

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Crl.Rev.Pet.No. 1717 of 2003 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.63/1996 of I ADDL. SESSIONS COURT,
TRIVANDRUM DATED 18-03-2003**

**AGAINST THE JUDGMENT IN S.C.NO.154/1994 of PRINCIPAL ASSISTANT SESSIONS
COURT,TRIVANDRUM DATED 24-02-1996**

REVISION PETITIONER(S)/APPELLANTS/ ACCUSED NOS. 2 & 3:

- 1. GANESAN @ KOPLI GANESAN,
S/O. RAMAN PERUMAL,
T.C.26/1019, CHENGALCHOO LA COLONY,
SECRETARIAT WARD, THYCAUD,
THIRUVANANTHAPURAM.**
- 2. RAMESH @ CHENNI RAMESH,
S/O.KESAVAN, FLAT NO.375,
CHENGAL CHOO LA COLONY,
SECRETARIAT WARD, THYCAUD VILLAGE,
THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SUDHEER KARAKONAM.

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. MADHU BEN.M.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
12-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.1717 of 2003

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Dated this, the 12th day of January, 2015.

ORDER

Accused Nos. 2 and 3 in S.C.No.154/1994 on the file of the Principal Sessions Court, Thiruvananthapuram are the revision petitioners herein.

2. The revision petitioners along with other accused persons were charge sheeted by the Circle Inspector of Police, Cantonment police station in Crime No.98/1993 of Cantonment police station under Sections 143, 147, 148, 149, 452, 323, 324 and 376 of Indian Penal Code.

3. The case of the prosecution in nutshell was that, CWs 1 and 2 were husband and wife and they were residing in Flat No.71 of Chegalchoola colony, Secretariat Ward, Thycaud Village. They were residing in the first floor of the said flat. On 04.08.1993, while they were sleeping in the terrace along with their son CW3 Rajeev, at about 11.30 p.m., the accused persons after forming themselves into an unlawful assembly with the common object of causing voluntary hurt to CWs 1 and 2 and also commit rape on CW2, committed house trespass in the flat after making preparation for the same and

they entered the terrace and first accused kicked CW1 over his stomach and accused Nos.2 and 3 fisted on him on his chest and back, fourth accused voluntarily caused hurt to CW1 by cutting with a chopper on the left side of his head and caused to sustain an injury and thereafter, they took CW2 - the prosecutrix to a nearby flat under-construction and committed rape on her after wrongfully restraining her by one after other and also inserted candle inside in the vagina and sexually assaulted her and thereby, all of them committed the above said offence. After investigation, final report was filed against the accused persons and the cases were committed to the Sessions Court on three occasions as some of the accused persons were absconding and they were taken on file as S.C.Nos.154/1994, 256/1994 and 331/1994 by the Sessions Judge, Thiruvananthapuram and they were made over to Principal Assistant Sessions Court, Thiruvananthapuram for disposal. The learned Principal Assistant Sessions Judge clubbed these cases and evidence was recorded in S.C.No.154/1994.

4. When the revision petitioners appeared before the court below, after hearing the Additional Public Prosecutor and the Defence Counsel, the Principal Assistant Sessions Judge,

Thiruvananthapuram framed charge against the accused including the revision petitioners under Sections 143, 147, 148, 149, 452, 323, 324 and 376 of Indian Penal Code and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 14 were examined and Exts. P1 to P22 and X1, X1(a) and MOS Nos. 1 to 4 were marked. After closure of the prosecution evidence, the accused including the revision petitioners were questioned under Section 313 of Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and they are innocent of the same and they have been falsely implicated in the case. Since the evidence in the case did not warrant an acquittal under Section 232 of Code of Criminal Procedure, the accused were called upon to enter on their defence. But, no defence evidence was adduced on their side.

5. After considering the evidence on record, the trial court found all the accused including the revision petitioners guilty under Sections 143, 148, 324, 323, 452 and 376 read with Section 149 of Indian Penal Code and convicted them

thereunder and sentenced them to undergo Rigorous Imprisonment for six months each under Sections 143 and 323 of Indian Penal Code and further sentenced to undergo Rigorous Imprisonment for one year each under Sections 148 and 324 of Indian Penal Code and further sentenced to undergo Rigorous Imprisonment for one year and also to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for three months each under Section 452 of Indian Penal Code and further sentenced to undergo Rigorous Imprisonment for five years each and also to pay a fine of Rs.2,000/- each in default to undergo Rigorous Imprisonment for six months each under Section 376 of Indian Penal Code and directed the substantive sentences to run concurrently. Set off was allowed for the period of detention undergone by them in the case. Accused preferred Crl.Appeal No.63/1996 and 254/1996 (the present revision petitioners along with others preferred Crl.Appeal No.63/1996 and some of the other accused persons filed Crl.Appeal No.254/1996) before the Sessions Court, Thiruvananthapuram which were made over to First Additional Sessions Court, Thiruvananthapuram for disposal and the learned Additional Sessions Judge by a common judgment, dismissed the appeals confirming the order or conviction and

sentence passed by the court below. Aggrieved by the concurrent findings of the court below in S.C.No.154/1994 of Principal Assistant Sessions Judge, Thiruvananthapuram as confirmed in Crl.Appeal No.63/1996, the present revision petitioners have filed the above revision.

6. Heard the Counsel for the revision petitioners and the Public Prosecutor.

7. The Counsel for the revision petitioners submitted that, courts below have not properly appreciated the evidence and there is nothing on record to show that the present revision petitioners have committed any of the offences alleged and the courts below were not justified in convicting the revision petitioners for the offence alleged. Further, offence under Section 376 has not been committed by any of the revision petitioners and the finding to that effect is also not correct. The sentence imposed is also harsh.

8. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below. The learned Public Prosecutor also submitted that the revision filed by some of the accused persons as Crl.R.P.No.1367/2003 was dismissed by this court.

9. The case of the prosecution as emerged from the

prosecution witnesses was as follows:

PWs 1 to 3 are the victims and injured and witnesses in this case. PW1 is the husband of PW3 and PW2 is their son. According to the prosecution, on 04.08.1993 at about 11.30 p.m., while they were sleeping in the terrace of the Flat No.71 of Chegalchoola colony, Secretariat Ward, the accused persons formed themselves into an unlawful assembly with deadly weapons like chopper and with preparation to commit offence, criminally trespassed into the house and reached the terrace and first accused kicked PW1 over his stomach and accused Nos. 2 and 3 fisted him over his chest and back and 4th accused voluntarily caused hurt to PW1 by cutting with a chopper over the left side of his head and caused injury to him. Thereafter, they had forcibly taken PW3, the prosecutrix to a flat under-construction, some distance away from the flat where they were residing and they took her to the hall of that flat and accused Nos.1 to 3 forcibly derobed her. Accused Nos. 5 to 7 forcibly made her to lie supine. 7th accused closed her mouth. Accused Nos. 1 to 3 forcibly separated her legs. Accused Nos. 5 and 6 caught hold of her hands forcibly and 3rd accused committed rape on her first and thereafter, others also raped her. First accused bit the breast of PW3 and thereafter,

she was made to stand and she was forcibly made her to stoop forward and accused Nos. 4 and 6 put her legs apart and 7th accused inserted a lighted candle inside her vagina. When PW1 sustained injuries, he ran to the down stairs and went to the General Hospital from where he was treated. On the basis of the intimation read, PW11, the Head Constable attached to Cantonment Police Station went to hospital on 05.08.1993 and recorded Ext.P1 statement of PW1 and registered Ext.P1(a) First Information Report as Crime No.98/1993 of that police station originally against accused Nos. 1 to 4 under Sections 452, 323, 324 read with Section 34 of Indian Penal Code. Thereafter, the investigation was undertaken by PW11 who went to the place of occurrence and prepared Ext.P10 scene mahazar. On 08.08.1993, when PW3 was questioned, it was revealed that apart from the offences committed as mentioned in the First Information Report, offence under Section 376 of Indian Penal Code was also committed and other persons also involved in the crime and so, offence under Sections 143, 147, 148, 149 and 376 were also added after deleting Section 34 of Indian Penal Code by filing Ext.P15 report. She was examined by PW13 and Ext.P20 certificate was obtained and her vaginal swab and smear were taken and sent for examination and

Ext.P21 report was obtained, in which, the presence of semen and spermatozoa were found. The investigating officer filed Ext.P16 and P17 reports showing the full names and address of the accused persons. The articles were seized and sent to court. After completing the investigation, final report was filed.

10. It is seen from the evidence of PWs 1 to 3 that originally accused Nos. 1 to 4 had criminally trespassed into the house and attacked PW1 with dangerous weapon like chopper and thereafter, PW3 was forcibly taken by them to the nearby flat under-construction from where other accused persons also joined and ravished her and committed gang rape on her. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. Merely because Section 376 of Indian Penal Code and Sections 143, 147, 148 and 149 were not shown in the original First Information Report and other accused persons were not mentioned is not a ground for disbelieving the case of the prosecution. The original First Information Statement was given by PW1 immediately after he was taken to the hospital when he escaped from the attack from the accused persons. It is thereafter, while the attack was in progress, PW3 was taken

away from the flat to a nearby flat and committed the remaining act of gang rape and this was revealed at the time when PW3 was questioned by the investigating officer. So, non mentioning of the serious offences like Section 376 of Indian Penal Code and incorporating other accused persons in the original First Information Report under the circumstances of the case cannot be said to be fatal. Further, there is nothing to disbelieve the evidence of PW3 on this aspect. There is no explanation forthcoming from the side of the accused for any enmity for them to falsely implicate them in a case like this as well. Further, since the incident occurred during night from the terrace of the house and also from a place where there was none to be expected to be present, namely, a flat under-construction, one cannot expect any independent witness to prove such incidents as well. So, under the circumstances, courts below have properly appreciated the evidence of PWs 1 to 3 and rightly come to the conclusion that the accused persons have committed the offence punishable under Sections 143, 147, 148, 452, 323, 324 and 376 read with Section 149 of Indian Penal Code and rightly convicted them including the present revision petitioners for the said offence and the concurrent findings of

the court below do not call for any interference.

11. As regards the sentence is concerned and also considering the manner in which the offence was committed and the gruesome act of the accused persons in ravishing PW3 and attacking CW1 who were helpless at that time with dangerous weapons, this court feels that the sentence imposed also cannot be said to be harsh or excessive which requires interference at the hands of this court. This court feels that the sentence imposed is also just and proper under the circumstances of the case. So, the revision lacks merits and the same is liable to be dismissed.

In the result, the revision fails and the same is dismissed.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge