

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

CRL.A.No. 1519 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN SC 272/2012 of LEARNED SESSIONS COURT,
KOTTAYAM DATED 31-05-2013

CRIME NO. 303/2012 OF VAKATHANAM POLICE STATION , KOTTAYAM

APPELLANT/ACCUSED:

JOHN @ KUTTAN, C.NO.8078, CENTRAL PRISON, TRIVANDRUM

BY ADV. SMT.ANJANA.P. (STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY DGP, HIGH COURT
OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR:SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1519 of 2013

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Dated this the 14th day of December, 2015

JUDGMENT

A 64 year old male, who stands convicted for offence punishable under Section 376(2)(f) of the Indian Penal Code for allegedly committing rape on a 8 year old girl, is the appellant herein.

2. On 24.04.2012 at about 10.30.a.m, PW1, the mother of the victim went to the police station and laid a complaint alleging that her daughter was raped by the accused on 18.04.2012 at 3 p.m. It was recorded and crime was registered. In the course of the investigation, the accused was arrested. The crux of the prosecution case was that the accused was employed in the house of PW1 to milk the cow. On 18.04.2012 , at about 2 p.m., the accused came to the house for milking the cow. At that time, the cow had moved to a nearby place for grazing and to bring it, PW1 left the home. After some time, the little girl was sent by the accused to follow the mother and to confirm that she had proceeded to bring back the cow. After confirming the child went back. After some time, PW1 returned home with the cow. The

accused left after milking the cow. Thereafter, PW1 found the child lying on bed in a disturbed condition. On enquiry, she revealed that the accused had committed rape on her and she was feeling pain. The mother checked the private part of the girl and found that she had minor injuries with blood stains. The matter was reported to her husband and after discussing with the relatives, FIS was laid. PW9 conducted the investigation and laid the final charge before the court below. The accused pleaded not guilty and demanded trial. On the side of the prosecution, PWs.1 to 10 were examined. PWs.1 to 13 were marked and MO1 was identified. The court below on an evaluation of the entire materials concluded that the prosecution had succeeded in proving the allegation against the accused, convicted and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- and in default, to undergo simple imprisonment for one year. It was further directed that if the fine amount was remitted, 75% of it shall be given to PW2, the victim.

3. The accused who is in jail has preferred this appeal. On his request, Adv.Anjana P. was appointed as the counsel on State Brief. Heard the learned counsel on State Brief who effectively argued the matter, which was equally effectively countered by

Adv.M.G.Lisha, the learned Public Prosecutor. Examined the records.

4. The prosecution is essentially relying on the oral testimony of PWs.1 and 2 to prove the allegation against the accused. A limited corroboration is sought from the attending circumstances and also from the medical and forensic evidences. PW1, the mother has given a detailed narration of what transpired on that day including the disclosure of incident by PW2, the victim, to the mother. Admittedly, the accused is known to PW1 and PW2. After the accused left the house, mother searched for the daughter. According to her, she found PW2 the daughter lying on a cot and on enquiry, the girl revealed that the accused had physically assaulted her and clearly and categorically indicated the allegation of penetrative sex. The mother had deposed that she checked the private part of the girl and found that there was bruises and congestion, with blood stains. Girl revealed that she felt pain. She further reported that accused had committed the same act atleast on 4 other previous occasions. PW1 further reported that she conveyed the matter to the father and after consulting with the relatives, a decision was taken to report the matter to the police.

5. PW2 is the victim herself. After putting few questions to the victim initially, learned Sessions Judge had satisfied himself about the capacity of the girl to tender evidence in a cogent manner. A perusal of the evidence tendered by PW2 also indicates that she had specifically mentioned about the acts of physical violence on her. It was indicated that the private part of the accused was pressed against her own private part and there is a clear indication of atleast partial penetration coupled with emission. She had further deposed that she suffered pain thereafter. She further deposed that the accused had committed the same act on four earlier occasions. She further stated that the accused had threatened that if she disclosed it to any other person, he would commit murder of her.

6. As mentioned above, the version of PWs.1 and 2 are categoric regarding the physical assault on the girl and there is no doubt that both, especially the victim, had given the details of the physical violence on her. However, the version of PWs.1 and 2, especially the one touching upon the crucial ingredients of the offence remain unchallenged. No material omission, contradiction or embellishment in the versions, with that of the previous statement given to the police, could also be brought out in the

course of cross examination.

7. Learned counsel for the accused vehemently contended that there were several doubtful circumstances in the prosecution case. Learned counsel referred to the reply given by the accused in the questioning under Section 313 of Cr.P.C. to indicate that he had set up a case of complete denial and a plea of innocence. Adv.Anjana P. further contended that the accused was wrongly implicated. It was further contended that there was unexplained delay in lodging the FIR. Though the incident allegedly happened on 18.04.2012, the FIS was laid only on 24.04.2012. The reason for the delay has been specifically explained by the mother. She stated that since the victim was a girl and they were afraid that her future may be in jeopardy, she consulted her husband and other relatives. She had also stated that they had taken the advise of family members and only thereafter, a decision was taken to lodge the FIS. Considering the valid and reasonable explanation given by the witnesses, I find no reason to hold that there was inordinate, unexplained delay in lodging the FIS.

8. Regarding the age of the victim, PW1 had deposed that her date of birth is 06.08.2003. PW2 could not specifically mention about the exact date of birth and the year. That is not relevant,

since she cannot be expected to be the best witness regarding her own date of birth. However, the officer attached to the office of Dates and Births was examined as PW7. Through him, Ext.P7 certificate issued from the concerned office was marked. He deposed that it was based on the relevant records kept statutorily. It shows that the date of birth of the child was 06.08.2003. This clearly shows that the child was around 9 years old at the time of the incident. This fact remains unchallenged in the cross examination.

9. It is settled law that the sole testimony of the victim is reliable and can be basis for conviction, provided, it inspire confidence and gets limited corroboration from other circumstances. Evidently, the version of PW2 is free from any doubtful circumstances. The version of PW2 was sought to be corroborated by Ext.P3 medical certificate issued by PW3. PW3 is the Assistant Professor attached to the Medical College, Kottayam. She deposed that she had seen the witness and had issued a certificate. In Ext.P3, the doctor has referred to the alleged incident as a case of sexual assault by the neighbour Kuttan, according to the child and the mother, on 18.04.2012 at about 3.30p.m. History of similar episodes in the previous periods by the

same person was also stated. The doctor had noted that the vulva, vagina was pre-pubertal and there was mild congestion in the pre-urethral area. There was no bruises over her external genitalia and hymen was intact. Vagina admitted little finger with difficulty and also, only tip passed. With reference to the above medical report, the doctor had clearly stated that from the nature of injuries noted, it was possible to believe that there was half penetration. The doctor further stated that it was not necessary that in all cases of sexual assault and rape, hymen should be disturbed. She stated that the injury mentioned was within vulva. Hence the allegation of PW2 of penetrative sex gets its support from the medical record also.

10. The limited support from the forensic evidence was also sought by the prosecution. MO1 was the dress worn by the girl during the relevant time. This was spoken by PW2 and mother also. It was seized by the investigating agency by Ext.P6 mahazar on 27.04.2012. It was sent for FSL analysis and Ext.P13 is the chemical analysis report. It shows that MO1 pinafore was examined under ultraviolet light and fluorescence of seminal plasma was detected on it. On an evaluation of the various tests, the result of examination showed that there were human

spermatozoa detected on MO1. This completely corroborates the version of PW2 that there was emission. The version of the witnesses also satisfies the allegation of the prosecution that there was penetration, atleast partial, coupled with emission.

11. Even though, learned counsel on State Brief vehemently contended that it appeared to be a case of wrong implication, especially in the background that the accused was known to the family and that he was not involved in any other previous crime, the oral testimony of the crucial witnesses indicate that no such allegation was raised in the course of cross examination. Not even a suggestion was made to the witnesses. Absolutely, no material was brought out as to why the girl and mother should falsely implicate a person, especially in a case which affects the modesty of a 9 year old girl. No previous enmity is suggested or even alleged. Hence, the contention of false implication is only to be ruled out.

12. An evaluation of the entire materials indicate that the court below has properly analyzed and evaluated all evidences in the correct manner. Court has also applied the law correctly. Having regard to the ingredients brought out in the evidence, I find no reason to take a different view from the findings arrived at

by the court below. The conclusion arrived at by the court below that the prosecution has succeeded in proving the allegation against the accused is only to be confirmed.

13. There cannot be any doubt that the allegation against the accused is very serious. The victim involved is only 9 year old. It was not a solitary instance of physical assault on her but it happened on four earlier occasions as per the version of PW2. Above all, he had also threatened her to do away with the girl, if the matter was reported. Sufficient preparation was evident from the conduct of accused in having sent the victim to follow the mother, who had gone to a nearby place to bring the cow. He is not entitled for any leniency at all. Hence, I feel that the sentence imposed by the court below is fully justified.

In the result, the appeal fails and is dismissed.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge