

Krishnan vs State of Kerala

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mrs. Justice C.S. Sudha

Appeal No. : CRL.A/169/2019

Appellant : Krishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE C.S. SUDHA FRIDAY,
THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 CRL.A NO.
169 OF 2019 CRIME NO.1520/2016 OF CHENGAMANAD POLICE
STATION, ERNAKULAM AGAINST THE JUDGMENT DATED
13.09.2018 IN SC NO.426 OF 2017 OF ADDITIONAL SESSIONS
JUDGE, ERNAKULAM. APPELLANT/ACCUSED NO.1: KRISHNAN,
AGED 67 YEARS, S/O NEELAKANDAN, PUTHENPURACKAL HOUSE,
PONNAMPARAMBU BHAGOM, MEIKKADU KARA, NEDUMBASSERY
VILLAGE, ERNAKULAM DISTRICT. BY ADV P.MOHAMED SABAH
RESPONDENT/COMPLAINANT-STATE: STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM, KOCHI-682031. SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24.03.2025, ALONG WITH CRL.A.890/2019, THE COURT ON 28.03.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE C.S. SUDHA FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 CRL.A NO. 890 OF 2019 CRIME NO.1520/2016 OF CHENGAMANAD POLICE STATION, ERNAKULAM AGAINST THE JUDGMENT DATED 13.09.2018 IN SC NO.426 OF 2017 OF ADDITIONAL SESSIONS JUDGE, ERNAKULAM. APPELLANT/ACCUSED: SREEDHARAN, AGED 63 YEARS, S/O. MANIKYAN, POLOOR GRAMAM, VELLAR DISTRICT, TAMILNADU, C.NO. 4350, CENTRAL PRISON, VIYYUR, THRISSUR, KERALA. RESPONDENT/COMPLAINANT: 1 STATE OF KERALA, BY.ADDL.PUBLIC PROSECUTOR, ERNAKULAM. 2 DEPUTY SUPERINTENDENT OF POLICE, ALUVA, CHENGAMAANAD POLICE STATION. SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR. THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 28.03.2025, ALONG WITH CRL.A.169/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.SUDHA, J.

Dated this the 28th day of March 2025

JUDGMENT

In these appeals filed under Section 374(2) Cr.P.C., the appellants, who are accused no.1 and 2 (A1 and A2) in S.C.No.426/2017 on the file of the Court of Session, Ernakulam, challenge the conviction entered and sentence passed against them for the offence punishable under Section 376 IPC.

2. The prosecution case as stated in the final

report/charge sheet is as follows - The accused persons, two in number, who belong to the upper caste, with the intention of getting sexual gratification by having sexual intercourse with the victim (PW1), belonging to the pulaya community, lured her to the back of the Kerala Judicial Academy building situated on the

northern side of the Chengamanadu-Athani Road, Nedumbassery Village, while on her way back home from School. The accused persons took her to an old bathroom situated 8 meters to the west of the main building of the Academy and abused her. The 1st accused had sexual intercourse with the victim without her consent. Thereafter, the 2nd accused took the victim to the aforesaid room a few days after her Onam examination and had sexual intercourse with her several times. The abuse took place during the period from September to December 2016. Hence, as per the final report, the accused persons are alleged to have committed the offences punishable under Section 376(2)(n) IPC ; Section 3(1)(w)(i) and 3(2)(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the SC/ST Act).

3. Crime No.1520/2016, Chengamanad police station, that is, Ext.P12 FIR was registered by PW15, the then Sub Inspector, based on Ext.P1 FIS of PW1. PW16, Dy.S.P. Aluva,

conducted the investigation and on completion of the investigation submitted the final report before the Court of Session, Ernakulam, alleging the commission of the offences punishable under the aforementioned Sections.

4. On appearance of the accused persons before the Court of Session, the formalities contemplated under Section 207

Cr.P.C. were complied with. After hearing both sides, the Sessions Court found no material to make out the offences under Sections 3(1)(w)(i) and 3(2)(v) of the Act and hence the accused persons were discharged of the said offences. Finding materials on record sufficient to make out a case under Section 376 IPC, a charge

under the said Section was framed, read over and explained to the accused persons to which they pleaded not guilty. The case was made over to the Additional Sessions Judge-I, Ernakulam for trial and disposal.

5. On behalf of the prosecution, PW1 to PW17

were examined and Exts.P1 to P16 were marked in support of the case. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence.

6. As the trial court did not find it a fit case to

acquit the accused under Section 232 Cr.P.C., they were asked to enter on their defence and adduce evidence in support thereof. No oral or documentary evidence was adduced by the accused persons.

7. On consideration of the oral and documentary

evidence and after hearing both sides, the trial court by the impugned judgment found the accused persons guilty of the offence punishable under Section 376 IPC and hence sentenced

them to undergo rigorous imprisonment for a period of ten years each and to fine of 50,000/- each and in default to rigorous imprisonment for three months each. The entire fine amount has been directed to be given to the victim as compensation under Section 357(1)(b) Cr.P.C. Set off under Section 428 Cr.P.C. has been allowed. Aggrieved, accused no.1 and 2 have come up in appeal.

8. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/accused no.1 and 2 by the trial court are sustainable or not.

9. Initially, Adv. Sreekanth K.S. was appointed as State Brief for the appellant in Crl.Appeal No.890/2019, that is,

for A2. Thereafter, there was no representation by the said counsel and hence Adv. Bhavana V. was appointed as State Brief. Heard the learned counsel for the appellant in Crl.Appeal No.890/2019 and the learned public prosecutor.

10. It was submitted by the learned counsel for the

appellant/A2 that the sole testimony of PW1, the prosecutrix, is insufficient to find the accused guilty of the offences alleged against him beyond reasonable doubt. Though the prosecution during the trial has a case that PW1 is having low IQ level of 53, the said case cannot be believed as it has come out in evidence that PW1 after her plus two course has been pursuing computer course. It has also come out in evidence that she passed in all her subjects except one. All this would indicate that PW1 was a person of reasonable comprehension. The materials on record would not in any way show that she was unable to understand things happening around her. Even assuming that there was some relationship between the appellant/A2 and PW1, the same can only taken to be consensual. There is no medical evidence to support the case of rape. Ext.P12 FIR refers to an autorickshaw

driver as the third accused. However, the said person has not been arrayed as an accused in the final report. No report has been submitted for deleting the third accused from the array of the accused in the FIR. PW16, the investigating officer does not give any explanation for not including the third accused in the final report/charge sheet. It is clear from the materials on record that PW1 did not agree to the medical examination as she had

something to hide. It may be that somebody else was also involved in the crime. PW6, one of the doctors who examined PW1 as well as PW8, the class-teacher of PW1 refers to an autorickshaw driver in their testimony. The FIR also refers to an autorickshaw driver as the 3rd accused. The investigating officer admitted that the autorickshaw driver referred to in the FIS and in the testimony of PW1 is her relative. The said person has some role in the crime, which was never investigated into or revealed by the prosecution. This aspect also throws doubt on the

prosecution case. The place of occurrence has also not been proved. Hence it is submitted that the appellant/A2 is entitled to the benefit of doubt and to be acquitted. 10.1. Per contra, it was submitted by the learned public prosecutor that testimony of PW8, the class teacher of

PW1 would show that she is not normal. Therefore, PW1 a person with low IQ cannot be stated to have given consent as consent given by such a person is no consent in the eye of law. It was also submitted that merely because the third accused has not been arrayed as an accused in the final report/charge sheet and no investigation has been conducted by the investigating officer regarding the role of A3, it cannot be concluded that the appellants herein, that is, A1 and A2 are also innocent of the offences alleged against them. There are no infirmities in the findings of the trial court calling for an interference, argued the learned public prosecutor.

11. Ext.P1 FIS is seen given by PW1 on 31/12/2016

at 04:30 p.m. In the FIS she states that she is a plus two student. She goes to school by bus. From September till December 2016, on her way back from school she used to reach Athani junction by about 04:45 p.m. During this period, a lottery vendor (A1) and a cobbler (A2) used to insist that she join them. The cobbler (A2) used to sit near his relative's house situated near the primary school, Thuruthussery, during which time he used to undress and exhibit his nakedness to her. Coming to know of this conduct of the cobbler (A2), his relatives drove him away from the said place. On a day before her Onam exams, the lottery vendor (A1) took her through the western side of the Hanuman Temple at Athani to the back side of the Kerala Judicial Academy. He took her to an old room situated near a bathroom. He made her lie on the floor of the room, undressed her and lay on top of her. When she tried to get up, he pressed her down. He compelled her to put

a contraceptive on him. (...). She

refused. He then committed penetrative sexual acts on her and touched her private parts. Thereafter she returned home. After a few days on her way back

home from school, when she got down at Athani junction, the Cobbler (A2) took her to the same place, undressed her and committed digital rape. The cobbler also insisted that she put the contraceptive for him. She refused and so he himself put on the contraceptive and placed his penis on her

private parts. (...

....). During this period, both of them repeated the aforesaid acts several times. In addition, the driver of the autorickshaw by name 'Vadakkumnathan', whom she can identify on sight, used to offer her lift while she was waiting for bus at the bus stop, Athani. When she got into the autorickshaw, she was

taken to a house situated at the place by name, Thiruvilamkunnu, which is to the east of Kariyaadu, where he undressed her, lay on top of her and touched her private parts with his penis. The autorickshaw driver repeated this act on several other days also. She told her friends in school about the incident. Her friends informed her teacher. The teacher informed the Principal, who in

turn summoned her mother and informed her. The Principal asked her to give a complaint in writing. However, she did not give a complaint as she was afraid that the matter would become public. Her mother then scolded the lottery vendor and cobbler. (. + " . " 3 + # ' + #4 + #%). Thereafter on 30/12/2016, while she was at her relatives house, the lottery vendor (A1) while passing by gestured to her to join him. (. " 30/12/2016 4 4)6 + 3 8 +, " 3 " +6+ + #%). She then told her mother (PW2) about the same. Her mother sent her along with her relative to the police station to give the complaint. In the FIS PW1 has also stated that she can identify all the three accused persons on sight. 11.1. PW1 in the box more or less stands by her version in Ext.P1 FIS. She deposed that both the accused used to take her to the room behind the Kerala Judicial Academy, undress her and commit penetrative sexual assault on her. They had ejaculated after the act. These acts were repeated several times by both the accused persons. PW1 further deposed that she did not subject herself to medical examination as she was scared/frightened. (. : < " .)). In the cross examination she deposed that after completing plus two, she started attending a six month computer course. She reiterated her

case in the FIS that the driver of the autorickshaw by name 'Vadakkumnathan' had taken her to a house and had done the same acts as done by the accused persons. The accused persons used to take her on those days when she did not have School, that is, when she was left early from School. Thereafter she deposed that she used to get out of her house by saying that she was going

to see her friends (..... " 3 "

" " 4 "). She also deposed that she along with the accused persons used to walk/proceed to the place of occurrence by entering into the Kerala Judicial Academy campus through the gate, at which time, there were no security guards at the gate. According to PW1, the Academy did have compound walls. She further deposed that she is more cross/angry at A1 as he used to tell her to cut her pubic

hair. PW1 further deposed that both the accused used to take her together to the room and do the aforesaid acts one after the other. 11.2. PW2, the mother of PW1, deposed that during the time of the incident, her daughter was studying for plus two in a school at Chengamanad. She used to take her daughter to Athani junction from where her daughter used to go to the School by bus (..... 3 +.

" +.). In the evening her husband used to bring PW1 back home from Athani junction. One day, PW1 did not return even after 06:30 p.m. and so her husband telephoned her and made enquiries at which time she was at her work place. After some time, her daughter reached the bus stop at Athani, pursuant to which her husband brought their daughter back home. When she enquired the matter with her daughter, the latter told her that the accused persons had taken her along with them. Hearing this, she along with her husband, daughter and two other persons, went to Athani junction where the second accused cobbler was available. She tried to beat him. The first accused was not present there. According to PW2, on a day when her daughter was having study leave and when she was let off early from school, the accused persons took her in an autorickshaw from Athani to a house at Kariyaadu and after undressing her, did everything (.... " #% ...). To prevent others from seeing, the accused persons had taken her daughter in an autorickshaw after pulling down the sheets on the side. (' " " ."). Her daughter

disclosed these incidents to PW9, her close relative. PW2 also deposed that her daughter has low IQ (" " " "). The accused persons had also taken her daughter near the Hanuman temple at Athani and abused her. The first accused had also taken her daughter to his house. PW2 further deposed that her sister passed away in December 2016. When she and her daughter were at the house of her sister in connection with the cremation, the accused persons called her daughter by gesturing to her. (....

.). Her daughter then informed PW9 about the abuse. PW9 asked her daughter whether she had disclosed the abuse to her parents to which her daughter had replied that she had not done so as she was afraid that her parents would punish her. Pursuant to the disclosure, she sent her daughter along with PW9 to give a complaint to the police. The police had prepared Ext.P2 scene mahazar relating to the scene of occurrence near the

Hanuman temple, Athani, in which she is an attestor. Her daughter refused to undergo medical examination as she was scared/frightened. Her daughter was admitted in the Medical college, Kalamassery, for three days. PW2 deposed that PW1 is her adopted daughter. PW2 also deposed that her daughter has the habit of pinching others, which habit still continues. PW2 further deposed that her daughter is on medication for low IQ

(' " "). She also clarified that her daughter has been on medication for the past one month. PW2 in the cross examination deposed that her daughter had disclosed the abuse to PW9 and not to her. She also deposed that except in one subject her daughter has passed in all other subjects. To her knowledge, the accused persons had taken her daughter with them two to three times.

11.3. PW3, the father of PW1 deposed that on a day the previous year (2016) his daughter reached Athani junction quite late. In the morning his wife drops their daughter at Athani junction. Some days in the evening, he goes to pick up his daughter. PW3 deposed that his daughter disclosed the abuse to PW9 as she was afraid of him. PW3 has also a case that his daughter has low IQ. He also deposed that his daughter is studying in a normal school (. D 3 " "). In the cross examination, PW3 deposed that he has only hearsay knowledge about the

incident and that he does not know the auto driver. 11.4. PW4, Consultant Gynecologist, District Hospital, Ernakulam, deposed that on 31/12/2016 at 06:30 p.m., the victim aged 17 years was brought before her for medical examination on the allegation of rape. The history was narrated thus - "D " M " N ' + # "'

8 + + 3

" M . PW4 further deposed that as the victim was not co-operative, medical examination could not be conducted even after counselling the victim for an hour. PW4 also deposed that she had a feeling that the victim was not having the required IQ to comprehend things properly and so she advised counseling. Ext.P4 is the certificate issued by her. In the cross examination, PW4 deposed that the history was narrated to her by the victim and those accompanying her. The victim was accompanied by her mother and another lady. 11.5. PW6, Lecturer, Government Medical College Hospital, Kalamassery deposed that on 04/01/2017 at 01:30, the victim was brought before her for medical examination with a history of rape. The history stated by the victim was thus- " 3 + # ' + 3 3 " " " . " . : " . N + " . PW6 further deposed that the victim was not willing for examination even after counselling. She had doubts that the victim was having border line IQ and hence advised psychiatric evaluation, for which the victim was admitted in the hospital. However, on the next day also the victim was not willing for examination. According to PW6, the victim was slow in speech and was smiling in between inappropriately. In her view, the victim has low IQ level though she was normal in all other respects. Ext.P7 is the certificate issued by PW6. In the cross examination PW6 deposed that the history of the case was narrated by the victim and her relative (PW9). PW6 further deposed that she had noted in Ext.P7 that an autorikshaw driver was asking for the mobile number of the victim during the time of the examination. 11.6. PW7, Assistant Professor, Psychiatry, Government Medical College, Ernakulam deposed that he had examined the victim in this case as per the request of the Dy.S.P., Aluva. The victim had dysmorphic facial features. Initially, the victim was not willing for evaluation. Thereafter, she started co- operating. Clinically her intelligence level was found to be subnormal. Her IQ level was found to be 53 as per the report of

the Clinical Psychologist. No other psychopathology was detected, which means that apart from the low IQ level, she had no other psychiatric disorders. According to PW7, the normal IQ for a person ranges from 90-110. In his opinion, the victim had mild mental retardation. He further deposed that in cases of mild retardation, it is possible for the victim to remain passive when sexual advances are made. Their judgment would be impaired. Such a person, if physically normal, would have sexual urge/desire. As the judgment of people having mild retardation would be impaired, it is possible for them to fall prey to sexual harassment. The victim was found to be of a shy nature. PW7 further deposed that people with mild mental retardation can resist sexual harassment. However, the victim in the case on hand is a shy person, and so it was probable that she was not in a position to resist the sexual advances. PW7 also deposed this cannot be generalised as things vary from person to person according to the

situation. Ext.P8 is the certificate issued by him. 11.7. PW8, the class teacher of the victim, deposed

that the victim in her conversations was not consistent; that she would pinch the other students; that she would pinch even the teachers; that in case she came late in the morning to school, she would hide in the bathroom; that sometimes during menstruation, the victim used to rub her menstrual blood on other students.

(.. + 3 + + consistent .

" " " + # 3' "). # PW8 also deposed that one day an auto driver came to the school and informed the Principal that the victim was seen with a lottery vendor and a cobbler under suspicious circumstances. The Principal then informed the parents of the victim and cautioned them to be careful in the future. The victim could comprehend to a certain extent what was being taught to

her. PW1 passed in all the subjects except one. (.. xxxx ' ') After the incident of the auto driver coming to the school, PW1 told her friends that she was abused by a lottery vendor and a cobbler. PW8 also deposed that the victim has mild mental retardation. PW8 in the cross examination deposed that PW1 had not told him anything directly. He further deposed that PW1 can

comprehend things but is slow in responding. 11.8. PW9, a close relative of PW1 deposed that on cobbler to her. PW9 was told that the said persons had taken PW1 to a bathroom behind the Hanuman temple and after undressing her had sexually abused her. PW9 also deposed that the victim has mild mental retardation. (. '+ "). On 30/12/2016 PW1 told her that the lottery vendor had called her. (...3 xxxx " ".....). In the cross examination, PW9 denied having stated to the police that the driver of autorickshaw by name 'Vadakkumnadhan' had also sexually abused PW1. The contradiction has been marked as Ext.D1 and proved through the investigating officer. 11.9. PW13, WPC, Chengamanad police station

deposed that on 31/12/2016 as instructed by the Sub Inspector, she had recorded Ext.P1 FIS of PW1. As directed by the Sub Inspector, she had taken PW1 to the Government Hospital, Aluva for medical examination. However, PW1 refused to co-operate with the examination. PW13 further deposed that from the speech and behaviour of PW1, she felt that the latter had mild mental

retardation. (. + 3 + 3 + " " " . ..) . PW13 in the cross examination deposed that when the FIS was recorded, PW9 whom PW1 addresses as 'ammamma' (grandmother) was also present along with PW2. 11.10. PW14, ASI, Angamaly police station deposed that as directed by the Sub Inspector, she had taken PW1 to the Gynecologist at Government Hospital, Aluva for medical examination. However, PW1 refused to submit herself for medical examination. 11.11. PW16, Dy.S.P., Aluva deposed that on According to him, the place of occurrence is inside the campus of the Kerala Judicial Academy. When he went to prepare the scene mahazar, the room in which the incident took place was found closed. It was in the presence of the staff of the Academy, the room was opened and inspection conducted. The room at the time

of inspection was found to be an electrical room. On enquiry, it was revealed that the room had been converted into the present condition in the near future. PW16 admitted that as per the FIR, the third accused is the driver of an autorikshaw by name 'Vadakkumnadhan'. PW16 also deposed that the driver of the said autorickshaw is a relative of PW1.

12. Now the question is whether the aforesaid

evidence is sufficient to find the accused persons guilty of the offence of rape punishable under Section 376 IPC. In the FIR, there are three accused persons. The third accused is stated to be the driver of the autorickshaw by name 'Vadakkumnathan'. PW1 in the box reiterates that the autodrivers had also abused her. PW16, the investigating officer does not even offer an explanation for not charging the third accused. It is true that defects in investigation will not always go to the benefit of the accused or be a reason to disbelieve or throw out the entire prosecution case.

Therefore, the question is whether the materials on record are sufficient to prove beyond reasonable doubt the offence of rape charged against A1 and A2.

13. It is true as pointed out by the learned public prosecutor that from the behaviour and conduct of PW1, as is evident from the testimony of PW8 her teacher, PW1 appears to

be not normal. PW6, one of the doctors, who examined PW1 deposed that the victim was smiling inappropriately when the former was brought for medical examination. All the prosecution witnesses have deposed that PW1 has mild mental retardation. PW7, one another doctor who examined PW1 deposed that the latter has low IQ, that is, 53. According to him the normal IQ is

from 90 to 110. PW1 was taken before several doctors for medical examination. Despite several attempts being made by taking PW1 to various doctors, she refused to subject herself to medical examination.

14. In the charge sheet/final report, the prosecution

has never a case that PW1 has any mental retardation issues. I have already referred to the prosecution case as stated in the final report/charge sheet. It only says that PW1 was induced to go along with the accused persons and that they had committed rape on the victim. The court charge also does not say that PW1 has any mental retardation issues. PW1 admittedly is above 18 years and therefore an adult. In such circumstances, the question that naturally arises is whether the sexual intercourse was with the consent of PW1. The learned public

prosecutor submitted that even if consent had been given by PW1, the same cannot be stated to be consent in the eye of law as PW1 has low IQ. As stated earlier, there is no such case in the final report/charge sheet or even in the court charge. Further, if PW1 does have low IQ

issues as stated by all the prosecution witnesses, then the question

is, would it be safe to rely on her testimony alone which raises

doubts in the mind of the court ? On going through the testimony of PW1, she has also stated that she had gone out of her house to meet the accused persons on the pretext of meeting her friends. Materials have also come on record that the Principal of the school had informed PW2 after an autorickshaw driver had reported to the former that PW1 was seen in suspicious circumstances with the accused persons. However, no complaint was made pursuant to the same. PW1 in the FIS as well as in the box reiterated her case that the driver of the autorickshaw by name 'Vadakkumnathan' had taken her on several days to a house

and abused her. But the said person has not been made an accused in this case. This autorickshaw driver seems to have an important role in this case because he appears to be the person who went and informed the Principal about the role of A1 and A2. He also seems to have been present when PW1 was taken before PW6 for medical examination. According to PW6, the

said autorickshaw driver was enquiring about the phone number of the PW1. PW9 had stated to the police that the autorickshaw driver had also sexually abused PW1. However, PW9 denied the said statement given to the police and hence the contradiction was marked as Ext.D1 and the same was proved through the investigating officer.

15. Further, if PW1 is to be believed, the accused persons had only sexually abused her at a room situated behind the Kerala Judicial Academy. But PW2 has a case that the accused persons had taken PW1 to a house at Kariyaadu and abused her. PW2 has also a case that A1 took PW1 to her

house and abused her. But PW1 has no such case. According to PW1, it was the auto driver who had taken her several times to a house at Kariyaadu and abused her. Going by the prosecution case, the accused persons abused her at a room situated on the rear side of Kerala Judicial Academy. However, when the

investigating officer prepared the scene mahazar, the room was found locked and the same was opened and inspected in the presence of the staff of the Academy. The room seems to be under the lock and key of the Academy. The investigating officer has a case that on inspection he found the room to be used as an 'electric room' which according to him was converted in the near future. However, he admits that there is no material to establish the same. So doubts arise about the place of occurrence also. In these circumstances, I find that it may not be safe to convict the accused persons based on the sole testimony of PW1. That being the position, I find that they are entitled to the benefit of doubt.

In the result, the appeals are allowed and the conviction and sentence imposed against the appellants/A1 and A2 by the trial court for the offence punishable under Sections 376 IPC is set aside. The accused persons are acquitted under Section 235(1) Cr.P.C. They are set at liberty and their bail bond shall stand cancelled. Interlocutory applications, if any pending, shall stand closed. Sd/-
C.S.SUDHA JUDGE Jms

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