

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.Rev.Pet.No. 1930 of 2013 ()

AGAINST THE JUDGMENT IN CRA 648/2012 of ADDL.SESIONS COURT (ADHOC)-II,
KOZHIKODE DATED 14-08-2013

AGAINST THE JUDGMENT IN CC 116/2010 of JUDICIAL FIRST CLASS
MAGISTRATE-I, THAMARASSERY DATED 12-10-2012

REVN.PETITIONER/APPELLANT/ACCUSED:

K.M. BABY AGED 35 YEARS
S/O. MANI, KUNNAKKAL P.O., MUVATTUPUZHA
ERNAKULAM.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT/RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682 031. (CRIME NO.65/2010 OF
THAMARASSERY POLICE STATION
KOZHIKODE DISTRICT).

BY PUBLIC PROSECUTOR:SMT.M.G.LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.R.P.No.1930 of 2013
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Dated this the 14th day of December, 2015

ORDER

This revision is directed against the concurrent findings of the learned magistrate in C.C.No.116 of 2010 of the Judicial First Class Magistrate Court-I, Thamarassery as well as that of the Additional Sessions Judge, Fast Track (Adhoc-II), Kozhikode in Crl.Appeal.No.648 of 2012 for offence punishable under Section 354 of the Indian Penal Code.

2. The crux of the prosecution allegation is that on 24.01.2010 at about 9 p.m., PW1 who was a women police constable of Thamarassery Police Station completed her duty, changed her dress and stepped out of the Police Station. She saw two persons coming from the opposite direction. When they reached her, one of the accused allegedly caught hold of her breasts. She immediately overpowered the person, brought him to the Police Station and lodged the FIS. Crime was registered and final report was laid. The accused faced trial before the Sessions Court for offences punishable under Sections 353, 354 and 341 of the IPC. Learned magistrate, on an evaluation of the evidence

found him guilty of offence punishable under Section 353 of the IPC and imposed a sentence of rigorous imprisonment for one year and for offence punishable under Section 354, rigorous imprisonment for two years along with a fine of Rs.10,000/-. This was carried in appeal before the learned Sessions Judge, who on a re-appreciation of the entire evidence concurred with the findings of the court below in relation to offence punishable under Section 354 of IPC alone. It imposed a substantive sentence of simple imprisonment for six months and a fine of Rs.10,000/- with a further direction that in case of default of the fine, he shall undergo simple imprisonment for a further period of three months. The accused was acquitted of the remaining offences. It was further directed that if the fine amount was remitted, it shall be paid by way of compensation under Section 357(1) of Cr.P.C. Contending that, both the courts have materially gone wrong in the evaluation of the evidence and have arrived at wrong conclusion, this revision is preferred.

3. Heard both sides and examined the records.

4. Learned counsel vehemently contended that the defence set up by the accused right from the beginning was that

while he was proceeding along the road, another person was also proceeding in the same direction, who misbehaved towards PW1. Believing that he did the act, he was caught. He claimed to be innocent and this defence was pursued throughout the proceeding. Learned counsel contended that there were some materials before the court below to support this contention. The Court did not consider that and arrived at a thoroughly unsustainable conclusion, goes the contention of the learned counsel. Learned counsel took me through the FIS wherein the details of the incident were narrated and that one was caught and brought to the station. Thereafter, the de facto complainant stated that he can again be identified. According to the counsel, it indicated that the person who has already apprehended was not the person who committed the crime. It was further contended that the version of PW1 show that two persons were proceeding along the road and one among them was arrested. The possibility of a wrong identification of the person could not be ruled out. Learned counsel drew this conclusion on a further basis that PW7 the Investigating Officer had referred to the testimony of CW3 who had given a statement to the police that PW1 had fallen on the footpath. According to the

counsel, if that version is believed, the entire edifice on which the prosecution case was built up that the person who committed the act was caught red handed should crumble down. Evidently, there could not have been an immediate identification of the culprit and the possibility of a wrong identification could not be ruled out. According to the counsel, both the Courts failed to notice this aspect and arrived at a conclusion that the accused has committed the offence punishable under Section 354 of IPC.

5. It is pertinent to note that in the FIS itself PW1 had stated that one among the two person had committed the act. She had specifically stated that though, she was shocked due to the assault, she immediately regained her spirit and apprehend that person. In the course of her examination in Court, she had clearly and categorically stated the details leading to the incident and clearly stated that she had apprehended the person who committed the act. She further had stated that the moment he touched her body, she caught hold of that man. She reiterated that she had apprehended that person who alone committed the act affecting her modesty. A perusal of the version of PW1 shows that she has clearly and categorically referred to the person who was

apprehended as the person who committed the act.

6. Having regard to these facts, I am convinced that both the Courts have arrived at a correct conclusion regarding the offence committed under Section 354 of IPC, on a proper evaluation of evidence. No interference is called for in this finding, in revision.

7. Learned counsel vehemently pleaded that the accused was in detention for five days and a further detention may be avoided. It was further pleaded that he is a man of 35 years, had been at Thamarassery in connection with his job and that, even the available materials did not indicate that it was a premeditated act. Learned counsel vehemently pleaded for avoiding a jail sentence.

8. It is pertinent to note that the act committed by the accused cannot be lightly seen. It was an assault on the womanhood as a whole, irrespective of the fact that whether she employed in police or not. Definitely, it may be that the act was done on spur of a moment. But it cannot be said that it was unintentional, though not premeditated. Having regard to the entire facts and having regard to the fact that the incident happened five years back and the accused was carrying trauma, a

substantive sentence of 15 days simple imprisonment will serve the interest of justice, while maintaining a fine of Rs.10,000/-. In default of it, he shall undergo simple imprisonment for one month.

In the result, the revision is allowed in part. While maintaining the fine under Section 354 of IPC, sentence imposed by the court below is modified to that of 15 days simple imprisonment and a fine of Rs.10,000/- (Rupees ten thousand only) and in default of the fine, he shall undergo simple imprisonment for one more month. The fine, if deposited, shall be paid as compensation to PW1 under Section 357(1) of Cr.P.C. Set off is permitted in accordance with law. The accused shall surrender before trial court to undergo the remaining part of sentence.

Sd/-

SUNIL THOMAS
Judge

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P.A to Judge