IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 3RD DAY OF JULY 2025 / 12TH ASHADHA, 1947

CRL.REV.PET NO. 832 OF 2018

AGAINST THE JUDGMENT IN Crl.A NO.489 OF 2011 OF ADDITIONAL SESSIONS COURT, IRINJALAKUDA ARISING OUT OF THE JUDGMENT IN SC NO.607 OF 2008 OF ASSISTANT SESSIONS COURT, IRINJALAKUDA

REVISION PETITIONER/APPELLANT/ACCUSED:

CHANDRAN,
AGED 42 YEARS, S/O CHERUNGORAN, CHAZHOOR HOUSE,
CHANDAPPADY, VALAPPAD, CHAVAKKAD, THRISSUR.

BY ADV SRI.MANSOOR.B.H.

RESPONDENT/COMPLAINANT AND STATE:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031, REPRESENTING STATION HOUSE
OFFICER, VALAPPAD POLICE STATION, THRISSUR DISTRICT.

BY SRI.SANAL P RAJ PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING ON 19.6.2025, THE COURT ON 03.07.2025 DELIVERED THE FOLLOWING:

CR

M.B.SNEHALATHA, J.

Crl.R.P.No.832 of 2018

Dated this the 3rd July, 2025

O R D E R

This revision petition has been filed by the revision petitioner challenging the concurrent finding of conviction and sentence against him for the offence punishable under Section 354 of Indian Penal Code (for short 'IPC') by the trial court and the appellate court.

2. Accused faced indictment for the offence punishable under Section 354 IPC on the allegation that on 25.9.2006 at around 11 am, when the victim girl aged 14, who is a neighbour of the accused, had gone to the house of the accused to watch TV programme, he dragged her to his bedroom and committed rape on her and thereby committed the offence punishable under Section 376 IPC.

3. The law was set in motion by PW1, the father of the victim girl by laying Ext.P1 First Information Statement, pursuant to which Ext.P1(a) FIR was registered. After the investigation, final

report was laid against the accused for the offence punishable under Section 376 IPC.

4. To bring home the guilt of the accused, prosecution examined PW1 to PW14 and marked Exts.P1 to P10. MO1 to MO3 are the material objects. No defence evidence was adduced by the accused.

5. On an appreciation of the evidence, both oral and documentary and other materials on record, though the trial court found the accused not guilty of the offence under Section 376 IPC and he was acquitted of the said charge, he was found guilty of the offence punishable under Section 354 IPC and was convicted and sentenced to undergo simple imprisonment for one year. Though challenging the conviction and sentence, accused filed Crl.A No.489/2011 before the Additional Sessions Court, Irinjalakkuda, the learned Sessions Judge dismissed the appeal by confirming the conviction and sentence for the offence under Section 354 IPC.

6. Heard the learned counsel for the appellant/revision petitioner and the learned Public Prosecutor.

7. In this revision, the revision petitioner/accused assails the conviction and sentence against him for the offence under Section 354 IPC on the ground that there are material discrepancies

in the testimony of prosecutrix and her parents regarding the incident and therefore their evidence is not reliable; that there was no charge against him for the offence under Section 354 IPC and therefore, the conviction and sentence against him for the offence under Section 354 IPC is unsustainable in law. It was contended that since the trial court found him not guilty of the offence under Section 376 IPC and acquitted him of the said charge, he cannot be convicted for the offence under Section 354 IPC based on the very same evidence. The learned counsel for the revision petitioner/ accused contended that Section 354 IPC is not a minor offence of Section 376 IPC and therefore, the conviction and sentence against the revision petitioner for the offence under Section 354 IPC is illegal and liable to be set aside.

8. Per contra, the learned Public Prosecutor submitted that the evidence on record and the materials placed by the prosecution clearly established the ingredients of the offence under Section 354 IPC and therefore by invoking the provisions under Section 222 Cr.P.C, the court was competent to convict and sentence the accused for the offence under Section 354 IPC; that there is no illegality or error in convicting the accused for the offence under Section 354 IPC and therefore, the judgment of conviction and

order of sentence warrants no interference at all.

9. In view of the rival submissions, let us consider whether the conviction and order of sentence against the accused for the offence under Section 354 IPC warrants any interference by this Court.

10. PW2 is the prosecutrix. PW1 and PW3 are her parents. PW4 and PW5 are the sister and sister-in-law of PW1. PW7 is the doctor who examined the prosecutrix on 30.9.2006 and issued Ext.P3 wound certificate. PW8 is the doctor who examined the accused and issued Ext.P4 certificate. PW9 is the principal of GVHSS, Valappad who issued Ext.P5 certificate from the said school showing the date of birth of the prosecutrix as per school admission register. PW6 and PW10 are witnesses to Ext.P2 scene mahazar. PW11 is the Village Officer who prepared Ext.P6 site plan. PW13 and PW14 are witnesses to Ext.P8 seizure mahazar prepared for seizing MO1 to MO3 clothes of the prosecutrix. PW12 is the investigating officer who completed the investigation and laid charge sheet against the accused.

11. The prosecutrix who was examined as PW2 has testified that during the period of incident, she was studying in 8th standard; that on the date of incident, that is, on 25.9.2006, she did not go

to the school. On that day, at about 10 am, she had gone to the neighbouring house of the accused to watch TV programme. When she reached there, accused was present there. His wife was absent in the house. On seeing the prosecutrix, the accused proceeded to the eastern room of his house and called her to the said room. When she did not respond, accused dragged her to his room and forced her to lie down on the floor and thereafter committed rape on her. Her further version is that when her mother called her, she ran out from the house of the accused. She has further testified that soon after the incident, though her mother asked her what happened to her, she did not disclose the incident to her mother since the accused had made a threat that if she disclose the incident to anyone, he would kill her. According to PW2 subsequently she revealed the incident to her parents and aunt Geetha; that her father laid Ext.P1 First information statement to the police. She has also testified that the police had taken her to the hospital for medical examination. She identified MOs 1 to 3 as the clothes worn by her at the time of the incident.

12. PW1 is the father of the prosecutrix. He testified that on 25.9.2006, when his daughter had gone to the house of the accused for watching TV programme, accused committed rape on her.

According to him, he informed the matter to his sisters and on enquiry made by his sisters, the victim told them about the incident. Ext.P1 is the First Information Statement given by him to the police on 30.9.2006.

13. PW3 is the mother of the prosecutrix. She testified that at the time of incident, her daughter, namely the prosecutrix was studying in 8th standard; that on 25.9.2006 at about 11 am, when she returned home after work and called her daughter, the prosecutrix was found coming out from the house of the accused; upon noting the unbuttoned blouse worn by her daughter, when she made enquiry with her daughter the latter told her about the incident. PW3 informed the incident to her husband, namely, the father of the prosecutrix who in turn informed the matter to his sisters and thereafter PW1 laid Ext.P1 complaint before the police. PW3 has further testified that after the incident, PW2 discontinued her studies due to shame and humiliation.

14. PW5, the paternal aunt of the prosecutrix, has testified that the prosecutrix told her that the accused committed rape on her on 25.9.2006.

15. PW7 doctor was the Assistant Surgeon of Government Hospital, Valappad. He examined the prosecutrix on 30.9.2006 and

issued Ext.P3 certificate. In Ext.P3 certificate it has been noted by the doctor that the hymen was found torn. No other physical injuries were noted in Ext.P3 and during cross examination the doctor has testified that there were no marks of violence on the private parts of the victim.

16. The trial court found the accused not guilty of the offence under Section 376 IPC as the evidence adduced by the prosecution was insufficient to sustain the conviction under Section 376 IPC. The findings of the trial court and the appellate court that the accused is not guilty of the offence under Section 376 IPC has become final. Therefore, the question is whether the trial court and the appellate court were right in its finding that accused is guilty of the offence under Section 354 IPC.

17. As per the prosecution case, the prosecutrix was a minor at the time of incident. Ext.P5 certificate issued from the school wherein she was studying during the relevant time coupled with the evidence of PW9 would show that the date of birth of the prosecutrix is 12.3.1992. Thus, as on the alleged date of occurrence, she was aged 14. The prosecutrix has categorically stated that on the date of incident she had gone to the house of the accused to watch TV; that at that time accused was present in

the said house; his wife was not present there. The specific version of the prosecutrix is that upon seeing her, the accused called her to the eastern room of his house and when she did not respond, he dragged her to the said room and forced her to lie down on the floor and undressed her and thereafter committed sexual assault. The version of PW3, the mother of the prosecutrix that when she returned home and called her daughter, the prosecutrix was seen coming out from the house of the accused with unbuttoned blouse is a strong circumstances which corroborates the version of the prosecutrix. Though the accused would contend that he was falsely implicated, there is nothing on record to show that neither the prosecutrix nor her parents had any enmity or animosity against the accused to implicate him in a serious crime of this nature. The defence could not make any semblance of enmity between the accused and PWs 1 to 3. The trial court was right in believing the consistent version of the prosecutrix that the accused forcibly dragged her to his bedroom and made her to lie down on the floor and undressed her. There is no reason to disbelieve the version of minor prosecutrix that the accused dragged her to his bedroom and made her to lie down on the floor and undressed her.

18. The learned counsel for the revision petitioner/accused

contended that there was a delay of five days in lodging the complaint before the police and the said delay is crucial.

19. It is true that though the alleged incident was on 25.9.2006, Ext.P1 First Information Statement was laid by the father of the prosecutrix only on 30.9.2006. Thus, there was a delay of five days. The question is whether the said delay is crucial, which undermines the prosecution case.

20. It is true that prompt lodging of FIR inspires confidence that it was not an outcome of any consultation or deliberation. But the delay in lodging the FIR in a case of sexual assault cannot be equated with the case involving other offence. When a sexual offence is committed against a girl or woman, the prosecutrix and her family often remain deeply concerned about their honour and social reputation. As a result, before approaching the police station, they may hesitate or take time to decide whether to lodge a complaint weighing the consequences and stigma associated with such disclosure. Delay in lodging the FIR in sexual offences against girls and woman has to be considered with a different yardstick.

21. In *State of Himachal Pradesh vs. Prem Singh [(2009) 1 SCC 420]* the Hon'ble Apex Court held that the delay in a case of sexual assault, cannot be equated with the case involving other

offences. It was observed by the Hon'ble Apex Court that there are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint and in a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

22. In *Karnel Singh vs. State of M.P[(1995) 5 SCC 518]* the Hon'ble Supreme Court observed that Indian women are slow and hesitant in making a complaint regarding sexual events and mere delay will not indicate the complaint false and the reluctance to go to the police is because of society's attitude towards such women. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.

23. In *State of Punjab vs. Gurmit Singh and Ors [(1996) 2 SCC 384*] the Hon'ble Apex Court while rejecting the plea of delay in lodging the FIR held that in sexual offences delay in lodging the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. Therefore, the mere delay of five

days in lodging the Ext.P1 FIS is not a ground to doubt the veracity of the version of the prosecutrix. Thus, though the evidence adduced by the prosecution was insufficient to sustain conviction for the offence under Section 376 IPC, prosecution could establish that the accused outraged the modesty of the prosecutrix and committed the offence under Section 354 IPC.

24. Section 354 of IPC reads as under: (Prior to the amendemnt in 2013)

> "**354. Assault or criminal force to woman with intent to outrage her modesty.—**Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

25. In *Tarkeshwar Sahu v. State of Bihar* [*(2006) 8 SCC 560]* the Apex Court observed that so far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the women or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. (para 28)

26. The moot point for consideration is whether a person charged under Section 376 of IPC can be convicted for a lesser offence under Section 354 IPC in the absence of a specific charge for the latter.

27. The learned counsel for the revision petitioner vehemently contended that as there was no charge for the offence under Section 354 IPC, the trial court and the appellate court went wrong in convicting the accused for the offence under Section 354 IPC. The learned counsel for the revision petitoiner contended that Section 354 IPC is not a minor offence of Section 376 IPC and therefore, the conviction of the accused for the offence under Section 354 IPC is unsustainable in law. In support of the said contention, the learned counsel placed reliance on a decision of the High Court of Gauhati in *Pulin Bihari Roy v. State of Tripura* reported in *(MANU/GH/0648/2012)*.

28. The learned Public Prosecutor on the other hand, contended that by invoking Section 222 Cr.P.C the Court can convict and sentence the accused for the minor offence proved, though the accused is not charged for the minor offence.

29. Section 222 of Cr.P.C reads as under:-

> **"222. When offence proved included in offence charged.**
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> (1)When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.
> (2)When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.
> (3)When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.
> (4)Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied. '

30. In *Tarkeshwar Sahu v. State of Bihar* [*(2006) 8 SCC 560]* the Hon'ble Supreme Court held that where the accused is charged with a major offence and the said charge is not proved, accused can be convicted of the minor offence. It was a case wherein the appeal was filed challenging the conviction and sentence for the offence under Section 511 of 376 IPC. The Apex Court held that the offence proved against the accused falls within the four corners of 366 and 354 IPC and accordingly by invoking Section 222 Cr.P.C the accused therein can be convicted for the offence under Section 366 and 354 IPC, though he was found not guilty under Section 511 of 376 IPC.

31. In *Shamnsaheb M. Multtani Vs. State of Karnataka*

[2001(2) SCC 577], the Apex Court held as follows:

> "15. Sections 221 and 222 of the Code are the two provisions dealing with the power of a criminal court to convict the accused of an offence which is not included in the charge. The primary condition for application of section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the section permits "to convict the accused" of the offence of which he is shown to have committed though he was not charged with it." But in the nature of the acts alleged by the prosecution in this case there was absolutely no scope for any doubt regarding the offence under Section 302 IPC, at least at the time of framing the charge.
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> 16. Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars". The Section permits the court to convict the accused "of the minor offence, though he was not charged with it." Sub-section (2) deals with a similar, but slightly different, situation. "When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it."

32. In *Pandhari Nath v. State of Maharastra (AIR 2010 SC 1453)* the Apex Court following its earlier decision in *State of Maharashtra vs. Rajendra Jawanmal Gandhi [(1997) 8 SCC 386*] and *Tarkeshwar Sahu's* case *(cited supra)* held that under Section 222 of Cr.P.C. when a person is charged with a major offence and if the ingredients of the major offence are not proved, accused can be convicted for the minor offence, if the ingredients of minor offence stands proved.

33. The judgment in *Pulin Bihari*'s case (cited supra) relied

on by the learned counsel for the revision petitioner is of little assistance to the revision petitioner since on the facts of that case, prosecution failed to prove the ingredients of assault or criminal force to establish the charge under Section 354 IPC and it was a case wherein the court found that the statement of the witnesses coupled with the discrepancies was doubtful.

34. In the case in hand, the prosecution has succeeded in establishing all the ingredients of the offence under Section 354 IPC against the accused. The offence committed by the accused squarely covers all the ingredients of Section 354 IPC. Therefore, the trial court and the appellate court were right in convicting the accused for the offence under Section 354 IPC and this Court finds no reason to interfere with the said concurrent finding of conviction.

35. The next aspect for consideration is whether the sentence awarded to the accused needs any interference.

36. Reckoning the nature and gravity of the offence committed, the sentence of simple imprisonment for one year imposed by the trial court and confirmed in appeal is not harsh and excessinve rather it is just and reasonable. Therefore, the sentence awarded to the accused needs no interference. This Court finds no reason at all to interfere with the impugned judgment of conviction

and sentence.

The Criminal Revision Petition is devoid of any merit and accordingly dismissed.

The trial court shall take steps to execute the sentence.

Registry shall transmit the records to the trial court forthwith along with a copy of this judgment.

Sd/-

M.B.SNEHALATHA

JUDGE

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