

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

CRL.A.No. 457 of 2014 (A)

**AGAINST THE ORDER/JUDGMENT IN SC 431/2011 OF ASSISTANT SESSIONS COURT,
KOYILANDY DATED 24.2.2012
CRIME NO. 112/2011 OF ATHOLY POLICE STATION , KOZHIKODE**

APPELLANT:

**PUSHPAKARAN, S/O.CHATHUKUTTY,
C.NO.340, CENTRAL PRISON, KANNUR**

**BY ADVS.SRI.K.A.SREEJITH
SRI.P.V.SREENIVASAN**

RESPONDENT:

STATE OF KERALA

BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.457 of 2014

Dated this the 26th day of March, 2015

J U D G M E N T

The appellant who has been convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,10,000/- for the offence under Section 376 IPC challenges the legality of his conviction and sentence. The allegation against him is that for several years he had sexual intercourse with his daughter; it started when she was a 7th standard student.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor.

3. It is seen that report of the chemical analyst to whom the vaginal swab was sent was not received by the trial court. The trial court should have called for the report before the trial started.

4. The last incident alleged by the prosecution took place in March 2011 one month before the registration of the case. The allegation is that the appellant attempted to commit rape on her on that day also during night and the

victim rushed to her uncle's house situated in the neighbourhood and informed her uncle's son Prajosh about the incident. Prajosh allegedly summoned his neighbours to whom the incident was disclosed. Prajosh was cited as a witness. But he was not examined as a witness, for which, no reason is stated. In the nature of the case his evidence is material.

5. For the two reasons stated above, I accept the submission of the learned Public Prosecutor that the matter may be sent back to the trial court.

In the result, this appeal is allowed. The order of conviction and sentence passed by the trial court are set aside. The matter is sent back. The trial court shall summon CW6 Prajosh and call for the chemical analysis report mentioned above before proceeding with the trial. The trial shall be completed within six months.

Sd/-

K. ABRAHAM MATHEW
JUDGE

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P.A. TO JUDGE

shg/