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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 29TH DAY OF JANUARY 2025 / 9TH MAGHA, 1946

CRL.REV.PET NO. 1196 OF 2024

CRIME NO. 756/2011 OF ARANMULA POLICE STATION, PATHANAMTHITTA

CRL.A NO.11 OF 2023 OF ADDITIONAL SESSIONS COURT - II,

PATHANAMTHITTA

CC NO.371 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS -

I, PATHANAMTHITTA

REVISION PETITIONERS/APPELLANTS/ACCUSED 1 & 2:

1 BIJU ABRAHAM,
AGED 55 YEARS
S/O.ABRAHAM JOHN, KULANJIKOMBIL HOUSE, NEAR
VAZHETHOPPILPADI, NARANGANAM MURI, NARANGANAM VILLAGE,
PATHANAMTHITTA DISTRICT, PIN - 689642

2 VARGHESE GEORGE,
AGED 55 YEARS
S/O.GEORGE KUTTY, KANNAMKARA HOUSE, VATTAKAVU, NARANGANAM
MURI, NARANGANAM VILLAGE, PATHANAMTHITTA DISTRICT, PIN -
689642

BY ADVS.
K.N.RADHAKRISHNAN(THIRUVALLA)
ANJU SUSAN REJI

RESPONDENTS/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
BY SR.PUBLIC PROSECUTOR SRI.RENJITH GEORGE

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
16.1.2025, THE COURT ON 29.01.2025, PASSED THE FOLLOWING:



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“C.R”
ORDER

Dated this the 29th day of January, 2025

Accused Nos.1 and 2 who were found guilty for the offence punishable under Section 354 r/w Section 34 of the Indian Penal Code (for short, ‘the IPC’ hereinafter) in C.C.No.371/2011 on the files of the Judicial First Class Magistrate Court-I, Pathanamthitta, being aggrieved by the said conviction and sentence, had approached the Additional Sessions Court, Pathanamthitta by filing Crl.A.No.11/2023 and by judgment dated 31.8.2024, the learned Additional Sessions Judge confirmed the conviction and sentence. Challenging the concurrent verdicts, this revision has been filed.

2. Heard the learned counsel for the revision petitioners and the learned Public Prosecutor appearing for the respondent.
3. I shall refer the parties in this revision as ‘prosecution’ and



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‘accused’ for easy reference, hereafter.

4. The prosecution case is that, in furtherance of common intention shared by the accused to outrage the modesty of the de facto complainant, at about 8.00 p.m. on 18.9.2011 while the de facto complainant was travelling in an Autorickshaw along with accused Nos.1 and 2 through Nellikala-Vattakavu public road, the 1st accused pressed on the left breast of the de facto complainant and the 2nd accused caught on her belly and thereby, outraged her modesty. Thus, offence under Section 354 r/w Section 34 of the IPC was alleged by the prosecution against the accused. Initially, crime was registered alleging commission of the said offence and on completion of investigation final report also filed accordingly.

5. The trial court took cognizance of the matter and proceeded with trial. During trial, PWs 1 to 7 were examined and Exts.P1 to P7 were marked on the side of the prosecution. Thereafter, the accused were questioned under Section 313 of the Code of



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Criminal Procedure, highlighting the incriminating circumstances against them found in evidence and they denied the same. Although opportunity was provided to the accused to adduce defence evidence, no evidence adduced.

6. The trial court addressed the question as to whether the prosecution succeeded in proving commission of offence under Section 354 r/w Section 34 of the IPC by the accused and the trial court relied on the evidence of PW1 supported by PW4, her mother in a case where PW2-the Autorickshaw driver, PW3-the neighbour and PW6-the husband of the de facto complainant, were turned hostile to the prosecution. Relying on the evidence of PW1 and PW4, the trial court found that the prosecution succeeded in proving commission of offence under Section 354 r/w Section 34 of the IPC, by the accused. Accordingly, the accused were convicted for the said offence and in consideration of the fact that the occurrence was on 18.9.2011, which is before amendment of Section 354 of the IPC which enhanced



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punishment as “shall not be less than one year”, and in consideration of the fact that the unamended provision provided punishment upto two years or with fine or with both, the accused were sentenced to undergo for rigorous imprisonment for 6 months for the offence punishable under Section 354 r/w Section 34 of the IPC. Although the verdict of the trial court was challenged before the appellate court, as per judgment in Crl.A.No.11/2023 dated 31.8.2024, the learned Additional Sessions Judge also concurred the finding of the trial court.

7. The learned counsel for the accused would submit that there are contradictions in the evidence of PW1 and PW4 and the same were not considered by the trial court as well as the appellate court. According to the learned counsel, PW1 gave evidence in excess of what she had stated before the police in the First Information Statement. Further, PW4 is not an occurrence witness. She had only hearsay knowledge. It is pointed out that PW2-the Autorickshaw



driver and PW3-the neighbour turned hostile to the prosecution. According to the learned counsel for the accused, when there are material contradictions in the evidence of the witnesses by disclosing new facts, the evidence is not reliable. In this connection, he has placed decision of the Apex Court in **Vijay Kumar v. State of Rajasthan** reported in **[2014 (1) KLD 560 (SC)]** and submitted that, if the evidence of PW1 is taken together, it could only be held that the prosecution case rests on concocted story and therefore, the trial court as well as the appellate court went wrong in convicting and sentencing the accused. Therefore, the same would require interference.

8. The learned Public Prosecutor fully supported the evidence and pointed out paragraph Nos.22 and 23 of the appellate judgment, where the appellate court considered the challenge raised as regards to contradictions and embellishments in the evidence of PW1 and submitted that, in fact, no material contradictions or additions to



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disbelieve the prosecution case, as rightly found by the trial court and the appellate court. Therefore, the conviction is only to be justified. The learned Public Prosecutor opposed reduction in sentence as canvassed by the learned counsel for the accused on the ground of leniency, on the submission that the sentence imposed by the trial court is only reasonable in parity with the gravity of the offence.

9. The power of this Court while exercising revision is not wide enough to re-appreciate the evidence as that of an appellate court and take a contra view, and the power is limited to address illegality and perversity.

10. In the instant case, PW1 is the victim. Even though PWs 2, 3 and 6 were cited by the prosecution, to support version of PW1, they did not support the prosecution case. Therefore, the trial court as well as the appellate court placed reliance on the evidence of PW1, who is the victim supported by the evidence of PW4, who is none other than the mother of PW1. As per the evidence of PW1, the



incident occurred inside an Autorickshaw. PW1 deposed that she and her kid entered inside the Autorickshaw by name 'Ammukutty' enroute and accused Nos.1 and 2 also entered in the Autorickshaw enroute. While travelling along with accused Nos.1 and 2, the 1st accused pressed on her left breast and the 2nd accused caught on her belly and thereby outraged her modesty. While PW1 was screaming, her mother, PW4 called her over phone and then PW1 pressed the call button instead of attending her call so as to make her mother to hear her hue and cry. Later, she reached Nellikala by bus, as instructed by the mother. PW4, who heard the hue and cry of PW1 through telephone also deposed in support of the evidence given by PW1, and stated that she heard the hue and cry of PW1 and immediately she rushed to Nellikala and directed PW1 to return to Nellikala. Thereafter, PW1 narrated all the events to PW4. PW1 identified accused Nos.1 and 2.

11. The argument advanced by the learned counsel for the



accused before the trial court was that there was no independent evidence available to find commission of the above offence by the accused in view of the fact that PWs 2, 3 and 6 turned hostile to the prosecution. Further some anomaly in the form of omissions also pointed out to disbelieve the evidence of PW1 and PW4.

12. The law is well settled that absence of independent witness by itself would not give clean chit to an accused if the testimony of an injured witness itself is wholly reliable. Law does not insist for plurality of witnesses and the legal mandate is to address on reliable evidence. That is why the said contention was negatived by the trial court after believing the evidence of PW1 supported by the evidence of PW4, her mother, and thus, the trial court entered into the conviction and sentence.

13. Going by the appellate judgment, as pointed by the prosecution, the contradictions in the form of omissions were addressed by the trial court in paragraph Nos.21, 22 and 23, which are as under:



"21. A plain reading of the above provision makes it clear that such contradiction can be used only to impeach the credit of the witness.

22. Admittedly in the case on hand no contradiction was brought out. However, there are certain omissions. Section 162 of Cr.P.C is the provision which deals with omissions. Explanation to Section 162 of the Cr.P.C states thus: "An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amount to a contradiction in the particular context shall be a question of fact." Having regard to the explanation to Section 162 of the Cr.P.C, as far as the omissions pointed out by the learned counsel are concerned, it can be said that such omissions are not relevant to fall under the category of contradiction. Even otherwise, such contradictions or omissions can be taken consideration only if they were brought subject to the procedure contemplated under section 145 of the Indian Evidence Act. It is obvious that such



procedure was not complied with.

*23. Even if there were any variations in the evidence with the statements that can be treated as natural as the witnesses were examined before the Court after five years from the date of the incident. The Hon'ble Apex Court in *Balu Sudam Khalde v. State of Maharashtra* (AIR 2023 SC 1736) explained the parameters for appreciating the ocular evidence. It said that minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attacking importance to technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. By and large a witness cannot be expected to possess a photographic memory as to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore, cannot be expected to be attuned*



to absorb the details. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of the other."

14. In this case, no marked contradiction brought out during cross examination of PW1 and PW4. However, contradictions in the form of omissions are the plank on which the accused raised a contention that the evidence of PW1 and PW4 could not be relied on. It is the well settled law that mere immaterial omissions by itself would not give any aid to the accused unless the contradictions in the form of omissions are so material, which would make the evidence of the witnesses wholly unreliable. In the instant case, PW1, a poor lady, along with her kid, happened to travel in an Autorickshaw along with accused Nos.1 and 2 enroute. While travelling so, the 1st accused pressed on her left breast and the 2nd accused caught on her belly and thereby, her modesty was outraged. This consistent version of PW1



was not shaken during cross examination and no material omission in this aspect brought into.

15. Section 354 of IPC provides that, 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.

16. Reading the provision, in order to attract an offence under Section 354 of IPC, assault or use of criminal force to any woman, (1) intending to outrage or (2) knowing it to be likely that he will thereby outrage her modesty, is to be made out, *prima facie*.

17. As I have already discussed, the most essential ingredient to attract an offence under Section 354 of IPC is assault or use of criminal force to any woman with intent to outrage or knowing it to be likely that he will thereby outrage her modesty.

18. Indubitably Indian Society places great emphasis on modesty of women and any act that seems as an insult to modesty is a



matter of serious concern. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended within the ambit of assault or use of criminal force. In recent years, the issue of the safety and security of women has come to the forefront in India, with large number of cases of sexual offences against women being reported. The legislature has taken steps to strengthen laws against sexual offences, with stricter deterrents for rape and sexual assault. However, sexual offences against women continue to be a major problem in India and efforts are still needed to ensure that laws are effectively implemented. It is important for individuals to be aware of their rights and for the society to take a zero-tolerance approach towards sexual offences to arrest the menace of sexual assault and molestation.

19. The act of outraging a female's modesty is increasing exponentially thereby taking a toll on the lives of women leading to mental and physical agony. The word 'modesty' has to be judged as a



quality or state of being modest, which is characterised by humility, restraint, simplicity, and good taste. The act of outraging the modesty of a woman, refers to the virtue that attaches to a female owing to her gender and is an attribute associated with females in general. It is a sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. To put it differently, modesty to a woman has evolved as altogether a different concept which has very little to do with the physique of the woman. The modesty of a woman is intimately connected with femininity including her sex. Modesty is not only limited to physical modesty but it also includes moral and psychological modesty. The moral modesty of a woman is said to be the sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. The psychological modesty of a woman is said to be her innate sense of self-respect and dignity. Thus the modesty of a woman is sublime and any sort of intrusion or



intercession is to be dealt with resolutely and soberly.

20. Considering the arguments tendered by the learned counsel for the revision petitioners within the sphere of limited power of revision, it could be gathered that the trial court as well as the appellate court rightly entered into conviction on finding that the evidence of PW1 supported by PW4, fully established the prosecution case that the accused persons outraged the modesty of PW1 by assault and use of criminal force. The said finding only to be justified.

21. Coming to the sentence, the learned counsel for the revision petitioners prayed for interference in the sentence. But the same is opposed by the learned Public Prosecutor. It is true that this occurrence is of the year 2011, prior to amendment of Section 354 of IPC w.e.f 03.02.2013, enhancing the punishment which shall not be less than one year. Prior to that, the punishment provided for the offence under Section 354 IPC was imprisonment of either description for a term which may extend to 2 years or with fine or



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with both. In the instant case, the trial court imposed rigorous imprisonment for 6 months and the same was found to be reasonable by the appellate court. However, in the interest of justice, I am inclined to modify the sentence. Accordingly, the accused/revision petitioners are sentenced to undergo rigorous imprisonment for a period of 5 months for the offence punishable under Section 354 r/w 34 of IPC.

22. In the result, this Revision Petition stands allowed in part, confirming the conviction and modifying the sentence as under:

23. The revision petitioners/accused shall undergo rigorous imprisonment for five months for the offence punishable under Section 354 r/w 34 of IPC.

24. The interim stay in executing the sentence stands vacated with direction to the revision petitioners to surrender before the trial court within two weeks from today to undergo the sentence. On



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failure to do so, the trial court is directed to execute the sentence hereby modified without fail.

Registry shall forward a copy of this order to the jurisdictional court for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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