

**Anilkumar Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jan-31-2014

**Judge :** Honourable Mr.Justice N.K.Balakrishnan

**Appellant :** Anilkumar

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN FRIDAY, THE 31<sup>ST</sup> DAY OF JANUARY 2014 11<sup>TH</sup> MAGHA, 1935 CRL.A.No. 1094 of 2006 ( ) ----- SC4972004 of ADDITIONAL DISTRICT COURT (FAST TRACK COURT-I), TRIVANDRUM ----- APPELLANT(S)/ACCUSED :- ----- ANILKUMAR, S/O.GANGADHARAN PILLAI, ARYAN BHAVAN, KURIYODE MURI, CHADAYAMANGALAM VILLAGE. BY ADVS.SRI.NAGARAJ NARAYANAN SRI.SAIJO HASSAN SRI.RAJAN VELLOTH SRI.SABU SREEDHARAN RESPONDENT(S)/COMPLAINANT :- ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM. BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: jvt N.K. BALAKRISHNAN, J.

## **JUDGMENT**

This appeal is directed against the conviction and sentence passed against the accused for offences punishable under sections 363 and 354 of IPC. He was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- for the offence under section 363 of IPC. For the offence under section 354 of IPC, he was sentenced to undergo rigorous imprisonment for two years and to pay Rs.2,000/- as fine.

2. The incident took place on 2.7.2002 at 1.30 p.m. and thereafter, till 6.30 p.m. on that date. The girl was aged less than 18 years. That could be proved by PW7 and Ext.P3 - the school admission register.

3. The allegation is that the accused, who is an autorikshaw driver, kidnapped or abducted PW4 in his Crl.A. No. 1094/2006 -2- autorikshaw bearing no. KL-2 F4328 from Bharathanoor Govt. High School and took her to Amritha Cinema Theatre, from where he outraged her modesty by pressing her breast and kissing her. She was thereafter, taken back in his own autorikshaw and she was dropped at a place called 'Pakisthan Mukku' at about 6.30 p.m. Her parents were in search of her. PW4 was stated to have told about the incident to her parents. She went to the Police Station on the next day morning at about 11.00 a.m., and lodged Ext.P2 - F.I.S., based on which the F.I.R. (Ext.P2(a)) was registered. After conducting investigation, charge sheet was laid against the accused alleging offences as stated above.

4. The accused contended that the whole prosecution case is untrue. No evidence was adduced on the side of the defence. Exhibits D1 and D2 are the portions of the statement, marked as contradictions. Crl.A. No. 1094/2006 -3- 5. The learned Additional Sessions Judge, accepting the evidence given by PW4 and of her mother and other witnesses, found the accused guilty of the offence under sections 363 and 354 of IPC. The court below found that section 363 of IPC is a minor offence of 366A and so without altering the charge, convicted the

accused/appellant of the offence under section 363 of IPC. Accepting the evidence given by PW1, he was also found guilty and convicted of the offence under section 354 of IPC.

6. The following points arise for consideration: i. Was PW4 kidnapped or abducted by the appellant as alleged by the prosecution? ii. Did the appellant outrage the modesty of PW4? iii. Whether the conviction and sentence passed against the appellant are unsustainable? Crl.A. No. 1094/2006 -4- 7. The learned counsel for the appellant submits that the whole prosecution case bristles with intrinsic infirmities and inherent improbabilities. The learned counsel mainly points out that in the F.I. Statement, the case of PW4 is that she was taken to Sree Sylam Cinema Theatre at Kadakal. The scene mahazar was prepared with respect to one Amritha Cinema Theatre at Chingoli, which is far away from Sree Sylam Theatre. At another place it is stated that the girl was taken to Bharath Cinema Theatre. That is at another place. The learned trial Judge observed that those contradictions are minor and do not affect the acceptability of the case. But there are other certain salient features also which would cast serious doubt on the prosecution case.

7. It is submitted by the learned counsel for the appellant that according to PW4, she was taken in an Crl.A. No. 1094/2006 -5- autorikshaw which was having the name 'Panackal' being written on its front and back. According to her that autorikshaw was of Bharathanoor auto stand. Nobody from that autorikshaw stand was examined to prove whether such an autorikshaw was there and whether the accused was its driver or whether any other autorikshaw was being used and parked by the appellant at Bharathanoor auto stand. The owner of the autorikshaw though was not cited as a witness, was subsequently examined. He says that the autorikshaw bearing no. KL-2 F4328 belongs to him but the accused is not the driver of that autorikshaw. It is also argued that there is no evidence to show that the accused was having any driving license at all or that he was driving any autorikshaw.

8. Yet another aspect assumes importance. PW6 is the teacher who was stated to have given consent to the person who had gone to that school, to take the girl.

CrI.A. No. 1094/2006 -6- According to PW4 the accused was stated to have told PW6 that her paternal grandmother expired and that her father and mother were waiting in the autorikshaw on the road and so she (PW4) has to accompany him to the autorikshaw. It was stated by PW6 that when the person went to the school to take PW4, for the purpose as aforesaid, that person was stated to have told that he was the brother of PW4 and when PW4 was asked, she confirmed that statement. That means, PW4 went along with a person who was so close to her and that she had been with that boy till about 6.30 p.m. on that day. Since she did not reach home as usual and as her parents were anxiously searching for her she had to give a distorted and coloured version to her parents and so, she stated that she was taken to the cinema theatre by an autorikshaw driver. It is argued by the learned counsel that the person with whom PW4 had gone out on that day must certainly be a person who was in love with her or her CrI.A. No. 1094/2006 -7- close associate; but in order to protect him a false story was invented and narrated and one name as 'Anilkumar' was given and a number of the autorikshaw was also given.

9. The Investigating Officer could not find out or seize the autorikshaw having the name 'Panackal'. Yet another aspect is there. The evidence given by PW4 would show that the person who had gone to the school to take her was the driver of the autorikshaw who used to go to that school whenever the students sustained injury or for other purposes to help the students. If so, can it be believed that PW6 did not know as to who was that person who had taken PW1 on that day. PW6 says that the accused was not the person who took the girl from the school on that day.

10. The learned counsel for the appellant has also argued that from the evidence given by PW4 and her CrI.A. No. 1094/2006 -8- mother, it can be seen that two youngsters happened to commit suicide as she (PW4) had made allegations of rape against those two persons.

11. The learned counsel for the appellant has also pointed out certain contradictions in the evidence given by PW4 as to the seat or place where she and the other man sat when they were watching the movie. Of course, it can be said that such contradictions may be there when a witness gives evidence after three

or four years of the incident.

12. There is also contradiction in the evidence given by PW4 as to the time when they went to the theatre. At one place it was stated by her that they entered the theatre when the film was midway. The prosecution may say that it is not a material contradiction that can affect the CrI.A. No. 1094/2006 -9- prosecution case.

13. The learned counsel for the appellant has also pointed out the findings recorded by the doctor (PW1) in Ext.P1 that her vagina admits two fingers which did indicate that she was having regular sexual intercourse earlier. With whom, is not the concern of the defence, the learned counsel submits. If this fact is read along with the statement given by her to PW6, that the person who went to the school for fetching her was 'her brother', that would probabalise the defence version that PW4 might have gone along with a person with whom she had such a connection. The submission, as aforesaid, made by the learned counsel for the appellant cannot be brushed aside. The further fact is that there is no consistency as to the theatre to which she was taken and even as to the time when she was taken. That also would loom large against the case of the CrI.A. No. 1094/2006 - 10- prosecution. The appellant is not proved to be the driver of the autorikshaw bearing no. KL-2 F4328 The autorikshaw having the name 'Panackal' is different from the autorikshaw bearing no. KL-2 F4328 That also would add the incredibility to the prosecution case.

14. In the circumstances delineated earlier, I find that the prosecution could not prove the charge against the accused beyond reasonable doubt. In the result this Criminal Appeal is allowed. Conviction and sentence passed against the appellant are set aside. He is set at liberty. The bail bond executed by him will stand cancelled. Sd/- N.K. BALAKRISHNAN, JUDGE //True Copy// P.A. to Judge jjj

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