaul (A1) presented a Maruti Car to Father Edakkara as a token of his respect.

Both came to Padanthurai and settled in the year 1996. They admitted their children in the school where Father Edakkara was the Principal. The parents, brother and sister of Josepaul (A1) were allowed to continue their stay at the house at Trissur.

Selvi Betty was working as teacher in Morning Star Higher Secondary School. She was engaged to impart tuition to the children of Josepaul (A1) at school itself and sometimes at the house of Josepaul (A1). The accused Josepaul (A1) used to take her in his vehicle after the tuition was over and drop at her house. The accused Josepaul (A1) developed

illicit intimacy with her. He enjoyed a tour to Mysore and Bangalore in a car with the company of Betty has been understood by the deceased Achamma and despite her objection the accused Josepaul (A1) carried on his relationship with Betty. On account of the relationship of A1 Josepaul with Betty, differences arose between husband A1 Josepaul and Achamma. In the same way A1, Josepaul did not like Achamma to help her parents and brothers and so also Achamma did not like Josepaul to help his parents, brothers and sisters.

The entanglement between husband and wife had occasioned from time to time. Due to the above reasons A1 Josepaul used to beat his wife Achamma frequently. Knowing the misunderstanding between A1 Josepaul and Achamma due to Betty's affairs. Fr. Edakkara stopped her from engaging tuition to the children of Achamma. Meanwhile Achamma decided to sell the house at Trissur for the reason that she and A1 Josepaul had to incur all the maintenance and incidental expenses like telephone charges etc due to the stay of the parents of Josepaul. In spite of the objection from A1 Josepaul, she got his consent letter and sold the house 10 days prior to her death. On account of this incident, differences further developed between A1 Josepaul and Achamma. The school Anniversary function of Morning Star Higher Secondary School was held on 23.01.1998. Josepaul (A1) and Achamma also attended the function with their children for the reason that their daughters performed dance in the said function. When the function was going on the accused Josepaul (A1) was seen moving with Betty. This incident caused wounded Achamma very much. Achamma was depressed and annoyed over the conduct of Josepaul. Knowing the fact she was in depressed mood, Father Edakkara came to her house on 24.01.1998 evening and consoled her. However she could not get herself consoled and became mentally sick due to the unchanged attitude and conduct of Josepaul.

On 24.01.1998 at about 6.30 pm Achamma who decided to commit suicide due to the cruelty of Josepaul (A1) went into the store room where garden materials including Organo Phosphorous insecticide poison was stored, consumed it and died on the same day.

On 24.01.1998 at about 10.30 pm as there was no response from Achamma when Josepaul shook her body followed by his calls, Josepaul (A1) contacted Father Edakkara over phone and informed the above matter and requested him to get a doctor. Fr. Edakkara after contacting Pushpagiri Hospital directed Josepaul (A1) to bring Achamma to the hospital.

Fr. Edakkara instructed him to take Achamma to Pushpagiri Hospital since he had informed Dr. Thressia, Josepaul (A1) called his friends Mathukutty and his wife to come to his assistance. Mathukutty came in his jeep to Josepaul's house and they removed Achamma (dead body) to the said hospital.

As soon as Achamma's body was placed in the room, the nurse, Benzy checked the pulse and felt that not functioning. She went and informed the failure of pulse to Dr. Thressia (A2) who was taking rest in the hospital rest room.

Dr. Thressia (A2) came and examined the body of Achamma and confirmed the death and she recorded chest pain, vomiting, giddiness etc, as alleged by Josepaul (A1) and finally declared as "Probable cause of death was due to M.I. based on the history".

According to the medical professional procedures and as per law Dr. Thressia (A2) ought to have intimated the Police about the fact of dead body for their investigation and to bury the dead body according to law after the post mortem. Dr. Thressia (A2) knowingly committed the mistake by recording the cause of death of Achamma as "Probable cause of death - acute M.I. based on history" by merely examining the dead body without a clinical report and she went to the extent of informing the blood relatives of Achamma during the funeral specifically that Achamma died due to heart attack concealing the word "Probable" in order to help Josepaul (A1) and to avoid police investigation and post mortem and in order to make them to believe that the death was a natural one. They believed Sister Dr. Thressia (A2) that she would not misguide them and allowed the funeral to go peacefully.

After a few days, the mother, brother, sister of Achamma came to the house of Josepaul and attending 21st day and 41st day functions. Josepaul (A1) left to America. Meanwhile, Baburaj and his wife took the children of Achamma to their home on 10.03.1998 after informing Fr. Edakkara and the mother of Josepaul that they would send back the children within 2 days.

Meanwhile, Sasi Thomas lodged a criminal case on 10.03.1998 at Devershola PS and his complaint was registered in Cr.No.18/98 u/s. 174 Cr.P.C. (Suspicious death).

As the children were not sent back, Josepaul (A1) who returned from USA lodged a case in Judicial Magistrate Court, Gudalur which was taken on file in CrI.O.P.522-A/98 and the Judicial Magistrate issued an order idrecting Baburaj and his mother to produce the children before him. Advocate Cherian was added as one of the Respondents. He produced the children before the Judicial Magistrate, Gudalur who recorded the statements of two girls in the presence of Josepaul (A1) and the mother of Achamma. Both the children stated that their mother was beaten and harassed by their father who was having illicit contact with Betty teacher etc. Then the children were sent to hostel as per the Court order but Josepaul took them to his house. As such Joju Thomas approached the High Court and the High Court after taking his petition in HCP No.422/98 ordered directing Superintendent of Police, Nilgiris to give protection to the children who are to be with the father.

Dr. Edwin Joe who conducted autopay opined that there were no symptoms to say forcible administration of poison and it was most probably self-consumed.

Dr. Edwin Jose stated that the opinion recorded by Sister Dr. Thressia (A2) regarding the cause of death was based on presumption on seeing the dead body of Achamma. It cannot be given such an opinion based on the history given by the attendants. The doctor seeing the dead body can proclaim the death alone and the cause of death should be confirmed by the post mortem examination. He further said it is the duty of the doctor to refer the case to the Police who will investigate and arrange for autopsy to be conducted on the body to confirm the cause of death. It is essential for the doctor to determine the cause of death before lawful disposal of the dead body. He opined that the time of death would be 1 to 3 hrs. prior to examining the dead body of Achamma by Dr. Thressia (A2) from the observation recorded by Thressai (A2) in the certificate maintained at the hospital. He opined further that there was no evidence of forcible administration of poison and most probably it could be self consumed. Achamma died due to the consumption of Organo Phosphorous insecticide poison.

Josepaul further filed on intimation about the death of Achamma as heart attack, falsely before the Executive Officer and obtained a death certificate. He also requested him not to issue death certificate to anyone without his prior permission.

(c) The names of the persons who appear to be acquainted with the circumstances of the case:

List of witnesses and Memo of Evidence attached separately.

(d) The above facts would make out the following charges against the accused

A-1 Josepaul was residing with his wife Achamma (since deceased) and their children at Therattil 4th Mile Pandathurai within Devarshola Police Station limits in Nilgiris District. On return of their appointment in the United States of America. Since 1996, A2 Dr. Sister Thressia was working as a doctor at Pushpagiri Mission Hospital at Gudalur.

Achamma purchased a house at Kuriachara, Karikattukara lane, Trissur out of her own earning and her in-laws were resident therein. A1 was a drunkard and womanizer. He had illicit intimacy with one Lissy P.C. when he was in the USA. He developed illicit relations with witness Elizebet @ Betty, a teacher in the service of Morning Star Higher Secondary School, Gudalur. He enjoyed a tour to Mysore and Bangalore in a car with the company of Betty when Achamma had been to Singapore. Despite the objection of Achamma A1 carried on his affairs with Betty. On 14.01.1998 she sold out the house despite the objection of A1 with the result that her in-laws had to vacate the said house. On the evening 23.01.1998 A1 moved with Betty closely at the school Anniversary function in the presence of Achamma herself. In addition, A1 used to harass his wife Achamma during their stay at America and continued his harassment and beating frequently during the period between April 1996 and 24.01.1998 at their house at Padanthurai.

On such constant harassment, cruelty and abetment by A1, Achamma committed suicide by consuming Organo Phosphorous Insecticide poison on 24.01.1998 at about 6.30 pm at their house at Padanthurai. Thereby the accused Josepaul (A1) has committed an offence punishable under section 306 IPC.

On 24.01.1998 at about 12 midnight the dead body of Achamma was brought to Pushpagiri Mission Hospital at Gudalur by Josepaul (A1) and he made false representation to A2 Dr. Thressia by stating that Achamma suffered with chest pain. The accused A2 Dr. Thressia after verification declared that she suspected death on the way to hospital. Thereby A1 Josepaul made A2 to issue false certificate stating that "Probable cause of death Acute M.I based on history" and further made her to declare the death of Achamma falsely as heart attack to Achamma's brothers in order to bury the dead

body without post mortem, knowing well that an offence has been committed by him and thereby caused such evidence of the commission of that offence to disappear with the intention of screening himself from legal punishment. Thereby A1 Josepaul has committed offence punishable under sections 306 r/w 201 IPC and 197 r/w 193 r/w 109 IPC.

A2 Doctor Sister Thressia recorded a false certificate on 25.01.1998 at 12.50 am at her said hospital stating "Probable cause of death Acute M.I. based on history" and issued to Josepaul (A1) knowing that such certificate was false and not basing her opinion on clinical or investigation findings but only on presumption of seeing a dead body and the alleged history given by Josepaul and without confirming by post-mortem examination.

Thereupon, on the evening of 25.01.1998 at the house of the accused Josepaul A1 at Padanthurai, A2 Dr. Sister Thressia falsely told witnesses Sasi Thomas, Baburaj Thomas, Moly that Achamma died of heart attack only with the view to prevent them from taking legal proceedings to question the cause of death of Achamma knowing that an offence of abetment to commit suicide had been committed by A1 caused such evidence of the commission of that offences to disappear in the absence of any post mortem examination with the intention of screening A1 from legal punishment.

Thereby the accused Sister Dr. Thressai A2 has committed offences punishable under sections 201 r/w 306 r/w 34 IPC and 197 IPC r/w 193 IPC.

Thereby the accused A1 and A2 committed offences punishable under sections mentioned below:

A1 Under sections 306, 306 r/w 201 IPC
197 r/w 193 r/w 109 IPC
A2 Under Sections 201 r/w 306 r/w 34 IPC
197 r/w 193 IPC'

3. The case is pending trial in S.C.No.62 of 2005 on the file of Fast Track Mahila Judge and District and Sessions Court of Nilgiris, Udthagamandalam. Dr.Sister Thresia moved CrI.M.P.No.100 of 2014 seeking discharge.

4. Court below, under orders dated 06.06.2015, even while holding that Dr.Sister Thresia would not be required to answer a charge u/s.201 r/w 306 r/w 34 IPC held that there was prima facie material to require her to face trial for offence u/s.199 r/w 200 r/w 193 IPC. Aggrieved Dr.Sister Thresia has preferred CrI.R.C.No.998 of 2016.

5. Contending that discharge of Dr.Sister Thresia of offences u/s 201 r/w 306 r/w 34 IPC is erroneous, Sasi Thomas

and Joju Thomas/brothers of the deceased have preferred Crl.R.C.No.1435 of 2016. It is their contention that the case was one of murder and Dr.Sister Thresia as also others had acted in collusion with the first accused/husband. Pursuing such contention Sasi Thomas moved C.A.No.1211 of 2006 wherein the Supreme Court, under judgment dated 24.11.2006, held as follows:

' The decisions referred to hereinbefore clearly show that the Trial Court even is not powerless. It, if a case is made out, can exercise its discretionary jurisdiction under Section 311 of the Code of Criminal Procedure as also Section 391 thereof. In the event of open marshalling of the evidence, it comes to the opinion that a case has been made out for alteration of charge, it indisputably can do so in exercise of its power under Section 311 of the Code of Criminal Procedure. In a given case again it can consider the question from the view point of the appellant herein as regards the existence of circumstances which point out to the guilt of the Respondent No.4.

We are also of the opinion that it is a fit case where the appellant should be permitted to engage a lawyer on his behalf who would assist the public prosecutor. We place on record that the learned Counsel for the State assured us that the same shall not be objected to. We hope and trust that in the event the State is of the opinion that the prosecution should be conducted by a public prosecutor of repute and having sufficient experience, it would not hesitate to appoint one.

We would also direct the learned Trial Judge if any occasion arises therefor, to exercise his power under Section 311 of the Code of Criminal Procedure upon considering the facts and circumstances of this case.

We may reiterate that although it is not beyond the jurisdiction of this Court to direct further investigation by the CBI as contradistinguished from reinvestigation at this stage, but we decline to do so keeping in view the fact that 47 witnesses including the appellant himself have already been examined and recourse thereto can be taken if during trial a case therefor is found to be have been made out.

This appeal is disposed of with the aforementioned directions.'

6. Heard Mrs.Bhavani Subbarayan, learned counsel for Dr.Sister Thresia and Mr.Joju Thomas, party-in-person and Mr.M.Mohammed Riyaz, learned Government Advocate [Crl.side] for State.

7. Learned counsel for Dr.Sister Thresia submitted that Dr.Sister Thresia, a qualified Doctor nun, had done no more than record in the hospital register the facts informed by the husband of the deceased/A1 who had brought the deceased to hospital and on the basis of what she had been informed merely recorded her opinion that the death could be due to heart attack. Court below, while rightly having concluded that there was no material for proceeding against the petitioner u/s.201 r/w 306 r/w 34 IPC, wrongly had required her to face charge u/s.199 r/w 200 r/w 193 IPC.

8. Mr.Joju Thomas, Party-in-Person, submitted that Dr.Sister Thresia had, in the hospital register, recorded that the deceased had died owing to heart attack. She had said that the deceased had died at hospital. He submitted that the conduct of ECG on a dead body and Dr.Sister Thresia informing of having attempted respiration 4 to 6 hours after death revealed that she had colluded with the first accused. He submitted that his contention stood proved in that the petition for anticipatory bail moved by Dr.Sister Thresia, she spoke of offence u/s.302 IPC. Therefore, she knew that it was a case of murder and she tried to cover up. He had been misled by Dr.Sister Thresia informing that the deceased died at hospital. In passing orders in C.A.No.1211 of 2006, the Apex Court had observed that it was only because of the persistent efforts of the appellant, a further investigation by CBCID was directed. He said that owing to such persistent efforts on his part, the final report informing commission of offence u/s.302 and 201 IPC had been filed. The Apex Court had appointed a Special Public Prosecutor. His plea for further investigation had been rejected by the Court below. State did not challenge such order, but he did and it was only thereupon that the order regarding CBCID conducting further investigation, if need be, was passed. Mr.Joju Thomas contended that Dr.Sister Thresia ought to have left the body alone but she had washed and cleaned the body towards destroying evidence. Her conduct had led to the postmortem being conducted 88 days after the death. Dr.Sister Thresia was liable to answer charges u/s.34 and 120-B IPC.

9. Submitting that the State Machinery had not even seized the passport of the husband/A1, Mr.Joju Thomas stated that A1/husband had collected a huge sum of money in U.S.A against the death of his wife.

10. Mrs.Bhavani Subbarayan, learned counsel for Dr.Sister Thresia, submitted that Dr.Sister Thresia had mentioned Section 302 IPC in her anticipatory bail petition since such was the offence informed in the complaint. Suspecting murder of their sister by husband/A1 as a result of which, according to them, A1/husband has received huge monies in America, Sasi Thomas, Joju Thomas, had, in the complaint, stated that to save Jose Paul (A1/husband), Father Mathew influenced Dr.Sister Thresia and she removed internal organs of the

deceased by opening her belly and chest and caused destruction of evidence under the guise of taking the dead body for preservation till their arrival from abroad. The postmortem report revealed that their contention was false. In fact, the entire viscera had been subjected to chemical analysis. It was wrong to contend that Dr.Sister Thresia had issued any certificate, much less a false one. She had only recorded the case sheet. Referring to the application for death certificate made by A1/husband to the Executive Officer of the Panchayat, learned counsel submitted that therein husband/A1 had informed the cause of death as 'heart attack' in Column 12 of such application. It was significant that in answer to query under Column No.13 'whether any medical certificate had been issued', he had answered in the negative. After the death of the wife on 24.01.1998, husband/A1 had left for USA. The three children of the couple were with the deceased family. Joju Thomas had filed H.C.P.No.442 of 1998 seeking custody and this Court, under orders dated 01.04.1998 had directed custody with the father.

11. By way of reply, Mr.Joju Thomas contended that several magazines/paper reports raised suspicion over the death of his sister. Dr.Sister Thresia informed that she had died owing to a heart attack at hospital. Had she actually informed that the deceased had been brought dead, the family would not have allowed an easy burial. They had no reason to suspect anything wrong upto the 41st day.

12. Learned Government Advocate [Crl.side] supported the finding of Court below and informed that a most reasoned approach had been taken by it in discharging the petitioner of offences u/s.201 r/w 306 r/w 34 IPC, even while requiring her to face trial for offences u/s.199 r/w 200 r/w 193 IPC. He referred to Paragraph No.8 of the counter which reads as follows:

'8.It is further respectfully submitted that during the course of investigation it reveals that the victim/deceased after consumption of the alleged poison was taken to nearby hospital named Pushpagiri Mission Hospital at Gudalur, where the petitioner/accused No.2 happens to be the physician responsible for alleged treatment given to the said Achamma. Further the petitioner/accused No.2 herein having understood that it was a medico legal case and ought to have reported the matter to the nearest police station for pursuing action. Much less, at the instance of accused No.1, recorded the death as to have happened in continuation of vomiting, giddiness etc. She also recorded the probable cause of death as to be due to Acute Myocardial Infraction. A Doctor with common prudence ought not to have given such opinion based on the history given by the attendees. A doctor should have confirmed the cause by the postmortem examination. But the

petitioner/accused No.2, in order to save the accused No.1 from the clutches of law, had given her opinion regarding cause of death as Acute Myocardial Infraction. Necessary certificates were also given with an intention to help accused No.1 to escape from legal clutches.'

13. This Court has considered the rival submissions.

14. The death of one's sister in poor circumstances is tragic. To believe and that A1/husband had caused her death and in the process pocketed huge sums of money only makes it worse. The circumstance provides enough fodder to let imagination run not. In the complaint dated 09.03.1998, the allegation of Dr.Sister Thresia having colluded with A1 has been made. The same seems to be totally unsubstantiated in the face of postmortem and viscera report. Even the charge sheet informs that Dr.Sister Thresia had made a mistake in recording the cause of death of Achamma as 'probable cause of death - acute M.I. Based on history' by merely examining the dead body without a clinical report. This Court may state that the order of Apex Court in C.A.No.1211 of 2006 informing filing of charge sheet under Section 302 r/w 201 IPC is a mistake for Section 306 r/w 201 IPC. This Court is of the view that in discharging Dr.Sister Thresia of offence u/s.201 r/w 306 r/w 34 IPC, the finding of the Court below is in keeping with the decision of the Apex Court in P.Vijayan v. State of Kerala and another [AIR 2010 SC 663], which reads thus:

' In exercising his jurisdiction under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out, whether the materials palced before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial by and large. If two view are equally possible and the Judge is satisfied that he evidence produced before him while giving rise to some suspicion but not grave suspicion under section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weight of the evidence as if he was conducting a trial...'

15. This Court, in the very beginning of the order has reproduced the hospital register entry. A reading thereof shows that what is recorded therein is what was informed by husband/A1 and on the basis of such information, a conclusion has been drawn on the probable cause of death. It is nobody's case that the deceased was not brought to hospital by husband/A1 as recorded in the case history. The medical records and opinion suggest that the deceased met her death owing to consuming poisonous substance and on her own accord. In the circumstance, suspicion of commission of screening evidence by Dr.Sister Thresia would be very remote and no where near the requirement of grave suspicion. As regards the charge against Dr.Sister Thresia for offences u/s.199 r/w 200 r/w 193 IPC, which the Court below has required her to face trial for, it is to be pointed out that an offence u/s.199 IPC can be committed only in respect of declaration which a Court or public servant or other person is bound or authorised by law to receive as evidence of any fact. Section 199 IPC reads as follows:

"199. False statement made in declaration which is by law receivable as evidence.- Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."

16. On a bare reading of Section 199 IPC, it is abundantly clear that unless the entry made by Dr.Sister Thresia in the hospital register was one that a Court of justice was bound or authorised by law to receive as evidence of any fact, no offence under such section would be attracted. The position that the hospital register entry informing the 'probable cause of death - acute M.I. Based on history', cannot by itself be accepted as evidence of the cause of death, is too clear to require elucidation.

17. Sections 192 and 193 IPC read as follows:

"192. Fabricating false evidence. - Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so

appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceedings, is said "to fabricate false evidence."

193. Punishment for false evidence. - Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

18. This Court is of the view that it would be too far fetched to inform that Dr.Sister Thresia intended to commit an offence of fabricating evidence when she entered the probable cause of death in the hospital record. In Upendra Nath Chatterjee v. Emperor [1936 (40) Cal W.N. 313], Lord - Williams, J. had this to say : '... I always think that it is very suspicious when the prosecution has to depend upon statements such as "this must have been so" or "that must have been so," in the absence of any evidence that it ever was so. ... Section 192 applies only if he did it with the intention of its being used in some judicial proceeding, and I should have thought that those words meant that some judicial proceeding was contemplated. I should have thought that a mere idea in the mind of any body that some document might at some future date be used in some judicial proceeding would not be sufficient to bring him within the ambit of Section 192, and so make it a crime.'

In the result,

- (i) CrI.R.C.No.998 of 2016 shall stand allowed and the order of the Court below passed in CrI.M.P.No.100 of 2014 in S.C.No.62 of 2005 on 06.06.2015 requiring Dr.Sister Thresia to face trial for offence u/s.199 r/w 200 r/w 193 IPC is set aside. Dr.Sister Thresia is discharged of all charges.
- (ii) CrI.R.C.No.1435 of 2016 shall stand dismissed. Consequently connected MPs are closed.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Mahila Court (Fast Track),
Ootacamund, The Nilgiris.

2.The Inspector of Police,
The Crime Branch Criminal
Investigation Department,
C.B.C.I.D., Nilgiri Unit,
Nilgiri District.

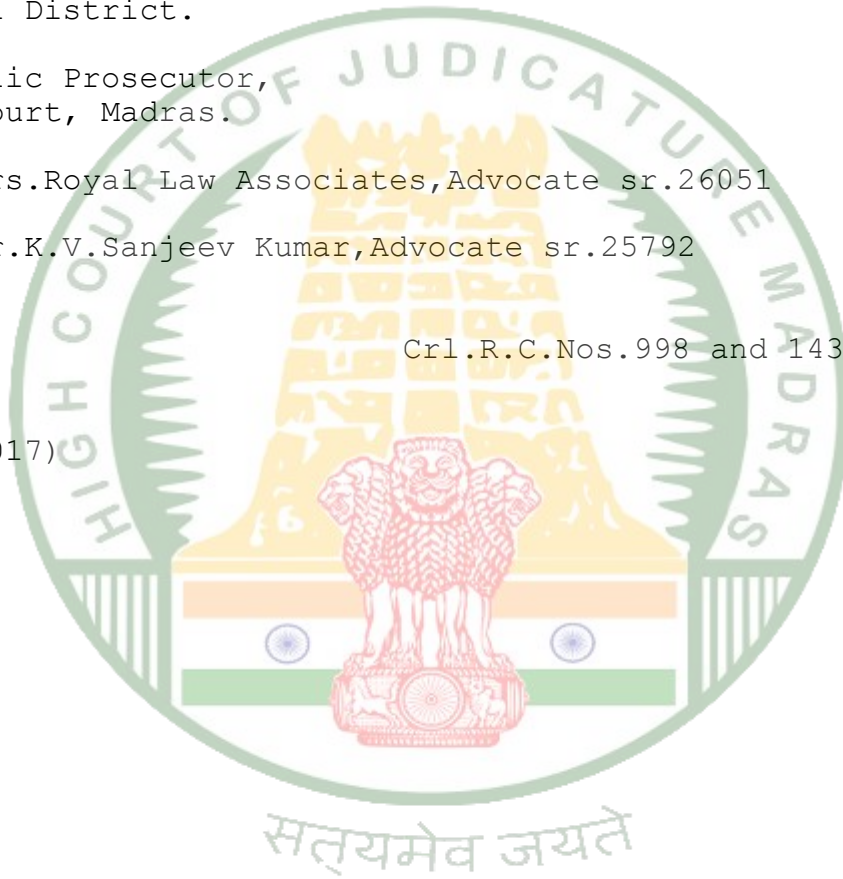
3.The Public Prosecutor,
High Court, Madras.

+1cc to Mrs.Royal Law Associates,Advocate sr.26051

+1cc to Mr.K.V.Sanjeev Kumar,Advocate sr.25792

Crl.R.C.Nos.998 and 1435 of 2016

ev(co)
ss(11/5/2017)



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