



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 14TH DAY OF JANUARY 2025 / 24TH POUSHA, 1946

CRL.A NO. 125 OF 2014

CRIME NO.68/2008 OF VELLAMUNDA POLICE STATION, WAYANAD

AGAINST THE JUDGMENT DATED 31.08.2013 IN SC NO.6 OF
2013 ON THE FILE OF THE SPECIAL COURT OF TRIAL OF OFFENCE

UNDER THE SC/ST (PREVENTION OF ATROCITIES) ACT,

MANANTHAVADY.

APPELLANT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF
POLICE, WAYANADU.

BY ADV PUBLIC PROSECUTOR

RESPONDENT/ACCUSED:

SREEKANTH,
S/O. MANI, MALAYAPPILLIL HOUSE, KOROME,
THONDERNADU AMSOM, MANANTHAVADY TALUK,
WAYANAD DISTRICT-670 645.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08.01.2025, THE COURT ON 14.01.2025 DELIVERED THE FOLLOWING:



C.S.SUDHA, J.

Criminal Appeal No.125 of 2014

Dated this the 14th day of January 2025

J U D G M E N T

In this appeal filed under Section 378(1) Cr.P.C. the appellant/State, the respondent in S.C.No.6/2013 on the file of the Special Court of the Trial of Offences under the SC/ST (Prevention of Atrocities) Act, Mananthavady, challenges the acquittal of the accused under Section 235(1) Cr.P.C. of the offences punishable under Sections 452, 511 of 376, 376, 506 Part-II IPC and Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the SC/ST Act).

2. The prosecution case as per the final report/charge sheet is that on 13/04/2008 at 12:00 noon the accused trespassed into the bathroom of the house bearing no.IX/18, Thondarnadu panchayath and tried to rape PW1, a girl belonging to the scheduled tribe community. When PW1 resisted the attempt, the accused threatened to do away with her. The accused on



28/03/2008 at 03:00 p.m. enticed PW1, taken her to a quarry near her house, raped her and threatened her with dire consequences if she revealed the incident to others. Hence, as per the final report the accused is alleged to have committed the offences punishable under Sections 452, 511 of 376, 376, 506 Part -II IPC and Sections 3(1)(xii) and 3(2)(v) of the SC/ST Act.

3. Crime no.68/2008 was registered by PW17, the then Sub Inspector, Vellamunda police station, that is, Ext.P1(a) FIR on the basis of Ext.P1 FIS of PW1 which was recorded on 13/04/2008 at 17:00 hours. The case was investigated by PW20, the then DYSP, Special Mobile Squad, Mananthavady, who completed the investigation and submitted the final report/charge sheet against the accused alleging the commission of the offences punishable under the above mentioned Sections.

4. On 28/11/2012 the trial Court framed a charge for the offences punishable under Sections 452, 511 of 376, 376, 506 Part II IPC and Section 3(1)(xii) of the Act which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution PW1 to PW20 were



examined and Exts.P1 to P14 and M.O.1 to M.O.4 were got marked in support of the case. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence.

6. As the trial court did not find it a fit case to acquit the accused under Section 232 Cr.P.C., he was asked to enter on his defence and adduce evidence in support thereof. DW1 was examined on behalf of the accused. No documentary evidence was adduced by the accused.

7. On a consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found the accused not guilty of the offences punishable under the aforementioned Sections and hence acquitted him under Section 235(1) Cr.P.C. of all the offences charged against him. Aggrieved, the State has come up in appeal.

8. The only point that arises for consideration in this appeal is whether the finding of acquittal of the accused by the trial



court requires any interference by this Court.

9. Heard both sides.

10. I make a brief reference to the evidence on record relied on by the prosecution in support of the case. PW1, the victim, a member of the Paniya Community, a scheduled tribe, was 18 years at the time of the incident. PW1 when examined deposed that the accused had raped her inside the bathroom attached to her sister's residence. When she tried to cry out for help, the accused threatened her with dire consequences. According to her, the accused had torn away her clothes and had raped her. In the cross-examination she admitted that when the accused tried to rape her inside the bathroom, she had cried out for help and then hearing her cries, PW2, Binu had come. She also deposed that the accused had blindfolded her before raping her. She did not have any explanation when it was brought to her notice that she had not stated so in her FIS. She also deposed that on the date of the incident, her sister's children had gone to the school and that there was nobody at home. However, she admitted that there are houses situated nearby within hearing distance. She also deposed that the accused on the date of



the incident had arrived at her place on a motor bike and at that time, the other children in the colony had seen him. According to her, they were inside the bathroom for about two hours. When she cried out for help PW2 Binu as well as PW4 Gopi came and seeing them the accused ran away. In the cross-examination she was asked whether she and the accused lay on the bathroom floor embracing each other for about half an hour to which she answered in the affirmative. (½ മണിക്കൂർ നേരം നിങ്ങൾ കെട്ടിപിടിച്ചു കിടന്നിരുന്നോ? കിടന്നു). After the examination of PW1 was completed, an application under Section 311 for recalling PW1 was moved by the prosecution which was allowed and PW1 was examined further. On the said day she deposed that before the accused raped her inside the bathroom, he had raped her twice at a quarry situated near her residence. The accused had enticed her by promising her to give sweets and money and then taken her to the quarry and raped her. On the said day also she had cried out for help. According to her the accused had raped her twice at the quarry. In the cross-examination she deposed that the incident of rape inside the bathroom and the incidents of rape in the quarry also



took place on the same day. After the accused raped her inside the bathroom, she was taken to the quarry by the accused and raped. She further deposed that in addition to PW2 Binu one Meenakshi had also rushed to the scene hearing her cries. After the first incident of rape, the accused returned by about 12:00 noon and after an hour returned on his motor bike, parked his vehicle in front of her house and then took her to the quarry and raped her. The nearby residents and children were watching when she was taken to the quarry. Going by her version, on the date of the incident, the accused had raped her thrice.

10.1. PW2 Binu and PW4 Gopi who are alleged to have rushed to the scene on hearing the cries of PW1 when examined, turned hostile and deposed that they had neither seen the incident nor stated to the police that they had seen the incident.

10.2. PW3 Ammini a neighbour of PW1 also turned hostile and deposed against the prosecution case.

10.3. PW5 stepmother of PW1 deposed that she is aware of the incident ; on the said day she was working at home when she heard a cry from PW1's sister's house ; when she reached



near the bathroom of the said house she saw PW1 standing by the side of the bathroom and crying ; she found the clothes of PW1 wet ; she saw the accused running away and when she inquired the matter to PW1, the latter told her that the accused had entered into the bathroom and frightened her. When PW5 was asked whether PW1 had told her about any act(s) of the accused, she replied in the negative. At the request of the learned Public Prosecutor, PW5 was declared hostile and questions as put in cross-examination were permitted to be put. On further examination by the Public Prosecutor, PW5 further deposed that PW1 had informed her that the accused had raped her at the quarry as well as inside the bathroom. In the cross-examination PW5 deposed that it was on the day previous to Vishu that the accused had first raped PW1. Thereafter, PW1 was taken twice to the quarry and raped.

10.4. PW6 sister of PW1, deposed that on the date of the incident, she had gone to collect fodder for her cattle at which time the accused came to her house and raped PW1 inside the bathroom. In the cross-examination PW6 deposed that she has three children and that all three children were at home when she left for



collecting fodder. PW6 also deposed that her eldest daughter was 16 years old at the time of the incident.

10.5. PW7 examined deposed that he has only hearsay knowledge about the incident.

10.6. PW8 the maternal uncle of PW1 deposed that he was absent when the incident took place. He accompanied PW1 to the police station for giving the complaint. He is also an attestor to Ext.P2 scene mahazar.

10.7. PW16 Assistant Surgeon, District Hospital, Mananthavady deposed that on 13/04/2008 at 09:00 p.m. she examined PW1 and issued Ext.P10 certificate. On examination she found that the vagina admitted two fingers and the hymen torn. The alleged history has been recorded thus- On 13/04/2008 a person named Sreekanth had raped her. He threatened to kill her if she disclosed the same to anyone. (13/04/08 തീയതി ശ്രീകാൻ്റ് എന്നയാൾ എന്നെ ബലാത്സംഗം ചെയ്തു. പുറത്തു പറഞ്ഞാൽ കൊല്ലുമെന്നു ഭീഷണിപ്പെടുത്തി). In the cross-examination PW16 deposed that on examination she did not notice any signs of rape or violence. According to her, the hymen can be torn due to various



reasons and if vagina admits two fingers then the sexual intercourse would not have been for the first time. She also deposed that only in rare cases, the vagina would admit two fingers in absence of sexual intercourse.

11. The question is whether the aforesaid evidence is sufficient to prove the charge against the accused. As per the final report/charge sheet, on 13/04/2008 there was only an attempt to commit rape. But going by the version of PW1, she was raped by the accused on the said day also. In fact her case is that she was raped thrice on the said day, first time inside the bathroom of her sister's house and thereafter twice at a quarry situated near her house. The version of PW1 is inconsistent with the version given in the final report as well as in the court charge. PW2 and PW4 who are alleged to have rushed to the scene on hearing her cries, do not support the prosecution case. Therefore, there is only the testimony of PW1 in support of the case of rape. It is true that the testimony of the prosecutrix alone would be sufficient to find the accused guilty of the offence of rape, provided her testimony is creditworthy and is of sterling quality. Unfortunately in this case, the testimony of PW1



is full of inconsistencies. In such circumstances, it would be unsafe to convict the accused relying solely on the testimony of PW1. In such circumstances, I find that the accused is entitled to the benefit of doubt. Therefore, I find no infirmity in the findings of the trial court acquitting the accused under Section 235(1) Cr.P.C. of the offences alleged against him.

In the result, the appeal *sans* merit is dismissed.

Sd/-
C.S.SUDHA
JUDGE

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