



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 13<sup>TH</sup> DAY OF AUGUST 2024 / 22ND SRAVANA, 1946

CRL.A NO. 886 OF 2017

CRIME NO.1611/2012 OF Mannuthy Police Station, Thrissur  
AGAINST THE JUDGMENT DATED 18.08.2017 IN SC NO.665 OF  
2013 OF I ADDL. SESSIONS COURT, THRISSUR ARISING OUT OF THE  
JUDGMENT DATED IN CP NO.22 OF 2013 OF JUDICIAL MAGISTRATE OF  
FIRST CLASS -III, THRISSUR

APPELLANT/ACCUSED:

RATHEESH @ AKKU  
AGED 27 YEARS, S/O.KARTHIKEAYAN, KOKKAMTHARA  
VEETIL, THRIKKUR VILLAGE, MAKKATTIPADAM DESOM.  
BY ADV SRI.P.K.VARGHESE

RESPONDENT/STATE:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM(CIRCLE INSPECTOR OF POLICE, OLLUR) .  
BY BINDU O.V-PUBLIC PROSECUTOR  
BY ADV SMT.AMBIKA DEVI S, SPL.GP ATROCITIES  
AGAINST WOMEN & CHILDREN & WELFARE OF W & C

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON  
10.7.2024, THE COURT ON 13.08.2024 DELIVERED THE FOLLOWING:

**CR****P.B.SURESH KUMAR & M.B.SNEHALATHA, JJ.**

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**Crl.Appeal No.886 of 2017**  
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**Dated this the 13<sup>th</sup> August, 2024****JUDGMENT****M.B.Snehalatha, J**

This appeal has been preferred by the accused in S.C.No.665 of 2013 on the file of the Court of Session, Thrissur against the judgment of conviction and order of sentence, whereby he was convicted and sentenced for the offences punishable under Sections 450, 376 and 392 of the Indian Penal Code [hereinafter referred to as 'IPC'].

2. Prosecution case in brief is as follows:- Accused who was in acquaintance with the minor prosecutrix through 'Facebook' criminally trespassed into the residence of the prosecutrix on 21.03.2012 during night and committed rape on her. Thereafter, during the period from 21.03.2012 to 21.09.2012, he sexually abused her on several occasions. He also



robbed 12¼ sovereigns of gold ornaments kept in the almirah of the said house and one ATM Card and thereafter by misusing the said ATM Card, he withdrew an amount of ₹7,300/- from the account of the mother of the prosecutrix.

3. On 21.09.2012 when the prosecutrix revealed the incident to her mother namely PW2, she laid Ext.P1 First Information Statement before the Police. During the investigation, the accused was arrested; the recovery of gold ornaments was effected and after completing the investigation, charge sheet was laid before the jurisdictional Magistrate. Upon committal, the learned Sessions Judge framed charge against the accused. Accused pleaded not guilty to the charges and claimed to be tried.

4. To bring home the guilt of the accused, prosecution examined PWs 1 to 20, marked Exts.P1 to P42. MOs 1 to 13 are the material objects. After closing the prosecution evidence, accused was examined under Section 313(1)(b) of the Code of Criminal Procedure [hereinafter referred to as 'Cr.P.C']. Accused maintained that he is innocent and he was falsely implicated. He took up a defense that the prosecutrix was in a romantic



relationship with him and when their relationship came to the knowledge of the school authorities, wherein the girl was studying, she was expelled from the school. It is his further case that the parents of the prosecutrix who did not approve her relationship with the accused, foisted this false case against him.

5. As the trial court found that it was not a fit case for acquittal under Section 232 Cr.P.C, accused was called upon to enter on his evidence and to adduce any evidence, which he might have in support thereof. On the side of the accused, DWs 1 & 2 were examined. Exts.D1 to D3 viz. portions of Section 161 Cr.P.C statements were also marked.

6. On an appreciation of the evidence, the learned Sessions Judge found the accused guilty of the offences punishable under Sections 450, 376 and 392 IPC and he was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹5,000/- for the offence under Section 376 IPC with default sentence of rigorous imprisonment for one year. For the offences under Sections 450 and 392 IPC he was sentenced to undergo rigorous imprisonment for 5 years each and to pay a fine



of ₹5,000/- each with default sentence for one year each.

7. Heard the learned counsel for the accused and the learned Public Prosecutor.

8. The learned counsel appearing for the accused after taking us through the evidence tendered in the case vehemently contended that the versions of the prosecutrix and her parents regarding the incident are highly unbelievable; that there is considerable delay in lodging the First Information Statement; that the versions of prosecutrix and her parents are inconsistent and therefore no reliance can be placed upon their versions as it is not free from blemish and therefore conviction and sentence passed against the accused is liable to be set aside. It was further contended that the alleged recovery of gold ornaments as per the alleged disclosure statements of the accused is doubtful and the accused has not given any such disclosure statements. The learned counsel for the accused further contended that the sentence awarded by the trial court is harsh and excessive and not proportionate to the offences committed.

9. Per contra, the learned Public Prosecutor vehemently



contended that there are sufficient materials to hold that accused committed the offences levelled against him; that the conviction and sentence against the accused do not need any interference.

10. The point for consideration in this appeal is whether the conviction entered and the sentence passed against the accused by the trial court is sustainable or not.

11. At first let us have a quick reference to the prosecution witnesses.

PW1 is the prosecutrix. PW2 is her mother and PW3 is her father. PW4 to PW6, PW8, PW9, PW13 and PW14 were examined by the prosecution to prove that accused had either sold or pledged the gold ornaments which he robbed from the house of the prosecutrix to the said witnesses and to prove the recovery of the said gold ornaments/ingots from the said witnesses. PW7 is the doctor, who issued Ext.P10 certificate in respect of the accused to the effect that there was nothing to suggest that the accused is incapable of performing sexual acts. PW10 is the doctor, who examined the prosecutrix on 22.9.2012 and issued Ext.P13 certificate. PW11 is the Superintendent of



Zonal Office, Thrissur Corporation, who issued Ext.P14(a) ownership certificate in respect of the residence of the prosecutrix. PW12 namely the Manager of SBT, Ollukara Branch was examined to prove that MO1 ATM card was issued in the account of PW2 and to prove the withdrawal of an amount of ₹7,300/- from the said account on 22.8.2012. PW15 is the Village Officer, Ollukkara who prepared Ext.P19 scene plan. PW19 is the Sub Inspector of Police, Munnuthy Police Station who recorded Ext.P1 FI statement of PW2 and registered Ext.P28 FIR. PW18 is the Circle Inspector of Police who conducted the investigation; arrested the accused; seized MO1 ATM Card from the accused; effected recovery of gold ornaments and gold ingots pursuant to the disclosure statements of the accused. PW17 and PW20 are the police officers who took part in the investigation of the crime conducted by PW18.

12. Now let us analyse the evidence adduced in the case.

PW1 is the prosecutrix in this case. Her version is that, while she was studying in 9<sup>th</sup> standard, she acquainted with the



accused through 'Facebook' she having received a friend request. According to her, she was under a mistaken impression that the accused is a senior student of her school. Thereafter, accused used to follow her. Subsequently, when she realized that he is not a student of her school, she ignored him. Then the accused told her that he is in love with her. Her further version is that, since she was not interested in him, she ignored him. Thereafter, accused used to make phone calls and when she failed to attend the phone calls, he called her on the land phone in her house. Subsequently, on 21.3.2012, at about 10 pm. accused called her over phone. Immediately thereafter, she heard the sound of somebody knocking at the door of the room occupied by her in the upstairs of her house. When she opened the door, accused entered inside the hall and dragged her to the bedroom, disrobed her by show of a knife and thereafter forcibly made her to lie on the bed and committed rape on her. Her further version is that when she cried due to pain, accused gagged her mouth. She has further testified that, accused threatened her not to disclose the incident to anyone and if she discloses the incident, he would kill





her brother and mother. Her further version is that, after committing rape, accused threatened her and demanded her to open the almirah and to handover the gold kept in it and out of fear when she opened the almirah, the accused took the gold ornaments namely three gold chains, three bracelets, four pairs of earrings, three finger rings kept therein and carried away the said gold ornaments.

13. PW1 has further testified that, one week thereafter accused again came to her house and asked her to open the door with a threat that unless she opened the door, he would make public the earlier incident. He also threatened to do away with her mother and brother. On that day also, accused had forcible sex with her. Her further version is that, accused had taken her nude photos. According to the prosecutrix, thereafter, she had gone abroad to join her father who was working abroad and when she came back in June 2012, accused again came to the house during the night and had forcible sex with her. Subsequent to that also, on two occasions, accused came to her house and committed rape on her. Her further



version is that on the last occasion on which he committed rape on her, he also took away the ATM Card of her mother by threatening her. According to her, as insisted by the accused, she shared the PIN number of the ATM Card. According to PW1, subsequently, when her mother namely PW2 came home from Calicut, her mother searched for the ATM card and when her mother noticed the missing of gold ornaments and ATM Card kept in the almirah, her mother questioned her and then she revealed the entire incidents to her mother. Immediately, her mother went to the police station and laid the complaint. Thereafter, the police recorded her statement and she was taken to a Gynecologist for medical examination.

14. She has identified MO1 ATM card and also MO2 Gold chain, MO3 Locket, MO4 ring as few of the gold ornaments carried away by the accused from the almirah. Her further version is that subsequent to the incident, she was mentally depressed for 3-4 years and she lost her childhood. She has also testified that accused sexually abused her against her will.

15. The prosecutrix has also testified that during the



period of incident, her father was working abroad; that her mother who was employed at Calicut used to come home at Thrissur only on alternate days and the prosecutrix was residing in the house with her grandparents and her younger brother.

16. Though PW1 was cross examined at length, nothing could be brought out to discredit her version regarding the sexual assault made by the accused against her during the period from March, 2012 to September, 2012. The suggestion put to her during her cross examination that she was in a romantic relationship with the accused was denied by her.

17. PW2 who is the mother of the prosecutrix has testified that on a day in September 2012, when she came home from Calicut, her ATM Card kept in the house was found missing and inspite of search, it could not be traced out. The gold kept in the almirah was also found missing. Accordingly, she enquired with her daughter about the same and upon repeatedly asking, the prosecutrix told her about the sexual assault which she had met at the hands of the accused and also told her that the accused robbed the gold ornaments kept in the almirah and also



took away the ATM Card. PW2 immediately went to the police station and laid Ext P1 FI statement on 21.9.2012.

18. Further version of PW2 is that during the period of the incident, her husband was working abroad; that she was employed at Calicut and she used to come to her house at Thrissur only on alternate days. According to her, on 22.8.2012 at 8.33 am an amount of ₹6,000/- was withdrawn from her account and on the same day at 8.53 am an amount of ₹1,300/- was withdrawn and when she received messages from the bank in respect of the said withdrawals, she had tried to contact the bank, but since the bank employees were on strike on that day, she could not contact them. Her further version is that she was also under a mistaken impression that it may be a belated message sent from the bank for withdrawal of an amount of ₹6,000/- done by her on 14.8.2012. Subsequently, when she doubted the transactions, she made a request to the bank to block the PIN. She has identified MOs 2 to 4 gold ornaments as the gold items lost from her house. She has also testified that due to the sexual abuse which her daughter had to face, her



daughter was mentally distraught and distressed and her entire family ran into rough weather.

19. PW3 is the father of the victim girl. According to him, he came to know about the sexual assault on his daughter on 21.9.2012 when his wife namely PW2 told him.

20. The prosecutrix has categorically spoken regarding the sexual harassment which she had to meet at the hands of the accused. It has come out in evidence that the prosecutrix was studying in 9<sup>th</sup> standard during the period of incident. Prosecutrix and her parents have stated that the date of birth of the prosecutrix is 16.10.1998. To prove the age of the prosecutrix prosecution has produced Ext.P6 which is the birth certificate of the prosecutrix issued by the Registrar of Births and Deaths, Thrissur. The date of birth of the prosecutrix as per Ext.P6 is 16.10.1998. Ext.P5 is the passport of PW1. In Ext.P5 also the date of birth shown is 16.10.1998. Thus, it stands established that the date of birth of the prosecutrix is 16.10.1998. Thus, as on 21.3.2012, i.e, the date of first incident of rape, she was only 13 years old.



21. PW10 doctor has testified that the prosecutrix was examined on 22.9.2012 and Ext.P13 is the certificate issued by her. PW10 doctor has further testified that at the time of examination, hymen was torn and there was evidence of past vaginal penetration and evidence of sexual intercourse. PW7 doctor who examined the accused and issued Ext.P10 certificate has testified that on examination of the accused, there was nothing suggestive of the incapability of the accused for performing sexual act.

22. PW18 who was the investigating officer has testified that on 24.9.2012, he arrested the accused and at the time of arrest, MO1 ATM Card found in the shirt pocket of the accused was seized. On the same day, as per Ext.P31(a) disclosure statement of the accused MO2 gold chain was recovered by PW18 from the residence of the accused. Ext.P31 is the seizure mahazar. Subsequently as per Ext.P9(a) disclosure statement of the accused, he was taken to the 'Janatha Trading Corporation' run by PW5 at which he had pledged MO3 locket and effected seizure of the same as per Ext.P9 seizure mahazar.



PW5 who was the owner and PW6 who was an employee of the said institution has testified that on 17.9.2012, accused pledged MO3 locket in the said institution. Further version of PW18 is that as per Ext.P25(a) disclosure statement of the accused, MO4 gold ring was recovered from PW8 Gangadharan and Ext.P25 is the seizure mahazar prepared for the same. PW8 Gangadharan has testified that accused had approached him for sale of MO4 gold ring and accordingly, he purchased it for an amount of ₹22,000/- which was subsequently seized by the police. Further version of PW18 is that as per Ext.P24(a) disclosure statement of the accused he was taken to the shop named 'Point Investment' run by PW4 and MO8 gold ingot was recovered from there. Ext.P24 is the seizure mahazar prepared for the same. PW4 who was the owner of the shop named 'Point Investment' has testified that accused had sold one gold bracelet weighing two sovereigns for an amount of ₹40,000/- to him and subsequently when the police brought the accused to his shop, he had produced the gold ingot to the police. PW18 has further testified that pursuant to Ext.32(a) disclosure statement of the accused, MO9 gold ingot



was seized from the institution named 'New Keerthi Finance' run by PW9 Raphel as per Ext.P32 seizure mahazar. PW9 Raphel has testified that the accused had pledged a gold chain and bracelet in his institution and subsequently accused sold the said gold ornaments to him and PW9 melted the same and MO9 is the said gold ingot. PW18 has also testified that as per Ext.P17(a) disclosure statement MO10 gold ingot weighing 15.830 gms. was seized from PW13. PW13 has testified that accused Ratheesh had sold three pairs of gold earrings and subsequently, as per the direction of the police he produced its ingot namely MO10 gold ingot before the police. PW18 has further testified that as per Ext.P18(a) disclosure statement given by the accused, MO11 series gold ingots (3 in No.) were recovered from the institution named 'Sun Micro Gold Testing' run by PW14 Pramod, as per Ext.P18 seizure mahazar. PW14 has testified that accused had sold three earrings and one bracelet to him for an amount of ₹40,000/-; that he had melted it and subsequently on 2.10.2012, when the police along with the accused came to his institution, he had produced the MO11 series gold ingots to the police.





23. PWs 1 to 3 have identified MO2 gold chain, MO3 locket and MO3 gold ring as the three items of gold ornaments belonging to them. MO8 to 11 series are the six gold ingots recovered by PW18 pursuant to the disclosure statement of the accused. PW4, PW9, PW13 and PW14 have testified that accused had sold gold ornaments to them and MOs8 to 11 series are the gold ingots of the said ornaments.

24. The learned counsel for the accused pointed out that in Ext.P11(a) extract of the ledger maintained by 'Keerthi Finance' would show that the pledging of gold by accused Ratheesh in the said institution was on 20.3.2012 whereas the prosecution case is that the accused robbed the gold ornaments on 21.3.2012.

25. A perusal of Ext.P11(a) would reveal that the transaction entered therein against the name Ratheesh is dated 20.3.2012. Therefore, there is merit in the contention raised by the learned counsel for the accused that the recovery of MO9 gold ingot as per Ext.P32(a) disclosure statements cannot be relied on. Likewise, the recovery of MO10 gold ingot from PW13 based on



the alleged Ext.P17(a) disclosure statement of the accused is also not in accordance with law and therefore cannot be relied on. Barring the recovery of MO9 and MO10 gold ingots, the recovery of MOs2 to 4 gold ornaments and MO8 and MO11 series gold ingots pursuant to the disclosure statement of the accused are admissible in evidence under Section 27 of the Evidence Act and the prosecution has succeeded in establishing that the recovery of the said gold ornaments and gold ingots were effected pursuant to the disclosure statements made by the accused and therefore admissible in evidence.

26. The prosecution has succeeded in establishing that the gold ornaments were taken away by the accused from the house of the prosecutrix after threatening her. It is to be borne in mind that accused has no case that the said gold ornaments belong to him. He has also no case that the gold ornaments were given to him by the prosecutrix or any of her family members. No such case was canvassed by him. So it is for him to explain the circumstances under which the gold ornaments belonging to PWs 1 to 3 reached at his hands. The seizure of gold



ornaments of PWs 1 to 3 as per the disclosure statements of the accused fortifies the version of the prosecutrix that on 21.3.2012 after committing rape on her, accused carried away the gold ornaments after extorting her.

27. PW18, the investigating officer has testified that at the time of arrest of the accused, MO1 ATM Card belonging to PW2 was seized from the shirt pocket of the accused. Ext.P15 extract of the statement of account produced by the prosecution coupled with the version of PW12 namely the Manager of SBT, Ollukkara Branch would show that on 22.8.2012 an amount of ₹7,300/- was withdrawn from the account of PW2 by using MO1 ATM Card. Accused has no explanation at all as to how MO1 ATM Card of PW2 came to his hands. Thus, the prosecution case that the accused took away MO1 ATM Card from the house of the prosecutrix and withdrew cash from the account of PW2 stands proved.

28. In an umpteen number of decisions, the Hon'ble Apex Court has held that once it is found that the version of the prosecutrix is reliable and trustworthy, there can be a conviction



of the offence under Section 376 IPC relying upon the sole testimony of the prosecutrix.

29. Apart from the evidence of the prosecutrix which is without blemish, there is also evidence of her parents who were examined as PWs 2 and 3 as well as the evidence of PW10 doctor which provides necessary corroboration regarding the incident of rape spoken to by the prosecutrix. The testimony of the prosecutrix is clear, categorical and convincing. Her specific version is that accused was carrying a knife and she was disrobed at knife point. There is no inconsistency or infirmity in the evidence of the prosecution which renders her deposition unbelievable. The evidence of prosecutrix is free from blemish and she has without any ambiguity narrated the incident.

30. In *State of U.P v. Chhoteylal (AIR 2011 SC 697)* the Apex Court observed as under:

“The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian



society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge."

31. The learned counsel for the accused further contended that in view of the non production of the mobile phone of the prosecutrix and the non production of the call details records (CDR) an adverse inference has to be drawn that if the mobile phone and call details are produced, it would reveal that there was romantic relationship between the accused and the prosecutrix.

32. DW1 who was the Sub Inspector of Police in charge of Cyber Cell, Thrissur who was examined on the side of the accused testified that there was no request from the investigating officer to produce the CDR. DW2, namely, the



Nodal Officer of 'Airtel' testified that CDR for the period from 1.1.2012 to 24.9.2013 sought to be produced was unavailable since the CDR will be kept only for a period of one year.

33. It is to be borne in mind that even if there was romantic relationship between the accused and the prosecutrix who was a minor aged 13, and even if there were frequent phone calls and chats between them and even if she had invited him to her house, it does not legalise the crime committed by the accused against the minor prosecutrix. Therefore, the non production of the mobile phone and call details records do not affect the credibility of the prosecution case in any way.

34. The learned counsel for the accused vehemently contended that there was a delay of six months in lodging the FIR which makes the prosecution case doubtful and the said delay is unexplained. The learned counsel for the accused contended that if the accused committed rape on the prosecutrix as alleged by the prosecution, naturally she would reveal the incident at the earliest either to her mother or to her grandparents and the fact that she failed to disclose the same to her mother and



grandparents would necessarily lead to an inference that no such incident has occurred as spoken to by the prosecutrix.

35. It is true that prosecutrix failed to reveal the incident to her mother or to her grandparents either after the first incident or on the subsequent dates until she finally revealed the incident to her mother on 21.9.2012. Prosecutrix who was examined as PW1 has testified that accused had made a threat that if she disclose the incident to anybody, he would make the incident public. Further, she has testified that accused had taken her nude photos and had made a threat that if she discloses the incident to anybody, he would publish her nude photos and had also threatened to kill her mother and brother. There is no reason to disbelieve the version of prosecutrix that accused blackmailed her by threatening her that if she disclose the incident to anybody he would publish her nude photos and would make the incident public. It is to be borne in mind that prosecutrix was a teenager aged 13 at the time of incident and thus she was a vulnerable victim. Therefore the version of the prosecutrix that it was out of fear, she did not disclose the



incident to her mother and grandparents, is quite believable and there is no reason to disbelieve the said version.

36. In the normal course of human conduct, a teenage girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy.

37. If a victim of rape is threatened by the offender that if she discloses the incident, he would publish her nude photos and would make the incident public etc. would really put the girl in a traumatic situation and in such circumstances, there is nothing unusual in victim concealing the incident even to her parents.

38. On a careful analysis of the testimony of the prosecutrix, one can see that she is a reliable and truthful witness. Her testimony do not suffer from any infirmity or blemish and we have no hesitation in acting upon her testimony





alone without looking for any corroboration. It is a settled principle that if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars and if for some reason, the courts find it difficult to place implicit reliance on her testimony, it may look for the evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. However, in this case there is ample corroboration available on record which lends support and further credence to the testimony of the prosecutrix.

39. In *State of Punjab v. Gurmit Singh and others* (MANU/SC/0366/1996) : AIR 1996 SC 1393, the Supreme Court held:

“The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts



should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."



40. The contention put forward by the accused that the parents of the girl foisted a false case against the accused since the accused refused to withdraw from the love affair, is devoid of any merit. No parents would come forward with a case of rape just to make a humiliating situation against the honour of the family. Why should a girl of 13 and her family lay false complaint against a person alleging rape without any rhyme or reason and invite dishonour and shame to the family? In the normal course of human conduct, no parents would come forward with a false case that their unmarried daughter was raped.

41. Prosecution has succeeded in establishing that on 21.3.2012 accused committed house trespass into the residence of the minor prosecutrix aged 13 and committed rape on her and thereafter during the period from 21.3.2012 to 21.9.2012 he sexually abused her on several occasions. Prosecution has also succeeded in proving that the accused robbed the gold ornaments from the house of the prosecutrix after extorting her. It also stands proved that he also took away



the ATM Card of the mother of the prosecutrix and by misusing the same, he stealthily withdrew an amount of ₹7,000/- from the account of PW2. Therefore, we find no reason to interfere with the conviction of the accused for the offences under Sections 450, 376, 392 IPC and accordingly the conviction rendered by the trial court stands confirmed.

42. The remaining aspect for consideration is with regard to the sentence passed against the accused.

43. The learned counsel for the accused submitted that the sentence for imprisonment for life awarded by the trial court for the offence punishable under Section 376 IPC is harsh and excessive and not proportionate to the crime committed. The learned counsel pointed out that prior to the amendment in the year 2013, the minimum sentence prescribed for the offence under Section 376(1) IPC was rigorous imprisonment for either description for a period of seven years and fine. Therefore, the learned counsel for the accused urged this Court to show some leniency in the matter of punishment for the offence under Section 376 IPC.



44. The learned Public Prosecutor on the other hand submitted that the accused who committed a heinous crime like rape do not deserve any sympathy.

45. It is a well settled principle that in criminal cases, awarding of sentence is not a mere formality and an element of discretion is certainly vested in the court in taking a decision on sentence. The sentence to be awarded will have to be considered in the background of the facts of each case and the court while doing so should bear in mind the principle of proportionality. The sentence awarded should be neither excessively hard nor ridiculously low.

46. Prior to the amendment of Indian Penal Code in the year 2013, the minimum sentence prescribed for the offence under Section 376 IPC was imprisonment of either description for a period of seven years and fine. Bearing in mind the said fact and also having regard to the facts and attending circumstances of this case, we are of the view that while confirming the conviction against the accused for the offences punishable under Sections 450, 376 and 392 IPC and confirming the sentence



awarded by the learned trial court for the offences under Sections 450 and 392 IPC, ends of justice would be met by awarding rigorous imprisonment of ten years and imposing a fine of ₹50,000/- (Rupees fifty thousand) for the offence punishable under Section 376 IPC instead of imprisonment for life.

47. In view of the findings rendered above, appeal is allowed in part modifying the sentence alone as follows:

a) The conviction rendered by the trial court in S.C.No.665/2013 of Sessions Court, Thrissur for the offences under Sections 450, 376 and 392 IPC stands confirmed.

b) The sentence against the accused passed by the trial court for the offences under Sections 450 and 392 IPC stands confirmed.

c) The sentence passed by the trial court for the offence under Section 376 IPC to undergo imprisonment for life and to pay a fine of ₹5,000/- is modified to rigorous imprisonment for ten years and to pay a fine of ₹50,000/- (Rupees fifty thousand only). In default of payment of fine, to undergo rigorous imprisonment for six months.



d) Substantive sentences shall run concurrently.

e) Accused is entitled to set off as provided under Section 428 Cr.P.C.

Sd/-  
**P.B.SURESH KUMAR**  
**JUDGE**

Sd/-  
**M.B.SNEHALATHA**  
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