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IN THE COURT OF SESSION KOTTAYAM DIVISION

Present: Sri. Gopakumar G., Addl. Sessions Judge - I

Friday, the 14th day of January, 2022
24th day of Pousha, 1943

SESSIONS CASE No. 457/2019

(Crime No.746/2018 of Kuravilangadu Police Station)
(C.P. No. 15/2019 of J.F.C.M. Court - I, Pala)

Complainant:

State of Kerala, represented by
The Dy.S.P., Vaikom.

By Adv. Sri. Githesh J. Babu, Special Public Prosecutor
Adv. Sri. John S. Ralph (Counsel for the Defacto Complainant)

Accused:

Bishop Franco Mulakkal, aged 57 years,
S/o Ippunny, Mulakkal House, Mattam Desam,
Kandanasseri Panchayath, Thalappally Taluk,
Trissur District, Kerala State.
Now residing at Bishop House,
Civil Lane, Jalandhar City - 144 001,
Punjab State, India.

By Adv. M/s. B. Raman Pillai & Associates & Adv. Sri. C.S. Ajayan

Charge : U/s. 376(2)(k), 376(2)(n), 342,
377, 376C, 354, 506(ii) IPC.
(framed on 13.08.2020)

Plea : Not Guilty.

Finding : Accused is found not guilty.

Sentence/Order : Accused is found not guilty of the offences punishable under sections 376(2)(k), 376(2)(n), 342, 377, 376-C, 354 and 506(ii) of IPC and is set free. His bail bond stands cancelled and sureties are discharged.

Dates of Trial : 16.09.2020, 17.09.2020, 05.10.2020, 27.10.2020, 28.10.2020, 30.10.2020, 13.11.2020, 18.11.2020, 20.11.2020, 30.11.2020, 16.12.2020, 21.12.2020, 12.01.2021, 18.01.2021, 19.01.2021, 20.01.2021, 03.02.2021, 05.02.2021, 19.02.2021, 20.02.2021, 02.03.2021, 12.03.2021, 30.03.2021, 05.04.2021, 19.04.2021, 20.04.2021, 21.04.2021, 26.04.2021, 28.04.2021, 30.04.2021, 29.07.2021, 03.08.2021, 06.08.2021, 10.08.2021, 31.08.2021, 22.09.2021, 01.10.2021, 04.10.2021, 06.10.2021, 13.10.2021, 22.10.2021, 25.10.2021, 26.10.2021, 28.10.2021, 29.10.2021, 06.11.2021, 08.11.2021, 11.11.2021, 12.11.2021, 22.11.2021, 24.11.2021, 25.11.2021, 27.11.2021, 29.11.2021, 30.11.2021, 03.12.2021, 13.12.2021, 14.12.2021 and 15.12.2021.

Date of Hearing : 10.01.2022

Date of Judgment : 14.01.2022

JUDGMENT

The accused, the Bishop of Jalandhar Diocese, stands charged by the Deputy Police Superintendent, Vaikom in Crime No.746/18 of Kuravilangadu Police Station under Sec.342, 376(2)(k), 376(2)(n), 376C(a), 377 and 506(II) IPC on the allegation that he raped PW1, a nun.

PROSECUTION CASE

2. PW1, was the Mother Superior of St. Francis Mission Home, Kuravilangadu, a convent belonging to Missionaries of Jesus, a congregation of Latin Catholics. Accused was the Bishop of Jalandhar Diocese, where the principal seat of the congregation is domiciled. The Mission Home was under the direct control of Jalandhar Diocese. The accused regularly visited Kerala and stayed at the convent. During 2014, after participating in an ordination function at Chalakkudy, he reached St. Francis Convent. His stay was arranged at guest room No.20 of St. Francis Mission Home. PW1 and PW8, Sr. Liyona, took the bag and other articles of the accused to the guest room. After, reaching the room, the accused asked PW1 to iron his cassock.

3. Earlier, on 08.02.2014 and 13.02.2014 he had supervised the renovation works of the kitchen. Later he permitted PW1 to continue with the renovation work. When PW1 went to room No. 20, with the ironed cassock, he asked her to bring the papers relating to the renovation works of the kitchen. She knocked at his doorsteps at around 10:45 pm. She was permitted to get in. When she stepped into the room with the papers, accused suddenly locked the door from inside and caught hold of her. He pulled her to a cot and forcefully removed her dresses. He then forcefully inserted his fingers into her vagina, and grabbed and kissed her breasts. He also made an attempt to insert his sexual organ into the mouth of the victim, and rubbed his penis on her face. He forced her to hold his penis and did onanism, using her. After the incident, using his power, authority and position, he threatened her that if she attempt to disclose the incident to any one, she would be eliminated. Prosecution alleges that the victim was raped repeatedly on 06.05.2014 at 11.30 p.m., on 11.07.2014 at 10 p.m., on 05.01.2015 at 10.30 p.m., on 15.01.2015 at 10.30 p.m., on 22.04.2015, 22.05.2015, 27.07.2015, 21.08.2015, 05.11.2015, 17.01.2016,

29.04.2016 and also on 23.09.2016, in between 10 p.m. and 12 p.m. at the guest room No.20 of St. Francis Mission Home.

Registration of FIR and Completion of Investigation

4. PW1, initially preferred Ext.P20 complaint dated 27.06.2018 before the District Police Chief. The said complaint was forwarded to the Station House Officer of Kuravilangadu Police Station for further action. On 28.06.2018, Ext.P1, first information statement of the victim was recorded, on the basis of which, PW38, the station house officer of Kuravilangadu Police Station, registered Ext.P85 FIR against the accused u/s. 342, 376(2)(k), 376(2)(n), 377, 506(1)of IPC. Subsequently, as per the order of Kottayam District Police Chief the further investigation of the case taken over by the Vaikom Dy. S.P. PW38 handed over the case diary to PW39 the Dy. S.P. Vaikom who conducted the further investigation. After due investigation, PW39 submitted a final report against the accused, alleging commission of offences punishable u/ss.342, 376(2)(k), 376(2)(n), 376C(a), 377 and 506(II) IPC.

Proceedings after the submission of Final Report

5. The charge sheet was filed before the Judicial First Class Magistrate Court-I, Pala. The learned Magistrate after taking cognizance and on securing the presence of the accused, and after complying with the formalities u/s. 207 Cr.PC, committed the case to the Principal District and Sessions Court, Kottayam, u/s. 209 Cr.P.C., as it was found that the case was exclusively triable by a Court of Session. The case was taken on file as S.C.No. 457/19 and was made over to this court for trial.

6. Afterwards, summons was issued and the accused appeared. Adv. Raman Pillai Associates appeared on behalf of the accused. He was heard on the question of charge. Since there were sufficient materials to proceed against the accused, charge was framed against the accused u/s. 376(2) (k), 376(2)(n), 342, 377, 376-C, 354 and 506(ii) of IPC and the same was read over and explained to the accused. The accused pleaded not guilty of the charge laid against him and stood for trial.

7. The trial was conducted by special prosecutor Adv. Sri. Githesh J. Babu. Victim moved CrI.M.P. No. 424/2020 U/s. 24(8) of the Code of Criminal Procedure, to permit her to engage Adv. John S. Ralph, to assist the prosecution. The said petition was allowed and she was allowed to engage a private lawyer to assist the prosecution.

8. From the side of the prosecution PWs 1 to 39 were examined and Exts.P1 to P122 were marked. Exts.X1, X1(a) and X1(b) were marked through PW39. Apart from the above mentioned documents MO-1 to MO-4 series material objects were also marked. CW4, CW6, CW10, CW15, CW17, CW19, CW20, CW21, CW24, CW26 CW29, CW30, CW31, CW32, CW34, CW36, CW37, CW38, CW39, CW40, CW42, CW46, CW47, CW49, CW50, CW52, CW53, CW54, CW55, CW56, CW57, CW58, CW60, CWs 63 to CWs 70, CW72 and CW73 were given up. CW33 was reported dead.

9. After the closure of prosecution evidence, the accused was questioned u/s. 313(i)(b) Cr.P.C. All the incriminating materials were denied. He also filed a defence statement. Subsequently, the prosecution and defence were heard under Sec.232 Cr. P.C. Since the case was not fit for an

acquittal under Sec.232 Cr. P.C., the accused was asked to lead evidence. DWs 1 to 6 were examined from the side of the defence. Altogether, defence marked Exts.D1 to D58 documents.

10. Some of the documents were marked subject to the objection raised by the opposite side. The admissibility of those documents would be dealt with separately.

11. After the completion of the evidence both sides were heard.

Arguments advanced by the Prosecution

12. The learned special prosecutor argued that, as in all cases of sexual violence, it is the victim's testimony which is of paramount importance. He submitted that there is nothing wrong in placing reliance on the uncorroborated testimony of the victim. He pointed out that as far as this case is concerned, the victim's testimony is amply corroborated by the testimony of PWs 2 to 9. Each and every incident spoken by PW1 is supported by the testimony of other witnesses who were present along with her at the relevant time.

13. The presence of the accused on 5th and 6th May 2014, is supported by the evidence of PW8 and PW19, the other two nuns of the convent. PW8 has also testified that she had seen the victim taking the ironed cassock of accused to room No.20. That apart, the entries in Ext.P34 chronicle would prove that the accused had stayed at the convent. The presence of the accused, at the convent on the other dates of sexual violence, also stands proved from the entries in Ext.P34 chronicle, argues the special prosecutor.

14. PW1's evidence would also prove that she was victimised and demoted from mother superior-ship and later transferred to another convent, from the day she started resisting the sexual advances of the accused. This part of her testimony is supported by the oral evidence of PW2 to 9 and PW11 and Exts.P4 to P6 and P8 to P13, P18, P28, P38 and P43 argues the learned special prosecutor. The learned prosecutor also pointed out that Exts.P55 and P56 medical reports of the victim also corroborates the testimony of the victim.

15. He argues that the testimony of PW1 has to be appreciated in the light of the special circumstances of the

victim. She came to the nunnery on her own volitions at a very young age. She was a devoted Nun, and was soon rewarded for her selfless service. She became the mother general of the congregation and was later appointed as the Kerela-in-charge. As a member of the congregation she was bound by the rules of the congregation and the directions of her superiors. But soon the sexual desires of the accused, got her in trouble.

16. The learned prosecutor argues that everything is fine in any self-regulating, hierarchical community, until you refuse to oblige to the unethical and immoral demands of the superiors. Once you start questioning their ill motive diktats, you will fall from grace in no time. This had exactly happened to her. Even her close relatives had little knowledge about her plight. She had no one to complain or share her griefs. The biggest asset of a nun is her vow of chastity. Even after losing her maidenhead, the hierarchical norms of the congregation forced her to travel with her predator and share seat with him in many function, that too on the very next day after the sexual violence, which made her situation much worse than an ordinary woman. PW1 was

also restrained by the societal dogmas and by the fear of being ostracized, which prevented her from disclosing her ordeal to her near relatives and companion sisters. She had to suffer her pain and sorrow in silence. She was reluctant to open up even when in her first information statement and also to the doctor, argues the prosecutor.

17. The learned prosecutor submitted that the hazy, and at times obscure complaints and statements of the victim has to be appreciated in the background of her unique situation. He argued that reliance should be placed on her testimony, for a nun will not gain anything by levelling false accusations against a Bishop. He concluded his argument and prayed that the accused may be found guilty.

Arguments advanced by the Defence

18. The learned counsel for the accused on the other hand submitted that the victim has no consistent version. Her version in Ext.P1 FIS is contrary to her deposition in court. She did not reveal any history of penile penetration to the doctor. Defence also stressed that though there are 18 entries in Ext.P34 chronicle regarding the visit and stay of the accused, there is no entry to show that he had stayed in

the convent on 05.05.2014 and 06.05.2014. The victim's version that she disclosed the sexual assault committed by the accused to PW14 and PW18 is proved to be untrue, as both PW14 and PW18 deposed that the victim did not narrate any sexual abuse to them. As per the victim's testimony she made the first disclosure to PW2. But even the name of PW2 is not revealed in Ext.P1 FIS and Ext.P19 Sec.164 statement of the victim.

19. The learned counsel further pointed out that the evidence of PW3 and PW4 is that the victim had disclosed to them after attending a retreat at Attapady, that she has been raped and subjected to carnal intercourse against the order of nature. But Ext.P43 letter issued by PW4 and her interview to DW4 would prove that she came to know about the incident after the registration of the First Information Report. Even the consistent case of PW1 is that she did not disclose the entire incident to PW3 and PW4. PW1's version is that she had informed PW3 and PW4 that she would be forced to share bed with the Bishop and not that she was raped by Bishop. In such circumstances no reliance can be

placed on the testimony of PW3 and PW4, argues the learned counsel for the defence.

20. The learned counsel also pointed out that many crucial evidence has been suppressed by the prosecution. The mobile phone used by the victim is not produced in court which would have proved the vulgar and sexually coloured messages allegedly sent by the accused. Similarly, the mobile phone of PW16 and CW17 are also not before this court which would have definitely proved the messages exchanged by the victim and CW17.

21. The learned counsel further pointed out that even in Ext.P8 letter issued to PW18 Cardinal Mar George Alencherry, there is no allegation of any sexual abuse from the part of the accused. The victim and her companion sisters started making accusations against the accused, when an enquiry was initiated on the complaint of PW16 Jaya. Subsequently they started disobeying Sr. Tincy, the newly appointed mother superior of the convent, openly. The learned counsel submitted that PW1 cannot be regarded as a sterling witness. She had given inconsistent and mutually

contradictory versions before various authorities. The long delay in reporting the matter also remains unexplained.

22. Ext.X1 medical examination register and Ext.X1(a) certificate would show that the victim had admitted to the doctor that there was no history of penile penetration. Subsequently, those words were struck off from Ext.P55. This amply proves the motive of the prosecution, contends the learned counsel. He concluded his argument pointing out that it is unsafe to place reliance on the delayed, inconsistent, uncorroborated, and motivated testimony of the victim.

Admissibility of documents marked subject to objection:-

23. Certain documents were marked subject to the objection raised by the opposite side. Admissibility of those documents has to be decided first. Ext.P9 is the first document to be marked subject to objection. Ext.P9 is a copy of the letter handed over to PW17. PW17 denied the claim of the prosecution and testified that no such letter was handed over to him. Though, the learned special prosecutor suggested to the witness, that his testimony is untrue, he was not declared hostile. More over, the defence would point out that the stand of the witness even in his Sec.161 statement

was that, he never received any letter/complaint from PW1. The mandatory requirement for adducing secondary evidence was not complied with. Hence, Ext.P9 is not admitted in evidence.

24. Ext.P11 is a copy of the letter written by PW1 and handed over to Apostolic Nuncio through PW6. Prosecution contends that the original is in the possession of Apostolic Nuncio and hence the photocopy can be permitted to be marked as secondary evidence. S.65(a) of the Evidence Act provides that if the original is in the possession of a person out of reach of the court or not subject to the process of the court then, secondary evidence can be adduced with respect to those documents. The evidence of PW6 proves that the original of the document was in fact handed over to Apostolic Nuncio. But Apostolic Nuncio is not a person outside the reach of the court. He is subject to the process of court. Hence, the objection raised by the defence is sustainable and Ext.P11 is discarded, being a copy marked without satisfying the mandatory condition for admitting secondary evidence.

25. Ext.P13 a copy of the letter sent to Cardinal Marc was also marked subject to objection. Cardinal Marc is residing at Vatican. Prosecution has produced Ext.P14 receipt and examined PW29 to prove that the courier was despatched to Vatican. Cardinal Marc is residing out of the jurisdiction of this court. He can be regarded as a person out of reach of this court. In the said circumstances, Ext.P13 being a copy of the original complaint is admissible in evidence under Sec.65(a) of the Evidence Act.

26. Ext.P18 is an e-mail sent to Apostolic Nuncio. Prosecution has failed to produce the mandatory certificate under S.65B of the Evidence Act, to prove Ext.P18 e-mail. Ext.P18 is a print out of the data stored in an electronic record. Hence, S.65B certificate is mandatorily required for its admission and proof. In the absence of S.65B certificate Ext.P18 is not admissible in evidence.

27. Prosecution has produced Ext.P23 letter issued by Sr. Rejina to PW1. The letter bears the signature of Sr. Rejina. PW1 has identified the letter. Being an original document Ext.P23 is admissible in evidence. But, without examining CW54 Sr. Rejina, its contents cannot be said to

have been proved. Ext.P24 is a photocopy of the tax receipt. Without producing the original tax receipt, or without issuing notice to the party in possession of the original of Ext.P24 to produce the same, a copy is not admissible in evidence. Ext.P27 is a copy of the receipt issued by Fast -track systems, Kuravilangadu. The Document being a photocopy is not admissible in evidence.

28. Exts.P28 and 29 e-mails and Exts.30, 31 and 32 delivery statements, downloaded from the website of DHL Courier service were marked subject to objection. S.65B certificate issued by PW4 is attached along with these documents. But the said certificates were neither shown to PW4 nor proved. Hence, these documents are inadmissible in evidence. More over Ext.P28 does not appear to be the print out taken from the inbox of the e-mail account.

29. Ext.P38(a) cover and Ext.P38 letter were proved through PW4, PW11 and PW15. But in the cross-examination of PW15, the defence took up a contention that there is no postal seal on the cover to show that the letter was sent from Punjab. This court had noted that the objection will be considered later. I have gone through the postal cover. A

postal slip is seen pasted over Ext.P38(a) wherein it is specifically stated that the letter is sent from Gurudaspur, head post office. The seal of the postal authority is also affixed, which is spread over the said postal slip and the cover. Hence the objection raised by defence in this regard is not sustainable.

30. Exts.P63, P63(a), P63(b) and P64 are some certificates issued by the Assistant Secretary of Kuravilangadu Grama Panchayath. Ext.P63 series certificates are ownership certificates pertaining to building bearing Nos.277, 278 and 279 of Kuravilangadu Grama Panchayath, while Ext.P64 is a one and the same certificate showing that building No.279 and 518, pertains to the same building. The objection raised by the defence is that the certificates are hit by S.162(1) of Cr. P.C.

31. There is a bar under section 162(1) Cr. P.C. to get signature from a person with respect to a statement made to a police officer. Sec. 162 also provides that such statements can be marked only for contradiction and not for corroboration. The argument of the defence is that Ext.P63 series and Ext.P64 certificates are in effect, statements made

to a police officer and not just certificates, and hence they are inadmissible in evidence.

32. The documents produced by the prosecution are public documents. Anyone can obtain ownership certificates and one and the same certificates from the Panchayath by paying the requisite fees. Hence these documents will not fall within the realm of statements recorded during the course of investigation. The bar under Sec.162(1) is not applicable to such certificates (see **Maju @ Manu v. State of Kerala (2020(3) KHC 22)**). The documents were proved by examining PW26. Hence, the documents are admitted in evidence.

33. Ext.P74 is a letter issued by Sr. Rejina to CW6 Being an original document Ext.P74 is admissible in evidence. But without examining CW54 Sr. Rejina, its contents cannot be said to have been proved.

34. Exts.P93 and 94 are the photocopies of two orders/directions issued by the accused. Prosecution has produced Ext.P96 letter issued from CW54 Sr. Rejina, the Superior General of Missionaries of Jesus stating that she

was issued with a notice to produce the original of Exts.P93 and 94. According to her, the original was lost from the office. PW39 has given evidence in this regard. Prosecution has thus established the mandatory condition under Sec. 65(c) of the Evidence Act, for adducing secondary evidence. Hence, I hold that Exts.P93 and 94 are admissible in evidence.

35. Ext.P112 is a photocopy. More over no translated copy is attached along with the document. Hence the document is not admitted in evidence.

36. Prosecution has produced Ext.P113 e-mail and Ext.P115 series letters issued by Sr. Rejina. S.65B certificate is not appended along with Ext.P113 e-mail. Hence, it is not admissible in evidence. Ext.P115, 115(a) and 115(b) are photocopies. They are also not admissible in evidence.

37. Ext.D6 series photographs and Ext.D7 DVD were marked subject to proof. Subsequently, the defence examined DW2 and proved Exts.D6 and D7. Ext.D6(g) Sec.65B certificate and Ext.D7(a) Sec.65B certificates were also produced and proved. Hence, Exts.D6 and D7 are found

to be admissible in evidence. Exts.D10 series e-mails and Ext.D10(h) S.65B certificate were also proved by examining DW3. Those documents are accordingly admitted in evidence.

38. Ext.D17 DVD of the programme, 'close encounter,' aired by reporter TV was initially marked subject to proof. Subsequently, proof was offered by examining DW3. He deposed that he downloaded the file from You Tube, to his computer and copied/wrote the downloaded file in a DVD and handed over it to the accused. He also produced Ext.D17(a), Sec.65B certificate.

39. Prosecution contends that DW3 was not authorised to download these contents from You Tube. Ext.D17 DVD was played in the court during the examination of DW4, the interviewer. Prior to that it was played during the testimony of PW4 and DW3. DW4's testimony proves that Ext.D17 DVD is not a doctored or edited one. It is true that no material is produced before this court to show that DW3 had any authorisation to download the contents, which seems to be a licensed material. But it is settled law that materials procured by illegal means would not make it inadmissible in evidence [see **Malkani R.M. V. State of Maharashtra**

(1973 KHC 469), Magraj Patodia V. R.K. Birla (1970 KHC 547), Dharmbir Khattar V. Union of India and others (2012 KHC 3077)]. Hence, I hold that Ext.D17 is admissible in evidence.

40. Ext.D22 e-mail was also subsequently proved through DW3. S.65 B certificate given by DW3 was marked as Ext.D22(a). Hence the challenge raised against the admissibility of Ext.D22 is found against the prosecution.

41. Exts.D23 and D27 are photocopies. The documents were not properly proved and hence those documents are discarded. Ext.D28 chronicle was produced to prove the important events and daily affairs of Kuravilangadu Convent from 03.01.2018 to 16.12.2018. The chronicle was proved by examining PW22. PW22, in her cross examination has admitted that there are material differences between the entries in Ext.P34 chronicle and Ext.D28 chronicle. Admittedly, the entries from 01.01.2018 to 23.02.2018 were originally written in Ext.P34 which was later rewritten in Ext.D28. In view of the admission made by PW22 that there is material difference in the entries seen in

Ext.D28n and D34, Ext.D28 cannot be regarded as a document kept in the regular course of business.

42. Exts.D29 and 30 were initially marked subject to proof. Both were photocopies. Subsequently the defence produced the original of those documents which were marked as Exts.D29(a) and D30(a) respectively. Hence, both these documents are admitted in evidence.

43. Exts.D45 is the printout of the handwritten complaint of PW16 Jaya and Ext.D50 is an e-mail sent by PW16. PW39, the investigating officer has admitted in his cross-examination that Ext.D45 is the complaint of Jaya. Ext.D45 complaint was also attached along with Ext.D50 e-mail. The said e-mail was proved by examining DW3. Ext.D50(a) certificate was also proved by him. Hence, Ext.D50 is held admissible in evidence.

44. Exts.D51 and D52 are photocopies. The original of these two documents were not produced. Hence, these two documents are discarded.

The Points Raised

45. From the rival contentions made, the following points arise for consideration in this case:-

- Point No:1. Is it proved that the accused was a person in authority or that he is in position of control or dominance over PW1?
- Point No:2. Is there any delay in lodging the complaint, if so, has the prosecution explained the delay?
- Point No:3. Has the delay caused any prejudice to the accused?
- Point No:4. Is it proved that the accused was present in the convent on 05.05.2014, 06.05.2014, 11.07.2014, 05.01.2015, 15.01.2015, 22.04.2015, 22.05.2015, 27.07.2015, 21.08.2015, 05.11.2015, 17.01.2016, 29.04.2016, 23.09.2016?
- Point No: 5. Has the prosecution proved that the accused committed rape on PW1, repeatedly, making use of his position of trust, authority and post of control and dominance over PW1 and thereby committed the offences

punishable u/s. 376(2)(k) and 376(2)(n) of IPC?

Point No.6 Is it proved that the accused wrongfully constrained PW1 in guest room No.20 and thereby committed an offence u/s. 342 IPC?

Point No: 7. Is it proved that the accused made the victim hold his sexual organ and forced her to stimulate his genitals and caused discharge and thereby committed carnal intercourse against the order of nature?

Point No: 8. Is it proved that the accused outraged the modesty of PW1 and thereby committed an offence u/s. 354 IPC?

Point No: 9. Is it proved that the accused criminally intimidated the victim that she would be killed and thereby committed the offence punishable u/s. 506(ii) of IPC?

Point No.10. Has the prosecution proved that the accused abused his position and fiduciary relationship and thereby committed sexual intercourse with

her repeatedly?

Point No: 11. What is the proper punishment?

46. Point No.1:- Prosecution had charged the accused, for repeatedly raping PW1, a nun, by making use of his authority and power over her. All the 13 incidents have taken place at St. Francis Mission Home, a Convent of M.J. Congregation. Prosecution would claim that Bishop of Jalandhar had control over the internal affairs of M.J. congregation, while the defence would argue that the administration of the convent was with the general council and the mother superior of the congregation, which is an autonomous body and that the local ordinary of St. Francis Mission Home was the Bishop of Pala Diocese and not the Bishop of Jalandhar diocese.

47. It is not under dispute that the accused was acting as the Bishop of Jalandhar diocese from 2013 to 2018. The founder father of M.J. congregation was Bishop Symphorian Keeprath, who was the Bishop of Jalandhar diocese until 2007. The principal seat of M.J. Congregation is at Jalandhar. M.J. Congregation has 3 convents in Kerala i.e at

Kuravilangadu in Kottayam District and at Pariyaram and Paravur, in Kannur District. After Bishop Symphorian Keeprath, Bishop Anil Cuoto was acting as the Bishop of Jalandhar diocese, from 2007. In August 2013, accused was ordained as the Bishop of Jalandhar.

48. Prosecution argues that the land owned by St. Francis Mission Home was purchased in the name of Bishop and not in the name Mother General. Ext.P24 copy of tax receipt is pressed into service. This court has already held that Ext.P24 is inadmissible in evidence. Hence, no reliance can be placed on Ext.P24 tax receipt.

49. Defence argues that Missionaries of Jesus is a Congregation of diocesan right, as opposed to congregations following pontifical rights. In a congregation following diocesan right, it is the local ordinary Bishop who has administrative control over the congregation. According to the defence, the local ordinary Bishop of St. Francis Convent is the Bishop of Pala and not the Bishop of Jalandhar.

50. Defence relies on the evidence of DW6, Fr. Mathew Koyickal, who claims to be an expert in Canon Law.

He deposed that every diocese has a geographically defined territory. Every parish also has a defined territory. The Bishop of a diocese is called diocesan Bishop. Every different rite among the Catholics, has different dioceses, and for each of these dioceses there would be separate diocesan Bishops. He explains that the term local ordinary means diocesan Bishop, reference of which is provided in Canon 134, Article 1, 2 and 3. Canon 103 provides for the domicile of the members of a religious institution. As per the Canon Law the domicile of the members of a religious institute is decided on the basis of the house which appointed them and that their domicile would change on being transferred.

51. The version of DW6 is that the domicile of a nun staying in a religious house within Pala diocese is Pala diocese. He adds that diocesan right over a congregation is the authority of a local ordinary bishop to supervise the divine activities of a nun. It is also deposed that the diocesan Bishop of the territory where the principal seat of the congregation is situated has some power over the house, as is given to a local ordinary. According to DW6, this is provided in Canon 599 and 625.

52. DW6 adds that a religious congregation is an autonomous institution. The supreme power of a religious congregation vest in the General Charter. Local ordinary also has been given the power to enquire into the financial dealings of the congregation.

53. In cross-examination, he admitted that Vijayapuram diocese belongs to Latin rite. It is also admitted that the territorial jurisdiction of various dioceses, under the various rites, may overlap. He testified that he does not know whether Kuravilangadu Mission Home comes within the territory of Vijayapuram diocese or not. It is also admitted that the generalate of M.J. Congregation is at Jalandhar and that the power over the generalate vest in Jalandhar Bishop, who is the local ordinary Bishop of the generalate. According to the witness, Pala Bishop has no role in the transfer and postings of Kuravilangadu Mission Home. The power with respect to the transfer and posting vest with Mother general and the council of the congregation.

54. The case of the defence is that as per the Canon Law, the local ordinary Bishop alone has supervisory

jurisdiction over the convent and as such the accused who was the Bishop of Jalandhar diocese had no control over the internal affairs of the convent. PW1's version on the other hand is that Jalandhar Bishop is the supreme authority of the congregation. It is her case that under the orders of the accused she had to stop the renovation work of the kitchen. The witness further testifies that she considered him like God. She added that she treated the Bishop like her father. She had confessed to a priest that she was molested by her supreme authority.

55. PW1 admits that her congregation is a diocesan right. But according to her, accused is the living patron of the congregation while Francis of Assisi, whom the defence project as the patron, was their saint. It is the Jalandhar Bishop who issues dispensation letter to the nuns and not the local ordinary Bishop.

56. Apart from the testimony of PW1, PW2 has also testified before this court that the accused is the diocesan Bishop of the congregation. She has also testified that M.J. Congregation is a diocesan congregation and hence the

accused had control over the building work and in the transfer and posting of nuns. Of course, PW2 belongs to a different congregation. But it has come out in evidence that she used to give classes to the nuns at St. Francis Mission Home during Easter and Christmas. There are entries in Ext.P34 chronicle which proves that she had stayed at the convent. In the said circumstances, her evidence regarding the administration and internal affairs of the convent has some significance.

57. PWs 3 and 4, the nuns of Missionaries of Jesus have also testified that accused was at the helm of the affairs of the congregation and that he was controlling and administering its affairs, directly and indirectly. PW8 and PW19, the companion sisters of PW1 during 2014 have also deposed that the accused was the supreme authority of the congregation. PW8's evidence would also prove that when the accused arrived at the congregation on 05.05.2014 it was PW1 and PW8 who took his suitcase and bag to the room. Their evidence would also prove that the accused was considered as a religious and administrative head and that his orders were obeyed with due respect.

58. Another crucial evidence in this regard has come from the evidence of PW19, who deposed it was the accused, who approved her dispensation letter. Going by her version, when she insisted to leave the congregation, she was asked by the sisters to meet the Bishop. She met the accused who permitted her to quit the convent. In cross-examination also she reiterated that it was after getting permission from the accused that the Mother general sanctioned her dispensation letter.

59. Apart from the testimony of the nuns, some priests have also deposed about the supreme authority of the accused over M.J. Congregation. PW9 is the vicar of St. Mary's Catholic Church, at Ferozpur District in the State of Punjab. Prior to that he had worked as the vicar of 'Our Lady of Grace', at Amritsar. His version is that the accused was the sovereign authority of their diocese. PW10 who is currently working as the hostel warden of Pariyaram. St. Francis Mission Home testified that the Mission Home is under the jurisdiction of Jalandhar diocese. The supreme authority of the diocese is the Bishop. An enquiry was conducted against her in connection with an incident in

Bihar. Accused visited Marian Sadan Convent in connection with the enquiry and stayed there and conducted necessary enquiry. Her version also proves that the Bishop is the supreme authority.

60. It is true that in cross-examination she has claimed that she was not issued any charge memo and notice. It is also testified that her statement was not taken. Her explanation is that though she has asked some questions, there was no formal enquiry. Even if her version regarding the absence of a formal enquiry is accepted, the fact remains that the Bishop was exercising his authority over the internal matters of the nuns who were part of M.J. Congregation, though their domicile was beyond the territorial jurisdiction of Jalandhar diocese.

61. PW12 was working as the Director of Gyanodaya Diocesan Pastoral Centre Jalandhar during July 2015. His version would also establish that the accused was the sovereign authority of Jalandhar diocese. Though in cross-examination he claims that if some convents of the congregation is functioning beyond the territorial jurisdiction

of the diocese where its principal seat is functioning, diocesan Bishop of the local convent would act as the local ordinary of the said convents, in re-examination, the witness clarifies that the local ordinary's jurisdiction is limited to divine matters. This part of his evidence goes in tandem with the evidence of DW6, whose evidence is also to the effect that the power of local ordinary is mostly limited to divine matters.

62. PW12 claims that the transfer and posting of the sisters are decided by general council and general councilors of the congregation. But he explains that the advice of the Bishop would be sought for, before issuing final orders.

63. Perhaps the most crucial evidence regarding the power of the local ordinary vis-à-vis the Jalandhar Bishop, is the testimony of PW14, the vicar of Kuravilangadu church, the parish church of St. Francis Mission Home. His definite stand is that the administrative head of St. Francis Mission Home was Jalandhar diocese and M.J. Congregation and not the local ordinary. His testimony would also prove that his parish comes within the jurisdiction of Pala diocese, belonging to Syro Malabar Rite, while St. Francis Mission

Home belongs to Latin Catholic rite. In cross-examination he further explains that Pala diocese is the local ordinary of the St. Francis Mission Home as its jurisdiction is within the territorial jurisdiction of Pala diocese. But according to him, from the mere fact that the Mission Home is functioning within its territorial limits, it does not come within its jurisdiction. He explains that St. Francis Mission Home is a diocesan congregation. Moreover it is a congregation of Latin Catholic Rites. The congregation was founded by Jalandhar diocese.

64. The evidence of PW14 gives the clear and correct picture of the actual state of affairs of the convent. Despite being the local vicar PW14 testifies that neither him nor Pala diocese had any jurisdiction or control over the internal affairs of the St. Francis Mission Home. In this regard the evidence of PW18 Cardinal Mar George Alencherry also has much significance. He has testified that the institutes of Jalandhar diocese are functioning in Kerala and that the administrative matters of those institutions are within the realm of Jalandhar Bishop. In fact, his version is that when PW1, and some sisters met him and raised their grievance

against the administrators of the congregation, he had advised them to approach the authorities at the helm of Latin Church. It was on his advice that PW1 and the other sisters approached Apostolic Nuncio and Cardinal Oswald Gracias, the president of Latin Bishop Conference. PW18 has also vouched that Jalandhar Bishop has got supervisory role over the congregation.

65. Apart from the oral testimony of these witnesses prosecution has also produced some documentary evidence to establish the authority of the accused. Ext.P93 is a letter issued by the accused to Sr. Regina, the then Mother General of Missionaries of Jesus, from which it is revealed that the Mother General and the councilors had met the accused and informed him about the complaint made by PW16. Ext.P93 shows that it was under the orders of the accused that an enquiry was made into the allegations. Ext.P93 is dated 10.12.2016. Ext.P94 would show that on 13.03.2017 the accused issued a remainder to Sr. Regina, that he is waiting for the completion of the enquiry report.

66. Accused during his 313 questioning has admitted that he had in fact issued Ext.P93 letter. His explanation is

that he had only suggested to Sr. Regina to make an enquiry. As regards Ext.P94, he admits that he had issued a remainder as he felt that the enquiry was taking too much time. If the case of the defence that the accused never had any role in the administrative matters of the congregation, Exts.P93 and P94 letters would not have been issued. Exts.P93 and P94 letters categorically proves that the accused had definite role in the internal and disciplinary matters of the congregation.

67. In this connection two more documents have ample relevance. Ext.P121 is a newsletter by name Link Lines, published by Missionaries of Jesus. The editorial board of the publication would show that the accused was considered as the Patron of the congregation, while Sr. Regina, the Mother General of the congregation was acting as the Manager. Ext.P121 was proved through DW5. She admitted that Ext.P121 is the official magazine of M.J. Congregation. Apart from Ext.P121 the prosecution has also produced Ext.P122 letter which shows that it was the accused who appointed Fr. Jose Edakkunnathu as the Finance Consultor of Missionaries of Jesus. Both these

documents, obliterate any semblance of doubt regarding the power and control of the accused over the congregation.

68. Ext.P25 souvenir, published during the death anniversary of Bishop Symphorian Keeprath also describes accused as the Patron of the congregation. Ext.D53 Constitution shows that the diocese of Jalandhar, had declared Missionaries of Jesus as the religious institute of diocesan rights. The decree of erection issued by Bishop Anil Joseph Thomas Cuoto also shows that the principal seat of the congregation shall be at Bogpur at Jalandhar District in the State of Punjab, within the diocese of Jalandhar. That apart, Ext.P10 summons issued to PW1. In connection with the enquiry ordered on the complaint of Sr. Tincy shows that a copy of the summons was sent to the accused also. All these documents categorically proves that the accused was exercising his authority over the congregation and the convent.

69. A scanning S.376(2) (f) and 376C(a) of IPC would show that the term authority is not used in a technical sense. The term 'authority' requires a contextual interpretation, rather than any narrow literal interpretation. Lust and power

often play equal part in sexual violence. Power inequalities/imbbalances, in terms of age, strength and money, often go along with incidents of rape, particularly when the surrounding community allows a veil of silence to cover the behaviour of the predator. Any authority, be it real or ostensible would come within the scope of the tern 'person in authority'.

70. Even if it is assumed that the lawful authority over a congregation is vested in its general council and the local ordinary, the power structures, both within and outside the Church being hierarchical in nature, all religious heads draw power on their subordinates on the strength of their positions as head of the institution. As far as this case is concerned there are ample documentary and oral evidence to conclude that the accused was exercising real authority over the congregation and the nuns. He is defenitely a person in authority. This point is accordingly answered.

71. Point Nos.2 to 10:- Since common aspects are involved, these points are discussed together. As in all cases of sexual violence, it is the oral testimony of the victim, which is of paramount importance. Apart from the oral testimony of

PW1, the victim, prosecution also relies on the testimony of PW2 to 9, and PW11, who came to know about the crime, either from PW1 or from her companion sisters as a corroborative piece of evidence under Se 157 of the Evidence Act. The testimony of PW12 to 14 and 18, are also relevant, since it is alleged that the victim had complained about the abuse to those at the helm of affairs of the church, before resorting to the legal remedy. Another crucial witness in this regard is PW16, the cousin of Jaya, who had made a complaint against the victim, alleging illicit relationship with her husband. According to the prosecution the complaint of Jaya was a cooked up one, while defence contends that the complaint was true and that aspersions were cast against the accused, to shield the enquiry ordered on the complaint of Jaya.

Victim's Version

72. PW1, testified that she is a nun of St. Francis Mission home, Kuravilangadu, a nunnery belonging to the congregation, Missionaries Of Jesus. She has been staying there since July 2013. Jalandhar diocese have 3 convents in Kerala i.e at Kuravilangadu in Kottayam District and at

Pariyaram and Paravur, in Kannur district. She was acting as the Mother superior of the St. Francis Mission Home, since 2013 July.

73. She went to Punjab in 1994, spend five years of novitiate training and took her final vows in 1999. At that time Bishop Symphorian Keeprath, the founder father of Mission Home, was in charge of the convent. Bishop Anil Cuoto was in the helm of affairs after 2007. From 1999 to 2004, PW1, was serving as a regular nun. In 2004, she was appointed as the mother General. In June 2013, when CW55, Sr. Regina, took charge as the new general, on her orders, PW1 took charge as the Mother Superior of Mission Home.

74. She deposed that Bishop Franco (the accused), became the Bishop of Jalandhar Diocese in the month of August 2013. Witness identified the accused. She testified that the Bishop of Jalandhar Diocese is the sovereign of the church. He controlled the renovation and construction works in the convent.

75. After informing Sr. Regina, PW1 had started the truss work and renovation work of the kitchen. The estimated

cost of the construction was Rupees Eight lakhs. In November 2013, accused called her and asked her to stop the work. She was informed that a commission would be sent from Jalandhar to inspect the work. PW1 informed the accused that she had purchased cement and tile, and that a fixed deposit was released prematurely for the work. The accused thereafter inspected the work in January 2013, and permitted her to continue with the work.

76. Later, on May 5, 2014, when the accused came to Chalakudy for the ordination ceremony of a priest, the inmates of Mission Home were also invited to the function. PW1 and, Sr. Liyona (PW8) attended the function. The accused had earlier informed that he would stay at the convent after the ceremony. So, on that night, PW1 and PW8 came back to the convent in the BMW car of the accused. They reached the convent after 10 p.m. On reaching the convent PW19, and PW1 took the bag of the accused to room No.20.

77. PW8 and PW19, the other two nuns of the convent, were staying up stairs. PW1's room and room No.20 are on

the same floor. The accused had asked PW1 to iron his cassock. Whilst, PW1 went to the ironing room, PW1 and PW19 went back to their respective rooms. PW1 ironed the cassock and knocked at door No. 20. She went inside with the permission of the accused. When she handed over the cassock, accused asked her to bring the papers of the kitchen work. She took the papers and knocked on the door. On getting permission from the accused, she entered the room. But the accused suddenly slammed the door and grabbed PW1 from behind. She was numb with terror. Her voice did not come out. She was trembling with fear. She asked the Bishop what he was doing? Accused replied that it was he who sanctioned the kitchen work and held her tight. He forced her to lie down on the bed. He lifted her dress. He grabbed her breasts and squeezed them and pulled her inner wear down. The accused tried to push his penis forcefully into her mouth. Victim shut her lips and tilted her head. The sexual organ of the accused, rubbed against her cheek and face. The accused kissed her breast and body. He pierced his fingers into her vagina. Her hands were forcibly placed on his genital and were moved backward and forward.

78. PW1 swears that Bishop was like God to her. She had placed him in her father's place. She didn't expect such a person to abuse her sexually.

79. When the accused freed her hand, she swiftly took her veil and dress from the floor, and tried to get out of the room. While she was moving out, the accused angrily told her that if the incident is made public, she would face the consequence.

80. PW1 feared that she would be done away with. Accused warned her that it was he who sanctioned the money and that he can stop it again. She opened the door and went to her room. She was so embarrassed that she couldnot speak out. She knew that Bishop Franco would go to any extreme to eliminate all those who stand in his way.

81. The first holy communion of PW1's sister's son was on the next day, i.e on 06.05.2014. Accused was the chief priest of the Eucharistic prayer. PW1 and PW8 went with the accused to attend the ceremony. Witness explains that her elder sister was getting back to her normal life after her husband's death and hence she could not tell her sister

about the previous night's incident, during the ceremony. She suffered her grief silently and kept a brave face.

82. After the ceremony, she returned to the convent in the car of the accused. They reached there around 11 p.m. PW19 was waiting for them at the convent. After their tea, when the other sisters returned to their rooms, the accused asked PW1 in a threatening tone 'to come to his room without much drama'.

83. PW1 felt scared. She went to her room. She became tense. Her younger sister is also a nun and she stays in a convent adjacent to Bishop's House in Jalandhar. PW1 vouches that she was afraid that the accused would take revenge on her junior sisters, and that he would eliminate her own sister. Hence, with no choice left, at 11:30 p.m., she went to the room of the accused and knocked at the door. The accused took her in, and slammed the door. She was forcibly made to lie on the bed. Her dresses including her under skirt were pulled down altogether. He put his fingers into her vagina and inserted his sexual organ into her genitals. PW1 was terribly hurt. After a while, the accused

pulled out his penis and swept the discharge from the penis, with his dhoti. The accused had also attempted to thrust his penis into her mouth. She left the room, wearing some of her clothes and taking the rest in her hands.

84. PW1 swears that her vows of chastity was violated. She knew that if she speak out, she would be expelled from the convent. She thought that she would be killed. Hence she chose to remain silent. The next day the accused left the convent.

85. After his return, the accused called PW1 over phone. She initially did not attend his calls. Later she picked up the phone, fearing retaliation. The accused asked her, had she disclosed the incident to anyone outside and whether she is scared. She did not give any answer.

86. At 10 p.m., on the 11th of July 2014, the accused again visited the convent. PW1 was threatened and called to room no: 20. The door was again slammed. She was undressed and raped again. She pleaded to the accused not to hurt her anymore. She said that she would kill herself. But the accused laughed at her.

87. PW1 confessed to the local priest that, a man had sexually assaulted her, that her virginity was lost and that she couldn't speak out, out of fear. It was also revealed to the priest that sexual violence was committed by her superior authority by exerting threat and by intimidating her. The priest advised her not to let it happen again. She returned to the convent with the firm determination that she would not allow it to happen again. On the 5th of January 2015, the accused again came to the convent. She was again summoned to his room. That day also she was raped. On the next day the accused went back.

88. PW1 testified that the accused had also made sexually coloured remarks at her, over phone. He compared her genital to a flower and asked her "Is the flower fine". The victim didn't answer. 10 days later, on 15.01.2015, the accused again visited the convent. When the dinner was over, he asked her to come to his room. Victim, initially did not leave her room. But the accused threatened her over phone. She went into the room of the accused out of fear, for she knew that the accused would not even hesitate to kill her.

She was again raped. The accused left the convent on the next day.

89. According to PW1, accused had also tried to put his penis into her mouth. He had also rubbed it against her face, and made her hold it with her hand and thus committed carnal intercourse against the order of nature.

90. Sexual violence was repeated on 22nd of April, 22nd of May, 27th of July, 21st August, and November 5, 2015 and also on 17th of January, 29th of the April, and 23rd of the September, 2016.

91. PW1 testifies that the important events and visits of the superior authorities and others, are recorded regularly, in a chronicle kept in the convent. The visits made by the accused are also recorded in the chronicle.

92. According to PW1, she told her spiritual mother Sr. Lizzy Vadakkal (PW2), about the sexual abuse, either by the end of 2014 or during the beginning of 2015. She also went for meditation at a retreat center called Thuvanisa, where she confessed to the priest about the incidents. She was assigned with Bible reading at the Abhishekagni meditation,

hosted by Xavierkhan Vattayil, at Attapadi. As she stood sad, Xavierkhan Vattayil came to the backstage. She knelt before him and confessed that she was not qualified for Bible reading. Xavierkhan Vattayil, consoled her and told her that God, the Omnipresent, perceives everything. He encouraged her to read holy Bible without any fear.

93. That meditation gave PW1 great spiritual courage. But on the 23rd of September 2016, the accused came back to the convent and raped her under threat. Traumatized, she went to Priest Xavierkhan Vattayil's Sehiyon Meditation Center at Attapadi, on the 29th of that month, along with PW3, Sr. Neena Rose, (PW3) Sr. Ancitta (CW4), Sr. Maggy in Praveen's (PW5) car. She confessed before the priest about the sexual abuse. Her confession lasted for a while. PW1 was relieved by the words of the priest. She then circled the cross, along with the other sisters. At that time Sr. Neena Rose and Sr. Ancitta asked her why it took her so long to confess. She initially did not respond to their query. But, on being asked again, she replied to them that she would tell them, after reaching the convent.

94. They returned from Wayanad at 3:30 p.m and reached the convent by around 11 p.m. After a while, Sr. Neena Rose, Sr. Ancitta and Sr. Anupama (PW4) came to her room and queried her about her inordinately long confession. They also asked her why she is looking dull. PW1 told them that the accused had raped her multiple times since 2014, that he had committed unnatural sexual abuse to her, that she could not tell anyone and that she could not resist the accused from visiting the convent. Sr. Neena Rose, Sr. Ancitta and Sr. Anupama comforted her and went back.

95. She called the Bishop on October 4 and wished feast. Her companions also wished the Bishop. She told him that she would not let him visit the convent again, She also made it clear that if he again stays at the convent, she would go to her house.

96. At the end of December 2016, the accused telephoned her and informed that he would visit the Convent in January 2017. She reiterated that she would go to her home. Sr. Neena Rose arranged the taxi of PW5, Praveen to go back to her home, in the eventuality of the accused

arriving at the convent on 24th January. But the accused did not come to the convent on that day. On the next day, Sr. Anupama booked the taxi of Praveen and assured him that they would pay him the day's taxi fare. At 11 a.m. Bishop texted her "I am passing through Kuravilangadu." On the 25th also the accused did not come to the convent.

97. At the end of December 2016, Sr. Regina (CW54) called her and informed her that her cousin Jaya (CW16) had filed a complaint against her. She was asked if she could come to Punjab. She told the sister that it is difficult to come to Punjab. Sr. Regina told PW1 that she is coming to Kerala next week and that she would come and see her.

98. Sr. Regina came to the convent and met her during second week of January 2017. PW1 asked her about the contents of the letter. PW3, Sr. Ancitta & PW4, were also present on that occasion. Sr. Regina told her that the complaint was that she had illicit relationship with Jaya's husband, that she had broken their family life, that she had a surgical scar on her stomach, and that one of her breast had an accessory nipple. PW1 clarified to Sr. Regina that she had

underwent a surgery for her Appendix, which every one in the congregation and her family, including Jaya, knows. PW1 also showed Sr.Regina, her breasts, after sending out her companion nuns, and proved that she had no accessory nipple. Sr. Regina was convinced by her explanation that the allegations levelled in the letter are untrue. She left the convent and advised her to settle the dispute within the family.

99. PW1 deposed that Jaya is her first cousin. Jaya and her husband Anand (CW17) were in a live-in relationship. Anand was a non christian. It was she who talked with PW9 and got their marriage solemnised in the church, after getting Anand converted into Christianity. When Jaya's sister, Sr. Anu, came to Delhi from the US, she had alleged that Sr. Anu had an illicit relationship, with Anand, which caused much trouble in the family. PW1 claims that when Jaya feels tensed, she starts doubting her near and dear ones, and that she is on medication for her illness. She believes that the complaint preferred by Jaya was a false one, owing to her illness.

100. PW1 admits that Anand had forwarded a message to her phone, on November 2016, which she felt to be inappropriate. She called him and warned him not to send such type of messages to her. She had also warned him that if he again sends her such inappropriate messages, she would forward it to Jaya. Subsequently Anand sent her another message, which was forwarded to Jaya. She called Jaya and told her about the message sent by Anand. Jaya angrily called her back. Realising that she was unusually angry, PW1 hung up the phone. As soon as she hung up, Jaya called PW7, her sister. They had an argument. Jaya alleged to PW7 that, PW1 had an illicit relationship with Anand. PW7, immediately called her back and enquired about the matter. PW7 and PW1's brother (CW10) went to PW1's relative's house at Muvattupuzha and talked to Jaya. But their conversation ended in an argument.

101. On February 2017, PW1 went to Velankanni church along with PW3, PW4 & Sr. Ancitta. At 9:30 p.m. Sr. Regina called her and told her that she was removed from the post of Kerala-in-charge. Two days later, when she called Sr. Regina, Sr. Regina revealed her that she had called her under

the diktat of the accused. She told Sr. Regina that accused was taking revenge against her for not yielding to his sexual demands.

102. The transfer list of the congregation came on 20.05.2017. PW1 was removed from the post of Mother Superior and was asked to continue in the same convent as an ordinary sister. According to PW1 the practice of demoting a Mother Superior as an ordinary nun of the same convent was unknown to the congregation. PW1 understood that, from now on, the accused need not inform his arrival to her. She was terrified. She called Sr. Regina and enquired whether the disciplinary action was taken on the basis of the complaint preferred by Jaya. Sr. Regina replied to her that the action was taken at the demands of the accused. When she felt that her life is in danger, she sent her dispensation letter to Sr. Regina.

103. When Sr. Anupama, Sr. Neena Rose and Sr. Alphy came to know about her dispensation letter, they along with some other sisters in the congregation made up their mind to leave the congregation. Hearing the news,

PW7, her elder sister and her younger sister came to the convent. They cautioned her that if the incident is made public, the reputation of church would be at stake. The local people would also make fun of them. They assured PW1 that the issues can be sorted out within the church itself. At the insistence of her sisters, on 30.05.2017, PW1 withdrew her dispensation letter.

104. On the first week of next month, she met PW14, the priest of Kuravilangadu church and informed him about the sexual assault committed by the accused. PW14 informed the matter to the Bishop of Pala Diocese. Bishop of Pala Diocese (CW26) summoned PW1 on the next day. The sexual violence committed on her, was revealed to CW26, in the presence of PW14. CW26 informed her that since he and accused are Bishops, the matter should be informed to Cardinal Mar George Alencherry (PW18). With the help of PW13, the uncle of Sr. Neena Rose, she prepared a letter in English, on 11.07.2017, and sent the same to PW18 and Bishop Sebastian Vadakkal, the Bishop of Ujjain Diocese (PW17), in the hands of PW13. She was advised by Bishop Sebastian Vadakkal that the information regarding sexual

abuse may not be disclosed in the letter, for the letter may reach the hands of the secretary of PW18 and they may inform the matter to the accused. Later, PW1 met PW17 at Bharananganam Ashramam. PW17 asked her to prepare a letter to Apostolic Nuncio. She was also asked to meet PW18 personally, and to inform him directly about the sexual abuse committed by the accused.

105. It is deposed that the accused threatened Sr. Anupama (PW4) that she would be ousted from the congregation and that he would not permit Sr. Neena Rose (PW5) to write her M.A. Examination, and forced Sr. Anupama to write an apology letter, at his dictation. Sr. Anupama was transferred to St. Biyanni Convent as the Mother Superior . But when she joined the convent, she was demoted as an ordinary sister.

106. PW1 visited PW18, along with the father of Sr. Anupama. Sr. Anupama had written a letter to her father explaining the difficulties faced by her. PW1 informed PW18 about the sexual abuse committed by the accused and regarding the retaliation from the accused. She also handed

over a copy of the letter sent to PW18. PW18 requested her not to make the allegations public. He advised her to send a complaint to Apostolic Nuncio. She was also informed that since PW18 is a Cardinal of Syro-Malabar Rite, he cannot take any action against the accused, who is a Bishop of Latin Catholic Rite.

107. When she reached the convent she received a phone call from Punjab. She was informed that Fr. Peter Kavumpuram (CW56), the PRO of Jalandhar Diocese had preferred a complaint before Punjab Police, alleging that PW1 and Sr. Anupama had made a suicide threat. PW1 informed Punjab Police that she never made any threat to commit suicide. On December 2017, Sr. Regina sent her a registered letter alleging that she had committed physical assault on the then Mother Superior of St. Francis Mission Home, Sr. Tincy and that she should come to Punjab and give an explanation in this regard. She accordingly went to Punjab. At that time Sr. Regina informed her that a new enquiry committee has been constituted. She appeared before the five member committee. Later on 19.01.2018 and 20.01.2018, a three members committee comprising of Sr. Sophia, Sr. Virgin and

Sr. Amala came to the convent. The family members of PW1, Sr. Anupama and Sr. Neena Rose met them. They complained to the committee members about the hardship and torture faced by them. There was a verbal altercation between the committee members and the family members of the sisters. In the presence of committee members and family members, PW1 openly disclosed that she was demoted as an ordinary sister for not yielding to the sexual desires of the accused. Her companion sisters are facing retaliatory measures for the allegiance shown by them. The committee members assured her that they would give a reply to her grievance, after consulting with the Mother General.

108. On 28.01.2018, with the help of PW9, she drafted a complaint and handed over the same to PW6, Bishop Kurian Valiyakandathil, who promised to hand it over to Apostolic Nuncio, during CBCI Meeting at Bangalore. She was later informed by PW6 that the letter was handed over to Apostolic Nuncio. She believed that a commission would be deputed to enquire about the allegation. In the meanwhile, she was transferred to Pariyaram Convent, Kannur. She obtained permission from Sr. Regina to continue at St.

Francis Convent for continuing with her treatment. In the meanwhile, Sr. Anupama, Sr. Alphy and Sr. Josephine joined her at Kuravilangadu Convent.

109. With the arrival of Sr. Alphy, Sr. Anupama and Sr. Josephine, PW1 could gather courage. The younger sister of PW1, who herself is a nun, wrote a letter to Sr. Regina pointing out the retaliatory measures faced from the accused and Sr. Regina, before leaving Bihar. PW1 sent letters to Pope Francis, Cardinal Marc and Cardinal Luis on 15th May, 2018, detailing the sexual assault and retaliatory measures, through Bluedart DHL Courier Services. Though they did not receive any receipt or acknowledgment, on searching the website of the courier service, they understood that the letters have been served.

110. Fr. Jose Thekkumvelikkunnu came to the convent on June 1st and 2nd. A committee was convened wherein her family members also participated. She openly disclosed in the meeting about the sexual assault to which she was subjected to. She also informed at the meeting that

if adequate corrective measures are not coming from the authorities, she would inform the matter to the police.

111. PW1 and her companion sisters were asked to inform the authorities whether they want to get transferred to Bhagalpur Diocese or whether they want to continue in Kuravilangadu convent. They accordingly gave a letter, expressing their choice. While they were waiting for a reply, they were informed by the priest of Kodanadu church that he had received a complaint. PW1, her companion sisters and her relatives met the priest. She was informed by the priest that Fr. Antony Madasserry had given him a letter stating that she was a woman of easy virtues. At that time, she revealed to him about the sexual assault committed by the accused. She also requested that her grievance should be redressed by the authorities. In the meanwhile, Fr. Paul and the younger brother of Fr. Lawrence, Mr. Thomas, threatened her sister. A complaint was made before Kuravilangadu station alleging that PW1, her brother (CW10), father of Sr. Josephine, father of Sr. Anupama (PW4) and father of Sr. Neena Rose and Praveen (PW5) had threatened the accused.

112. She did not receive any response to the letters sent to Apostolic Nuncio. Hence she sent two e-mails to Apostolic Nuncio on 24th and 25th of June. She did not receive any reply to the said e-mails as well. Hence, on 27.06.2018, she preferred a complaint to the District Police Chief, Kottayam. Her statement was taken on 28.06.2018. Later, on 30.06.2018, deputy Superintendent of Police, Vaikom took her additional statement. Subsequently she gave her statement before the Magistrate. Her medical examination was done twice.

113. She identified her first information statement which was marked as Ext.P1. Her Sec.164 was marked as Ext.P19.

114. PW1 was extensively cross-examined for 10 days. PW1 was cross-examined with regard to her failure to disclose about the details of sexual intercourse, in her FIS. PW1 would explain that her first information statement was not recorded in a free atmosphere. According to her, her statement was recorded in the presence of her companion sisters and hence she could not reveal the entire episode.

The defence also sought her explanation for not opting to enter room No.20 in the company of other sisters, and for not informing the Bishop that the accounts relating to the work of the kitchen is in the custody of Sr. Leona and that since she had already slept, the papers can be submitted in the morning, to which PW1 replied that she cannot say 'No' to the orders of the authorities. She was also asked whether the police had asked her about the said accounts and as to whether she had produced the same to the police. PW1 replied that she does not remember that.

115. PW1 was questioned with respect to the history disclosed to the doctor. She admitted that the entire matters within her knowledge were disclosed to the doctor. According to her, she had full trust in the doctor and that the history was disclosed to the doctor in a free atmosphere.

116. As per the history narrated to the doctor she was subjected to 'assault including touching of private parts, inserting his fingers in victim's vagina, forces her to touch his private parts and ejaculate in front of her'. Victim explained

that the history was with respect to the incidents which occurred on 05.05.2014.

117. As regards her conversation with PW18 Mr. George Alencherry she claimed that Fr. Mar George Alencherry had told her that he would consider her grievance after she comes out of the congregation. She was asked about the altercation with Sr. Tincy, her successor in office. She was asked whether she had attempted to take the key of the car belonging to the convent forcefully from the room of Sr. Tincy. PW1 answered that she took the key after informing Sr. Tincy. But she admitted that there was an argument prior to that. She also admitted that she drove the car forward and backward at the car porch. But, she denied the allegation of the defence that she punctured the wheels of the car.

118. The defence confronted her with some Exts.D10 emails sent to the mail id of the accused. She was also cross-examined at length showing the videos and photographs of the functions which she attended with the accused, on the next days after the alleged incidents. She was also

elaborately cross-examined with respect to the complaint preferred by PW16. The matters brought out during the cross-examination, including the omissions and contradictions projected by the defence would be discussed at the appropriate context.

119. According to PW1, the first disclosure about the incident was made to PW2, her spiritual mother. According to the victim the disclosure was made either in the end of 2014 or in the beginning of 2015. In this regard, PW2's testimony is as follows.

PW2's Evidence and its Relevance and Reliability

120. PW2 deposed that she had acquaintance with the victim since 2011. According to her, it was Bishop Symphorian who introduced her to PW1. PW1 invited her to St. Francis Mission Home to take religious classes to sisters and inmates of the old age home. From 2013 onward, she used to take classes at the Mission Home during Christmas and Easter. In 2011, PW1 selected her as her spiritual mother. According to her, the duty of a spiritual mother is to share divine matters and to give proper guidance to the

disciple on domestic issues. Their relationship was like that of a mother and daughter. On December 2014, she spent two days at Kuravilangadu Convent, before Christmas. When she saw the new kitchen, she remarked that the work has been well executed. At that time, PW1 disclosed to her that there is a sad episode behind this work. She also told her that the accused used to visit there, that his character is bad and that he committed sexual violence on her on many occasions. On hearing this shocking revelation, both PW1 and PW2 cried. According to PW2, PW1 told her that she is thinking about committing suicide, as she had lost her vow of chastity. PW2 gave her moral courage and strength by prayer and gifted counseling.

121. She further testified that PW1 was transferred for not yielding to the sexual demands of the accused. She identified Ext.P21 Sec.164 statement given by her. According to her, immediately after giving statement against the accused she was taken to Andhra and was kept under confinement.

122. The evidence of PW30, the then Muvattupuzha SHO, proves that PW2 was found missing from her house. He registered Ext.P75 FIR U/s. 57 of KP Act on being informed by the brother of PW2 that she is missing from her convent. Later PW2 was traced out and was produced before Judicial First Class Magistrate Court-I, Muvattupuzha. Her statement was recorded by the learned Magistrate. The learned Magistrate thereafter issued Ext.P76 protection order. PW30 posted two women police officers for the protection of PW2, at Jyothi Bhavan. But cross-examination of PW2 would prove that she was transferred from Jyothy Bhavan to Nidamanuru Nirmala Provincial House, way back on 04-04-2013. Witness claims that she was later permitted to stay in Jyothy Bhavan. She further claims that in 2019 she was again ordered to be transferred to Nirmala Provincial House. There is no documentary proof to substantiate her claim. But she complains that she was transferred because of her statement against the accused.

123. The evidence of PW35, proves that at the time of recording her statement, PW2 was not residing at Jyothy Bhavan. Her statement was recorded at Kamareddy, near

Hyderabad on 11.10.2018. PW2 is not a member of M.J. Congregation. She is a nun of FCC provincial house Vijayawada. It is also admitted that her congregation is a pontifical rite. It seems she had some issues within her congregation. It is not proved that the accused had any role in the internal matters of FCC provincial house. Hence Ext.P75 FIR and Ext.P76 protection order has not much relevance in the present case.

124. Going by the testimony of PW1, the first act of sexual violence happened on 05.05.2014 at 10.45.p.m. The sexual violence was repeated on 06.05.2014, 11.07.2014, 05.01.2015, 15.01.2015, 22.04.2015, 22.05.2015, 27.07.2015, 21.08.2015, 05.11.2015, 17.01.2016, 29.04.2016 and 23.09.2016. PW1 testifies that she disclosed these matters to PW2, her spiritual mother either in the end of 2014 or in the beginning of 2015. Her testimony reads as follows; "ഞാൻ ഇക്കാര്യങ്ങൾ എന്റെ Spiritual mother Sr.Lizzy Vadakkal (CW2) -നോട് 2014 അവസാനത്തിലോ 2015 -ന്റെ തുടക്കത്തിലോ പറഞ്ഞിട്ടുണ്ട്. CW2 -നോട് പിന്നീടും ഇക്കാര്യം ഞാൻ പറഞ്ഞു." This part of her testimony is in tune with the evidence of PW2, who had also testified that she had

stayed at the convent during December 2014. Entries in Ext. P34 chronicle supports her stay.

125. The above testimony of PW1 and PW2 has crucial significance. Going by the victim's version, she had kept the incident within her and had suffered the trauma silently. The alleged incidents came to the public domain in 2018. In such a scenario when the victim testifies that she had disclosed the incident to PW2 as early as on December 2014, it goes without saying PW1's relationship with PW2 was so intense and deep. But surprisingly, this disclosure does not find a place in Ext.P1 FIS. Prosecution has no explanation to this crucial omission other than the explanation offered by the victim that the statement was not taken in a free atmosphere and that she had no trust in PW37 who recorded her statement. PW1 had made many allegations against the accused in her first information statement. In the said circumstances, her explanation that she could not freely disclose to PW37 about the disclosure made to PW2 is not convincing. The disclosure made to PW2 does not find a place in Ext.P19 Sec.164 statement as well. Normally, a

survivor would not forget to reveal about her first disclosure, in her subsequent statements.

126. Defence has a case that PW2 was a planted witness to supply corroboration to the version of PW1. PW2's testimony is that PW1 choose her as her spiritual mother. The version of PW2 is that she supported the victim who was on the verge of committing suicide by gifted counseling and prayers. PW2's further version is that in 2017 she came to know that PW1 has been removed from the post of Mother superior. According to her, she felt that PW1 was demoted for not yielding to the sexual demands of the accused. But surprisingly, PW2 has not testified about any other disclosure made after 2014. As already pointed out going by the victim's version, she was raped on 7 occasions on 2015 and 3 times on 2016. PW1 in her cross-examination has admitted that she had gone before PW2, for counseling in September 2016. But neither PW1 nor PW2 has testified that the sexual violence committed on 2015 and 2016 were disclosed to PW2. If PW2 was in fact acting like as a spiritual mother of PW1, she would have definitely disclosed these incidents to PW2, regularly. There is an entry in Ext.P34 chronicle at

page No.118, that on 30.09.2016, PW1 went with Sr. Maggi to meet Sr. Lissey Vadakkal and that they came back in the evening. It is thus obvious that PW1 was meeting PW2 regularly. But PW2 has no case that the sexual violence committed on PW1 during 2015 - 2016 was disclosed to her or that she advised her to get over from her trauma. PW2's version before this court and the Magistrate will not prove that PW1 disclosed to her about any of the incidents after 2015.

127. Certain other facts unearthed in the cross-examination of PW2 also pose a challenge on her credibility. PW2 in her cross-examination has admitted that she had sent a letter to Sr. Alphonsa Abraham on 05.02.2019. According to PW2, she had written only untrue facts in the said letter as she felt that if true facts are disclosed, the matter would be informed to the accused. According to PW2, she does not know PW39 Subhash and CW40 Mohandas, the police officers entrusted with the investigation of this case. She even goes to the extent that she is hearing their names for the first time in her cross-examination. At the time of her examination, Mohandas was present in court. But she did not identify him.

When she was questioned, as to how could she make a reference about Mohandas and Subhash in the letter sent to Sr. Alphonsa Abraham, she changed her stand and explained that, she had purposefully included the name of the police officers disclosed by the media, in her letter, to make the letter believable. She admitted that she was not questioned, either by Subhash or Mohandas and that the contrary contents in the letter written by her is incorrect.

128. She admitted that her version in the letter that she had spoken to PW6, Bishop Kurian Valiyakandathil is false. Her explanation is that she was sure that Sr. Alphonsa Abraham would have tortured her, had she disclosed to her about the statement given against the accused and hence she made incorrect and untrue statements in the letter sent to Sr. Alphonsa Abraham. The following statement of the witness sums up the shaky nature of her deposition “എന്റെ മേലധികാരിക്ക് കൊടുത്ത കത്ത് ഫ്രാങ്കോയുടെ വക്കീലിന് കൊടുത്തു എന്ന് കേട്ടിട്ട് എനിക്ക് തല കുറങ്ങുന്നു”.

129. It is true that the former statement made by a victim is admissible under Sec.157 of the Evidence Act as a

corroborative piece of evidence. Two categories of statements made by a witness can be used for corroboration under Sec. 157 of the Evidence Act. First is the statement made by a witness to any person "at or about the time when the fact took place". The second is the statement made to any authority legally bound to investigate the fact. The second limb is not applicable to the evidence of PW2. The probative value of a statement made to a non authority, gets reduced by the lapse of time. But, the question whether the delay is material or not depends on the facts of the case. The proper test is whether the statement was made as reasonably as can be expected in the factual scenario, and whether it was made before an opportunity for tutoring or concoction (See **State of Tamil Nadu v. Suresh AIR 1998 SC 1044**). Hence, though it is claimed, that the matter was disclosed to PW2 on second week of December 2014, both PW2 and PW1 did not speak out, until 2018. The alleged disclosure to PW2 does not find a place in Ext.P1 FIS as well. Hence no weight can be attached to the version of PW2. That apart the inconsistent version of PW2 makes her version an unreliable one.

Subsequent Disclosures of the Victim

130. Victim has testified that she had confessed about the sexual abuse to the priest of Bharananganam church in the year 2014 itself. But no one else has testified this fact. There is no point in seeking corroboration from the priest, as the seal of confession prescribes an absolute duty on the priests not to disclose anything they learn from the penitents, during the confession.

131. Going by the testimony of PW1, her next disclosure was during Tuvanisa retreat conducted on 20.03.2016. Though the prosecution has produced Ext. P7 receipt and Ext. P60 register to show that PW1 had attended a retreat at Tuvanisa Retreat Centre, there is no other supporting evidence to show that she had in fact disclosed the incident to any one.

132. PW1 further testified that she attended Abhishekagni Convention hosted by the priest Xavier Khan Vattayil and that she was deputed for Bible reading. It is her version that she confessed to Fr. Xavier Khan Vattayil that she was not qualified for Bible reading, but Fr. Xavier Khan

Vattayil gave her the moral courage to get over from the predicament. But Xavier Khan Vattayil was given up by the prosecution.

133. PW1, states that, on 29.09.2016, she disclosed to PWs 3 and 4 about her ordeal. Prosecution places much reliance on the testimony of PW3 and PW4. The testimony of PW3 is as follows:

Disclosure to PW3 and PW4 and its Relevance and Reliability

134. PW3 was an inmate of the convent from 26.07.2016. According to her, on 23.09.2016 the accused visited the convent and went back on the next day. She noticed that PW1 was remaining gloomy on knowing about the visit of the accused. Though she asked her what was the cause of her gloominess, she evaded the question, saying that she is suffering from head ache. On 29.09.2016, herself, PW1, Sr. Ancitta and Sr. Maggi went to Sehion Retreat Centre at Attapadi. They attended the holy mass and gave confession. Their confession was over in no time. But PW1's confession took some time. When PW1 came back they teased her for the inordinately long confession. PW1 replied

that she would reveal the reasons, later. By around 11 p.m. they reached the convent. After dinner PW3, Sr. Ancitta and Sr. Anupama went to her room. PW1 was still looking gloomy. PW3 again asked her why she was looking disappointed. Initially, she did not offer any reply. Later, she started crying. She insisted that they should not disclose the matter to any one. PW1 told them that accused had repeatedly raped her in the past two years and that he had also indulged in carnal intercourse against the order of nature. They were all shocked. They were also told that she could not share her trauma, out of fear and that she could not prevent the accused from visiting the convent.

135. PW4 Sr. Anupama has also deposed in tune with the evidence of PW3.

136. The version of PW1 in this regard is that after being subjected to rape on 23.09.2016, she attended a retreat at Sehion Retreat Centre at Attappadi where she confessed before the priest about the sexual violence committed on her. Her version is that her confession took some time and hence her companion sisters, who were waiting outside asked her

why her confession took so long, to which she replied that she would explain the reason for the long confession after reaching the convent. Later, after reaching convent, she replied to PWs 3, 4 and Sr. Ancitta that the accused raped her and that the accused committed carnal intercourse against the order of nature and that she could not share the incident to any one and that she was unable to prevent the accused from coming to the convent. But the crucial contradiction in this regard is there in Ext.P19 Sec. 164 statement of PW1. Her version in this regard is as follows;

“2016 December ൽ ഞാൻ Sister Anupama യോടും Sister Neena യോടും കുറച്ചു കാര്യങ്ങൾ പറഞ്ഞു. ഞാൻ mood off ആയി ഇരിക്കുന്നതും കരയുന്നതും കണ്ട് Sisters നിർബന്ധിച്ചു കാര്യം ചോദിച്ചു. ഞാൻ "പിതാവ് അടുത്ത മാസം വരും" എന്ന് പറഞ്ഞു. അതിനു അമ്മ tension അടിയ്ക്കുന്നതെന്തിനാണ് എന്നു ചോദിച്ചു. ഞാൻ മറുപടി പറയാൻ പോയില്ല. 2017 January ൽ പിതാവ് 24 നോ 25 നോ വരുമെന്നു പറഞ്ഞിരുന്നു. അപ്പോൾ ഞാൻ അവരോട് പിതാവ് വന്നാൽ ഞാൻ കൂടെ കിടക്കേണ്ടി വരും എന്നു പറഞ്ഞു. ഞാൻ കിടന്നു എന്ന് അവരോട് പറഞ്ഞിട്ടില്ല.”

137. When PW1 admits that she did not disclose to PWs 3 and 4, even during December 2016, that she had slept

with the accused, the testimony of PW1, PWs 3 and 4 that there was a disclosure on September 2016 that the accused had raped PW1 and that he had committed carnal intercourse against the order of nature, cannot be taken reliance. Going by the version in Ext P19, PW1 raised her apprehension to PWs 3 and 4 that she may be forced to share bed with the accused. She had no case in her Sec.164 Statement that she had disclosed to her companion sisters, even in December 2016, about the sexual violence committed by the accused. In the said circumstances, the version of PWs 1, 3 and 4 that PW1 disclosed about the rape and unnatural sex to them on 29.09.2016 cannot be believed.

138. Another crucial document in this regard is Ext.P43 letter written by PW4. Ext.P43 is a letter addressed to Sr. Regina, the mother superior. The letter is dated 14.11.2017. The version of PW4 in Ext.P43 reads as follows; "Sr. X called me (to Bishop) not even to come to Kuravilangadu. I don't know what if have done to her (that I too does not know only Bishop and X will know)" (sic). Ext.P43 letter also would show that PW4 was unaware of the actual issue between the accused and PW1.

139. Another crucial input in this regard is the interview given by PW4 to DW4 Abhilash Mohan, the Assistant Executive Editor Media One Television. DW4 has deposed that he interviewed PW4. It was telecast through Reporter Chanel. The interview was taken on 2018. Ext.D17 is the DVD of the said interview. Ext.D17 was played in the court, firstly during the testimony of PW4 and secondly during the testimony of DW4. DW4 the interviewer after watching the DVD deposed before this court that no tampering or doctoring is there in the contents. He testified that the contents in Ext.D17 is the actual questions put by him and the actual answers given by PW4. When the same interview was shown to PW4 she denied some of her statements and submitted that the interview appears to be an edited one. Witness's version in the interview was that,

“ ഞങ്ങളോട് എല്ലാവരോടും എപ്പോഴും പറയുന്ന കാര്യം കൂടെ കിടക്കാത്തതിന്റെ പേരിൽ ഉള്ള കാര്യമാണ്. Even എന്നോടു പോലും അങ്ങനെയാണ് പറഞ്ഞത്. Last കാര്യങ്ങൾ ഇത്രയും വഷളാകും എന്ന് കണ്ടപ്പോഴാണ് എന്താണ് പോലീസ് കേസുകൾ കൊടുത്തത്. അതൊക്കെ കാണുമ്പോഴാണ് നമ്മളും അറിയുന്നത് ഇതാണ് സത്യത്തിൽ അവിടെ സംഭവിച്ചത് എന്നുള്ളത് .” The above

version of PW4 shows that even she was not aware about the allegation of rape and unnatural sexual intercourse until the police registered the case.

140. The further version of the witness in the interview is much more damaging. In answer to a question as to what gain the accused would get by provoking the sisters and thereby making the matter public, PW4 answers that if he had settled the matter at right time they would not have gone for the case. This being the contradictory version of PW4 and PW1, the claim of PWs 1, 3 and 4 that after attending the meditation at Attappadi PW1 told PWs 3 and 4 that she was raped by the accused cannot be believed.

141 Going by Ext.P1 FIS and Ext.P19 Sec.164 statement, the first disclosure to PWs 3 and 4 was in the month of December 2016 which I have already extracted above. PW1 and the prosecution has no explanation about these crucial omission, which definitely amounts to contradiction. Disclosure made by a nun about the rape and unnatural acts from the part of a Bishop, that too to her companion sisters is an important incident, which no nun can

forget. PW1 had given a voluminous Sec.164 statement to the Magistrate which runs to more than 100 pages. There is no reference about attending any retreat at Attappadi or about the unusually long confession which she made before the priest or about the disclosure to PWs 3 and 4 which questions the genuinity of the version of PWs 1, 3 and 4 that PW1 had disclosed to them about the rape and sexual violence committed on her by the accused, as early as on September 2016.

142. The version of PW1 is that, on 04.10.2016, she wished feast and informed the accused that she will not permit him to visit the convent again. She also warned him that if he visits the convent again she would go back to her home. There is no supporting evidence about these facts other than the testimony of PW1. Going by the version of PW1, the other sisters had also wished feast to the accused. But PW1 has not deposed that she told her companion sisters about her warning to the Bishop. This aspect has got some significance since going by the version of PW1, PW3 and PW4, they were aware of the atrocities committed by the accused on September 2016, itself. In such circumstances,

any reasonable and prudent person would have also shared the warning given to the Bishop.

143. Victim states that when she heard from the accused that he is planning to visit Kerala, on January 2017, she shared her apprehension to PW3 and PW4. They arranged the taxi of PW5, to move out of the convent. The evidence of PW3, in this regard is as follows:

144. On December 2016, the accused telephoned PW1 and informed her that he is visiting the convent on 24.01.2017. PW1 decided to go back to her house. PW3 arranged the taxi of PW5, Praveen. But the accused did not visit the convent, that day. On the next day Sr. Anupama called Praveen and booked his taxi. By around 10.45 - 11 a.m., accused texted PW1 that he is passing through Kuravilangadu. He did not visit the convent, that day.

145. PW4 has also deposed that she booked the taxi of Praveen and asked him not to accept other bookings. She also demanded Praveen to park the taxi near the convent.

Evidence of PW5, the taxi driver and its reliability

146. Prosecution relies on the evidence of PW5 the taxi driver to prove that PWs 3 and 4 had arranged his taxi on January 24th and 25th to take her out of the convent. PW5 testified that in the end of January 2017, PW3 called him and booked his taxi. He was also informed that he should be ready with his taxi, at any time during night. But he did not receive any call in the night. On the next day morning, PW4 called him and asked him not to offer taxi service to others on that day. He was also asked to reach the convent, if called. But it was specified that he should not come through the front gate. Instead he should park the car in front of the gate. He felt that something seriously wrong is going on. He replied that he would not come unless reasons are spell out. At that time, PW4 told him about the proposed visit of the accused and that the accused wants PW1 to share bed with him. He was also told and that if the accused enters the convent through the front gate, they have planned to take PW1 out, through the back door.

147. The version of PW1, with respect to the said incident is as follows: According to PW1, after being informed about the visit of the accused, she became tensed and she informed the matter to PW3, who with the help of PW4 arranged the taxi of PW5 for her journey. But the accused did not visit the convent on 24th. But she feared that the accused may visit the convent again on 25th and hence PW4 called PW5 and arranged the taxi. According to PW1, she received a message from the accused at around 11 a.m. that he is passing through Kuravilangadu. The version of PW1 is that the accused did not visit the convent on that day.

148. As already pointed out, in the Ext.P1 FIS of the victim, she did not disclose anything regarding the taxi arranged by PWs 3 and 4 and about the disclosure she made to PWs 3 and 4 about the arrival of the accused. In Ext.P19 Sec.164 statement she has stated that in December 2016, she had informed PWs 3 and 4 that she would be forced to share bed with the accused if she stays at Kuravilangadu. PWs 3 and 4 have also deposed before this court that they have disclosed to PW5 that the accused is demanding PW1 to share his bed. The evidence of PWs 3, 4 and 5 in this regard

are totally artificial and unbelievable. It is very difficult to believe the version of prosecution that a nun would openly disclose to a taxi driver that a Bishop is threatening another nun to share bed with him. One must remember that PWs 1, 3 and 4 have taken all pains to keep the disclosure made by PW1 a secret. In fact even the brother and sister of PW1 were not aware of the sexual violence committed on her. None of the priests or sisters also were not aware of the incident. In these circumstances, the evidence of PW5 that PW4 very casually told him that the accused is forcing PW1 to share bed with him cannot be believed at all. The evidence of PW5 seems to be an attempt to rope in an outsider, to supply corroboration from independent source. No reliance can be placed on his evidence. But the version of PW1 that she disclosed to PW3 and PW4 in December 2016, that she may have to share bed with the accused, is supported by the evidence of PW3 and PW4. Her version finds a place in Ext P19, Sec.164 statement as well.

Events after January, 2017

149. Now this court will deal with the evidence of PW3, PW4, PW7, PW9 and PW11, regarding the important events that happened after January 2017.

150. PW3 deposed that in the second week of February 2017, while PW1, Sr. Anupama, Sr. Ancitta and PW3 were returning from Velankanni Church, at around 9.30 p.m., Sr. Regina called PW1 and informed her that she has been removed from the post of Kerala-in-charge. The transfer list of the congregation was published on 20.05.2017. PW1 was removed from the post of mother superior and was demoted as an ordinary sister at the same convent. Such a practice is unknown in the congregation. They understood that PW1 was demoted to the position of an ordinary sister at the direction of the accused.

151. On 26.05.2017 PW1 gave Ext. P4 dispensation letter. On knowing about the dispensation letter, Sr. Anupama, Sr. Alphy and PW3 declared that they would also leave the congregation. On their compulsion PW1 decided to withdraw her dispensation letter.

152. In the first week of June 2017, PW3 and PW1 met Fr. Joseph Thadathil (PW14), at Kuravilangadu church and told him about the retaliatory measures of the accused. They also informed him that the retaliatory measures were taken for not yielding to his sexual desires. Fr. Joseph Thadathil was shocked by the revelation. He informed them that the matter should be disclosed to the Bishop of Pala Diocese. As recommended by Fr. Joseph Thadathil, on the next day, they met Bishop of Pala Diocese and Fr. Joseph Thadathil at Kuravilangadu church. PW1 talked to them for about two hours at the office of Fr. Joseph Thadathil.

153. On 11.07.2017, PW1 and PW3, and the brother of PW1 visited Fr. Dai (PW13) at his house and prepared a letter to PW18 Cardinal Mar George Alencherry, with his help. The letter was handed over to Bishop Sebastian Vadakkal (PW17), for handing over to PW18.

154. PW3 was doing a correspondence course in M.A. English Literature at Guru Nanak University. Her exams were scheduled on 23.11.2017. She booked train ticket for her exams on 15th November. But on 14th November,

Sr. Regina called her and asked her not to come to Punjab for writing exams. PW4, Sr. Anupama, informed her that the accused had threatened her for supporting PW1. The threat was that she would be ousted from the congregation. When Sr. Regina asked her not to come to Punjab she felt that the threats have come into effect and that she would be ousted from the congregation. Hence, PW1, PW3, and the father of Sr. Anupama, met Cardinal Mar George Alencherry and shared their grievance. She handed over a letter written by her mother to Cardinal and others handed over their complaints to the Cardinal.

155. On 18.12.2017, Sr. Regina wrote a letter to her. She was asked to come to Punjab and offer explanation to the complaint given by Sr. Tincy. Though they reached Punjab on 18.12.2017, Sr. Regina did not allow them to meet her. They were informed that a three member committee has been constituted and that they can raise their grievances to the committee members. They met the committee members and appraised them that five other nuns also have grievances and hence the committee should meet them at the convent. As requested, on 19.01.2018 the three member committee came

to the convent. While they were interacting with the committee members, their family members also came to the convent. Their family members argued with the committee members, about the false cases instituted against PW1 and Sr. Anupama and regarding the threats exerted on them. In the midst of the argument, PW1 disclosed in front of all the members that she has been cornered, for not yielding to the sexual demands of the accused.

156. PW3 would swear her presence and the presence of Sr. Ancitta, when PW1 handed over the complaint addressed to Nuncio to PW6, Bishop Kurian Valiyakandathil at his residence at Elanji. She is also aware of the letter written by PW1 to Vatican, complaining about the retaliatory measures taken by the accused.

157. The entries of Ext.P34 chronicle from November 2015 to 06.07.2017 are in the handwriting of PW3. She deposed that all important events and functions happening in the convent would be written in the chronicle. She identified her handwriting. According to her, the chronicle is a regularly kept record. She also identified her signature in Ext.P35

mahazar prepared during the seizure of Ext.P34 chronicle and Ext.P36 mahazar prepared during the seizure of emails sent by Bishop Agnelo Gracias untold to Sr. Anupama.

158. PW4 testified that on January 2017, Sr. Regina visited the convent. At that time, PW1 asked her about the contents of the letter written by Jaya. Sr. Regina informed PW1 that Jaya had complained that PW1 had illicit relationship with her husband and that she spoiled their family life. PW4 would also add that after sending them out of the room, PW1 and Sr. Regina interacted, secretly.

159. PW4 was transferred to St. Biyani Convent in Punjab. She went there on 05.07.2017 to take charge as the mother superior. When she reached there she was informed that she has to take charge as an ordinary nun. She understood that accused was behind the retaliatory measures. On 08.11.2017, Sr. Anie Rose and Fr. Antony Madasserry came to Gurdaspur convent. They persuaded her to appear before the accused. The accused leveled accusations against PW1 and read over the complaint of Jaya. He threatened her that he would oust PW1 and PW3 from the

convent and that he will not permit PW3 to write her M.A exams. He also compelled her to write an apology letter at his dictation.

160. On 14.11.2017, she sent a letter to her father, explaining the harassment faced by her. On 30.11.2017 Fr. Peter Kavumpuram, the PRO of the accused preferred a false complaint to the Punjab police, alleging that herself and PW1 had threatened to commit suicide.

161. PW4 supported the version of PW1, about the revelation made to Fr. Nicholas. They also demanded that they may be transferred to Bihar, out of the control of the accused or that they may be permitted to stay at Kuravilangadu convent for one more year as they felt that their presence is very much needed for PW1. Fr. Nicholas immediately telephoned Fr. Madasserry and told him about their request. But he declined their request.

162. She also gave evidence about the program 'a day with a shepherd', started by the accused. According to the witness she had also participated in the program. Participant sisters were given an opportunity to meet the accused

personally, at his room. In the beginning almost 50 sisters participated in the program. But later, the number of participants declined, owing to the bad behaviour of the accused.

163. She deposed that on January 2019, herself, Sr. Alphy, Sr. Josephine and Sr. Ancitta received letters, calling upon them to join their respective convents to which they were transferred. They thereupon sent a mail to Bishop Agnelo requesting that they may be permitted to stay at Kuravilangadu convent.

Evidence of PW7

164. Some of the matters deposed by PW3 and PW4, finds a place in the testimony of PW7, the elder sister of the victim. She deposed that one day PW1 informed her that their relative Jaya, had filed a false complaint against her, before the Mother General, alleging that she has illicit relationship with Anand, the husband of Jaya. Later, PW1 informed her that she is planning to quit the congregation. It was also revealed that the accused had repeatedly raped her and that he had harassed her physically and mentally. PW7 asked her

to continue in the congregation and to fight for justice. She also cautioned her that if she and their younger sister quit the congregation, then parishioners would make fun of them. She assured PW1 that all her problems would be solved within the church, itself.

165. On 27.05.2017, during the birthday celebration of CW10, their brother, she informed her brother that the accused had raped PW1. Her brother was shocked. Later, on knowing that the councilors are visiting the convent, PW7, CW10 and his wife, and the younger sister of PW7 went to the convent. Initially, the councilors were reluctant to meet them. Later, with the help of PW1, they met the councilors. She informed Sr. Amala that the accused had raped PW1 and that he is tormenting her. Sr. Amala assured her that the issue would be resolved even at the cost of their resignation.

166. Later, on being informed that the mother general and Fr. Thekkumcherry are present in the convent, they went to meet them along with the family members of other sisters. Initially, they did not open the doors. But on seeing PW9, they opened the door. They asked the councilors about the

solution offered. Fr. Jose advised them that they can pray and forgive. Hearing his sermons, her brother furiously asked him what would have been his response had the mishap happened to his sister? Father of PW4 showed them a letter and informed them that his daughter has received death threats. They were assured that a solution would be worked out before 30.06.2018. In the meanwhile the PRO of Jalandhar diocese, Fr. Peter Kavumpuram lodged a complaint against CW10, at Punjab. Another complaint was lodged at Kuravilangadu police station alleging that CW10 threatened Fr. Peter Kavumpuram. After lodging the said complaint the younger brother of Fr. Lawrence Chittiparamban, Mr. Thomas Chittiparamban came to their house and threatened her stating that it is not safe to fight against the accused. They preferred a complaint before Kalady Police station. Ext.P46(a) FIR was registered on the basis of their complaint.

167. The cross-examination of PW3, PW4 and PW7, on these aspects would be dealt with at the appropriate stage.

Evidence of PW9

168. Apart from the evidence of PW3, 4 and 7, prosecution relies on the evidence of PW9, a priest and a close relative of PW1. He deposed that during a telephonic conversation with PW1, on May 2017 she disclosed him that the accused had raped her under duress. She also told him that she could not resist him, an account of fear. After doing retreat, meditation and counseling she could muster courage to resist his sexual advances. But now the accused is torturing her mentally for not yielding to his sexual desires. She was removed from the post of Kerala-in-charge and Mother Superior-ship, and a junior sister was made the superior of Kuravilangadu convent. She also told him that she has decided to quit the convent.

169. PW9 consoled and motivated her to fight for justice, within the church. He also invited Sr. Rejina, Sr. Maria and Sr. Alphonsa to his church at Amritsar and informed them about the ill motives of the accused. At that time, Sr. Rejina told him that the accused had directed her to

take action against PW1, on the basis of the complaint preferred by Jaya.

170. PW1, later sought his help to draft a complaint to Nuncio. On 28.01.2018, at the house of PW1, he translated the complaint of PW1, to English. PW1 herself wrote the translated version. He also informed her that a conference of the Bishops is convened at Bangalore, that PW6 Bishop Kurian is attending the said meeting and that her complaint can be forwarded to Nuncio, through Bishop Kurian.

171. On March 2018, he directly met the accused and asked him about the issues with PW1 and about the complaint preferred against PW1 at Punjab. Accused told him that he has no issues with PW1, that he did not file any complaint against PW1 and that he should ask Fr. Peter Kavumpuram about his complaint.

172. On 02.06.2018, he along with PW7, CW10 and the second sister of PW1, met Sr. Regina at Kuravilangadu convent. Fr. Jose Thekkumcheril was also present at that time. PW9's testimony on the events that followed, goes in tandem with the evidence of PW1 and PW7. He added that

the sisters placed a demand that they should be transferred to another convent of M.J Congregation at Bihar or else, they should be permitted to stay at Kuravilangadu convent for one more year. Sr. Regina and Fr. Jose Thekkumcheril did not give them any assurance.

Evidence of PW11

173. The father of Sr. Anupama was examined as PW11. He testified about Ext.P38 letter sent by Sr. Anupama. After talking with his daughter, he called Sr. Regina and asked her about the grievances raised in the letter. PW11 would depose that Sr. Regina told him that he had no authority to question the affairs of the congregation. PW11 thereupon drafted a complaint and sent it to PW18 Cardinal Mar George Alencherry, by registered post. His family friend Fr. Joison told him that he should directly talk to Mar George Alencherry. PW1 and PW3 also expressed their desire to meet Cardinal Mar George Alencherry. They accordingly met Cardinal George Alencherry and told him about their grievances. PW5 Praveen was also present with them. PW18 told him that he did not receive his registered letter, and

hence he gave him a copy of the complaint. PW3 also handed over a complaint written by her mother. PW18 listened to their grievances and assured them that their grievances would be redressed. PW1 told PW18 that she want to talk to him personally. All of them stepped out of the room. PW1 thereafter talked with PW18 for 15 minutes. PW18 requested them not to reveal the matters to the media or to the police or in court. Later he came to know from the media that a case has been registered against him on the allegation that he attempted to kill the accused.

174. He identified Ext.P50 complaint given to PW18. He also deposed that he had heard the victim telling the councilors that had she yielded to the sexual desires of the accused, all these things would not have happened.

Discussion on the evidence of
PW1, PW3, PW4, PW7, PW9 & PW11

175. Certain facts are established from the testimony of PW1 and her companion sisters. It is established that, on 02.01.2017, Sr. Regina came to Kerala to enquire about Jaya's

complaint. Prior to that PW1 was asked to offer her explanation at Punjab, but she declined the said request stating that it is too cold in Punjab. On 09.02.2017, PW1 was removed from the position of Kerala-in Charge. On 20.05.2017, she was removed from the post of mother superior. On 26.05.2017, PW1 issued Ext.P4 dispensation letter. But in Ext.P4 dispensation letter, she has not raised any sexual charges against the accused. It was after her dispensation letter that she revealed the incident to her sister, PW7. PW7 in turn revealed the incident to CW10 their brother on 27.05.2015. The version of PW1 is that on hearing about the dispensation letter given by her, PW3 and PW4 and some other sisters expressed their solidarity and informed her that they would also leave the congregation. According to PW1, her sister gave her the courage to fight against the injustice within the church and hence on 30.05.2017, she withdrew her dispensation request.

176. This Court had already noted that the victim had only raised her apprehension fear and doubt to PW3 and PW4, during December 2016 that she may have to share bed with the accused. But she never disclosed to PW3 and PW4

that she was raped or sexually abused by the accused. The testimony of the witnesses would also prove that even before the councillors, the victim's revelation was that the retaliatory measures would not have happened, had she submitted to the sexual desires of the Bishop. She did not reveal to them that she had been repeatedly raped. In other words, the disclosure about the sexual violence was made to PW7 and PW9, the sister and uncle of the victim, alone. Both these disclosures were made on May 2017.

Evidence of PW14

177. The first revelation about the sexual abuse of the accused, to a person having no connection to Jalandhar diocese was to PW14, Fr. Joseph Thadathil, the vicar of Kuravilangadu church. The revelation was on June 2017. There also the revelation was about the sexual abuses made by the accused and not about Rape. According to the victim, PW14, Fr. Joseph Thadathil in turn informed the matter to Pala Bishop (CW28) and provided her an opportunity to disclose the incident to Pala Bishop.

178. PW14, however did not support the prosecution version. His version is that during June 2017 PW1 had informed him that she had an issue with the Bishop and other administrators of the congregation and that she is planning to inform the said matters to the police and to Nuncio. On the next day when the Bishop of Pala diocese came to the church he informed the matter to Bishop. As directed by the Bishop, he called PW1 and asked her to meet Pala Bishop. Accordingly PW1 reached Kuravilangadu church and talked with Pala Bishop at the Bishop's room of the church. In 2018, he came to know that the police had registered a case against the brother of PW1. When he contacted PW1, she complained to him that the accused had used or insulted her sexually.

179. PW14 did not depose before this court that PW1 had informed him anything regarding the sexual abuse committed on her. According to PW14, he came to know about the sexual abuse from the news paper, that too in 2018.

180. Prosecution did not examine CW28 Pala Bishop and as such the version of PW1 that she had disclosed about the sexual abuse to Pala Bishop is without any corroboration.

Discussion on the evidence of PW13

181. The next disclosure was made to PW13, a distant relative of PW3. PW13 testified that PW3 had once called him and requested for help to secure a job or to complete her studies. He asked why she making such a request, to which PW3 replied that there are some issues in the congregation and that she has decided to leave the congregation. He consoled her and assured her that he would discuss the problems with the mother superior. He thereafter called PW17, Bishop Sebastian Vadakkal of Ujjain diocese. Both of them went to Kuravilangadu convent and talked with PWs 1, 3 and other sisters.

182. On hearing their grievance, they were told that the issues raised by them are beyond their control and power and that they should submit a complaint to Nuncio. It is also testified that PW1, PW3 and four others had come to his Ashram at Thevakkal. He corrected their complaint and

gave back the pendrive brought by them. According to PW13, the grievance of PWs 1 and 3 were that the accused used to send indecent and obscene messages and that no proper support was given to PW3 to pursue her studies and that they were not provided with proper medical care. The evidence of PW13 does not support the prosecution case.

Discussion on the evidence of PW17

183. PW17, the Bishop of Ujjain diocese also did not support the prosecution as regards the allegation of rape leveled against the accused. He testified that it was PW13, Fr. Varghese Kunnathu, who introduced PW1 to him. PW1 wanted to meet Cardinal Mar George Alencherry. Hence he went to St. Francis Mission Home and talked with the sisters. Sisters told him that the accused is starting another congregation and that he is exerting pressure on the sisters to join his congregation and that those who are not willing to join his congregation were facing harassment. He assured them that he would inform the matter to the higher authorities. He later met PW18 and informed the matters and requested him to give an appointment to the sisters.

184. According to PW17, the grievance of the nuns was that the accused was standing as a hindrance in the growth of the congregation that he is starting a new congregation and is putting pressure on the sisters to join his congregation. According to PW17, no other allegation was made.

Discussion on the evidence of PW18

185. The next disclosure was made to PW18 Cardinal Mar George Alencherry. This court has already referred the version PW1, PW3 and PW11, regarding their meeting with PW18. Apart from these witnesses, PW5 Praveen has also testified about the said meeting. His version is that at the end of November, he took PW1 and PW3 in his taxi to the residence Cardinal Mar George Alencherry. When they reached there, father of PW4 also joined them. All of them met PW18. PW5 apprised PW18 about the threats made by the accused. He also sought his advice as to whether he should complaint to the police. PW18 advised him not file any complaint in police. Cardinal also assured him that he would take all necessary steps. According to PW5, he handed over

his written complaint to PW18. PW4's father also handed over a complaint. PW3 handed over a complaint written by her mother. PW1 wanted to talk with PW18, personally. Hence, all of them stepped out of the room and PW1 and PW18 talked for about 10 minutes.

186. PW5's testimony corresponds to the version of PW1, PW3 and PW11. As against the testimony of PW1, PW3 and PW11, PW18 would vouch that PW1 had met him on 24.11.2017 and handed over Ext.P8 complaint. She had informed him that the accused was maliciously transferring sisters and that he is taking many retaliatory measures against the sisters. He was also informed that accused indulged in obscene talks and had sent obscene messages to the sisters. According to PW18, along with PW1, PW11 Varghese and another sister had also met him. The Bishop of Ujjain Fr. Sebastian Vadakkal had complained that the sisters are facing harassment from the accused. He kept the complaint in his personal file and advised them that the complaint should have been made to the authorities of the Latin Catholic Rite. He advised them to give a complaint to

Cardinal Oswald Gracious, the Cardinal of Latin Bishop Conference.

187. According to PW18, PW1 had used the word harassment during her phone conversation to which he had replied that if the accused had in fact harassed her, let him learn from his sins. PW18 admitted that PW11 Varghese had handed over a complaint, alleging that the accused is harassing her daughter. According to him, the grievance of PW1 was that Bishop Franco was illegally transferring them and that he is harassing them. According to PW18, PW1 had also informed him that the accused had sent some obscene messages to her and that his behaviour was inappropriate for a Bishop. According to him, no other allegation was made. PW18 deposed that PW5 did not give him any complaint. But he admitted that PW3 gave him a complaint.

188. In cross-examination, he has explained that there was no allegation of any sexual assault either in the complaint or in the telephonic conversation with PW1. According to PW18 issues pertaining to the affairs of congregation alone were raised before him.

189. The evidence of PW18 is against the version of PW1, that she had disclosed the sexual abuse of the accused to PW18. In this regard, the prosecution has produced Ext.P8 complaint given by PW1 to PW18. In Ext.P8 there is no allegation of any rape or other sexual violence against Bishop. In Ext.P8 complaint, the allegation was that the accused used abusive language and derogatory remarks that he would bury the congregation, as he buried their founder Bishop. It was also alleged that he used malicious words directly and indirectly through phone, especially vulgar words with sexual tones. Those mobile messages are also seen attached along with Ext.P8 complaint. But there is no allegation in Ext.P8 that the accused raped PW1.

Reliability of the explanation offered by PW1 for not revealing about the sexual abuse in Ext.P8

190. PW1's explanation is that she purposefully omitted to include the facts relating to sexual violence in Ext.P8 complaint, as she feared that the secretary of PW18 may go through the contents of the letter and would inform the matter to the Bishop. Her version is that PW17 had also warned her not to include any sexual allegations in the letter.

PW17 did not support the victim's version in this regard. He never testified before this court that any such warning was given to PW1. The version of PW18 is that his secretary never goes through the contents of letter which are written as personal and confidential. Hence, the explanation offered by PW1 in this regard is doubtful. That apart, PW1 had made several allegations against the accused including allegations regarding transmitting of vulgar messages. In fact the subject of the complaint itself is that it is a petition against Bishop Franco. Some of the messages were also attached along with the complaints. If PW1 was in fact apprehending that the secretary of PW18 would go through the contents of the letter and inform the matter to the accused, there was no point in revealing the contents of the vulgar text messages sent by the accused. Hence, the explanation offered by PW1 that the allegation regarding rape was suppressed in the letter fearing that the same would reach the ears of the accused through the secretary of PW18, is beyond comprehension.

191. The evidence of PW18, PW17 and Ext. P8 will not support the case put forward by the prosecution that the

sexual assault committed by the accused was disclosed to PW17 and PW18. As already pointed out, the evidence of PW13 and PW14 also will not prove that the victim complained to them about the sexual abuse. None of these witnesses were declared hostile and cross-examined by the prosecution. Prosecution cannot simply discard their evidence on the premise that they were won over by the defence. Their evidence are binding on the prosecution and the defence can place reliance on their evidence [**see Mukhtiar Ahammed Ansari v. State (NCT of Delhi) 2005 (5) SCC 258), Jagan M. Seshadri v. State of Tamilnadu 2002 (9) SCC 639), Assoo v. State of M.P. (2011 (14) SCC 448)**].

Discussion on the evidence of PW6

192. The next important event is the disclosure made to PW6, Bishop Kurian Valiyakandathil. As per the version of PW1, she had addressed a letter to Nuncio and had handed over the same to PW6 Bishop Kurian Valiyakandathil with a request to hand over the same to the Nuncio, at the CBCI Meeting of the Bishops. PW1 has further testified that the

letter was prepared with the help of PW9 Fr. Sebastian Pallasserri. The letter was prepared on 28.01.2018 and the same was handed over to PW6 at his residence at Elanji. CBCI Meeting was scheduled at Bangalore on February. After the meeting she enquired to PW6 as to whether the letter has been handed over to Nuncio, to which he replied that the letter has been handed over to Nuncio.

193. PW6's version would show that PW1 approached him during the end of January and asked him whether he is attending CBCI meeting at Bangalore. When he replied that he is in fact going to the meeting, PW1 asked him whether he would meet Apostolic Nuncio, to which he answered in the affirmative. Then PW1 asked him whether he could hand over the letter to Nuncio. PW6 agreed that he would hand over a letter to Nuncio. Later in the end of January, PW1 and other sisters came to his house with a file containing the letter. Two days prior to his meeting with Apostolic Nuncio, PW1 asked him whether he had handed over the letter. Out of curiosity, PW6 asked her what is so special in the letter to which she replied that it is a complaint against Franco and that the letter is with respect to the problems faced by her,

for not sharing bed with the accused. According to PW6, he met Apostolic Nuncio and handed over the file containing the letter. Nuncio opened the file and uttered the word 'rape' and closed the file with a remark that this is a serious matter. According to PW6, there were no further discussion in the matter. PW6 further testifies that he saw a priest summoning the accused and the accused proceeding to meet Nuncio, on the next day. It is also added that he did not see the accused in the meeting on the next day.

194. PW6 has not stated either in his Sec.164 statement or in his Sec.161 statement that he saw the accused being summoned by the Apostolic Nuncio. Defence has examined DW1, the Vicar of Fathima Matha Church, Changanacherry and marked Ext.D49, page of the marriage register kept in the church. He deposed that on 07.02.2018, the marriage of the niece of the accused was solemnized in the church and that the accused was the chief priest of the function. According to PW6, the CBCI Meeting was on the first week of February. The defence has thus explained the absence of the accused on 07.02.2018, at the CBCI Meeting. Hence, the absence of accused at the CBCI Meeting will not

lead to any conclusion. It has also come out from the cross-examination of PW6 that he did not disclose in his previous statement about the remark made by Nuncio that it is a serious matter. Hence, that part of his evidence is an omission.

195. Going by the deposition of PW6, even prior to his meeting with Nuncio, PW1 had informed him over phone about her grievance. According to him, she had told him that the accused was harassing her for not sharing bed with him. But PW1 has no such case. Her evidence is that she only enquired with PW6, as to whether the letter has been handed over to Nuncio.

196. That apart, there are other discrepancies and inconsistencies in the version of PW1 and PW6. In Ext.P19 Sec.164 statement, the victim's version was that PW6 had informed her that Fr. Antony Madasserry had met him with a letter written by Jaya. She would further state that Fr. Antony Madasserry had made very bad comments about her character. PW1 would add that she replied to PW6 that Jaya is having some mental ailments and that Jaya had earlier

cooked up some stories about her own husband and her own sister. PW6 was cross-examined on these aspects. He feigned ignorance. His version was that he is not aware of the complaint, photos and messages sent by Jaya to the then Mother General complaining that her husband is having illicit relationship with PW1. PW6 would also depose that he never asked PW1 about the said complaint on October 2017.

197. That apart PW6, was asked about his acquaintance with PW2 Lissey Vadakkal. As already noted PW2 has admitted that she had given a letter to Sr. Alphonsa Abraham stating that she had talked to PW6 Bishop Kurian Valiyakandathil over phone. Of course, she has retracted from her version and has deposed before this court that the entire matters stated in the letter are false. But if she had no acquaintance with Bishop Kurian Valiyakandathil she would not have referred his name in the said letter. The testimony of PW6 on the other hand is that he had no acquaintance with Lissey Vadakkal and he had not even talked with her. It seems PW6 was deliberately hiding something from the court.

198. In this connection the defence would contend that PW6 had some professional jealousy with the accused.

According to the defence, the accused was made a Bishop at a very young age whereas it took 30 years for PW6 to become a Bishop. It is also contended that he was not permitted by the accused to participate as the chief priest in the funeral ceremony of Bishop Symphorian Keeprath despite PW6 being a close relative of the Bishop and that he has a grudge towards the accused. Though PW6 has denied the suggestion of the defence that he had a grudge towards the accused, on perusing Ext.P13 letter issued by PW1 to Cardinal Marc it can be gathered that the letter written by PW6 against Bishop Franco has been attached along with the said complaint, as a supporting material to her grievance. It must also be remembered that the demands of PW1 and her companion sisters was that they should be transferred to Bhagalpur diocese and that Kuravilangadu convent should be brought under its jurisdiction. PW6 is the bishop of Bhagalpur diocese. The defence has a case that the accused fell pray to the professional rivalry and factional feud within the church, which will be discussed later. At any rate the evidence of PW6 would only prove that he was informed by PW1, that the accused is demanding her to share bed with

him. The alleged sexual violence committed by the accused was not revealed to PW6, as well. PW6's evidence will also prove that he had handed over Ext. P11 complaint to Apostolic Nuncio. But Ext.P11 being a photocopy is inadmissible in evidence.

Relevancy of Ext.P13

199. Apart from the above discussed materials prosecution alleges that the victim had issued Ext.P13 letter to Cardinal Marc on 14.05.2018. The letter was send through blue-dart courier. PW29 was examined to prove that the letter was sent. He testified that on 15.05.2018 a nun came to his office and entrusted three covers to be despatched to Rome. He identified Exts.P14 and P15 receipts. He also testified that the tracking ID of the courier is available in the receipts and that on verification it was revealed that the parcel was delivered in Rome on 18.05.2018.

200. This court has already held that Ext.P13 is admissible in evidence. But even in Ext.P13 letter the victim had not stated that she was raped by the accused on 13 occasions. Her version was that she was sexually abused on 5th May 2014. It is also alleged that the abuse continued for

several times. As per the version in the complaint, subsequently, she said a firm 'No' to the sexual advances of the accused, on September 2016. The said statement also does not go in tandem with her testimony. Going by her testimony, she was raped on 23rd September 2016. It was on 4th October 2016, when she wished feast that she told the accused that she would not permit him to enter the convent. The victim also complains in Ext.P13 that Fr. Peter Kavumpuram and Fr. Antony Madasserry had filed a police complaint against her alleging that she had made suicide threat to the accused.

201. The next document relied on by the prosecution is Ext.P18 e-mail issued to the Apostolic Nuncio on 24.06.2018. The document was not properly proved. Three days after sending Ext.P18 email, PW1 preferred Ext.P20 complaint, to the District Police Chief.

**Summary of the disclosures and complaints filed
by PW1, before the registration of FIR**

202. Thus, the foregoing discussion would reveal that there is no consistency in the disclosure made by the victim to her companion sisters and also to the various authorities of

the Latin church and to the Syro Malabar Church as regards the real nature of the abuse and harassment meted out by the accused. The prosecution could only prove that PW7 and PW9 had been told about the rape, that too in May 2017, almost 8 months after the last incident. In view of the long delay, the corroborative value of those disclosures are minimal. As already pointed out the alleged disclosure made to PW2, in 2014 has not been convincingly established. As regards the disclosure made to others, they were never told that the victim was raped. On the other hand PW1's version was that she might be compelled to share bed with the accused. Multiple incidents of rape were not revealed in any of the complaints preferred.

203. Now this court will deal with the evidence of PW8 and PW19, who were present at St. Francis home convent on 5th and 6th May 2014, when the first two incidents occurred.

Evidence of PW8

204. PW8 was a nun of St. Francis Mission Home during 2013 - 2016. Corresponding to the evidence of PW1, she deposed that the accused used to stay at the Mission

house, during his visit to Kerala. On 05.05.2014, she along with PW1 went to the ordination ceremony of Fr. John Paul. Accused was the chief priest of the ceremony. They came back to the convent by around 10.30 p.m, in the car of the accused. After reaching the convent, PW1 took the suitcase and bag of the accused to room No.20. Accused handed over his cassock and asked PW1 to iron it. She was present with PW1 while she was ironing the cassock. She had also seen PW1, proceeding to the room of the accused after ironing his cassock. She was staying in the upper floor of the guest room. Sr. Nimisha, the other inmate was staying in another room on the upper stairs of the convent building. On the next day morning, after breakfast, herself and PW1 went in the car of the accused, to attend the First Holy Communion of PW1's sister's son. Accused was the chief priest of the function. By around 11 p.m. they returned to the convent. Sr. Nimisha was waiting for them at the convent. After reaching the convent, the accused went to his room. PW8 and Sr. Nimisha went back to their respective rooms. On the next day, before breakfast, Monce Joseph MLA met the accused at the

convent. Thereafter, all of them had their breakfast. After breakfast, accused left the convent.

205. PW8 deposed that she had seen PW1 getting gloomy, on being informed about the arrival of the accused. Though she asked her many times for her gloominess, she was evasive. They have also attended the ordination celebration of Sr. Geena, at Poovarani along with the accused. After the said function, they reached the convent in the car of the accused.

206. On July 2016, she was transferred to Punjab. Though she had requested for an extension, her request was rejected, citing that the Bishop and councillors were against her request. She went to Punjab to meet the Mother General, personally. She thereafter met the accused at his room. She informed him about the difficulties faced by her and requested him to permit her to continue in Kerala for one more year. The accused rejected her request. She felt severely hurt. When she was about to step out of his room, the accused came near her and put his arms on her shoulders and pulled her towards him. She did not like his behaviour.

She forcefully opened the door and came out of the room. After 5 - 6 days she sent her dispensation letter to the Mother General.

207. Witness admitted that prior to the approval of her dispensation letter, on 28.12.2017, she had registered her marriage. After registering her marriage, she called PW1. She felt that PW1 was under severe mental trauma. PW1 informed her that she was removed from the position of Kerala- in-charge, that Sr. Tincy has been appointed as the new mother superior and that she will not be permitted to stay at Kuravilangadu convent. PW8 asked her why these measures were taken against her. She replied to her that the accused is taking retaliatory measures for not yielding to his sexual desires.

208. She identified Ext.P34 chronicle and deposed that the writings from page Nos.1 to 76 are in her handwriting.

Evidence of PW19

209. PW19 was the third nun of the convent during 2014. She testified that when she joined St. Francis Mission Home, herself, PW1 and Sr. Leona were the nuns of the

convent. On May 2014, PW1 and Sr. Leona went for an ordination ceremony at Chalakkudy. They reached convent along with the accused in his car, by around 10-10.30 p.m. PW19 was waiting for them at the parlour. After his tea, accused went to the guest room and she returned to her room. On the next day PW1, PW8 and accused left the convent to attend the first communion ceremony of PW1's sister's son. By around 10.30 p.m. they came back in the car of the accused. As in the previous night, after tea, the accused went to his guest room and PW19 returned to her room. She added that the accused stayed at the guest room for two days and went back on 7th.

210. According to her, the convent has two entrance, one at the old age home and another at the parlour. On 05.05.2014 Bishop entered the convent through the parlour. She testified that though the old age home is also functioning in the same floor, no inmate was staying on the said floor.

Stay of the accused on 5th and 6th May, 2014.

211.A reading of the testimony of PW8 and PW19 proves that, though PWs 8 and 19 were present at the convent on 05.05.2014 and 06.05.2014, they have no direct knowledge about the incident which happened in room No.20. Prosecution does not have a case that the incident was disclosed to PW8 or PW19, at any point of time. PW8 in her cross-examination admitted that she has only hearsay knowledge about the incident. Though it has come out from her evidence that she had contacted PW1 after registering the marriage, she admitted that she did not contact PW1 after hearing the news that the accused had raped PW1 on 13 occasions.

212. As regards the stay of the accused in the convent on the 13 dates, commencing from 05.05.2014 and ending in 23.09.2016, the definite version of the defence is that the accused did not stay there on 05.05.2014 and 06.05.2014. The stay of the accused on the other days are admitted by the defence.

213. As regards the stay of the accused on 5th and 6th, prosecution relies on the testimony of PW1, PW8 and PW19, who have consistently testified that the accused arrived at the convent along with PW1 and PW8, at night, on 05.05.2014 and 06.05.2014, and that he stayed there on the said nights. Their consistent evidence is that on 07.05.2014, he had a meeting with Monce Joseph M.L.A. in the morning. He left the convent after his breakfast.

214. Apart from the oral testimony of PWs 1, 8 and 19, prosecution also relies on Ext.P34 chronicle to prove the stay of the accused. The entries in Page Nos.1 to 76 in Ext.P34 chronicle is in the handwriting of PW8. PW8 was cross-examined with respect to the entries in the chronicle. She admitted that it is not specifically stated in the chronicle that the accused came to the convent at 10 p.m. She admitted that the wordings used in the chronicle is that accused arrived at the convent in the evening. But, her explanation is that by the word "evening" she was referring to her bedtime. She added that she went to bed after 11 p.m. As regard to the omission to specify in the chronicle that the accused came out of the car after dropping PW1 and PW8 and to

mention that he had his tea at the convent, PW8 explained that she had used the word “along” in the entry “they came back in the evening along with Bishop Franco” to mean that Bishop had also come to the convent.

215. She admitted that there is no entry in the chronicle regarding the presence of the accused in the convent on 06.05.2014. It is also admitted that she had written in the chronicle that PW1 and Sr. Leyona went to Kalady to participate in the Holy Communion ceremony of PW1’s nephew, Joseph. She admitted that she did not write that they had gone along with Bishop, but she explains that she had given more importance to the function than to the persons participating in the function and hence she did not specifically state anything regarding the presence of the accused.

216. There is no entry in the chronicle that the accused stayed at the convent on 06.05.2014. But it is stated in the chronicle that PW1 along with accused went to meet Fr. Joseph Puthenpura’s mother and came back at night after meeting Fr. Dominic. It is also written in the chronicle that on 07.05.2014, Monce Joseph M.L.A. came there and met Bishop

Franco and that they discussed about the road and its maintenance.

217. Though the defence contends that the version of PW8 that she and PW1 took the bag and other articles of the accused to the guest room and that on 06.05.2014 at 8 a.m. they left Kalady after breakfast are omissions, that alone will not discard the evidence of PW8. PW19 Nimisha has also testified about the stay of the accused at the convent. In cross-examination, she has reiterated that she had seen the accused moving towards the guest room building on 5th and 6th, after his tea. The version of PW1, PW8 and PW19 are substantially corroborated by the entries in Ext.P34 chronicle. It is stated in the chronicle that accused arrived at the convent at night, on 5th and 6th May. It is also stated in the chronicle that he met Monce Joseph MLA in the morning on 7th.

218. The contention of the accused is that he did not stay at the convent. But it is admitted that he had attended an ordination ceremony at Chalakudy on 05.05.2014 and the Holy Communion function of PW1's nephew on 06.05.2014 and that he had met Monce Joseph M.L.A. on 07.05.2014. He

has no definite stand regarding his place of stay on 05.05.2014 and on 06.05.2014. PW39, the investigating officer has deposed that the stand of the accused during the investigation was that he had stayed at Muthalakkodam Convent. Prosecution has produced Ext.P71 Nalagamam of B.Sc. Nursing Hostel Service Centre, Muthalakkodam to prove that accused did not stay there. The stand of the defence in the cross-examination of PW39 was that the accused stayed at Muthalakkodom convent. At the time of argument, it was submitted that the accused might have stayed at his residence. The plea of the accused in this regard is basically a plea of alibi. It is for the accused to prove his alibi, beyond all reasonable doubt. Under Sec. 103 of the Evidence Act, the burden is on the accused to prove those facts which are within his exclusive knowledge. He has failed to adduce any cogent evidence regarding his stay on 05.05.2014 and on 06.05.2014. Prosecution on the other hand has proved that the accused had stayed at St. Francis Mission Home on 05.05.2014 and 06.05.2014 through the oral testimony of PW1, PW8 and PW19 and from the entries in Ext.P34 chronicle.

Lack of knowledge of PW8 and PW19 about the incidents happening on 05-05-2014 & 06-05-2014

219. As already pointed out PW8 and PW19 were unaware of the sexual violence committed on PW1. They did not have even the slightest hint of the abuse, until they heard about the same through the media, that too after 4 years. PW19, left the convent by March 2015. PW8 stayed there until July 2016. PW3 and PW4 joined the convent on July 2016. The last incident was on 23-09-2016. There were 3 incidents of rape in 2014 and 7 incidents of rape in 2015 and 3 more incidents in 2015. But none of them were aware of it.

220. PW8 was acting as the procurator of the convent. She was in charge of the accounts of the convent (see page No.7 of her testimony). Her version is that she used to visit Pariyaram for the auditing of the account. It is also testified that she used to stay at Pariyaram for three to four days to complete the accounting procedure.

221. On 05.05.2014, when the accused asked PW1 to get the papers relating to the kitchen works, PW8 was very much present in the convent. She was present with PW1, when she was ironing the cassock of the accused. She had

also seen PW1 proceeding towards the room of the accused, with the ironed cassock.

222. Going by the version of PW1, the accused had called her at around 10.45 p.m. As per the version of PW9, she had slept after 11 p.m. In the said circumstances, the version of PW1 that she did not ask PW8, her subordinate, to get the papers relating to the kitchen work casts some doubt on PW1's testimony. PW8, who was in possession of the accounts would have been the natural choice to bring those papers. Going by the version of PW1, she had kept the notes of the kitchen work, at her room. She took those papers from her room and went to the file room in the old convent and collected the estimate from the file room, and knocked at the door of the guest room. The relevant portion of her testimony reads as follows;

"ഞാൻ കൂട്ടിന് ആരെയും വിളിച്ചില്ല. ബിഷപ്പിന്റെ മുറിയിൽ junior sisters - നെ കൂടെ കൊണ്ടു പോകാൻ തടസ്സമുണ്ടായിരുന്നോ (Q) അതിന്റെ ആവശ്യം തോന്നിയില്ല (A) ഒരു കന്യാസ്ത്രീക്ക് ഒരു പുരുഷന്റെ മുറിയിൽ പോകുമ്പോൾ ഒരു sister companion വേണം എന്ന് അറിയാമോ (Q) Convent -ൽ നിന്നും

പുറത്ത് പോകുമ്പോഴാണ് അപ്രകാരം വേണ്ടത് .
മഠത്തിനകത്ത് അപ്രകാരം വേണ്ട (A).”

A discussion regarding the place of occurrence seems to be relevant at this juncture.

Proof of place of occurrence

223. All the thirteen incidents have occurred in the guest room No.20 used by the Bishop. PW1's evidence is that she was also staying in the same floor. Prosecution relies on the evidence of PW38 and PW39, the investigating officers and the evidence of PW25 the village officer and PW26, the Panchayath Assistant Secretary to support the version of PW1, regarding the place of occurrence.

224. Initially, on 29.06.2018, PW38 prepared Ext.P39 scene mahazar. According to him, there are three buildings in the compound. But he explains that the three buildings are part of one single building and hence he noted the building number of one of the building alone. As per Ext.P39, the building number is 277. According to the witness, guest room No.20 of St. Francis Mission Home is the place of occurrence.

225. Subsequently, on 11.09.2018, PW39, prepared Ext.P40 additional scene mahazar, on noticing that some vital

aspects are missing in Ext.P39 Scene mahazar. He deposed that the place of occurrence is the guest room No.20 of building bearing door No.518 of ward No.5, of Kuravilangadu panchayath, situated on the first floor of the old age home belonging to St. Francis Mission Home. As per Ext.P40, the building number of the chappel was 278/V and the building number of the convent was 277/V.

226. PW26 is the Assistant Secretary of Kuravilangadu grama panchayath who issued Ext.P63 series ownership certificate of the building. As per Ext.P63, building Nos.277/V, 278/V and 279/V is owned by Mother Superior. She also issued Ext.P64 one and the same certificate stating that building No.518 in ward No.V and building No.279 in ward No.5 pertains to one and the same building. Thus, the difference in the building numbers are clarified.

227. PW25, the Village Officer, prepared Ext.P62 scene plan on the basis of the scene mahazar. He deposed that the guest room where the incident occurred is on the first floor of the building and that the convent, chappel and old age home have separate building numbers. Though the three institutions are functioning in the same building, there are

ramps and verandas connecting the three buildings. The convent is on the northern end followed by chappel. The old age home stands on the southern end. Though a detailed narration of room No.20 is made in Exts.P39 and P40 scene mahazars, there is no mention regarding the location of the room used by PW1.

228. Coming back to the evidence of PW1, it is her case that there was a struggle between herself and the accused, though she claims that her voice did not come out. The evidence of PW38 shows that the room had a ventilation opening. Other rooms were also there on the same floor. Of course, prosecution contends that the other rooms were remaining vacant. But there is no evidence to show that the other rooms were remaining vacant, on all the 13 days of Sexual Violence.

229. Prosecution witnesses has no consistency in this regard. PW1 and PW3 testifies that PW1 was staying in room No.11 right from the beginning and even now. Both PW3 and PW4 testifies that her room is next to the chappel. Going by the evidence of PW4, who is also an attestor to the scene mahazars, the room of PW1 was not the room next to room

No.20 where the incident occurred. But, PW22 testifies that PW1 was staying in the very next room on the southern side of room No.20 and that she still stays there. According to her, the old age home is functioning on the ground floor and first floor, while a ladies hostel is functioning on second floor. PW3 on the other hand testifies that right from the time she came to the convent, i.e during July 2016, old age home was functioning at the ground floor. But she admits that the ladies hostel was functioning at third floor.

230. The evidence of PW8, who was present at the convent during the first 12 incidents is that, she does not know who was using the room opposite to room No.20. The evidence of PW19 is that 3 or 4 inmates were residing at the old age home. According to her, the inmates were staying at the ground floor. But she does not know who all were staying at the first floor. She also admits that there is a ladies hostel on the second floor. It is also admitted that the hostelers have to pass through the front of the guest room, to reach downstairs.

231. PW39, the investigating officer claims that no one was staying in the ladies hostel. But he admits that the

registers of old age home and hostel were not checked. He admits that it is mentioned in Ext. P40 scene mahazar that the old age home is functioning on the ground floor and first floor. Thus, it is clear that no proper investigation was made in this regard.

232. As per the prosecution case, all the thirteen incidents have occurred at room No.20. According to PW1, her room and room No.20 was on the same floor. But it has come out that there are other rooms on the said floor, including a room on the opposite side of room No.20. Old age home is also functioning on the same floor. The chronicle entry of 05.11.2015, shows that the accused had come to the convent along with Fr. Antony Madasserry and both of them stayed there. Some of the guests of Bishop Franco also came there in the evening and they all had a meeting together. Chronicle entry of 17-01-2016 also shows that the accused had come to the convent along with Fr. Antony Madasserry. Prosecution alleges that PW1 was raped on both these days. Prosecution has not offered any explanation regarding their stay at the convent. No investigation was conducted on that aspect also. It was definitely a matter that required proper

investigation. The version of those who might have stayed on the floor, would have definitely given some inputs regarding the prosecution case.

233. The version of PW8 and PW19, the only other nuns of the convent during the happening of first three incidents is that, they do not know whether any other person was staying on the opposite room, on the alleged dates. PW1's version is that she left the room in a hurry, wearing some of her dresses, and taking some of her cloths in hand. In the light of the testimony of PW1, a clear picture about the presence or absence of a third person on the opposite room, or on the floor, on all the thirteen occasions would have been very much relevant. But no proper investigation was done on these aspects.

234. Before analysing the testimony of PW1, in the light of the contentions raised by the defence, a scanning of the other evidence adduced by the prosecution would be relevant.

Potency of the Accused

235. It was PW20 who conducted the potency examination of the accused. Ext.P54 is his potency certificate. PW20 testified that nothing was revealed in the potency examination of the accused to conclude that the accused is incapable of sexual intercourse. He identified the accused. The defence has no case that the accused was impotent.

Proof of Mahazars and Inventory

236. PW10 stood as an attester to Ext.P48 mahazar, prepared while seizing Ext.P49 chronicle. She identified Ext.P49 chronicle. PW15 is an attester to Ext.P53 mahazar prepared during the seizure of Ext.P38 letter. PW23 produced Exts.P8 and P50 documents to PW39 investigating officer as directed by Fr. Vincent Cheruvathoor, the Chancellor of Syro Malabar Church. He also identified the signature in Ext.P58 inventory. PW24, who was working as WCPO at Vakathanam police station stood as an attester to Ext.P59 mahazar while seizing Ext.P60 register and Ext.P61 notice. PW27 is an attester to Ext.P65 mahazar prepared during the seizure of

MO-1 hard disc. He is also a signatory to Ext.P66 label. PW28 is an attester to Ext.P58 mahazar prepared while seizing Exts.P8 and P50 complaints. He is also an attester to Ext.P67 mahazar prepared while seizing the BMW car, bearing No. KL-08-BQ-7000 owned by the brother of the accused, and also of Ext.P68 mahazar, prepared while seizing Ext.P51 time table and Ext.P52 register of the programme 'a day with shepherd'. He also stood as an attester to Ext.P69 mahazar prepared while seizing MO-2 series lap top, hard disc and charger and MO-3 mobile phone belonging to the accused. He also stood as an attester to Exts.P70, P71, P72 and P73 mahazars.

Investigation

237. PW38 did the initial investigation. Later PW39 took over the investigation. PW35 and PW36 assisted the investigation.

238. PW35 deposed that on the basis of Ext.P82 order issued by the District Police Chief, he was directed to assist PW39 in the investigation of the present case and crime No.725/2018 and 848/2018 of Kuravilangadu police station.

On 16.09.2018, he seized Ext.P60 admission register and Ext.P61 notice from Thuvanisa Retreat Centre, Kothanalloor by preparing Ext.P59 mahazar. He also recorded the statement of Sr. Navya who had participated in the said retreat. He issued S.91 notice to Sr. Regina to produce the complaint given by PW16. But he received a letter stating that the original was misplaced. On 09.10.2018 he went to Bangalore and took the additional statement of Sr. Leona. On 11.10.2018, he went to Hyderabad and recorded the statement of PW2.

239. PW36 testified that while he was working as the Inspector of Kaduthuruthy Police Station, he was ordered to assist PW39. He accordingly went to Marian Sadan Convent at Paravoor and recorded the statement of PW10. He also seized the original register and other documents pertaining to the First Holy Communion of PW1's sister's son. He testified that the original was later returned on the basis of Ext.P84 Kaichittu.

240. PW38 deputed PW37, to record the first information statement of PW1. By around 6 p.m., on

28.06.2018, PW37 produced Ext.P1 statement of the victim, on the basis of which, he registered Ext.P85 FIR. On the next day, the FIR was produced at Judicial First Class Magistrate Court, Pala. On the next day he took steps to conduct the medical examination of the victim. The victim was sent to Medical College, Kottayam along with WCPO Sumangala and WCPO Kripa P. Krishna. He also forwarded a letter to Chief Judicial Magistrate, Kottayam to record the Sec.164 statement of the victim. At 3.45 p.m., he reached at St. Francis Mission Home and prepared Ext.P39 scene mahazar. He clarified that in Ext.P85 FIR, the period of crime was recorded as 05.05.2014 to 31.12.2016, on the assumption that the crime was committed until the end of 2016. It is also testified that when Ext P55 certificate was produced before him, there were corrections and overwriting. On 29.06.2018, the investigation of the case was handed over to Vaikom Deputy Superintendent of Police. He accordingly handed over the entire records of the case to Vaikom Deputy Superintendent of Police.

241. PW39 conducted the further investigation of the case and laid the charge. He deposed that on 30.06.2018, he

recorded the additional statement of PW1. On 07.07.2018, he took the additional statement of the victim and seized 13 documents by preparing Ext.P41 mahazar. On 09.08.2018, he recorded the statement of PW21 the doctor who conducted the medical examination of the victim. He also issued notice u/s. 91 Cr. P.C. to CW54, to produce the original of Exts.P93 and 94 orders passed by the accused. But it was replied through Ext.P96 letter that the original was misplaced. He seized Ext.P71 register from Muthalakkodam Holy Family B.Sc Nursing Hostel Convent. On perusal of the register it was revealed that the accused did not stay at Muthalakkodam convent.

242. On verification of the statement of PW10, the commission of a cognizable offence was revealed. Hence, he prepared a report to send the said statement to Kannur District, for further investigation. But further proceedings could not be conducted due to the non co-operation of PW10.

243. PW39 deposed that the accused was arrested on 21.09.2018. Exts.P100 to 103 arrest related documents, were also prepared during his arrest. He was remanded to

police custody from 22.09.2018 to 24.09.2018. His potency examination was conducted on 22.09.2018. On 22.09.2018 he prepared Ext.P106 additional report, to include additional sections. He also took steps to record the Sec.164 statement of PW3, PW4, PW5, PW6, PW7 and PW10. The breast examination of the victim was conducted and Ext.P56 certificate was obtained. Notice u/s. 91 Cr. P.C. was given to produce the lap top or computer used for preparing Exts.P93 and 94 orders. It was replied that the computer could not be traced out. He prepared Ext.P117 forwarding note to send MO-3 mobile phone and MO-4 lap top for forensic examination. Ext.P118 is the report received from the forensic lab.

Flaws in the Investigation

244. Apart from the defects/laches in the investigation which this court has already noted, some other glaring defects pointed out by the defence, also needs a mention. PW1 has not disclosed in any of her previous statement that she was raped on 15.01.2015. Explanation offered by PW39 investigating officer in this regard is quite bewildering. He admitted that the victim has not disclosed in any of her

statement she was raped on 15.01.2015. His explanation is that during a phone call, the victim disclosed 13 dates to him wherein 15.01.2015 was also included. Hence, the said date was also incorporated in the final report. PW39's evidence is silent as regard to the investigation done by him to verify the said statement of the victim. He has also not taken pains to record the statement of the victim with respect to the incident which occurred on 15.01.2015.

245. As already pointed out, from Ext.P19 Sec.164 statement of PW1 it can be gathered that it was Sr. Regina and Sr. Maggi who was instrumental in stopping the kitchen work. Accused had no role in the said act. Going by the testimony of PW1, the accused had asked her get him the papers relating to the kitchen work and when she entered his room along with papers the accused grabbed her from behind. But surprisingly, the said papers were not produced before this court. In this connection it has come out from the evidence of PW8 that she was in charge of the accounts of the convent (see page No.7 of her testimony). Her version is that she used to visit Pariyaram for the auditing of the account. It is also testified that she used to stay at Pariyaram for three to

four days to complete the accounting procedure. Thus, it is obvious that the accounts relating to the kitchen work was available at the congregation. Defence contends that no such papers were in the possession of PW1. It seems no investigation was conducted on those aspects.

246. Defence contends that the additional statement of the victim was not taken on 30.06.2018, but subsequently after the arrest of the accused. It is also contended that there was no reference about the disclosure made to PW2 in any of the statements made by the victim prior to the arrest and that hence an antedated statement of the victim was brought into picture to add credibility to her version. Defence places reliance on Ext.D42 report submitted by the investigating officer before the Hon'ble High Court of Kerala to buttress its point.

247. There is no mention in Ext.D42 statement that the additional statement of the victim was taken on 30.06.2018, though there is reference about the Sec.164 statement of the victim dated 05.07.2018. Ext.D42 also mentions about the statement taken from the inmates of St. Francis Mission Home, Nedumkunnam. But interestingly, there is no mention

regarding the statement dated 30.06.2018. PW39 was cross-examined on these aspects. He admitted that the first entry in the case dairy regarding PW2 was on 06.10.2018. According to him, it was on 06.10.2018 that PW35 was sent to Andhra Pradesh to record the statement of PW2. PW2's evidence reveals that she was staying at Jyothi Bhavan, Muvattupuzha until September 2018. Normally, if the disclosure made to PW2 was revealed by the victim on 30.06.2018, there was no need for the investigating officer to wait until 06.10.2018, to record the statement of PW2, particularly when she was staying at Muvattupuzha until September 2018. But from the said doubtful circumstances alone, one cannot come to a conclusion that the additional statement dated 30.06.2018 was an antedated one and that the actual statement was recorded after the arrest of the accused. PW39 has explained in his re-examination that Ext.D42 statement was prepared on his way to Jalandhar. According to him, due to oversight, some mistakes had crept in Ext.D42 statement. Hence, in the absence of cogent evidence and in the light of the explanation offered by PW39

the contention of the defence in this regard cannot be accepted.

248. The next important contention of the defence is regarding the failure of the investigating officer, to enquire into the history narrated by the victim to the doctor. Defence alleges that the history narrated by the victim was struck off by the doctor, colluding with the investigating officer. Defence also contents that the mobile phone used by the victim, PW16 and CW17, and the laptop used by PW1 were purposefully kept out of the court. I will now deal with those aspects.

Inconsistency in the Statement of PW1 and in the history narrated to the Doctor

249. PW1's allegation in Ext.P20 complaint given to the Kottayam District Police Chief is that, though she had informed the church authorities about the commission of offences involving Sec.376 IPC, she did not lodge a complaint before the police on account of fear and ignominy. She had also assured in her complaint that she is willing to co-operate with the investigation and that she is ready to give statement to a woman police officer and to the Magistrate. The District

Police Chief forwarded this complaint to Kuravilangadu Police Station. Accordingly, on the next day itself, her statement was recorded by PW37 a Woman Senior Civil Police Officer, working at Kuravilangadu Police Station.

250. In Ext.P1, the victim's version was that on 05.05.2014 the accused stayed at room No.20 and that he called her to the room and asked her to bring the papers relating to the renovation works of kitchen and when she entered the room along with the papers the accused grabbed her from behind. According to her, though she attempted to free herself from the clutches, the accused managed to pull her into his cot. She alleges that the accused lifted her Habit, removed her inner wear and inserted his fingers forcibly into her vagina. It is also alleged that he attempted to insert his sexual organ into her mouth. The further allegation is that the accused forced her to do onanism.

251. There is no allegation of any penile penetration in Ext.P1 first information statement. As regards the sexual violence committed on 06.05.2014, the victim's version in Ext.P1 FIS is that, the accused removed her entire dresses

and repeated the acts which were done on 05.05.2014. She further states that the aforementioned acts were repeated on 13 occasions.

252. There is no allegation of penile penetration anywhere in Ext.P1 FIS. In her cross-examination PW1 was asked about this anomaly. Her explanation is that Ext.P1 first information statement was not taken in a free atmosphere. She further states that she had no trust in the Woman Police Officer who recorded her statement. According to her, the S.I. of Kuravilangadu police station is an ex-seminarian. She had no faith in PW37. It is further deposed that after recording her statement, she had telephoned the District Police Chief and informed him that she had no faith in PW37.

253. No such fact has come out from the testimony of the investigating officer. On the other hand, the additional statement of PW1 and the statement of many other witnesses were recorded by PW37 herself. She was part of the investigating team and had recorded as many as 23 statements of various witnesses. None of them has raised any complaint against her. Hence, the explanation of PW1 cannot be accepted on face value.

254. As already pointed out, the victim had stated in Ext.P20 complaint that she is ready to disclose the entire incidents to a woman police officer. It was on the basis of the said request that a woman police officer was deputed to record her statement. She has no case that the said woman police officer had any connection with the accused or other authorities against whom she was apprehensive. As already pointed even the additional statement of the victim was recorded by the very same police woman. The victim in her cross-examination has admitted that the woman police officer did not omit to record any of the statements given by her. Contrary to her stand in court that she had no faith in PW37 and that the statement was not taken in a free atmosphere, her explanation in Ext.P19 sec.164 statement is that she could not disclose the entire incident to PW37 out of fear. There lack of consistency even in the explanation offered.

255. Victim's explanation that she could not disclose in the presence of her companion sisters that her chastity has been lost, is hard to believe. She admits in her cross-examination that Ext.P20 complaint was prepared at the convent with the help of her five companion sisters (See page

No.39 of PW1's deposition). It is alleged in Ext.P20 complaint that an offence under sec.376 IPC was committed against her. When PW1 had no issues to draft a complaint with the help of her companion sisters, wherein the commission of rape also was disclosed, her explanation that she could not reveal about penile penetration in their presence cannot be believed. Her explanation is that the facts relating to the kitchen work also could not be disclosed, on account of her lack of trust on PW37. (see page No.47 of PW1's deposition). Her explanation is beyond comprehension.

256. PW37's evidence will not show that there was lack of privacy, while recording Ext. P1 FIS. PW1 was asked why she did not insist that her statement should be recorded at her room. Her explanation is that the Mother Superior did not permit her to move to her room. The explanation is difficult to believe. PW1 admits that she did not make any request to PW37 to record her statement at her room or to ask other sisters to move out of the parlour. PW22 was the Mother Superior of the convent at that time. Her version is diametrically opposite to the testimony of PW1. According to her, on 28.06.2018, the Sub Inspector of Police and a woman

police officer came to the convent and questioned her at the parlour. Her version is that she and the other sisters were not permitted to enter the parlour. She would also swear that she did not prevent PW1 from choosing any place or room, for recording her statement. All these circumstances cast serious doubt on the explanation offered by PW1 for the material omission found in Ext. P1.

257. It is argued from the side of the prosecution that two days later, on 30th itself, the victim's additional statement was recorded wherein the entire incidents were narrated. Defence has got a definite case that the said statement is an antedated statement and that it was actually recorded some time in September, which I have already dealt with.

258. One may think that the non disclosure about the penile penetration was an innocent omission from the part of the victim. But the evidence of PW21 and Ext.P55 medical report and Ext.X1(a) copy of the report kept in the medical examination register proves that the victim has failed to reveal about penile penetration to the doctor as well.

259. PW21 who was working as additional Professor in Obstetrics Gynecologist at Medical College Hospital,

Kottayam was assigned with the duty to examine the victim. She deposed that she examined the victim on 29.06.2018. Ext.P55 is the certificate issued by her. The history narrated by PW1 to PW21 is as follows; "History of multiple sexual assault by Bishop (Franco Mulackal) who was occasional visitor at the convent Home. The history of assault multiple times 13 times ie., in 4 year period. Assault including touching of private parts, inserting his fingers in victim's vagina, forces her to touch his private parts and ejaculation in front of her. Last episode one year back." Though it is revealed to the doctor that there were 13 episodes of sexual assault, there is no mention of penile penetration.

260. On examination, the victim's hymen was found torn. PW21 collected the vaginal swab and smear of the victim and handed over the same to WCPO Sumangala to be produced before the chemical examination Lab, Trivandrum. She further testified that before giving evidence, she had verified the results from the lab. According to her, the report was negative. Sperm and spermatozoa were not detected in the sample. She explained that the presence of sperm and

spermatozoa can be detected only up to 7 days after the last sexual contact.

261. Some portion of the history narrated by the victim was found struck off in Ext.P55 medical report. PW21 was asked about these corrections. She admitted that it was she who struck off the entry in page No.3 of Ext.P55. She also deposed that PW1 had narrated to her that the sexual assault was repeated for 4 years which she assumed to be from 2013. She also opined that the torn hymen could be on account of vaginal penetration.

262. She answered in cross-examination that she is aware of the guidelines issued by the government, for conducting medical examination of victims of sexual assault. She is aware that alterations must be initialed, without obliterating the original entry and that scribbling must be avoided. PW21 admitted that the victim did not narrate any history of coercion or verbal threat against herself or her near and dear ones before the sexual assault. It is also admitted that as per the narration use of force was employed only in the matter of touching of the private parts of the male aggressor.

263. Though she was asked to read out the portion struck off, she answered that she cannot read or recollect the original version. She admitted that she has not put any initial at the portion struck off.

264. After the completion of the evidence of PW21, the defence summoned the carbon copy of the Medical Examination Report register from the Medical College, Kottayam. The document was subsequently marked through PW39. Surprisingly, no portion of the history written by the doctor, has been struck off from the carbon copy, from which it is obvious that the portion was struck off at a later point of time. The original history in Ext.X1(a) reads as follows;

*“Victim a resident of St. Francis Mission Home since 2013. History of multiple sexual assault by Bishop (Franco Mulackal) who was occasional visitor at the convent Home. The history of assault multiple times 13 times ie., in 4 year period. Assault including touching of private parts, inserting his fingers in victim's vagina, forces her to touch his private parts and ejaculation in front of her. **No history of penetrative sex according to the victim.** Last episode one year back.”*

265. The portion “no history of penetrative sex according to the victim” has been struck off in Ext.P55. PW39 investigating officer was questioned on this aspect. He explained that he did not peruse the carbon copy of Ext.P55, during the investigation. He also admitted that no investigation was done with regard to the corrections made in Ext.P55 medical report. But, the investigating officer admits that the portion which was struck off from Ext.P55 is a material portion and that it affects the credibility of the victim's version.

266. Thus, if we read the first information statement of the victim and the history narrated by her to the doctor in tandem, it is very much clear that the victim never raised any complaint about penile penetration either to PW37 the Woman Senior Civil Police Officer or to PW21 the doctor. As against her version that the statement given to PW37 was spoken in an unsecured atmosphere, she maintains that she had every opportunity to talk freely to the doctor. She asserts that the entire incident was revealed to the doctor. Her explanation is that history of sexual assault ie., regarding the insertion of fingers, touching of her private parts, force the

victim to touch the private parts of the accused and masturbation in front of her was with respect to the incidents which happened on 05.05.2014 alone. Her explanation is that she had given a detailed narration of the other incidents to the doctor. But PW21's version is on the contrary. According to PW21, PW1 was asked about the history and brief description of the incident. According to the doctor what was stated by the victim was recorded in Ext.P55. She added that she is aware that the examining doctor must persuade the survivor to reveal the facts which the victim is aware of, in case the victim does not reveal the date, time and specific location of the incident. PW21 asserts that the victim did not complain about any violence during the assault. She admitted that doctors are bound to collect information from the victim as to whether there is any complete, partial or an attempt of penile, finger or other penetration. She reiterated that there was no history of penile penetration. The version given by PW1 in Ext.P1 and Ext.P55, coupled with the version of PW21 undermines the prosecution case to a great extent.

267. It is true that the hymen of PW1 was found completely torn. But defence has a relevant explanation for

her torn hymen. Defence contends that PW1 had an illicit relationship with CW17, the husband of PW16. It is their further case that when it was revealed from her medical examination that her hymen was found fully torn, the victim has levelled charges of penile penetration against the accused in her additional statement, possibly to cover up her sexual relationship with CW17. That aspect would be dealt with separately.

268. Apart from the above mentioned omissions, some other crucial omissions in Ext.P1 First Information Statement also has much significance. It has come out in evidence that after the first incident on 05.05.2014, the victim and accused participated in the First Holy Communion celebration of the victim's elder sister's son. Accused was in fact the chief priest of the said function. There is no mention about the said function in Ext.P1 FIS. On the other hand, the victim says that after the incident the accused went to attend some program. It is obvious that the victim wanted to cover up her presence with the accused immediately after the alleged sexual violence. She has also failed to state anything regarding the complaint given by PW16 Jaya. Defence version

is that the allegations levelled against the accused is a counterblast, to stall the enquiry ordered into the complaint of Jaya. In the said circumstances the failure of PW1 to refer anything related to the complaint of Jaya is a material omission.

Jaya's Complaint

269. Jaya is the cousin of PW1. She was examined as PW16. She deposed that she was in love with Ananthan (CW17), that Ananthan was a Hindu, that he later converted to Christianity and that they married according to christian rites. PW1 is her father's sister's daughter. PW1 used to visit her at Delhi, when she was staying at Jalandhar. She had also stayed at their flat, it was PW1 who took the initiative for her marriage with CW17.

270. On 2016, PW1 invited her to attend Abhishekagni Convention. She did not get leave and hence she sent her husband to attend the convention. Her husband stayed at Kuravilangadu convent as the guest of PW1 and attended the convention. Her husband used to call her everyday, during his stay. After some days, PW1 forwarded some messages to her

phone. Later when she called her to ask about the forwarded messages, PW1 talked to her rudely, and remarked that the forwarded messages were sent to PW1's phone by her husband. PW16 thereafter called PW7 and informed her that PW1 has some issues with her husband. A little later, PW7 called her over phone and remarked that she and her husband are bad individuals. She was asked to hand over her phone to her husband. She handed over the phone to her husband and all of them embroiled in an argument. At that time CW10 the brother of PW1 took the phone and abused them and threatened them that they would be killed.

271. She felt aggrieved by the behaviour of CW10. They decided to take revenge. They took an appointment with Sr. Regina and complained to her, orally. Two days later Sr. Regina asked her to give a written complaint. She consulted her husband and added some personal details of PW1, in the complaint, which she only knew, to add credibility to the complaint. She also edited some messages sent by PW1 and forwarded those messages to Sr. Regina. A photograph of PW1 wearing a nighty with goggles placed on her forehead was also forwarded, alleging that the

photograph was taken by her husband. But, PW16 would depose that the photograph was actually taken by her. According to her, the allegations levelled against PW1 in her complaint was false. The allegations were made on account of her enmity with PW1, PW7 and CW10.

272. It is also testified that she was asked by the police to produce the letter and the mobile phones. But she could not produce the phone. The phones were not in use and they could not traced it out. According to her, the original complaint also could not be produced, as it was misplaced.

273. As already pointed out the entire episode involving Jaya and her husband and the verbal arguments with PW7 and CW10 are missing in Ext.P1 FIS. But there are some passing remarks about these incidents in Ext.P19 Sec.164 statement. The verbal argument of Jaya and PW7 and her brother is missing in the previous statement of PW7 and also in Ext.P47 sec.164 statement of PW7.

274. As per PW16's version, her husband Ananthan had stayed in Kuravilangadu Convent for five days from 28.09.2016 for attending Abhishekagni Convention. The said fact is missing in the previous statement of PW1. PW1 also

did not depose anything about it, in her chief-examination. She admitted in cross-examination that the husband of Jaya had stayed at Kurvailangadu convent for five days. But her explanation is that he had stayed there for attending Abhishekagni Convention.

275.The stay of CW17 is stated in Ext.P34 chronicle. It is also stated in Ext.P34 chronicle that PW1 and other sisters attended Abhishekagni Convention. But it is not mentioned in the chronicle that CW17 attended the Convention.

276.Though PW16 claims that her complaint was a false complaint, defence contends that PW16 was subsequently won over by PW1 and her family since their reputation was at stake. The reputation of PW16 and her husband were also at stake and hence she purposefully retracted from her complaint, contends the defence. Now let us see whether there is any substance in the doubts raised by the defence.

277.Going by the version of PW1, CW17 had forwarded a message to her on November 2016, which she felt had crossed all limits. According to PW1, earlier also CW17 had sent similar type of messages and she had warned him not to

send such type of messages. When the act was repeated she forwarded the messages to PW16 and asked her to warn her husband not to send these type of messages to her phone. This fact is admitted by both PW1 and PW16. But both witnesses have not testified about the contents of the controversial messages. PW16 goes to the extent of saying that she did not find anything inappropriate in the controversial message. If in fact there was nothing inappropriate in the said messages this court is at lost to understand why PW16 created so much of fuss over the messages.

278. Going by the version of PW1, on receiving the forwarded message PW16 called back PW1, in anger. PW1 hung up her phone whereupon she called PW7, which ended in an argument. Subsequently, PW7 called PW16 over phone and there was an argument between PW16 and her husband on the one hand and PW7 and her brother on the other. PW16's narrative is slightly different. According to her, when she called PW1, she talked to her very rudely, whereupon she called PW7 and informed her that PW1 has some issues with her husband. Little later, PW7 called her back and asked her

to hand over the phone to CW17, her husband, and when she handed over the phone to her husband, CW10, the brother of PW1 threatened her husband.

279. The argument with PW16 and her husband is admitted by PW7. PW7 claims that the issue was subsequently, sorted out. But according to PW16, they are still at loggerheads. They have not talked to each other after this incident.

280. PW16 admits that she was more attached to PW1, than her parents. She had full trust on PW1. She believed her next to God. But she admits that they have not talked to each other after 05.11.2016. It is difficult to believe the version of PW16 and PW1 that a silly issue involving an innocuous forward, would trigger the emotions of two closely related families. The fact that PW1 and PW16 are still not at talking terms, shows that the emotional trigger still boil over.

281. PW16's testimony shows that two days after receiving the forwarded message she took an appointment with Sr. Regina and informed her about the incident including, the argument which she had with PW1's relatives. Her version is that she took leave from the school and

travelled for about 7 hours to meet Sr. Regina. If the issue was so trivial there was no need for PW16 to take so much of pain to inform the matter urgently. PW16 is not an ordinary housewife. She is a teacher in a private school at Delhi. Her husband is a lawyer practicing at Supreme Court of India. The conduct of PW16 has to be appreciated in the said background.

282. The claim of PW1 is that PW16 is suffering from mental ailment. PW16 has refuted the said claim. The further allegation of PW1 is that PW16 had made similar allegations against her own sister. The said allegation was also strenuously denied. Prosecution has not adduced any other evidence to substantiate the claim of PW1, that PW16 was on medication for her mental ailment.

283. PW16 was confronted with Ext.D45 complaint in her cross-examination. She admitted that the handwriting and the signature in Ext.D45 complaint resembles her handwriting and signature. But she did not admit the document. Ext.D45 was subsequently marked through PW39 the investigating officer. As per Ext.P92, inventory investigating officer had seized 7 documents. Ext.D45 is the

print out of the one of those documents. Defence also produced Ext.D50 e-mail, wherein also Ext.D45 handwritten complaint has been attached. I have gone through the controversial handwriting and signature with the admitted signature of PW16 in her deposition sheet and the endorsement made in the deposition. There is absolutely no difference in the admitted writings and signature and the disputed writings and the signature. In the said circumstances, this court has no doubt to hold that Ext.D50 is the very same complaint written by PW16.

284. The initial part of her complaint reads as follows;

“It all happened in the first Saturday of November 2016, when ‘X’ told me that Anand is troubling by over caring and she forwarded a message sent by him. I tried to call him to know the fact, however, he does not pick up my call and then I forwarded the same message which was sent to me by ‘X’. Then also I was an under impression that, it could be a case of over caring by Anand and nothing else as ‘X’ ever told me that they are having an affair. I reached home early on that day around 3 p.m. When I reached home I found that he was writing a letter and was restless. Without saying anything I

went to the room to keep my bag then I noticed that some dust particles are lying on the ironed cloths (white) which were lying on the bed. When look upward, I found a rope tied on the hook on the ceiling to commit suicide found that letter addressed to one of my friends wherein he has asked him to hand over the documents to the clients. I lost my cool on seeing this and shouted at him and we have a quarrel over the issue. At that time he told me that it is not the case that he was troubling 'X' he is ready to put his side of the facts in front of 'X'. On my insistence, he showed me numerous text messages sent by 'X' from her mobile No.9495633914 to him on various dates and odd times that including those messages sent after 2 a.m. Through these messages 'X' conveyed to him her love and numerous kisses on different occasions."

It is true that PW16 had stuck to her stand that the allegations were false and concocted, aimed for taking revenge against PW1. But she admitted that she had in fact seen a letter written by her husband. The relevant portion of her deposition reads as follows:

“ഭർത്താവ് അയാളുടെ സുഹൃത്തിന് address ചെയ്ത് ഒരു കത്തെഴുതി ആ കത്തിൽ ഭർത്താവ് ഒപ്പിട്ട് തയ്യാറാക്കിയ Will ആ കത്തിൽ പറഞ്ഞിരിക്കുന്ന ആൾക്ക് കൊടുക്കണം എന്നും, നിങ്ങളോടും ഭർത്താവിന്റെ family members നോടും നിങ്ങളുടെ parents നോടും മാപ്പ് അറിയിക്കുന്നു എന്ന് എഴുതിയ കത്ത് കണ്ടിരുന്നോ Q. കത്ത് ഞാൻ കണ്ടിരുന്നു. contents ഞാൻ കണ്ടില്ല.”

Her version that she saw the letter written by her husband goes in tandem with the allegations levelled in Ext.D50. But her version that she did not go through the contents of the letter cannot be swallowed without a pinch of salt.

285. In the latter part of her complaint, she states as follows;

“Thereafter they prepared food as she has to carry food for other sisters with whom she will be travelling to Kerala. He accompanied her to railway station and other sisters including Sr. Leona were there. He then handed over five churidars which was bought by ‘X’ to Sr. Leona on the pretext that the same is to be handed

over to Anand's family as 'X' does not want other sisters to know about it".

PW8 Sr. Leyona has admitted these facts. Her deposition reads as follows;

“സഭാ വസ്തു ഉപേക്ഷിക്കുന്നതിനാൽ PW1 നിങ്ങൾക്ക് churidar വാങ്ങി തന്നില്ലേ Q. എനിക്ക് ജയയാണ് ചുരിദാർ തന്നത് A. ജയയുമായി എനിക്ക് ബന്ധമില്ല. ആനന്ദിനെ എനിക്ക് അറിയാം. ആനന്ദിനെ railway station ൽ വെച്ച് കണ്ടില്ല. ജയയോട് ചുരിദാർ തന്ന സമയം സംസാരിച്ചോ Q. Witness takes time. കൈയ്യിലിരിക്കട്ടെ എന്നു പറഞ്ഞ് സംസാരിച്ചു A. എന്താണ് പൊതിക്കകത്ത് എന്നു ഞാൻ ചോദിച്ചില്ല. വീട്ടിൽ എത്തിയ ശേഷം തുറന്നു നോക്കി. 2 ദിവസം കഴിഞ്ഞാണ് വീട്ടിൽ എത്തിയത്.”

Thus, that part of the allegations levelled in Ext.D50 letter also stands corroborated, though the version of Sr. Leona is that the churidars were purchased by PW16 and not PW1. PW8 has admitted that she had no contacts with Jaya. In the said circumstances, the version of PW8 that it was Jaya who handed over the churidars to her is not believable. In all probability as alleged in Ext.D50 complaint, churidars would have been purchased by PW1 herself.

286. Another important allegation raised in Ext.D50 letter is with respect to Abhishekagni Convention. It was alleged in the letter that CW17 had stayed at the convent from 27.08.2016. There are corresponding entries in Ext.P34 as per which PW1's cousin Anand came and stayed at the convent to attend the convention on 27.08.2016. It is also mentioned in the chronicle that the convention ended on 31.08.2016. There are entries in the chronicle to the effect that PW1, PW3 and PW4 attended the convention. But there is no entry to the effect that CW17 Ananthan attended the convention. There is no entry as regards his departure as well. Thus the stay of CW17 at the convent as alleged in Ext.D50 letter would also stand corroborated by the entries in Ext.P34 chronicle.

287. As regards the allegation of illicit relationship between PW1 and CW17 during his stay at Convent, PW16 reiterates that the allegations made in her complaint were false. As already pointed out, her explanation is that some facts which were already within their knowledge, were twisted, to add credibility to the allegations levelled against PW1. But on going through Ext.D50, this court finds that

certain incidents pertaining to the accused which comes within the exclusive knowledge of either PW1 or the accused also had surfaced in Ext.D50, which requires an explanation from the side of prosecution. That part of the allegations reads as follows;

“He further told me that one day when they are having physical relation, Bishop Franko texted her “Entha Mashe” then she was confused and told him that Bishop may call. Then she called Bishop but he did not pick up her call but sent a text saying that he cannot take call right now. Then she sent good night message saying that she will call him tomorrow. Then Bishop replied saying that he has to talk to her today itself. Bishop Franko called ‘X’ on the same day around 1 a.m. and she didn’t pick up his call. When Anand questioned her about this odd timing, then she told him that she is tolerating Bishop for some reasons.”

288.Ext.D50 letter was issued on 13.11.2016. PW1 never revealed to Jaya about the late night messages and phone calls of the accused. In the said circumstances, the allegation levelled in Ext.D50 regarding the late night messages and phone calls of the accused cannot be brushed

aside as a mere figment of imagination by PW16. PW16 must have known about these messages from her husband CW17, who might have happened to see or hear PW1 attending this late night calls during his stay at the convent, or PW1 herself might have revealed it to him. In the argument notes submitted by the prosecutor, he contends that, the late night calls of the accused was known to all including Jaya and Anand (page No.15 of the argument note). There is nothing in the records to substantiate that Jaya was aware of the late night phone calls of Bishop. PW1 has also not deposed before this court that she had told Anand about the late night calls of accused. It is not the knowledge of Anand, regarding these messages, that matters. What is needed is a credible explanation regarding the circumstances in which she happened to narrate these private facts to Anand. Non explanation of the facts creates a shadow of doubt on the prosecution case that the contents of Ext.D50 is a mere figment of imagination.

289. That apart, in Ext.D50, allegations are leveled against the accused as well. In the said circumstances, the version of PW1 that accused had a role in Ext.D50 complaint

preferred by Jaya cannot be accepted. Even otherwise, the sequence of events, unveiled from the testimony of PW1, PW7 and PW16, completely rules out the role of the accused.

290. There are remarks in Ext.D50 letter about the functions attended by the accused and PW1 in connection with the death anniversary of a priest. It is also stated in the letter that during the function PW1 texted CW17 that 'boring speech of many going on'. The function, going by Ext.D50 letter happened after CW17 reached Delhi, subsequent to the convention. Ext.P34 Chronicle would show that on 24.09.2016 PW1 and PW3 had gone with the accused, to Rev. Fr. Kurian's home land to offer Holy Mass and to pray for his departed soul. The allegations in Ext.D50 letter goes in tandem with the said entry as well.

291. It is also stated in the letter that PW1 had sent messages to CW17 from various places including Kalady and Muvattupuzha while she was returning from Attappadi along with Sr. Maggi and another sister. The visit of PW1 and Sr. Maggi to Attappadi is admitted by PW1. But she has no case that she had either sent messages to PW16, from her phone

on her way back from Attappadi or that she had talked to her over phone during the Journey. These circumstances probalilise the case of the defence that PW1 had sent numerous messages to the phone of CW17.

292. It is stated in Ext.D50 that CW17 had told Jaya about a surgical scar in her abdomen and also about the accessory nipple in her left breast. Prosecution had offered explanation to these two allegations. The explanation with regard to the surgical scar is that PW1 had undergone a surgery for her appendix and that this fact is known to everyone including PW16 and that PW16 had purposefully included the said details as if the same was revealed to her by CW17 to add credibility to her version. PW16 has also concurred with the prosecution version.

Breast Examination Report

293. As regards the allegation of accessory nipple prosecution relies on Ext.P56 breast examination report of PW21. PW21 examined the breasts of the victim on 02.10.2018 to verify the allegation in Ext D50, that she had an accessory nipple. According to PW21, on examination her

right and left breast and nipples were normal. No accessory nipples were found during examination. The result of examination is as follows; Right breast - normal, nipple normal. No accessory nipple. Left breast - normal, nipple normal, no accessory nipple seen. Learned counsel points out that the terminology used with respect to her right and left breast are entirely different. As regards, the right breast, PW21 has noted that PW1 had no accessory nipple at all, but as regards the left breast her version is that no accessory nipple was "seen" which implies that the nipple was subsequently removed by surgical procedure.

294. PW21 was cross-examined on these aspects. She admitted that she had not conducted any other examination of PW1's breast other than the visual examination by naked eye. She was also asked whether the extra nipples can be removed easily by a surgical procedure without leaving any marks. The answer of PW21 was that she is unaware of the surgical procedure. She has not heard about super accessory nipple surgery or third nipple surgery being done by plastic surgeon for removing the third nipple without leaving any mark.

295. The evidence of PW21 and Ext.P56 is inconclusive as to whether PW1 had undergone any surgical procedure for removing her accessory nipple. But from the evidence of PW21 and Ext.P56 certificate it can be concluded that she had no accessory nipple at the time of her medical examination. Victim's version that she showed her breast to Sr. Regina and convinced her that she had no accessory nipple is confirmed in Ext.P26 letter (marked as Ext.D1 from the side of the defence). But the contents of Ext.P26 was not proved by examining Sr. Regina.

296. The explanation offered by the prosecution with respect to the surgical scar of PW1, and the findings in Ext P56, coupled with the evidence of PW16 establishes that the allegations leveled in Ext.D50 as regards the marks in her body, were not revealed by CW17. But that alone will not lead to a conclusion that the entire allegations levelled in Ext.D50 letter are untrue. As already pointed out, some of the allegations are corroborated by other documents and some part of the allegations especially about the night calls of accused, are within the exclusive knowledge of PW1 and not definitely within the knowledge of PW16.

297. Going by the version of PW16, she had forwarded some of the messages exchanged by PW1 and CW17, to Sr. Regina. Of course, PW16 claims that the forwarded messages were edited ones. The best evidence in this regard would have been the mobile phones of PW16 and CW17. But surprisingly PW16 and CW17 did not produce their mobile phones to the investigating officer. PW39 had issued S.91 notice to PW16 and CW17 to produce their mobile phone. But both of them replied that the mobile phones were not in use. PW16's explanation is that she might have handed over her phone to any child for playing games, or she might have sold the same, or she might have sold the same to some scrap dealers. She admits that they were not blessed with a child in 2016. But according to her she might have handed over the phone to any child, residing in the neighbouring apartment. No explanation is offered regarding the missing phone of CW17, her husband. The computer/laptop used by PW1 also was not produced in court. In fact, CW17 is a material witness to depose about these facts. But for the reasons best known to the prosecution, the prosecution did not examine him.

298. PW16 ends her letter, with a remark that she does not know who is telling the truth. The failure of the investigation agency to trace out corroborating materials has handicapped everyone, from finding out the actual truth of the revelations made in Ext.D50 letter. But it is hard to believe that PW16 would make such wild allegations against her own husband and her own relative, whom she had once considered like God, for forwarding an innocent SMS. It is also doubtful whether she would tarnish the image of her husband who is a practicing lawyer at the Supreme Court of India, by making false and frivolous allegations that he had attempted to commit suicide on account of his illicit relationship with a nun. Most importantly, PW16 has not till date given any communication to Sr. Regina or M. J. Congregation that the allegations levelled in her complaint are false.

**Curious case of the missing mobile phone and
damaged laptop**

299. PW1 was complaining right from the beginning that the accused used to send obscene messages to her phone. In fact, in Ext.P19 statement of the victim, she has

spoken about some of those messages. According to her, when she told the accused that she would not permit him to stay at the convent so long as she continues as the mother superior of the convent, the accused initially replied, "that is alright". He then added that "the right thing is that he should visit the convent. If he does not visit the convent then it won't be correct". Later, she started avoiding his phone calls. Then, the accused texted her and asked "sleeping"? As per her version, the accused had texted her,

'with heavy heart I am joining with your decision'. 'I want to see you, I want to need you, call me'. Victim also speaks about the messages sent by the accused that he is 'passing through Kuravilangadu'.

But, when it comes to the production of the mobile phone to which the messages were sent, prosecution has a strange explanation to offer.

300. According to the prosecution after issuing Ext.P4 dispensation letter, PW1 abandoned her phone and SIM Card, and sent it to her house, along with her other articles. The phone and the SIM card were later sold to a scrap dealer, which could not be recovered. In this connection the evidence

of PW39, the investigating officer is that, though he enquired about the mobile phone used by the victim, it was revealed during investigation that the mobile phone was handed over to a scrap dealer. He questioned the scrap dealer but could not recover the phone. Though he made an attempt to trace out the details of the phone calls, and had also submitted an application before Judicial First Class Magistrate Court, Pala, mobile companies replied that the required information is not available.

301. Admittedly, the dispensation letter was issued on 26.05.2017 and within 5 days, PW1 withdrew her dispensation request. The old phone and sim were allegedly abandoned and sent to her house, in between these five days. Admittedly, the phone belonged to the congregation. If PW1 was fed up with the phone calls in connection with her dispensation letter, the better option would have been to take a new SIM connection. There was no real need to abandon her old phone. But PW1's explanation is that not only did she abandon her old phone and SIM, but she also purchased a new phone and SIM connection, that too using the funds of

the congregation after taking a decision to leave the congregation.

302. The relevant portion of her deposition is as follows;

“Dispensation കൊടുക്കുമ്പോൾ ഞാൻ കുറവിലങ്ങാട് മഠത്തിൽ ആയിരുന്നു. Dispensation കൊടുത്ത ശേഷം വീട്ടിലേക്ക് പോയോ(Q) ഇല്ല. അങ്ങനെ പോകാൻ പറ്റില്ല. അതിന് ശേഷം മഠത്തിൽ തുടർന്നു. Ext.P5 മഠത്തിൽ വെച്ചാണ് എഴുതിയത്.”

Thus, from the version of PW1 it is very much clear that she did not leave the convent after issuing Ext.P4 dispensation letter and stayed in the convent. The version of PW7 also proves that PW1 did not come to their house after issuing Ext.P4 dispensation letter. Her testimony is as follows;

“കുത്ത് കൊടുത്ത അന്നുതന്നെ PW1 വീട്ടിൽ വന്നോ? ഞാൻ മഠത്തിലേക്ക് പോവുകയായിരുന്നു. പിറ്റേ ദിവസം പോയി എന്നാണോർമ്മ. 27.05 ന് മുൻപ് ആണ് പോയത്.”

303. Thus, when both PW1 and PW7 consistently states that PW1 did not go to her house after issuing Ext.P4 dispensation letter, PW1's explanation that she packed all her

materials including the mobile phone and SIM card and sent it back to her home does not appear to be true. There is one more circumstance which establishes that PW1 did not abandon her mobile phone, on May 2017. In Ext.P8 letter dated 11.07.2017, issued to Cardinal Mar George Alencherry, she had attached the messages sent by Bishop Franco. Her old mobile number and her new contact number also finds a place in Ext.P8 letter.

304. Though, in Ext.P8 letter it is stated that the controversial messages were attached along with the letter sent to PW18, PW18 has deposed before this court that he did not receive any such messages. The said messages or its print outs are not produced before this court as well. The reference about these messages can be found in the interview given by PW4 to DW4 Abhilash Mohan. PW4's answer is that,

“ഞങ്ങളുടെ കൈയ്യിലുണ്ടായിരുന്ന മെസ്സേജുകൾ എന്ന് പറയുന്നത് ഞങ്ങൾ already പേപ്പർ പ്രിൻ്റ് എടുത്തു വച്ചേക്കുന്ന ഒരു കാര്യം ആയിരുന്നു. അത് ഫോട്ടോ എടുത്ത് ഒരു മൂന്നാലു പ്രാവശ്യം അത് അങ്ങോട്ടും ഇങ്ങോട്ടും മാറി. നമ്മളുടെ ഫോൺ ഒരു പഴയ ഫോണായിരുന്നു. അതിനകത്ത് നിന്ന് മാറ്റി നമ്മൾ ലാപ് ടോപ്പിലേക്ക് കയറ്റി. അങ്ങനെ പല സിസ്റ്റത്തിൽ നിന്നൊക്കെ മാറിയതുകൊണ്ട് പോലീസുകാരെ നമ്മളതു കാണിച്ചു, മെസ്സേജുകൾ

അപ്പോൾ അവർ പറഞ്ഞത് കോടതിയിൽ അത് valid അല്ല എന്ന മറുപടിയാണ് നമ്മൾക്ക് കിട്ടിയത്.”

305. Before confronting PW4 with the above portion of the video clip, PW4 was cross-examined with respect to the messages. Her answers in the cross-examination was diametrically opposite to the explanation offered in the interview. Her version in the cross-examination is as follows:-

“Bishop അയച്ചു എന്ന് പറയുന്ന മെസ്സേജുകൾ ലാപ്ടോപ്പിൽ ആക്കിയതായി എനിക്കറിയില്ല. എനിക്ക് ബിഷപ്പ് മെസ്സേജ് അയച്ചിട്ടില്ല. PW1 ന്റെ ഫോണിൽ ഒന്നോ രണ്ടോ മെസ്സേജ് ബിഷപ്പ് കുറവിലങ്ങാട് മഠത്തിൽ വരുന്നത് സംബന്ധിച്ച് വന്ന കാര്യം അറിയാം.”

PW4 had gone to the extent of saying that “അന്നത്തെ മാനസികാവസ്ഥയിൽ കള്ളത്തരം പറഞ്ഞിട്ടുണ്ടോ എന്നറിയില്ല. ഇപ്പോഴത്തെ മാനസികാവസ്ഥയിൽ സത്യമാണ് ഞാൻ പറയുന്നത്.”

306. In the said circumstances, the explanation offered by the prosecution about the missing mobile phone cannot be taken on face value. The further argument of the prosecution that the screen shots of the text messages were

taken in another phone and that the said screen shots alone were handed over to PW18 in a pen-drive (page 18 of argument notes) is against the version of PW1, who has admitted that the memory card containing the messages were handed over to PW18. The relevant portion of her deposition is as follows: “ആ മെസ്സേജുകൾ കത്തിനോടൊപ്പം ആലഞ്ചേരി പിതാവിന് മെമ്മറി കാർഡിൽ കൈമാറി.” (Page No.98).

307. Ext.P8 and the version given by PW4 in her interview and the testimony of PW1 categorically proves that PW1 and her companion nuns had the controversial messages with them. If PW1 and her companion sisters were vigilant enough to take the print out of the controversial messages they would not have dealt with the mobile phone in a casual manner and would not have sold the mobile phone to a scrap dealer as claimed by them. The explanation offered by PW1 and the prosecution is highly artificial and unbelievable.

308. That apart, no real investigation was conducted with respect to the claim of PW1 that the new SIM connection was taken after issuing Ext.P4 dispensation letter i.e., after 26.05.2017. According to PW1, the abandonment of

the old phone and the purchase of the new phone had taken place simultaneously. The customer details of the mobile connection would have sufficiently proved that the new connection was taken after 26.05.2017, which would have also added some credence to her version that the old phone was abandoned after taking a decision to leave the congregation. But no attempt was made to get the customer details, though an attempt was made to get the call detail records.

309. Worst is the case of the laptop. Prosecution has produced MO1 Hard disc and has claimed that the hard disc of the laptop got damaged and hence the materials stored in the laptop could not be retrieved. PW1 has stated in her previous statement that the laptop belongs to her. But her version in court is that the laptop belongs to the congregation. PW39 the investigating officer has admitted that PW1 never stated in her previous statement that the congregation had a laptop and that the said laptop was given for repair. PW39 has also admitted that PW1 had in fact stated in her case diary statements that the laptop belongs to her. That apart, as already pointed out, PW4 has stated in the

interview that the messages were retrieved and put in the laptop. PW13 has admitted that Exts.P13 and 18 letters were typed in the official laptop of the congregation. Hence, the production of laptop and the retrieval of the data stored therein, has got some significance.

310. PW1's version is that, the official laptop of the congregation was given in a service centre, for repair. According to her, either PW3 or PW4 would have received the lap top from the service centre. According to her, the shop owner had also handed over to them the old hard disc. As per her version, the hard disc was sent to the service centre and taken back with the permission of the mother superior as she was only a community member of the convent at that time. She further testifies that she had handed over the bill to the police officials.

311. In this connection prosecution has produced Ext.P27 photocopy of the receipt issued from Fast Track Systems Ltd., as per which the laptop was serviced and a new 500 GB hard disc was installed. The receipt is dated 23.08.2018. Ext P27 being a photocopy was not properly proved. But even according to the prosecution, the laptop

was serviced almost 3 months after the registration of the FIR. Investigating agency could have recovered the laptop immediately after the registration of the FIR, but that was not done.

312. That apart from Exts.D29(a) and D30 letters, it can be gathered that the main grievance of PW1 against Sr. Tincy, the then mother superior of Kuravilangadu convent was that, she had kept the laptop and other common accessories in her room and that she was not provided the laptop and other common accessories for the use of PW1 and other companion sisters. In the light of the said grievance aired by PW1, it is highly improbable to believe her version that she took initiative to repair the laptop and that with the permission of the mother superior she took the laptop to a service centre and got it repaired. The repair of the laptop and the seizure of MO-1 damaged hard disc, months after the registration of crime, adds to the shadow of doubt.

313. Similarly, the phones used by PW16 and CW17, also were not submitted for investigation. Thus by a strange coincidence of events, the digital evidence has not come

before court, which would have corroborated the version of PW1.

Communications between PW1 and the accused after the incident

314. Defence has produced Exts.D10 series e-mails sent by the victim to prove that the relationship between the accused and the victim were friendly, even after the alleged sexual violence. Ext.D10(b) e-mail sent on 16.02.2016 reads as follows;

“dear lordship good afternoon, Now I understood how much love and concern you have for mj”ssssssss, you r too late to update...just now I have seen and replied u, how is ur health, work, mission, vision, etc.....take care of mj’s too who is in and out, I mean those who r out...for studies.....praying for u, thank u.....

315. The above e-mail is in reply to the e-mail sent by the accused on 13th February 2016. The e-mail of the accused reads as follows;

“oh my dear only today I saw the pictures. Beautiful. Please reply when you see this mail. thank you.”

The language used in the mails are neither formal nor official. These emails definitely give an insight into the relationship between the accused and the victim. The picture of a tyrannical, or vengeful person is not revealed from these e-mails. Ext.D10(e) e-mail dated 29.03.2016 would show that the victim had forwarded an article about Bishop Symphorian Keeprath, to the accused, for correction. The reply e-mail sent by the accused would show that necessary corrections and re-drafting were made, as requested by PW1. The said article finds a place in Ext.P25 souvenir. The article was separately marked as Ext.D58. Ext.D10 series emails would prove that the relationship between accused and PW1, were very friendly and cordial, at least until March 2016.

Photographs and video of the functions attended by the accused and the victim on the next day after the alleged Sexual violence:

316.The defence placed reliance on Exts.D6 series photographs and Ext.D7 DVD of the functions attended by PW1 on 6th May 2014, to buttress their contention that no sexual violence had taken place in the night of 05.05.2014.

317. It was DW2 who videoed the function. He also provided Exts.D6 series photographs. The victim appears to be quite happy and joyful in the photographs. In Ext.D6(c) photograph, PW1 and PW7's husband's father are seen welcoming the accused to the function. In Ext.D6(f) photograph the victim is serving food to the accused. In both photographs the victim appears to be happy. Ext.D7 video clip was also played during her testimony. The defence contends that the victim was quite happy during the function. PW1 on the other hand, states that she was sad during the function. She states that in the third video clip, she can be seen crying, sitting on the back side of the church.

318. I have meticulously gone through the photographs and video clips. As stated by the victim, at the beginning of the third clip, the victim looks very gloomy. But on the very next moment the victim can be seen smiling. PW7's husband's father was also looking gloomy, throughout the video.

319. In this regard the evidence of PW7, the elder sister of PW1 also has got some relevance. She testified that

her husband died in 2012. Her son's first holy communion was on 6th May 2014. The accused was the chief priest of the function. Her testimony was that she was crying during the function, thinking about her late husband. She added that PW1 was also crying during the function. She asked PW1, why she is crying during the function, to which PW1 replied that her sister's tears have made her cry.

320. Though the holy communion of the child of PW7 is a happy occasion for the family, the memories of late father of the boy would have definitely haunted them. All of them were in a celebrating mood, as well. Hence, nothing can be concluded from the joyful face of PW1 or from her gloomy face as regards what was actually going through her mind. Gone are the days of St. Jerome, when face was considered as the mirror of the mind, and eyes without speaking confess the secrets of heart. Now face is a tool to cover up ones emotions. Man has mastered to hide his emotions. Hence, nothing can be concluded from the facial expressions of PW1.

321. Same is the case with Exts.D11 series photographs. Those photographs were taken on 23.05.2015, during the house blessing ceremony of Sr. Tessy. Going by

the prosecution case, the accused had raped PW1 on 22.05.2015. Exts.D11 photographs especially Ext.D11(i), D11(h) and D11(g) photographs would show that the victim was interacting with the accused in a joyful mood. But the happy face of the victim will not lead to a conclusion that she was not subjected to any sexual violence on the previous day.

Discussion on the events and programmes participated by PW1 and the accused, on the next day after the sexual violence

322. According to the prosecution, the 3rd incident had happened on 11.07.2014 at 10 p.m. Defence points out that on the very next day PW1 had gone with the accused and attended a function. PW1 was confronted with Ext.P34 chronicle. She admitted that she and Sr. Leyona went with Bishop Franco to attend the Golden Jubilee Celebration of Fr. Mathew Nilappana.

323. The 4th incident was on 05.01.2015. PW1 has admitted that she went to Kannur with the Bishop on 06.01.2015 and returned to the convent on 09.01.2015. She was asked about her stay at Kannur. She replied that there

are two convents at Kannur. She and Bishop might have stayed at any one of the convents.

324. The 5th incident was on 15.01.2015. It is admitted that on 19.01.2015, the Golden Jubilee Celebration of the Bishop was held at St. Francis Mission Home. PW1 admits that she was in charge of the function. The function was attended by the Pala Bishop and many other priests and general public. The function was a grand success.

325. The 6th incident was on 22.04.2015. PW1 admits that from 08.04.2015 to 19.04.2015 she was in Punjab. It is also admitted that on 21.04.2015 she was at Thrissur to attend the Jubilee Celebration of the accused. According to her, on 23.04.2015 accused took his breakfast at the convent. A friend of the Bishop from Switzerland had also stayed at the convent on 24.04.2015. On 23.05.2015 she along with Sr. Leyona went to the Jubilee Celebration of the Bishop's batch-mate at Chengalam. These inputs definitely establish that prior to the alleged incident on 22.04.2015 and subsequently as well, the victim had close interactions with the accused.

326. The next incident was on 22.05.2015. PW1 admits that on 20.05.2015 PW1 and Sr. Aleesha went to Kannur and returned to convent along with the accused on 22.05.2015. Ext.P34 chronicle would show that on 23.05.2015 PW1 and the accused along with Sr. Leyona attended the house blessing ceremony of Sr. Tessey and First Holy Communion of her cousin. Accused left the convent on 24.05.2015, after offering holy mass. On 27.05.2015 and 28.05.2015 PW1 and other sisters went along with Bishop to Kadaplamattam to attend the holy mass in connection with the death of Bishop Symphorian Keeprath.

327. The next incident was on 27.07.2015. The chronicle entry of 27.07.2015 would show that PW1 and Sr. Leyona went to Angamali for the prayer service of Fr. G.P.'s mother. Later PW1 and PW4 along with Sr. Angel and Sr. Kusumam went to Bharananganam for the Holy mass of Bishop Franco. As per the chronicle entry the Bishop came to the convent and stayed there. He later went back on 28.07.2015, after wishing feast to Sr. Anupama.

328. The next incident was on 21.08.2015. PW1 admits that on 22.08.2015 herself and Sr. Leyona attended the Baptism function of the friend of the Bishop at Kuruppumthara.

329. The next incident was on 05.11.2015. The chronicle entry however would show that the accused had come to the convent in the company of Fr. Antony Madasserry. As per the chronicle entry, both of them stayed at the Mission Home. Some of the guests of Bishop Franco also came there in the evening and they all had a meeting together.

330. The mother of the accused passed away on 06.11.2015. PW1 has admitted that she went with Sr. Leyona, Jerome and Reji to attend the funeral ceremony of the mother of the accused on 08.11.2015. The defence would contend that PW1 did not return to the convent on 08.11.2015. When PW1 was asked about this fact she insisted that she should be permitted to peruse the chronicle. Ext.P34 chronicle was shown to the witness. After going through the chronicle she admitted that it is written in the

chronicle that Sr. Leyona and Jerome and their family members alone returned to the convent. But she explains that the ordination ceremony of Libin was scheduled on 09.11.2015 and that she stayed at her house to attend the said function. But there is no entry in the chronicle in this regard.

331. The next incident was on 17.01.2016. Chronicle entry reveals that the accused had come to the convent on 17.01.2016 along with Fr. Antony Madasserry. It is admitted by PW1 that she had gone along with the Bishop up to Kuravilangadu bus stand. According to the witness thereafter she proceeded to Thrissur in bus.

332. The next incident was on 29.04.2016. PW1 has admitted that on 29.04.2016, she along with Sr. Leyona went to attend the feast of Sr. Jeena. She admits that she had come back to the convent in the car of Bishop. On the next day ie., 30.04.2016, she went along with the accused and Sr. Clare, to attend the Jubilee Celebration of Fr. Jose T. at Chembaramattam. After attending the said function PW1,

PW3 and the accused went to Kudamaloor to attend the memory day of Fr. Kurian Muttathupadathu.

333. The last incident was on 23.09.2016. Ext. P34 Chronicle would show that on 23.09.2016, PW1 and PW3 had gone with the accused, to Rev. Fr. Kurian's home land to offer Holy Mass and to pray for his departed soul. On their way, they got down at Rev. Fr. Jomy's house to pray for the departed mother of Rev. Fr. Jomy. On their way back, PW1 and PW3, got down at Pala and the accused went back to Trissur. PW1 also admitted that she along with Sr. Neena Rose had attended the first death anniversary of the mother of the accused at Thrissur on 27.10.2016.

334. Though the defence had argued that being a nun she was bound to accompany the Bishop and hence her journeys will not establish that she had a friendly relationship with the accused, the fact remains that even PW8 who had accompanied PW1 in most of these journey's, did not find anything unusual in her behaviour. She has not deposed that PW1's interactions with the accused were odd or unfriendly. PW1 could have stayed at her sister's home, on 06.05.2014,

after the holy communion function of her nephew. Instead she chose to return to the convent along with the accused, that too after being subjected to rape previous night. According to her the vow of chastity had haunted her after every abuse. After every rape, she pleaded for mercy. In the said circumstances these journeys and close interaction with the accused definitely undermines the prosecution case.

Bad Character of the accused.

335. The bad character of the accused is not a relevant piece of evidence in a criminal case (See Sec. 54 of the evidence Act). But when the accused gives evidence regarding his good character then prosecution is also permitted to adduce evidence regarding the bad character of the accused. As far as this case is concerned the accused has not given any evidence regarding his good character. But, some questions were put to PW12 regarding the high positions and honours held by the accused. It is also contented that the accused was appointed as a Bishop at a very young age. Hence, this court is of the view that some discussion is inevitable with respect to the evidence adduced by prosecution as regards his alleged bad behaviour.

Discussion on the programme 'a day with shepherd'

336. Prosecution contends that Bishop had started a programme by name 'a day with shepherd,' where, nuns were provided with an opportunity to interact with the Bishop, personally. PW4 has testified that initially, more than 50 nuns had participated in the programme, but their numbers started reducing, owing to the bad behaviour of the Bishop. But, PW4 in her cross-examination has admitted that she never had any bad experience from the accused, when she attended the programme (see page No.31 of the deposition of PW4).

337. In this connection prosecution had examined PW12, the then director of Gyanodaya Diocesan Pastoral Centre, Jalandhar. Prosecution also proved Ext.P51 registration book and Ext.P52 time table of the said programme. He testified that the programme had started on March 2014, after the accused took charge as the Bishop of Jalandhar. The programme was held on every second Saturday. The sisters who were interested in participating the programme, had to register their name by Friday

evening. Rooms also will be allotted to them, on payment of requisite fee. After he took charge as the Director, the programme continued for four months. In answer to a question as to why the numbers of the participant sisters started coming down, he replied, when the accused stopped participating in the programme, the number of participants also started reducing. His explanation is that the sisters were not interested in the prayer conducted by other priests. In cross-examination he deposed that the nuns domiciled at Jalandhar diocese alone were permitted to participate in the programme. It is also testified that the Bishop could not attend the programme on account of his hefty schedule. When the number of the participants started coming down, the programme became financially unworkable and ultimately the programme was stopped.

338. The evidence of PW12 will not prove that the bad behaviour of the accused was the reason for the fall in the number of the participants.

Evidence of PW10 and PW8 regarding the bad character of accused and its relevancy

339. Prosecution had also examined PW10 to prove that accused had misbehaved with her. But she did not support the prosecution.

340. It is true that PW8 has deposed that the accused had once put his hands over her shoulder and pulled her towards him. But as already pointed out, the behaviour of the accused to PW8 is not a relevant issue in this trial.

Discussion on 18 sisters leaving the congregation

341. Prosecution contends that 18 sisters left the congregation after the accused took charge as the Bishop. There is nothing on record to show that any among those sisters had left the congregation, owing to the sexual or other harassment of the accused. PW22 has deposed that Sr. Anseena and Sr. Jeena had left the congregation, citing personal reasons. The testimony of PW8 and PW19 proves that they left the congregation on personal reasons. PW8, even got her marriage registered, before the church accepted her dispensation letter. Their evidence would show that the accused had no role in their decision to leave the

congregation. Hence, the contention of the prosecution in this regard also cannot be accepted.

Repeated stay of the Accused in the Convent

342. Prosecution contends that the accused repeatedly stayed at St. Francis Mission Home, with the sole intention of molesting PW1. Prosecution relies on the evidence of PW18 and argues that Bishops from outside Kerala, usually stays at the Bishop's House or at the local church or at their own residence. According to him, normally, Bishops do not stay at a Nunnery. But the evidence of PW8 and Ext.P34 chronicle itself would prove that Bishop Anil Cuoto and Bishop Symphorian had also stayed at St. Francis Mission Home. PW39 has admitted that it is revealed in the investigation that Bishop Anil Cuoto had stayed in the convent, on several days (see page No.43 of the deposition of PW39). There are entries in Ext. P34, which indicate that several other priest have also stayed in the convent. PW4 Sr. Anupama had also stated in her interview to DW4 that there is nothing unusual in the stay of the accused at St. Francis Mission Home. Hence, the argument in this regard is not sustainable.

Faction Feud in the Church

343. Defence contends that a group of priests were against the accused and that it was at their instance and influence that PW1 and her companion sisters levelled false allegations against the accused.

344. Defence relies on the evidence of PW12 to prove that a rival group was working against the accused. PW12 in his cross-examination claims that the accused was ordained as a Bishop at the age of 44 years. According to him, the retirement age of a Bishop is 75 years. If the accused could continue as the Bishop, he may become a Cardinal or may even reach a higher position. PW12's version is that the accused had faced active opposition from some priests of Jalandhar Diocese. According to him, when the accused took charge as the Bishop of Jalandhar Diocese, Fr. Thomas Valiyaparambil (CW20), Fr. Mathew Palachuvattil (CW21), Fr. Jose Edakunnath (CW24), Fr. Jose Kandathilchira, Fr. Sebastian Pallasserry (PW9), Fr. Scariah, Fr. Thomas Nedumkandam, Fr. Basil Mookanthottil, Fr. Sunny George, Fr. Sebastian Pottanani, Fr. Kuriakose Kattuthara were

against him. In this regard, the testimony of PW2 also has some relevance. She has admitted that some priests had visited her after she was granted protection order. The relevant portion of her evidence is as follows;

“അച്ഛൻമാർ ആദ്യം മുറിയിൽ ഇരുന്ന് സംസാരിച്ചു, പിന്നീട് അവർ പുറത്തിറങ്ങി സംസാരിച്ചു, പിന്നീട് മുറിയിൽ കയറി വീണ്ടും സംസാരവും പ്രാർത്ഥനയും ആയിരുന്നില്ലേ (Q) ഞാൻ മറന്നു പോയി (A) മഠത്തിന് മുമ്പിൽ കിണറിലേ (Q) ഉണ്ട് (A) പ്രാർത്ഥനയ്ക്ക് ശേഷം കിണറിന്റെ മുമ്പിൽ വെച്ച് അച്ഛൻമാരോടൊപ്പം ഫോട്ടോ എടുത്തില്ലേ (Q) ഫോട്ടോ എടുത്തത് ഓർക്കുന്നു. (A). Witness adds. പ്രതിയുടെ support ഉള്ള സിസ്റ്റർമാർ മുറിയിൽ ഒളിഞ്ഞിരുന്ന് ഫോട്ടോ എടുത്തു (page No.5).

The evidence of PW2 shows that the long standing factional feud has also played its part in the events that happened after the registration of the case.

345. The letters issued by Fr. Basil Mookanthatil, CST Fathers, Fr. Mathew Palachuvatiil, Fr. Thomas Valiyaparambil and Bishop Kurian Valiyakandathil (PW6) were attached in Ext.P13 letter sent to Cardinal Marc, presumably to gain

support. Among those priests, except for PW6, no one else was examined by the prosecution. Neither the victim nor her companion sisters have testified that these priests were aware of their issues. In the said circumstances, the only possible conclusion is that the grievance of these priests were unconnected with the present case.

346. PW9 has also admitted that when the accused took charge as the Bishop there was a protest from the part of the devotees and that he was shown black flag. The defence contends that the protest was organised by his rival faction. PW9, refuted the said contention. Defence confronted PW9 with Ext.D24 contradiction, where his version was that he along with 12 other priests met the accused. PW9 denied the said statement. His stand in the chief-examination was that he alone met the accused. But after being confronted with Ext.D24 statement he changed his stand and testified that some other priests had also accompanied him. But when he was asked whether Fr. Thomas Valiyaparambil, Fr. Mathew Palachuvatiil, Fr. Jose Edakkunnathu, Fr. Thomas Nedungattu, Fr. Jose Kandathilchira, Fr. Joy A.C., Fr. Sebastian Pottanani were present with him, he skipped

answers, stating that he cannot remember their names. PW9 admitted that accused had taken disciplinary action against Fr. Basil Mookenthottil and that he was placed under order of suspension. Thus, there is evidence to show that accused had many enemies within the church.

347. Defence has a case that Ext.P8 letter was prepared by the rival priests, and that PW1 was made a scapegoat. PW1 was cross-examined with respect to the contents of Ext.P8. She admitted that she had not heard the accused using abusive language and derogative remarks against other sisters. She admitted that she did not hear from the accused that he would bury the congregation as he buried its founder Bishop. According to PW1, these facts were told by one of the sisters but she could not disclose the name of the sister. The further allegation in Ext.P8 that the Bishop did not support the community in Kerala and had remarked that the community would succumb to a natural death was also admitted by PW1 to be hearsay in nature. Thus it is established that PW1 has included many hearsay allegations in the complaint given to PW18. All these circumstances show that everything was not fair inside the congregation.

Protest by the Sisters

348. Another argument is regarding the active participation of PW3, PW4 and other sisters supporting the victim, in the protest organised at Vanchi Square, near High Court Kerala. PW1 testifies that the protest was organised by SOS (Save Our Sisters). According to her, the organisation's objective is to protest against discrimination. PW3 and PW4 have admitted that they have participated in the protest. PW4 has admitted that after the arrest of the accused, she went to the protest site and expressed her gratitude. Her evidence and her interview with DW4 would also establish that the protest ended after the arrest of the accused.

349. There is nothing wrong in organising and participating in protests, especially when justice is not seen to be done or when the investigation appears to be tainted. But a protest aimed solely for the arrest of a person cannot be regarded as a protest in good taste.

350. Now, in the light of the discussion which I have already made, let us see how far the solitary testimony of PW1 can be relied on. An ancillary question as to how far the

prosecution could succeed in explaining the delay, also arise for consideration.

Delay and its Impact on the Prosecution

351. The legal issues of delay is no longer res integra. Prosecution relies on **Dildar Singh v. State of Punjab (2006 (10) SCC 531)**, and argues that delay as such will not impact the merits of the prosecution case. The relevant portion of Dildar Singh is extracted below;

“This Court has observed in several decisions that the Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. A girl in a tradition bound non permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing any one about the incident in the circumstances cannot detract from her reliability. In normal course of human conduct an unmarried girl would not like to

give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory.

352. In **State of U. P. v. Manoj Kumar Pande (: 2009 (1) SCC 72)**, the hon'ble Apex court stressed that,

“ The normal rule regarding the duty of the prosecution to explain the delay in lodging FIR and the lack of prejudice and / or prejudice caused because of such delayed lodging of FIR does not per se apply to cases of rape. This has been the consistent view of this Court”

353. In **State of Himachal Pradesh v. Prem Singh (2009 (1) SCC 420)**, it was laid down that,

“So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR .”

354. Defence on the other hand relies on the dictum laid down in **Thulia Kali v. State of T. N. (1972 SCC (Cri) 543)**, where it was opined that,

“Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

355. Though, generally, the delay in setting the law into motion is always considered as fatal, when it comes to rape

cases, universally, the rule has only limited application. This is because of the peculiar nature of the crime, where the initial instinct of the victim would be to cover up the ignominy and to suffer the pain silently, as opposed to cases involving, personal injury, when there would be no embargo at all to raise her grievance. It is now settled law that delay as such will not undermine the prosecution case. A credible explanation for the delay would be sufficient to remove the doubts and air of suspicion created on account of the delay. This is more so in sexual offences in view of the underlying social stigma. The fear of social stigma would definitely cause some indecision, resulting in delay and hence a credible explanation, devoid of any malice, or grudge would be more than sufficient for the prosecution to keep the ball rolling. But, this exception is also applied with much care and caution. As in any other crime false accusations are on the rise in rape trials as well. Consensual sexual relationship sometimes take the shape of sexual violence, when the relationship takes a beating. Hence, it is all the more important to see whether there is any extraneous causes/reasons for setting the law into motion. A careful

analysis of the change in relationship of the accuser and the accused is necessary while appreciating the delay.

356. The following excerpts from **Ramdas and Others v. State of Maharashtra (2007 (2) SCC 170)**, sums up the legal position,

“In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No strait jacket formula can be evolved in such matters, and each case must rest on its own facts. **It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See AIR 1956 SC 216 : Pandurang and Others v. State of Hyderabad). Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact**” [Empasis Supplied].

357. On the basis of the above legal position, let me analyse the sequence of event resulting in the registration of Ext.P85 FIR.

Timing of the Sexual Allegations Against the Accused

358. Though prosecution alleges that the incidents of sexual violence started in the year 2014 and ended on 23.09.2016, the revelations in this regard started coming out, by the end of 2016. Prior to that on 13.11.2016, PW16 had submitted Ext.D50 complaint to the congregation. Subsequently, on 10.12.2016, accused had issued Ext.P93 order to commence an enquiry into the complaint. As per Ext.P19 Sec.164 statement, the first disclosure from the side of PW1 about the sexual desires of the accused also came on December 2016. PW1's version in Ext.P19 is as follows;

“2016 ഡിസംബറിൽ ഞാൻ Sister Anupama യോടും Sister Neena യോടും കുറച്ചു കാര്യങ്ങൾ പറഞ്ഞു. ഞാൻ mood off ആയി ഇരിക്കുന്നതും കരയുന്നതും കണ്ട്..... അപ്പോൾ ഞാൻ അവരോട് പിതാവ് വന്നാൽ ഞാൻ കൂടെ കിടക്കേണ്ടി

വരും എന്നു പറഞ്ഞു. ഞാൻ കിടന്നു എന്ന് അവരോട് പറഞ്ഞിട്ടില്ല.”

359. Though PW1 has deposed before this court about the disclosure made to PW2 in the year 2014 and to Pws 3 and 4 on September 2016, both these disclosures do not find a place in Ext.P1 First Information Statement and Ext.P19 Sec.164 statement. This court had already come to a conclusion that the claim of the witness regarding those disclosures are untrue.

360. The next important event was the visit of Sr. Regina to, Kuravilangadu convent to enquire about Ext.D50 complaint, preferred by Jaya. The visit was on 02.01.2017. Prior to that, she had asked PW1 to come to Punjab and offer her explanation. But PW1 refused to go to Punjab stating that it is too cold at Punjab during December.

361. It has come out from the evidence of PW1, PW3 and PW4 that, Regina met PW1 at the convent and that she explained the circumstances in which Jaya happened to file Ext. D50 complaint.

362. The next major event happened on 09.02.2017 when PW1 was removed from the position of Kerala-in-

charge. On 13.03.2017, accused issued Ext.P94 remainder, to speed up the enquiry. On 20.05.2017 the transfer list of the congregation was published in which PW1 was removed from the post of mother superior-ship. Immediately after the publication of the transfer list, on 26.05.2017, she issued Ext.P4 dispensation letter seeking permission to leave the congregation. There is no allegation of any sexual abuse in Ext.P4 letter. On 30.05.2017, she withdrew her dispensation. Immediately after withdrawing her dispensation letter, on June 2017 she met PW14 Fr. Jose Thadathil and raised her grievance. PW1 testifies that she disclosed to PW14 about the sexual abuse committed by the accused, but PW14 testifies there was no allegation of sexual violence or sexual abuse. According to PW14, the grievance of PW1 was limited to the harassment from the part of the authorities in charge of the congregation. The next important event is the preparation of Ext.P8 complaint, on 11.07.2017. Subsequently on 24.11.2017, PW1 along with PW3, PW5 and PW11 met PW18 and raised their grievances. Even in Ext.P8 complaint there is no allegation of rape, though the heading of the complaint is that it is a petition against His Excellency Bishop Franco

Mulackal, Bishop of Jalandhar. Though PW1, PW3, PW5 and PW11 testifies that PW1 had talked with PW18 Cardinal Mar George Alencherry personally and that they had complained to PW18 about the retaliatory measures taken by the accused, PW18 did not support their version fully. According to PW18, Cardinal Mar George Alencherry PW1 did not inform anything about the alleged sexual violence committed on her.

363. Another crucial revelation made by PW18 is that PW1 had enquired to him about the possibility of joining Syro Malabar Church. The deposition of PW18 reads as follows;

“ബിഷപ്പ് ഫ്രാങ്കോ ഒരു വിഭാഗം കന്യാസ്ത്രീകളോട് അനുകൂലമായ തീരുമാനങ്ങൾ എടുക്കുകയും PW1 നെയും മറ്റും അന്യായമായി ബുദ്ധിമുട്ടിക്കുന്നതായും മറ്റും പറഞ്ഞിരുന്നു. ഫോണിലൂടെയും ബിഷപ്പ് ഫ്രാങ്കോയ്ക്കെതിരെ ലൈംഗിക ആരോപണങ്ങൾ എന്നോട് പറഞ്ഞിരുന്നില്ല. ഫോണിൽ സംസാരിച്ച കൂട്ടത്തിൽ ഫ്രാങ്കോ പിതാവിന്റെ ഉപദ്രവം ഞങ്ങൾക്ക് സഹിക്കാൻ പറ്റുന്നില്ലെന്നും PW1 ഉം മറ്റു ചില കന്യാസ്ത്രീകളും ആ സഭ വിട്ട് ഞങ്ങളുടെ സഭയിലേക്ക് (സീറോ മലബാർ) വന്നാൽ സ്വീകരിക്കുമോ എന്നും ചോദിച്ചു. അപ്പോൾ

PW1 നോട് നിങ്ങൾ വന്നാൽ അപ്പോൾ ആലോചിച്ച് തീരുമാനം എടുക്കാം എന്നറിയിച്ചു.”

PW1 has also admitted this fact. The testimony of PW1 and PW18 itself shows that the object of the meeting was to explore the possibility of joining Syro-Malabar Church and not to complaint against the sexual violence committed by the accused.

364. Next important event is, Ext.P10 letter dated 28.11.2017, issued by the Superior General of M.J. Congregation, summoning PW1 to offer explanation to the complaint raised by Sr. Tincy, the Mother General of St. Francis Mission Home, about her acts of disobedience, indiscipline, use of abusive words and attempts of physical violence against the superior and other community members.

365. In compliance with Ext.P10 letter, PW1 went to Punjab and talked with the councilors. She also placed a request to them, to visit the convent and hear their grievances. A three member committee consisting of Sr. Amala (CW57), Sr. Virgin (CW58) and Sr. Maria (CW37) visited the convent on 19.01.2018 and 20.01.2018. Prior to that PW1 and Sr. Ancitta had given a written petition to the

commission. The grievance of PW1 in Ext.D29(a) complaint was that, Sr. Tincy is acting in a authoritarian manner. Their complaint was that Sr. Tincy had locked the store room and had taken custody of the keys of the vehicle and the common Cell phone and laptop used by the members, and that Sr. Neena and Sr. Ancitta were not permitted to answer the phone calls from their home.

366. The grievance leveled against the accused in Ext.D29(a) is that, the accused is waiting for a chance to use the sisters sexually, and that they feel insecure under the present Mother General, who is only a puppet in the hands of Bishop. There was no allegation of rape even in the said complaint.

367. Later, the three members commission visited the convent. The family members of PW1, Sr. Anupama and Sr. Neena Rose also met the commission. An argument broke out between the family members of the sisters and the commission members. PW1 alleges that she disclosed to the committee members about the sexual desires of the accused, openly. Thereafter she met PW6 and handed over the complaint addressed to Apostolic Nuncio, which going by the evidence

of PW6 was handed over to Apostolic Nuncio, in the first week of February 2018.

368. Ext.D30(a) is a letter dated 17.02.2018 written by PW1, PW3 and Sr. Ancitta to the Superior General. In the said letter also the grievance of PW1, 3 and Sr. Ancitta was against Sr. Tincy. Their complaint was that Sr. Tincy was not permitting them to use the common accessories, including the vehicle belonging to the convent. On 23.03.2018, PW1 was transferred to Pariyaram. At the request of PW1 she was permitted to continue at Kuravilangadu convent on medical grounds. In the meanwhile, PW3, Sr. Alphy and Sr. Josephine also came back to Kuravilangadu convent. PW1 sent Ext.P13 complaint to Cardinal Marc and an e-mail to Nuncio. Three days after sending the said e-mail, she submitted Ext.P20 complaint to the District Police Chief.

Allegations and counter allegations and registration of series of FIR

369. The incidents which were lying dormant for more than four years, suddenly changing its tenor. The result was the registration of a series of FIR's. On 21.06.2018, CW56, Fr. Peter Kavumpuram, the PRO of Jalandhar diocese

gave a complaint against the brother of PW1 and father of PW3 and PW4 and against PW5, alleging that they have made death threat to accused. Ext.P77 FIR was registered on the basis of his complaint. PW7, the victim's sister in turn filed another complaint against Thomas Chitooparamban and Unni Chitooparamban, on 24-09-2018, alleging that they have intimidated her, for participating in the protest against accused. On 26-09-2018, brother of PW1, filed a complaint against the brother of the accused, Fr. Panakkal and two other priests alleging that he was offered Rs.5 crores to withdraw from the case. Ext.P81 FIR was registered on the basis of his complaint. The brother of PW1, also lodged another complaint against Sister Amala, for revealing the name of PW1, through Whatsapp. Ext.P79 FIR was registered on the basis of the said complaint. On 13.09.2018, on the basis of a statement given by the worker at St. Francis Mission Home, Ext.P78 FIR was registered alleging that a person came in an Innova car and gave him 200 rupees and asked him to flatten the tyres of the scooter used by PW1 and PW4. Ext.P80 FIR was also registered against

Sri.P.C.George M.L.A. on the basis of the complaint preferred by PW1.

Discussion on the Retaliatory Measures taken against PW1

370. The prosecution argues that retaliatory measures were taken against PW1, for not yielding to the sexual desires of the accused, while defence argues that the allegations against the Bishop were raised, to cover up the enquiry ordered on the complaint of PW16. According to the prosecution, it is quite uncommon to demote a mother superior to the position of an ordinary sister and to ask her to continue in the same convent and that the above measure was a retaliatory measure of the Bishop. Defence on the other hand contends that PW1 was transferred to another convent and that it was at her request that she was permitted to continue in the convent on medical ground. Prosecution did not produce the transfer list of the congregation, which was published on May 2017. PW1 has admitted that she was permitted to continue in the convent on medical ground. That apart, PW22 in her cross-examination has testified that Mother General, Mother Superior and Councillors would be

relegated to the position of ordinary sisters after their tenure . According to her such practices are common in the congregation. She testifies that Sr. Lincy Pallasserry was acting as a councillor from 2013 to 2018. She was relegated as an ordinary sister in the congregation after her tenure. In other words, the stand of the prosecution that the practice of demoting a mother superior as an ordinary member is unheard in the congregation, is not fully established.

371. In this regard the demand made by PW1 and PW4 also have much significance. PW1 in her cross-examination admitted that they did make two demands to the commission. One of their demands was that PW1 and her companion sisters should be permitted to stay in the convent until June 2018, when the tenure of Sr. Regina expires. Their second demand was that Kuravilangadu Mission Home should be made, under the jurisdiction of Bhagalpur diocese and that those sisters who want to work in Bhagalpur diocese should be permitted to continue there. These demands have to be appreciated in the light of the interview given by PW4, to DW4, where she has admitted that they were ready to settle the matter had their demands been accepted.

Finding in Ext.P57 Report

372. In this connection, the findings in Ext.P57 enquiry report is also relevant. The report was marked through PW22, who was a member of the committee. It is stated in the report that the family members of PW1 and the father of PW4 and the mother and sisters of PW3, forcefully entered the convent's parlour shouting and howling and abused the accused and Fr. Antony Madasserry with all types of vulgar languages and threatened to kill them if they came to Kerala. It is also stated in the report that PW1's brother advanced towards Sr. Amala and tried to beat her and snatched her file and phone. Abuse was showered at Sr. Maria's brother saying that he is the one who is ruling the community. They insulted Sr. Tincy and cursed her saying that she had no concern for human value. PW22 has deposed that, when Sr.Amala told the victim that she is creating all this trouble fearing, disciplinary action on the complaint of Jaya, PW1 walked out of the enquiry without offering any explanations.

373. Ext.P57 is a document marked by the prosecution. Prosecution cannot wriggle out from the

findings made by the committee constituted by the mother superior to enquire into the grievances of nuns. The report reads as follows;

“ Report of meeting with sisters;

- X asked about the police case report
- X blamed Bishop Franco by saying that he is ruling the congregation and playing games behind curtain.
- Complaints from sisters were that community time table was made without discussion, sisters not getting calls from house, smart phone with Sr. Tincy not in common place, locking the rooms, visitors room turned into kitchen store room, common phone with Sr. Anseena, no community meeting is held and not providing pocket money in time. Even to buy the common things no money is given neither she buys the things. To get money for medicine sisters has to walk behind her.

Again we persuaded X to sit down and talk to us. Sr. Virgin and Sr. Amala met personally X. (sic) We asked her, “why all these behavior happening from you”. She said that she has no problem with congregation but with Bishop Franco. Then we asked her that both of you were very close friends and what happened now. You were the adviser to Bishop and

even all the appointments, and sometimes even over ruling the appointments done by the council. Then why and how did it happen now this type of anger and revenge (sic). Then we explained to her, on many occasions we felt Bishop Franco was supporting you. When we went to him with out problems, even regarding Jaya's letter he was very supportive of you. He objected and defended you telling that the letter is only a lie.

At this, 'X' said that Bishop was supporting her when congregation was not supporting her. She asked us, that why do you go to Bishop Franco for decisions and why he is interfering in the matters of the congregation". As general councilors we told her that decisions are made by Sr. Regina and general team. We approach him only to inform our decisions which we have taken. X then said Sr. Regina told her that bishop was forcing her to do things. We also told her that as general councilor we knew that was not true. Sr. Amala told her that you are attacking the Bishop, because you are afraid and only to escape the consequences of Jaya's letter, in which you are accused of having an illegal relationship with Anand. Sr. Amala told X that she was purposely tarnishing the image of Bishop to divert the punishment. She was accusing Sr. Tincy very badly. She evaded all other questions and got up and went away, showing very little remorse for all that happened. We tried to bring a compromise among them, however the living

together as a community for these members seems a distant dream.”

374. Evidence of PW22 also proves that PW1 and her associate sisters were staying in the convent as a group. They did not participate in the day to day affairs of the convent. They also did not cooperate with the Mother General. The testimony of PW22 is binding on the prosecution.

Conclusions

375. From the foregoing discussion, it can be gathered that the sexual allegations against the accused started coming, after the initiation of disciplinary proceedings against PW1, on the basis of the complaint preferred by PW16. From the evidence of PW1, PW7 and PW16, it is proved beyond doubt that accused had no role in the complaint. Neither the accused nor the mother general is at fault for ordering an enquiry into the complaint, as serious allegations were levelled against PW1. PW16 never withdraw her complaint though she now claims that the complaint was a fake one.

376. It must also be remembered that PW's 3 and 4 have not raised any complaints of sexual nature against the

accused. They also have no complaint that the accused used to send obscene or sexually coloured messages to them. PW3's complaint is that her exams were scheduled on 23rd November 2017 and that she had booked train ticket on 15th November, but on 14th November Sr. Regina called her from Punjab and asked her not to come to Punjab for writing her exams. She further complains that 4 days prior to the said communication, PW4 had informed her that the accused had threatened her that she would not permit PW3 to write her exams and that she would be ousted from the convent. She thinks that, there were retaliatory steps taken for supporting PW1.

377. Grievance of PW4 is that she was transferred to St. Biyani Convent at Gurdaspur and when she reached on 05.07.2017 to assume charge, she was informed that she has been relegated to an ordinary sister. According to her, she felt that she was relegated on account of the retaliatory measures of the accused. Her further claim is that on 08.11.2017 Fr. Antony Madasserry and Sr. Annie Rose came to Gurdaspur Convent and took her to the residence of the accused. Accused thereafter appraised her about the

complaints levelled by Jaya against PW1. She further testifies that accused threatened her that he would not permit PW3 to write her exams and that he would oust both of them from the convent. She also deposes that she was forced by the accused to write an apology letter at his dictation. On 14.11.2017, she wrote Ext.P38 letter to her father and Ext.P43 letter to the Mother General and councilors. As already pointed out, PW4 has remarked in Ext.P43 letter that she had no idea of what had actually happened between PW1 and the accused. Thus, even if it is assumed that the measures taken against PWs 3 and 4, were retaliatory in nature, there is no conclusive evidence to prove that the retaliatory measures had any connection with the case projected by the prosecution that, the accused was taking revenge against PW3 and PW4 for supporting PW1. PW3 and PW4 also had issues with Sr. Tincy, the mother superior and other members of the congregation. More over, PW1, PW3 and PW4 were ready to settle the matters, had they been permitted to set up a region, with Bihar as its head quarters.

378. The million dollar question was already asked by DW4, Abhilash Mohan in the programme "Close

Encounter”, “Why should the accused provoke PW1, PW2 and PW3, who were ready to settle the matter with retaliatory and disciplinary action? He could have accepted their demands, which was all what PW1, PW2 and PW3 wanted? What gain did he make by not conceding to their demands? Prosecution has not offered any credible explanation to these questions.

379. Exts.D29(a) and D30(a) letters written by PW1 and her companion sisters would prove that they had issues with Sr. Tincy, the new Mother General. Ext.P57 report of the three members committee shows that mudslinging was going on among the members of congregation. Evidence of PW22 shows that PW1 and her associate sisters were staying the convent like separate group and were not participating in the day to day activities of the convent. These developments points towards indiscipline, non co-operation and lack of mutual respect among the members of the congregation. The evidence on record will not prove that the measures against PW1 were acts of vengeance, for not yielding to the sexual desires of the accused.

Solitary testimony of a rape victim

380. Now the question that remain is whether the solitary evidence of PW1 regarding the sexual violence can be taken reliance. It is true that there is nothing wrong in holding a man guilty relying on the basis of the solitary evidence of a Victim. In **Wahid Khan v. State of (2010 (2) SCC 9)** it was held that,

“Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible.”

381. In **State of Himachal Pradesh v. Manga Singh (2018 (15) SCALE 895)**, it was held that,

“11. . The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the Courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and

circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”

382. In **Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130**, the Hon’ble Apex court has observed that,

“to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality”.

383. In **Tameezuddin @ Tammu v. State of (NCT) of Delhi (2009 (15) SCC 566)**, a word of caution was noted.

“7. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

384. In **Raja and Others v. State of Karnataka (2016 (10) SCC 506)**, it was opined that, the solitary testimony of a victim cannot be taken as gospel truth

24. This Court in Raju (supra), while reiterating that the evidence of the prosecutrix in cases of rape, molestation and other physical outrages is to be construed to be that of an injured witness so much so that no corroboration is necessary, ruled that an accused must also be protected against the possibility of false implication. It was underlined that the testimony of the victim in such cases, though commands great weight but the same, cannot necessarily be universally and mechanically accepted to be free in all circumstances from embellishment and exaggeration. It was ruled that the presumption of absence of consent of the victim, where sexual intercourse by the accused is proved as contemplated in S.114A of the Evidence Act, was extremely restricted in its application compared to the sweep and ambit of the presumption under S.113A and S.113B of the Indian Evidence Act. It was expounded that insofar as the allegation of rape is concerned, the evidence of the prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should always without exception, be taken as gospel truth. The essence of this verdict which has

stood the test of time proclaims that though generally the testimony of a victim of rape or non - consensual physical assault ought to be accepted as true and unblemished, it would still be subject to judicial scrutiny lest a casual, routine and automatic acceptance thereof results in unwarranted conviction of the person charged.”

385. The Concept of Sterling Witness was explained in **In Deepu v. State (NCT of Delhi), (2012) 8 SCC 21**, Apex court has observed that a sterling witness’s evidence should have the following qualities,

9. *“In our considered opinion, the sterling witness should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. **What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with***

the case of the prosecution qua the accused.

There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it.” (Emphasis supplied).

386. In **Kusti Mallaiah v. State of Andhra Pradesh (2013 (12) SCC 680 :)**, the oral testimony of a solitary witness was classified as wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. A word of caution was made, while appreciating the evidence of a witness, who is neither wholly reliable nor wholly unreliable. It was opined that corroboration in material particulars should be insisted before acting on the testimony of such witness. The relevant portion of the ruling is extracted below;

It has been held in catena of decisions of this Court that there is no legal hurdle in convicting a person on the sole testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted. In *Vadivelu Thevar v. The State of Madras*, AIR 1957 SC

614, it has been held that if the testimony of a singular witness is found by the court to be entirely reliable, there is no legal impediment in recording the conviction of the accused on such proof. In the said pronouncement it has been further ruled that the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness

Similar view has been expressed in **Lallu Manjhi and another v. State of Jharkhand, 2003 (2) SCC 401, Prithipal Singh and others v. State of Punjab and another, 2012 (1) SCC 10 and Jhapsa Kabari and others v. State of Bihar, 2001 (10) SCC 94.**

387. The maxim "falsus in uno falsus in omnibus" and how far it can be applied in India was considered in **Jayaseelan v. State of Tamil Nadu AIR 2009 SC 1901**, it was held that,

"The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. (See Nisar Alli v. The State of Uttar Pradesh, AIR 1957 SC 366. In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurucharan Singh and Another v. State of Punjab, AIR 1956 SC 460. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared

that administration of criminal justice would come to a dead stop. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. **Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (Emphasis supplied)**

388. Now this court will analyse the solitary evidence of PW1 and see how far her solitary evidence can be taken reliance. PW1 has given contradictory versions to different persons at different point of time.

1. Her revelation to PWs 3 and 4 during December 2016 was that Bishop is forcing her to share bed with him. She did not disclose to them that she was subjected to sexual violence on 13 occasions.

2. She did not mention in Ext.P4 dispensation letter dated 26.05.2017 that she was subjected to sexual violence.
3. Her version to PW6, Bishop Kurain Valiyakandathil was that accused is taking retaliatory measures for not sharing bed with him and not that she was raped or sexually abused.
4. In Ext.P8 letter given to PW18 Cardinal Mar George Alencherry her grievance was that she was unable to tolerate the dealings of Bishop directly and through phone calls and messages made with bad intention. Her grievance was that the accused used vulgar words with sexual tones in the messages sent to the sisters. In cross-examination she admitted that she had no direct knowledge about some of the allegations made in Ext.P8. She specifies in the letter that she cannot reveal the matter in detail and that she want to meet PW18 and discuss her

struggles. Contrary to the claim of PW1, PW18 testified that apart from the grievances about the problems and harassment faced within the congregation, victim did not disclose to him that she had been abused sexually by the accused.

5. In Ext.P13 letter sent to Cardinal Marc on 14.05.2018, her version was that the accused abused her for the first time on 05.05.2014. It was also stated in the said letter that the abuse continued for several times. But it is not specified that she was raped on 13 occasions.
6. In Ext.P20 complaint given to the District Police Chief her version is that an offence under Sec.376 IPC was committed against her. No other detail was stated.
7. In Ext.P1 FIS she did not disclose about penile penetration. Her version was that the accused inserted his fingers into her vagina and that he attempted to thrust his sexual

organ into her mouth and that she was forced to hold his sexual organ. The explanation offered by the victim is that she had no trust in PW37, the woman police officer and that the statement was recorded in an unsecured environment. Both explanation have been proved as incorrect.

8. Her original version before PW21 the doctor was that there is no history of penetrative sex. Subsequently that entry was struck off. Even in the other portion of the history narrated to PW21, there is no allegation of penile penetration.
9. In her additional statement and Sec.164 statement her version was that she was subjected to forcible sexual intercourse including penile penetration on 12 occasions and that there was only fingering on the first occasion.

These inconsistent versions at different point of time to different persons, pose questions on her credibility. The following circumstances also creates doubts on her version.

10. Exts.D10 series e-mails, Exts.D6 series and Exts.D11 series photographs and visuals in Ext.D7 DVD shows that she had close interactions with the accused on the days, next after the alleged sexual violence.
11. Entries in Ext.P34 chronicle shows that she had travelled long distance with the accused in his car and had attended many functions on almost all days, next to the days of the alleged forceful sexual violence. PW8 who had travelled with the victim during some of those occasions had no hint, either from her interaction with the accused or from her interaction with PW8 and others, about the sexual violence to which PW1

was subjected to on the previous nights.

12. Going by her testimony, after PW1 conveyed to the accused that she would not permit him to come to the convent. The accused never came to the convent. Even after reaching Kerala on January 24-01-2017, his message to the victim was that he is passing through Kuravilangadu. The version of PW1 will not go in tandem with the projected case of the prosecution that the accused was using all sorts of threats to make her yield to his sexual desires.
13. The messages claimed by PW1 to have been sent by the accused in response to her stand that she will not permit him to stay in the convent gives an insight into the nature of relationship between the accused and

PW1. The message of the accused going by the Sec.164 statement of the victim was that '*with heavy heart I am joining with your decision*'. '*I want to see you, I want to need you, call me*'. No threat or intimidation or force is revealed from these messages.

14. Prosecution has failed to produce the mobile phones of PW1, PW16 and CW17, though the entire case is built around some obscene messages sent by the accused to the phone of PW1 and the message forwarded by PW1 to the phone of PW16.
15. Ext. P57 enquiry report of the three member committee shows that the victim was maintaining a very close relationship with the accused. She was the chief adviser of the Bishop in all appointments and some times those

appointments were made overruling the decision of the general council.

16. It is proved from the evidence of PW1, PW16 and PW7 that the accused had no role in the complaint preferred by Jaya, the cousin of PW1, alleging that PW1 had illicit relationship with her husband. The enquiry ordered by accused on the complaint of Jaya, cannot be regarded as a retaliatory measure.
17. Though the prosecution has attempted to explain the delay ranging from four to two years, there is no satisfactory explanation of the delay. There are enough circumstances to prove that PW1 started complaining about the sexual abuse and sexual overtures of the accused, after the commencement of the enquiry ordered in the complaint of Jaya.

18. PW1 and her companion sisters were unhappy with the appointment of Sr. Tincy, as the mother superior of the convent. Ext D30(a) letter dtd. 17.02.2018 shows that PW1 had made complaints against Sr. Tincy, that she is not permitting her to use the common facilities provided to the sisters.
19. Ext. P57 report of the three member committee shows that the victim, her companion sisters and their family members shouted and abused at the committee members. There was also an attempt for physical assault. The report would also prove that there was infighting among the members of the convent. PW22's evidence would prove that PW1 and her companion sisters were staying in the convent as a separate group and was not

participating in the day to day activities of the convent.

20. PW18 deposed that PW1 wanted to join Syro Malabar Church and he advised her that her request would be considered after she comes out of M.J. Congregation. This fact is admitted by PW1 as well.
21. The evidence of PW1, PW3, PW4 and PW22 proves that they have placed some demands before the church, including a demand that the convent shall be placed under the diocese of Bihar and that they were ready to settle all issues if their demands are met. The complaint was filed after their demand was rejected.

389. In the said circumstances, the claim of the victim that she was raped on 13 occasions under duress cannot be taken reliance on the basis of her solitary

testimony. There is no consistency in the statement of the victim. The grievance projected by her to her companion sisters was that the accused was taking retaliatory steps for not yielding to his sexual desires, whereas her version before the court was that she was forced to do sexual intercourse with the accused on 13 occasions including fingering on the first occasion. Prosecution has failed to give proper explanation for the inconsistent version. Of course, it is contended that initially the victim was reluctant to disclose to her companion sisters about the sexual abuse. But there is no explanation for the omissions made in Ext.P1 FIS and the history narrated to the doctor wherein also penile penetration was not disclosed. In fact her original version to the doctor as evident from Ext. X1(a) is that there is no history of penetrative sex. In view of the inconsistent version of the victim, this court is of the view that she cannot be categorised as a sterling witness as laid down in **Deepu v. State (NCT of Delhi)** (supra). PW1 cannot be categorised as a wholly reliable witness as well [see **Kusti Mallaiah v. State of Andhra Pradesh** (Supra)].

390. Apart from the testimony of PW1 there is no corroborative evidence to prove the prosecution case. The police could not seize the mobile phone used by the victim which would have provided some input into the alleged vulgar messages sent by the accused. The explanation offered for the non production of the phone is thoroughly dissatisfactory. The laptop also was not subjected to scientific analysis, as it is claimed that the hard disk got damaged.

391. It is true that the hymen of the victim was found torn in her medical examination. But defence contends that there was a complaint against the victim, by her own cousin that she had indulged in sexual intercourse with her husband. Even if it is assumed that the complaint was a false complaint, from the mere fact that the victim's hymen was found torn, penile penetration or forceful sexual intercourse cannot be inferred [see **Sasi v. State of Kerala (2019(3) KLT 561**], particularly in the light of the history narrated to PW21, doctor that there was no history of penile penetration.

392. As regards the complaint of Jaya, it is established from the evidence of the victim, her sister and PW16 that the accused had absolutely no role in the complaint. From the mere fact that the accused was instrumental in ordering an enquiry against the victim one cannot reach to a conclusion that the enquiry ordered by the accused was part of his retaliatory measure for not yielding to his sexual demands, on the 14th occasion. It is quite natural for a person at the helm of the affairs to order enquiry into a complaint, when serious allegations of in-chastity are raised against a nun, that too by her own cousin. There were other circumstances as well to order such an enquiry since it is established that the husband of Jaya had stayed at the convent for five days under the pretext of attending Abhishekagni convention. Ext.P34 chronicle however will not prove that he attended the convention. Prosecution also failed to examine CW17 Ananthan who is a material witness on these aspects.

393. It is true that PW16 has deposed before this court that the complaint levelled against the victim was false and that she filed this complaint on account of her hostile

relationship with PW1 and PW7 and CW10, the brother of the victim. But it is doubtful whether a lady of the stature of PW16 who is a teacher by profession would malign the reputation of her own husband, who is a lawyer practicing at the Hon'ble Supreme Court of India, for a silly verbal brawl with PW1 and her family members. At any rate, she has not till date withdrawn her complaint. In the said circumstances, the enquiry ordered by the mother superior at the recommendation of the accused cannot be regarded as an act of vengeance, as alleged by the prosecution.

394. This is a case in which the grain and chaff are inextricably mixed up. It is impossible to separate the grain from the chaff. There are exaggerations and embellishments in the version of the victim. She has also made every attempt to hide certain facts. It is also evident that the victim was swayed under the influence of others who had other vested interest in the matter. The in-fight and rivalry and group fights of the nuns, and the desire for power, position and control over the congregation is evident from the demand placed by PW1 and her supporting nuns who were ready to

settle the matter if their demands for a separate region under the diocese of Bihar is accepted by the church.

395. Ext.P57 report of the committee, shows that the committee members had to face two hours of shouting and cursing from the family members of the nuns, and there are allegations that one of the committee members was physically assaulted.

396. As held by the Hon'ble Apex Court in **Jayaseelan (supra)** when it is not feasible to separate truth from falsehood, when grain and chaff are inextricably mixed up, the only available course is to discard the evidence in toto. In the said circumstances, this court is unable to place reliance on the solitary testimony of PW1 and to hold the accused guilty of the offences charged against him. I accordingly acquit the accused of the offences under Sec. 376(2)(k), 376(2)(n), 342, 377, 376-C, 354 and 506(ii) of IPC.

Verdict

397. Point No.11:- In view of my findings on points 1 to 10, this point does not arise for consideration. In the result, accused is found not guilty of the aforesaid offences

punishable under sections 376(2)(k), 376(2)(n), 342, 377, 376-C, 354 and 506(ii) of IPC and is set free. His bail bond stands cancelled and sureties are discharged.

10. MO1 hard disk, and MO4 series blood samples being value less shall be destroyed after the appeal period, or after the disposal of the appeal if any filed. MO2 series articles belong to Jalandhar diocese. MO-3 mobile phone belongs to the accused. Both shall be returned to the person from whom it was seized, after the appeal period, or after the disposal of the appeal if any filed.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 14th day of January, 2022).

Sd/-

Gopakumar G.,
Additional Sessions Judge-I.

APPENDIX

Exhibits marked from the side of Prosecution:-

- | | | | | |
|----|---|------------|---|--|
| P1 | - | 28.06.2018 | - | First Information Statement.
(marked through PW1
(CW1)) |
| P2 | - | 11.08.2018 | - | Certificate showing PW1
(victim) is a member of
Missionaries of Jesus
Congregation since
22.04.1999.
(marked through PW1) |

- P3 - 12.07.2013 - Letter showing the appointment of PW1 (victim) as the Mother Superior of St. Francis Mission Home at Kuravilangadu.
(marked through PW1)
- P4 - 26.05.2017 - Dispensation letter.
(marked through PW1)
- P5 - 30.05.2007 - Letter showing the withdrawal of application for Dispensation.
(marked through PW1)
- P6 - No Date - Letter written by Superior General (CW 54) showing the greetings on the withdrawal of Dispensation Application.
(marked through PW1)
- P7 - 20.03.2016 - Receipt from Thuvanisa Prayer House, Kothanalloor.
(marked through PW1)
- P8 - 11.07.2017 - Original of the petition given by PW1 against the accused addressed to Cardinal Mar George Alencherry.
(marked through PW1)
- P9 - 11.07.2017 - Copy of petition given to Cardinal Mar George Alencherry addressed to PW17.
(marked through PW1)

- P10 - 28.11.2017 - Letter given by Superior General Sr. Regina to PW1 showing that she should reach at Jalandhar on 18.12.2017.
(marked through PW1)
- P11 - 28.01.2018 - Copy of hand written letter prepared by PW1 for giving to Nuncio through PW6.
(marked through PW1)
- P12 - 23.03.2018 - Transfer order of PW1 from St. Francis Mission Home, Kuravilangadu to St. Clare's Mission Home, Pariyaram.
(marked through PW1)
- P13 - 14.05.2018 - Copy of letter sent to Cardinal Marc through Blue dart DHL courier service.
(marked through PW1)
- P14 - 15.05.2018 - Receipt of P13 document received from Blue dart DHL courier service.
(marked through PW1)
- P15 - 15.05.2018 - Receipt of letter sent to Pope received from Blue dart DHL Courier Service.
(marked through PW1)
- P16 - 15.05.2018 - Receipt of letter sent to Arch Bishop Luis.
(marked through PW1)
- P17 - 22.06.2018 - Receipt of letter sent to State Secretary of Catholic Church

at Rome.
(*marked through PW1*)

- P18 - 24.06.2018 - Copy of e-mail sent to Apostolic Nuncio at New Delhi.
(*marked through PW1*)
- P19 - 05.07.2018 - 164 statement of PW1 taken down by JFCM - I, Changanacherry.
(*marked through PW1*)
- P20 - 27.06.2018 - Original of complaint given to The District Police Chief, Kottayam by PW1.
(*marked through PW1*)
- P21 - 01.11.2018 - 164 statement of PW2 taken down by JFCM - I, Kottayam.
(*marked through PW2*)
- P22 - 18.02.2019 - Certified copy of statement of PW2 taken down by JFCM - I, Muvattupuzha in connection with Cr. No. 452/2019 of Muvattupuzha Police Station.
(*marked through PW2*)
- P23 - 29.04.2018 - Letter sent to PW1 by Superior General Sr. Regina (CW54), showing the permission of Superior General to continue at Kuravilangadu Convent on medical ground.
(*marked through PW1*)

- P23(a) - 01.05.2018 - Postal cover of Ext.P23 letter.
(marked through PW1)
- P24 - 29.04.2014 - Photocopy of Tax receipt of property of Kuravilangadu Convent and other institution, received from Kuravilangadu Village Office.
(marked through PW1)
- P25 - No Date - Souvenir of 1st Death Anniversary of Bishop Symphorian Keeprath.
(marked through PW1)
- P25(a) - No Date - Page 5 of Ext.P25.
(marked through PW1)
- P25(b) - No Date - Page 10 of Ext.P25.
(marked through PW1)
- P26 - 25.06.2018 - Original of Ext.D1.
(marked through PW1)
- P26(a) - 25.06.2018 - Postal cover of Ext.P26.
(marked through PW1)
- P27 - 23.08.2018 - Copy of receipt received from Fast-track systems, Kuravilangadu.
(marked through PW1)
- P28 - 08.07.2019 - e-mail sent to Bishop Agnelo Gracias, the Apostolic Administrator of Jalandhar Diocese and Sec.65B certificate prepared by PW4 Sr. Anupama and others.
(marked through PW1)

- P29 - 09.07.2019 - Reply e-mail of Bishop Agnelo Gracias sent to the mail id of PW4 Sr. Anupama.
(marked through PW1)
- P30 - 19.05.2018 - Copy of proof of delivery of Ext.P14 courier sent to Rome, downloaded from the website of DHL Courier Service.
(marked through PW1)
- P31 - 19.05.2018 - Copy of proof of delivery of Ext.P15 courier sent to Rome, downloaded from the website of DHL Courier Service.
(marked through PW1)
- P32 - 19.05.2018 - Copy of proof of delivery of Ext.P16 courier sent to Rome, downloaded from the website of DHL Courier Service.
(marked through PW1)
- P33 - 03.10.2018 - 164 statement of PW3 (CW3) taken down by JFCM - I, Kanjirappally.
(marked through PW3)
- P34 - No Date - Chronicle of St. Francis Mission Home, Kuravilangadu for the period from 01.01.2014 to 23.02.2018.
(marked through PW3)

- P34(a) - 17.01.2016 - Page 85 of Ext.P34.
(marked through PW3)
- P34(b) - 29.04.2016 - Page 95 of Ext.P34.
(marked through PW3)
- P34(c) - 23.09.2016 - Page 117 of Ext. P34.
(marked through PW3)
- P34(d) - 05.05.2014 - Page 14 of Ext.P34.
(marked through PW8)
- P34(e) - 06.05.2014 - Page 15 of Ext.P34.
(marked through PW8)
- P34(f) - 11.07.2014 - Page 21 of Ext.P34.
(marked through PW8)
- P34(g) - 05.01.2015 - Page 41 of Ext.P34.
(marked through PW8)
- P34(h) - 15.01.2015 - Page 42 of Ext.P34.
(marked through PW8)
- P34(i) - 22.04.2015 - Page 52 of Ext.P34.
(marked through PW8)
- P34(j) - 22.05.2015 - Page 55 of Ext.P34.
(marked through PW8)
- P34(k) - 27.07.2015 - Page 63 of Ext.P34.
(marked through PW8)
- P34(l) - 21.08.2015 - Page 66 of Ext.P34.
(marked through PW8)

- P34(m) - 05.11.2015 - Page 75 of Ext. P34.
(marked through PW8)
- P35 - No Date - Seizure mahazar of Ext.P34
Chronicle.
(marked through PW3)
- P36 - 10.02.2019 - Seizure mahazar of e-mail
printout sent by PW4
Sr. Anupama and others to
Bishop Agnelo Gracias, the
Apostolic Administrator of
Jalandhar Diocese.
(marked through PW3)
- P37 - 03.10.2018 - 164 statement of PW4 taken
down by JFCM - I, Kottayam.
(marked through PW4)
- P38 - 14.11.2017 - Hand written letter written
by PW4 to her father.
(marked through PW4)
- P38(a) - 14.11.2017 - Postal cover of Ext. P38
(marked through PW4)
- P39 - 29.06.2018 - Scene mahazar
(marked through PW4)
- P40 - 11.09.2018 - Additional Scene mahazar
(marked through PW4)
- P41 - 07.07.2018 - Inventory mahazar of
documents produced by PW1.
(marked through PW4)

- P42 - 30.07.2018 - Certified copy of FIR in Crime No. 848/18 of Kuravilangadu Police Station. *(marked through PW4)*
- P42(a) - 29.07.2018 - First Information Statement of Crime No. 848/2018 of Kuravilangadu Police Station. *(marked through PW4)*
- P43 - 14.11.2017 - Letter written by PW4 - sent to Mother General and Councilors. *(marked through PW4)*
- P44 - 10.10.2018 - 164 statement of PW5 taken down by JFCM, Erattupetta. *(marked through PW5)*
- P45 - 16.10.2018 - 164 statement of PW6 (CW8) taken down by JFCM - I, Kottayam. *(marked through PW6)*
- P46 - 24.09.2018 - Complaint filed by PW7 before the C.I. of Police, Kalady Police Station. *(marked through PW7)*
- P46(a) - 24.09.2018 - FIR in Crime No. 1236/2018 of Kalady Police Station. *(marked through PW7)*
- P47 - 03.10.2018 - 164 statement of PW7 (CW-9) taken down by JFCM - I, Kottayam. *(marked through PW7)*

- P48 - 12.07.2018 - Seizure mahazar of the Chronicle of Paravoor Marian Sadan Convent during the period 02.01.2014 to 07.07.2016.
(marked through PW10)
- P49 - No Date - Chronicle of Marian Sadan Convent, Paravoor.
(marked through PW10)
- P50 - 21.11.2017 - Complaint submitted by PW11 to PW18.
(marked through PW11)
- P51 - No Date - Registration book of the programme 'A day with the Shepherd' .
(marked through PW12)
- P52 - No Date - Monthly recollection for the sisters at Gianodaya, Guru Gobind Singh Avenue, Chogitti, Jalandhar.
(marked through PW12)
- P53 - 17.07.2018 - Seizure mahazar of the letter dated 14.11.2017 and postal cover sent by PW4 to PW11.
(marked through PW15)
- P54 - 22.09.2018 - Certificate of Potency
(marked through PW20)
- P55 - 29.06.2018 - Medical Examination report of Victim.
(marked through PW21)

- P56 - 02.10.2018 - Medical Examination report of Victim.
(marked through PW21)
- P57 - 23.01.2018 - Copy of Enquiry Report regarding Kuravilangadu Community.
(marked through PW22)
- P58 - 27.07.2018 - Inventory regarding the seizure of original complaint given by PW1 to PW18 and original complaint given by PW11 to PW18.
(marked through PW23)
- P59 - 16.09.2018 - Seizure mahazar of Admission Register of Kothanallor Thuvanisa Retreat Centre and Programme notice of Retreat during the period 2016 January to June.
(marked through PW24)
- P60 - No Date - Admission Register of Thuvanisa Retreat Centre, Kothanallor during 2014 - 2016.
(marked through PW24)
- P61 - No Date - Notice of Retreat schedule of Kothanallor Thuvanisa Prayer Home for the period 2016 January to June.
(marked through PW24)
- P62 - No Date - Scene Plan - Page No. 1
(marked through PW25)

- P62 (a) - No Date - Scene Plan - Page No. 2
(*marked through PW25*)
- P62 (b) - No Date - Scene Plan - Page No. 3
(*marked through PW25*)
- P62 (c) - No Date - Scene Plan - Page No. 4
(*marked through PW25*)
- P62 (d) - No Date - Scene Plan - Page No. 5
(*marked through PW25*)
- P63 - 21.02.2019 - Ownership Certificate of
Building No. V/279 of
Kuravilangadu Grama
Panchayath.
(*marked through PW26*)
- P63 (a) - 21.02.2019 - Ownership Certificate of
Building No. V/278 of
Kuravilangadu Grama
Panchayath.
(*marked through PW26*)
- P63 (b) - 21.02.2019 - Ownership Certificate of
Building No. V/277 of
Kuravilangadu Grama
Panchayath.
(*marked through PW26*)
- P64 - 21.02.2019 - Certificate showing that
building No. V/279 and V/518
of Kuravilangadu Grama
Panchayath are of the same
building.
(*marked through PW26*)

- P65 - 03.09.2018 - Seizure mahazar of the hard disc of the Laptop through which PW1 sent e-mail on 24.06.2018 and 25.06.2018 to Nuncio.
(marked through PW27)
- P66 - 03.09.2018 - Covering label of Laptop Hard disc seized from PW1.
(marked through PW27)
- P67 - 31.07.2018 - Seizure mahazar of BMW car bearing registration No. KL-08-BQ 7000.
(marked through PW28)
- P68 - 12.08.2018 - Seizure mahazar of Programme Register and time table of 'A day with the Shepherd'.
(marked` through PW28)
- P69 - 14.08.2018 - Seizure mahazar of the Laptop and mobile phone of the accused.
(marked through PW28)
- P70 - 23.08.2018 - Seizure mahazar of 'Nalagamam' of Muthalakkodam Nursing College Hostel Convent.
(marked through PW28)
- P71 - No Date - Nalagamam of B.Sc. Nursing Hostel Service Centre, Muthalakkodam.
(marked through PW28)

- P72 - 22.09.2018 - Seizure mahazar of bottles of Saliva sample and blood sample of the accused and sample seal.
(marked through PW28)
- P73 - 04.07.2018 - Seizure mahazar of the letter dated 05.05.2018 sent by Sr. Regina (CW54) to CW6.
(marked through PW28)
- P74 - 05.05.2018 - Letter dated 05.05.2018 sent by Sr. Regina (CW54) to CW6 .
(marked through PW28)
- P75 - 18.02.2019 - Certified copy of the FIR of Crime No.452/2019 of Moovattupuzha Police Station.
(marked through PW30)
- P76 - 18.02.2019 - Certified copy of Police Protection Order to Sr. Lissy Vadakkal (PW2) .
(marked through PW30)
- P77 - 23.06.2018 - Certified copy of FIR in Cr.No.725/2018 of Kuravilangadu Police Station.
(marked through PW31)
- P77 (a) - 21.06.2018 - Certified copy of Complaint filed by Fr. Peter Kavumpuram (CW56) before the District Police Chief,

Kottayam.
(*marked through PW31*)

- P78 - 13.09.2018 - Certified copy of FIR in Crime No. 1015/2018 of Kuravilangadu Police Station.
(*marked through PW32*)
- P78 (a) - 06.09.2018 - Certified copy of FIS in Crime No. 1015/2018 of Kuravilangadu Police Station.
(*marked through PW32*)
- P79 - 14.09.2018 - Certified copy of FIR in Crime No. 1019/2018 of Kuravilangadu Police Station.
(*marked through PW32*)
- P79 (a) - 14.09.2018 - Certified copy of FIS in Crime No. 1019/2018 of Kuravilangadu Police Station.
(*marked through PW32*)
- P80 - 01.10.2018 - Certified copy of FIR in Crime No. 1080/2018 of Kuravilangadu Police Station.
(*marked through PW32*)
- P80 (a) - 28.09.2018 - Certified copy of FIS in Crime No. 1080/2018 of Kuravilangadu Police Station.
(*marked through PW32*)
- P81 - 28.09.2018 - Certified copy of FIR in Crime No. 806/2018 of

Kuravilangadu Police Station.
(*marked through PW34*)

- P81 (a) - 26.09.2018 - Certified copy of FIS in Crime No. 806/2018 of Kuravilangadu Police Station.
(*marked through PW34*)
- P82 - 09.09.2018 - Order No. D2 - 65911/2018/K dated 09.09.2018 of the District Police Chief, Kottayam.
(*marked through PW35*)
- P83 - 16.12.2018 - Seizure mahazar of 'Aadyaqurbanayum Sthairyalepanavum' Register of Kalady St. George Church.
(*marked through PW36*)
- P84 - 16.12.2018 - Kaicheet of 'Aadyaqurbanayum Sthairyalepanavum' Register of Kalady St. George Church.
(*marked through PW36*)
- P85 - 28.06.2018 - FIR in Crime No. 746/2018 of Kuravilangadu Police Station.
(*marked through PW38*)
- P86 - 29.06.2018 - Proceedings of the District Police Chief, Kottayam (Order No. D2-48621/2018K) entrusting the investigation of Crimes 746/2018 &

725/2018 of Kuravilangadu Police Station to Dy. S.P. Vaikom (PW39).
(*marked through PW39*)

- P87 - 30.06.2018 - Report filed before the JFCM Pala regarding the investigation charge taken by PW39 in Crime No. 746/2018 of Kuravilangadu Police Station.
(*marked through PW39*)
- P88 - 11.07.2018 - Application filed before the JFCM Pala for collecting the CDR of mobile numbers used by PW1 & accused .
(*marked through PW39*)
- P88(a) - 11.07.2018 - Order in CMP 6200/2018 of the JFCMC-I, Pala.
(*marked through PW39*)
- P88(b) - 16.07.2018 - Reply received from 'airtel' to JFCM-I Pala showing that they are unable to provide CDR of mobile number 9779991099 for the period from 05.05.2014 to 31.12.2016.
(*marked through PW39*)
- P88(c) - 16.07.2018 - Reply received from 'BSNL' to JFCM-I Pala stating that the call details of mobile

numbers 8078157366 and 9495633914 for the period from 05.05.2014 to 31.12.2016 are not available in their server system.
(marked through PW39)

- P89 - 12.07.2018 - Seizure mahazar of Chronicle of St. Clare Mission Home Pariyaram, Kannur.
(marked through PW39)
- P90 - No Date - Chronicle of St. Clare Mission Home Pariyaram, Kannur.
(marked through PW39)
- P91 - 31.07.2018 - 3rd party kaicheet of BMW car & its RC particulars.
(marked through PW39)
- P92 - 11.08.2018 - Inventory mahazar of 7 documents produced by CW54.
(marked through PW39)
- P93 - 10.12.2016 - Copy of enquiry order issued by the accused to CW54 regarding the complaint of PW16.
(marked through PW39)
- P94 - 13.03.2017 - Copy of Reminder issued by the accused to CW54 regarding the Enquiry

Report.
(marked through PW39)

- P95 - 11.08.2018 - Sec.91 Cr.P.C. notice issued to CW54.
(marked through PW39)
- P96 - 11.08.2018 - Reply of CW54
(marked through PW39)
- P97 - 03.07.2018 - Property list of MO2 series & MO3.
(marked through PW39)
- P98 - 03.09.2018 - Property list of MO1.
(marked through PW39)
- P99 - 17.09.2018 - Seizure mahazar of Receipt of Thuvanisa prayer home.
(marked through PW39)
- P100 - 21.09.2018 - Arrest Memo
(marked through PW39)
- P101 - 21.09.2018 - Arrest Intimation
(marked through PW39)
- P102 - 21.09.2018 - Inspection Memo
(marked through PW39)
- P103 - 21.09.2018 - Custody Memo
(marked through PW39)
- P104 - 22.09.2018 - Remand Application

(marked through PW39)

- P105 - 22.09.2018 - Property List of MO4 series.
(marked through PW39)
- P106 - 22.09.2018 - Sec.376C(a) IPC adding report.
(marked through PW39)
- P107 - 22.09.2018 - Address report of accused.
(marked through PW39)
- P108 - 22.09.2018 - Dates and Time report of Occurance.
(marked through PW39)
- P109 - 27.10.2018 - Sec.91 Cr.P.C. notice issued to CW56.
(marked through PW39)
- P110 - 27.10.2018 - Reply of CW56.
(marked through PW39)
- P111 - 21.04.2014 - Order issued by the accused to begin 'A day with shepherded'.
(marked through PW39)
- P112 - No Date - Appointment Order of accused as the Bishop of Jalandhar Diocese.
(marked through PW39)
- P113 - 03.02.2019 - Copy of e-mail sent by Bishop

Agnelo Gracias to PW4.
(*marked through PW39*)

- P114 - 15.02.2019 - Inventory mahazar of 3 circulars of Missionaries of Jesus.
(*marked through PW39*)
- P115 - 16.06.2015 - Cir/03/2015 of Missionaries of Jesus.
(*marked through PW39*)
- P115(a) - 16.10.2015 - Cir/06/2015 of Missionaries of Jesus.
(*marked through PW39*)
- P115(b) - - Cir/02/2017 of Missionaries of Jesus.
(*marked through PW39*)
- P116 - 21.02.2019 - Report regarding building numbers.
(*marked through PW39*)
- P117 - 03.09.2018 - Forwarding note.
(*marked through PW39*)
- P118 - 26.09.2018 - FSL Report No. DD-493/18.
(*marked through PW39*)
- P118(a) - No Date - Annexure 2 DVD attached with FSL Report.
(*marked through PW39*)

- P119 - 08.04.2019 - Sec.506(ii) IPC adding report.
(marked through PW39)
- P120 - 22.02.2019 - Refer Report (Final Report) in Crime No. 725/18 of Kuavilangadu Police Station.
(marked through PW39)
- P121 - October 2017 - Publication named The Link-Lines. A bond of sharing. Published by, Missionaries of Jesus.
(marked through DW5)
- P122 - 25.10.2013 - Appointment order of Fr. Jose Edakkunnath as Finance Consultor to the Missionaries of Jesus, Religious Institution of Diocesan Right, issued by Bishop Franco Mulackal.
(marked through DW5)

Exhibits marked from the side of Defence:-

- D1 - 25.06.2018 - Photocopy of letter given by Sr. Regina, Superior General to PW1.
(marked through PW1)
- D2 - 05.07.2018 - Marked portion in the 164 statement of PW1. (page No.22 of Ext.P19)
(marked through PW1)

- D3 - 05.07.2018 - Marked portion in the 164 statement of PW1. (page No.25 of Ext.P19)
(marked through PW1)
- D4 - 05.07.2018 - Marked portion in the 164 statement of PW1. (page No.32 of Ext.P19)
(marked through PW1)
- D5 - 05.07.2018 - Marked portion in the 164 statement of PW1. (page No.45 of Ext.P19)
(marked through PW1)
- D6 - No Date - Compact Disc containing 6 still photos.
(marked through PW1)
- D6(a) - No Date - Photograph
(marked through PW1)
- D6(b) - No Date - Photograph
(marked through PW1)
- D6(c) - No Date - Photograph
(marked through PW1)
- D6(d) - No Date - Photograph
(marked through PW1)
- D6(e) - No Date - Photograph
(marked through PW1)
- D6(f) - No Date - Photograph
(marked through PW1)

- D6(g) - 12.11.2020 - Sec.65B certificate regarding Ext.D6 series.
(marked through DW2)
- D7 - No Date - DVD of First Holy Communion of S/o of PW7.
(marked through PW1)
- D7(a) - 12.11.2020 - Sec.65B certificate regarding Ext. D7.
(marked through DW2)
- D8 - 30.06.2018 - Marked portion in the Addl. 161 statement of PW1.
(marked through PW1)
- D9 - 01.11.2018 - Marked portion in the 164 statement of PW2 at page No. 4 of Ext.P21.
(marked through PW2)
- D10(a) - 09.10.2015 - e-mail printout
(marked through PW1)
- D10(b) - 16.02.2016 - e-mail printout
(marked through PW1)
- D10(c) - 09.03.2016 - e-mail printout
(marked through PW1)
- D10(c1) - 10.03.2016 - e-mail printout
(marked through PW1)
- D10(c2) - 12.03.2016 - e-mail printout
(marked through PW1)
- D10(d) - 13.03.2016 - e-mail printout
(marked through PW1)

D10(e)	-	29.03.2016		e-mail printout (<i>marked through PW1</i>)
D10(e1)	-	29.03.2016		e-mail printout (<i>marked through PW1</i>)
D10(e2)	-	11.04.2016		e-mail printout (<i>marked through PW1</i>)
D10(f)	-	11.04.2016		e-mail printout (<i>marked through PW1</i>)
D10(f1)	-	11.04.2016		e-mail printout (<i>marked through PW1</i>)
D10(f2)	-	11.04.2016		e-mail printout (<i>marked through PW1</i>)
D10(f3)	-	11.04.2016		e-mail printout (<i>marked through PW1</i>)
D10(g)	-	08.10.2015		e-mail printout (<i>marked through PW1</i>)
D10(h)	-	30.11.2020	-	Sec.65B certificate regarding Ext. D10 series. (<i>marked through DW3</i>)
D11	-	----	-	Photograph (<i>marked through PW1</i>)
D11(a)	-	----	-	Photograph (<i>marked through PW1</i>)
D11(b)	-	----	-	Photograph

(marked through PW1)

- | | | | | |
|--------|---|------|---|---|
| D11(c) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(d) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(e) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(f) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(g) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(h) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(i) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(j) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(k) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(l) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(m) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |
| D11(n) | - | ---- | - | Photograph
<i>(marked through PW1)</i> |

- D11(o) - ---- - Photograph
(*marked through PW1*)
- D11(p) - ---- - Photograph
(*marked through PW1*)
- D11(q) - ---- - Photograph
(*marked through PW1*)
- D12 - 29.10.2017 - Photocopy of Reply letter
sent by PW3 to Sr. Regina.
(*marked through PW3*)
- D13 - 03.10.2018 - Portion in the 164 statement
of PW3 (at page No.3 of P33
(*marked through PW3*)
- D14 - 30.06.2018 - Portion in the 161 statement
of PW3.
(*marked through PW3*)
- D15 - 30.06.2018 - Portion in the 161 statement
of PW3.
(*marked through PW3*)
- D15(a) - 30.06.2018 - Portion in the 161 statement
of PW3.
(*marked through PW3*)
- D16 - 03.10.2018 - Portion in the 164 statement
of PW3. (at page No. 9 of
P33)
(*marked through PW3*)
- D17 - No Date - Video clip (DVD) of close
encounter interview of PW4.

(marked through PW4)

- D17(a) - 05.02.2021 - Sec.65B certificate regarding Ext. D17.
(marked through DW3)
- D18 - 09.11.2017 - Photocopy of Apology letter prepared by PW4 and sent to Sr. Regina.
(marked through PW4)
- D19 - 10.09.2018 - Portion in the 161 statement of PW5.
(marked through PW5)
- D20 - 03.10.2018 - Portion in the 164 statement of PW7.
(marked through PW7)
- D21 - No Date - Portion in the 161 statement of PW7.
(marked through PW7)
- D22 - 24.09.2016 - Copy of e-mail letter sent by PW8 to the accused.
(marked through PW8)
- D22(a) - 13.12.2021 - Sec.65B certificate regarding Ext. D22.
(marked through DW3)
- D23 - No Date - Copy of letter sent to Bishop Agnelo Rufino Gracias - prepared by Sr. Mini John, Sr. Violet and Sr. Celine.
(marked through PW9)

- D24 - 04.07.2018 - Portion in the 161 statement of PW9.
(marked through PW9)
- D25 - 17.07.2018 - Portion in the 161 statement of PW11.
(marked through PW11)
- D26 - 17.07.2018 - Portion in the 161 statement of PW11.
(marked through PW11)
- D27 - No Date - Copy of Dispensation letter prepared by PW19 and sent to Sr. Regina.
(marked through PW19)
- D28 - No Date - Chronicle of St. Francis Mission Home, Kuravilangadu for the period 03.01.2018 to 16.12.2018.
(marked through PW22)
- D29 - 19.01.2018 - Copy of letter prepared by PW1, CW4 & PW3 and sent to The Commission of Missionaries of Jesus.
(marked through PW22)
- D29(a) - 19.01.2018 - Original of Ext. D29.
(marked through DW5)
- D30 - 17.02.2018 - Copy of letter prepared by PW1, CW4 and PW3 sent to Sr. Regina.
(marked through PW22)
- D30(a) - 17.02.2018 - Original of Ext. D30.
(marked through DW5)

- D31 - 03.08.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D32 - 03.08.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D33 - 03.08.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D34 - 03.08.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D35 - 06.10.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D36 - 06.10.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D37 - 03.08.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D38 - 03.08.2018 - Portion in the 161 statement of PW16.
(marked through PW16)
- D39 - 06.10.2018 - Portion in the 161 statement of PW16.
(marked through PW16)

- D40 - 22.09.2018 - Affidavit submitted by Dy. S.P. Vaikom filed along with the Custody Application.
(marked through PW39)
- D41 - 09.07.2018 - Form 15 of Ext.P55.
(marked through PW39)
- D42 - 10.08.2018 - Certified copy of Statement of Fact submitted by Dy.S.P. Vaikom with regard to Writ Petition (C) 26383/2018/N of the Hon'ble High Court of Kerala .
(marked through PW39)
- D43 - 07.07.2018 - Form 15 of 14 documents
(marked through PW39)
- D44 - 16.09.2018 - Form 15 of Ext. P7
(marked through PW39)
- D45 - 13.11.2016 - Scanned copy of handwritten complaint prepared by PW16 and given to Sr. Regina.
(marked through PW39)
- D46 - 17.09.2018 - Certified copy of Anticipatory Bail Application No. 6381/2018 of accused filed before the Hon'ble High Court of Kerala.
(marked through PW39)
- D47 - 01.10.2019 - Certified copy of objection filed by Fr. Peter Kavumpuram against the Refer Report No. 37/2019 filed before the JFCM Pala in

Crime No. 725/2018 of
Kuravilangadu Police Station.
(*marked through PW39*)

- D48 - 30.06.2018 - Portion in the 161 statement of PW1.
(*marked through PW39*)
- D49 - No Date - Notarized copy of relevant page of Marriage Register of St. Xavier's Church, Villooni, Arpookkara, Kottayam.
(*marked through DW1*)
- D50 - No Date - e-mail & attachment
(*marked through DW3*)
- D50(a) - 06.11.2021 - Sec.65B certificate regarding Ext. D50.
(*marked through DW3*)
- D51 - 18.11.2003 - Copy of request letter to grant permission to establish a Religious House of 'Missionaries of Jesus' at Kuravilangadu.
(*marked through DW5*)
- D52 - 05.05.2004 - Photocopy of permission giving letter issued by the Bishop of Palai to start a house at Kuravilangadu.
(*marked through DW5*)
- D53 - No Date - The Rule & The Constitution of the Missionaries of Jesus.
(*marked through DW5*)

- D54 - No Date - Directory of the Missionaries of Jesus.
(marked through DW5)
- D55 - No Date - Memorandum of Association of the Missionaries of Jesus with Rules & Regulations.
(marked through DW5)
- D56 - No Date - 'Niyamaavali' of Reg. No. 127/2007 Old Age Home attached to St. Francis Mission Home, Nadukunnu, Kuravilangadu.
(marked through DW5)
- D57 - 06.06.2014 - Copy of Dispensation Letter given to Sr. Arpitha, issued by the Bishop of Kannur.
(marked through DW5)
- D58 - No Date - Page 25 of Ext.P25.
(marked through DW5)

Third party Exhibits :-

- X1 - No Date - Register of Medical Examination Report for Sexual Assault of Government Medical College Hospital, Kottayam for the period from 17.03.2018 to 17.07.2018 (Sl. No. 901 to 950).
(marked through PW39)
- X1(a) - 29.06.2018 - Relevant page in Ext.X1 (Sl. No. 944).

(marked through PW39)

X1(b) - 29.06.2018 - O.P. Ticket.
(marked through PW39)

Witnesses Examined for the Prosecution:-

PW1	- 16.09.2020, 17.09.2020, 05.10.2020, 27.10.2020, 28.10.2020, 30.10.2020, 13.11.2020, 18.11.2020, 20.11.2020, 30.11.2020, 12.01.2021 & 18.01.2021	- Victim
PW2	- 16.12.2020, 21.12.2020	- Sr. Lissy Vadakkal
PW3	- 19.01.2021, 20.01.2021, 03.02.2021	- Sr. Neena Rose
PW4	- 03.02.2021, 05.02.2021, 19.02.2021	- Sr. Anupama
PW5	- 20.02.2021, 02.03.2021	- Praveen K. Sebastian
PW6	- 12.03.2021	- Bishop Kurian Valiyakandathil
PW7	- 30.03.2021, 05.04.2021	- Sister of victim
PW8	- 19.04.2021, 20.04.2021, 21.04.2021	- Silcy Scaria @ Liyona
PW9	- 26.04.2021, 28.04.2021, 30.04.2021	- Cousin of victim

PW10	-	29.07.2021	-	Sr. Rosallo Paruthiparambil
PW11	-	29.07.2021	-	Varghese @ Varkeykunju
PW12	-	03.08.2021	-	Fr. Antony Thuruthiyil
PW13	-	03.08.2021	-	Fr. Varghese @ Dai
PW14	-	06.08.2021	-	Fr. Joseph Thadathil
PW15	-	10.08.2021	-	Prasannan
PW16	-	31.08.2021, 06.11.2021, 08.11.2021	-	Jaya Francis
PW17	-	22.09.2021	-	Bishop Sebastian Vadakkal
PW18	-	01.10.2021	-	Mar George Alencherry
PW19	-	04.10.2021	-	Nimisha
PW20	-	06.10.2021	-	Dr. Jameskutty
PW21	-	13.10.2021	-	Dr. Roshni R.
PW22	-	22.10.2021, 25.10.2021	-	Sr. Sophy
PW23	-	26.10.2021	-	Francis

PW24	-	26.10.2021	Vimala B.
PW25	-	28.10.2021	- Bino Thomas (Village Officer)
PW26	-	28.10.2021	- Seenath K. (Panchayath Asst. Secretary)
PW27	-	28.10.2021	- Prasanth V.S.
PW28	-	29.10.2021	- Anilkumar P.V.
PW29	-	29.10.2021	- Jobi (Courier Service)
PW30	-	11.11.2021	- C. Jayakumar (C.I. Muvattupuzha)
PW31	-	11.11.2021	- V.P. Thankachan (S.I. Kuravilangadu)
PW32	-	11.11.2021	- Dipu T.R. (S.I. Kuravilangadu)
PW33	-	11.11.2021	- Asokan M.S. (S.I. Kalady)
PW34	-	12.11.2021	- R. Rajesh (S.I. Kodanadu)
PW35	-	12.11.2021	- P.V. Manojkumar (C.I. Vakathanam)
PW36	-	22.11.2021	- K.S. Jayan (C.I. Kaduthuruthy)

PW37	-	24.11.2021, 27.11.2021	-	Sheeja K.G. (WSCPO)
PW38	-	24.11.2021	-	Santhosh K. (S.I. Kuravilangadu)
PW39	-	25.11.2021, 27.11.2021 29.11.2021, 30.11.2021	-	Subhash K. (Dy.S.P. Vaikom)

Witnesses Examined for the Defence :-

DW1	-	13.12.2021	-	Fr. Xavier J. Puthenkulam
DW2	-	13.12.2021	-	Shajo Alukkal
DW3	-	13.12.2021	-	Fr. Agin
DW4	-	14.12.2021	-	Abhilash Mohan
DW5	-	14.12.2021	-	Sr. Mable Joseph
DW6	-	15.12.2021	-	Fr. Mathew Koyickal

Material Objects :-

MO1	-	Hard Disc of Laptop used by the victim
MO2	-	Laptop of the accused
MO2(a)	-	Hard disc of Laptop of the accused
MO2(b)	-	Charger of Laptop of the accused
MO3	-	Mobile Phone of accused
MO4	-	Saliva bottle
MO4(a)	-	Blood sample bottle
MO4(b)	-	Sample Seal

Id/-
Addl. Sessions Judge-I.

Serial No. of the Case : Sessions Case No.457/2019
 Crime Number and : Crime No. 746/2018 of
 Name of Police Station : Kuravilangadu Police Station.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Father's Name	Occupation	Residence	Age
1.	Bishop Franco Mulakkal	Ippunny	Bishop	Mulakkal House, Mattam Desam, Kandanasseri Panchayath, Thalappally Taluk, Trissur District, Kerala State. Now residing at Bishop House, Civil Lane, Jalandhar City - 144 001, Punjab State, India.	57

Dates of

Occurrence : 05.05.2014, 06.05.2014, 11.07.2014, 05.01.2015, 15.01.2015, 22.04.2015, 22.05.2015, 27.07.2015, 21.08.2015, 05.11.2015, 17.01.2016, 29.04.2016 and 23.09.2016

Complaint : 27.06.2018

Apprehension : 22.09.2018

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Release on bail : 16.10.2018
Committal : 26.08.2019
Commencement of trial : 16.09.2020
Close of trial : 15.12.2021
Date of Hearing : 10.01.2022
Judgment : 14.01.2022
Reason for delay : No delay.
Remarks : Nil.

Id/-

Addl. Sessions Judge-I.

// True Copy //

Copied by :

Compared by :

Sd/-

Gopakumar G.,
Additional Sessions Judge-I.

**Copy of Judgment in
S.C. No. 457/2019
Dated : 14.01. 2022**