

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1419 of 2004 (B)

AGAINST THE JUDGMENT IN CRA 172/2003 of SESSIONS COURT,KOTTAYAM
DATED 15-03-2004
AGAINST THE JUDGMENT IN CC 13/2001 of J.M.F.C.-II, KANJIRAPPALLY
DATED 17-03-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

THOMAS P.JACOB @ JOSEKUTTY,
AGED 33 S/O. JOHN, PUTHENPURACKAL VEEDU
ALURUMPU BHAGOM, ELIKULAM P.O., PONKUNNAM.

BY ADV. SRI.P.A.MOHAMMED SHAH

RESPONDENT(S)/COMPLAINANT:

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

BY ADV. SRI. GITHESH.R., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1419 of 2004

Dated this the 2nd day of June, 2015

ORDER

This Criminal Revision Petition arises out of the judgment in Criminal Appeal No.172/2003 of the Sessions Court, Kottayam, for offence punishable u/s.451 and 354 of IPC. The above Criminal Appeal was preferred against the conviction and sentence in C.C.No.13/2001 of Judicial First Class Magistrate Court-II, Kanjirappilly for the above offences, in which he was convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of ₹1000/- u/s. 451 IPC, in default of payment of fine, simple imprisonment for one month, he was also sentenced to simple imprisonment for six months and to pay a fine of

₹1000/- u/s.354 IPC, in default of payment of fine, simple imprisonment for one month.

2. The facts necessary for the indictment were that on 3.12.2000 at 5.30 p.m., the revision petitioner trespassed into the bathroom of PW1, with intention to outrage her modesty. He bit on her left cheek and pressed on her neck, thereafter, he embraced her and pressed on her breast. She cried loudly and the revision petitioner ran away. On the basis of information, Asst. Sub Inspector of Police, Ponkunnam registered crime No.223/2000 against the revision petitioner and after investigation, laid charge before Court.

3. Both oral and documentary evidence were considered by the trial Court to prove the offence. Oral testimony consists of the evidence of PWs 1 to 7 and admitted documentary evidence of Exts.P1 to P5. The

incriminating circumstances brought out in evidence were denied by the revision petitioner, while questioning him u/s.313 Cr.P.C. He did not adduce any defence evidence. The trial Court, after analysing the evidence, convicted him . Against that, he approached the Sessions Court.

4. The learned counsel appearing for the revision petitioner contended that the evidence of PW1 is not believable, in cross examination, she deposed about an earlier attempt made by the revision petitioner, which was not reported to the Police or her husband. Moreover, it is stated that some other men also had trespassed into her house during nights even in the presence of her husband, at that time, she assaulted those men, but this incident was denied by PW3 in his evidence. Therefore, non-reporting of the aforesaid incident to the Police and the assault against the revision petitioner creates a doubt in

the genuineness of the allegation. Therefore, the learned counsel seeks remand of the case for reconsideration by the trial Court.

5. For the purpose of satisfying the correctness, legality or propriety of the finding and sentence or order of the courts below, I have considered the records of the courts below as to whether they have committed illegality or irregularity while disposing the above case. For satisfying the correctness and legality of the findings of the courts below, I have perused the oral evidence of PW1, who is the occurrence witness. Her evidence shows that on 3.12.2000 at 5.30 p.m., while she was taking her bath in the bathroom, the revision petitioner trespassed into the bathroom and bit on her left cheek and pressed her neck. He again embraced her and pressed on her breast. When she cried loudly, he left the place. She sustained injury on

the left cheek, she was admitted in the Government Hospital, Kanjirappilly and took treatment. The witness was cross examined by the defence counsel, at that time she admitted that she has some mental difficulty while thinking about her children. It is pertinent to note that the revision petitioner was her husband's friend, his earlier attempt to assault PW1 was not reported to the Police. She is the single witness available to give evidence in support of the alleged incident. In such a situation, the court has to carefully verify her testimony. If it is satisfied that the evidence is reliable and free from any taint, it is the duty of the Court to act upon such testimony. There are exceptions to certain situation in cases of sexual offence. When there is no doubt with regard to the oral testimony of the victim, it becomes the duty to convict, if it is satisfied that the evidence of

single witness is reliable. The matter, thus depends upon circumstances of each case and the quality of the evidence of single witness.

6. PW2 supported the evidence of PW1 and deposed that on 3.12.2000 at 5.30 p.m., he heard the cry of PW1. Hearing the cry, he went to the adjacent property at that time, appellant was found going to the courtyard near the bathroom. He heard PW2 abusing the appellant from the bathroom. PW2 is maintaining good relationship with appellant and PW1. PW2 is the neighbour of PW1, who deposed that he heard a cry of PW1 and thereafter, he saw the revision petitioner fleeing near the bathroom. The oral testimony of PW2 is corroborating and supporting the evidence of PW1.

7. The medical evidence is supporting the evidence of PW1. PW4, the doctor, who examined PW1 noticed one

injury in the wound certificate. He deposed that he examined PW1 and issued Ext.P2 wound certificate. In Ext.P2, PW4 noticed contusion on the left side of the face of PW1 and teeth marks and there were also abrasion on the left side of neck. She had also complained of pain on the right side of the chest. PW4 opined that the injury in Ext.P4 might have caused within 24 hours. The defence counsel asked a specific question to PW4 whether it is possible with a hollow brick. PW4 answered that there is only a remote chance to suffer such an injury if one comes into contact with a hollow brick. Analysing the evidence in Ext.P2, I am of the opinion that the medical evidence is supporting the story stated by PW1.

8. The case was registered by the Assistant Sub Inspector of Police, Ponkunnam. Ext.P4 is the FIR and he completed the investigation and laid charge against the

revision petitioner. He arrived at the place of occurrence and prepared Ext.P3 scene mahazar. PW5 attested Ext.P3 scene mahazar. The revision petitioner was arrested by PW6. From a close perusal of oral evidence of PW1, I do not find any reason to discard the oral evidence of the victim.

9. The Courts below scrutinized the oral and documentary evidence. Therefore, I do not find any illegality in the proceedings of the courts below. When there is no illegality or irregularity, the scope of revisional jurisdiction is very limited. I am not justified, If I interfere with the concurrent findings of the trial Court. Therefore, the conviction of the revision petitioner u/s.451 and 354 IPC is only to be confirmed. But, I modify the sentence, thereby the revision petitioner is sentenced to imprisonment for a period of 15 days and to pay a fine

of ₹2,000/- u/s.451 IPC and sentence of imprisonment for 15 days and fine of ₹1000/- u/s.354 is confirmed. Realisation of fine amount of ₹1500/-, which will be paid to PW1 as compensation, is also upheld. The sentence shall run concurrently.

Crl.R.P. is partly allowed.

P.D. RAJAN, JUDGE.

acd

