IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 11TH DAY OF DECEMBER 2025/20TH AGRAHAYANA, 1947

CRA(V) NO. 81 OF 2025

CRIME NO.51/2019 OF BEDAKOM POLICE STATION, KASARGOD

AGAINST THE ORDER DATED 08.07.2025 IN SC NO.257 OF 2019 OF DISTRICT COURT & SESSIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL/RENT CONTROL APPELLATE AUTHORITY, KASARAGOD

APPELLANT/DEFACTO COMPLAINANT (VICTIM):

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXX

BY ADV SMT.SHERLY MOL THOMAS

RESPONDENTS/ACCUSED:

1 MR. GOPALAN K.T
AGED 51 YEARS
S/O MALINKAN, NELLITHAVU ,KANHANADUKKAM,
KUTTIKKAL VILLAGE, KASARAGOD, PIN - 671541

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA COCHIN, PIN - 682031

BY ADV. SMT.SHEEBA THOMAS, P.P.

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING COME UP FOR ADMISSION ON 11.12.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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“C.R.”

J U D G M E N T

Jobin Sebastian, J.

This appeal has been filed by the victim in S.C. No. 257 of 2019 on the file of the Sessions Court, Kasaragod, under the proviso to Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the judgment of acquittal passed in the said case.

2. The crux of the prosecution's case is as follows:

On 3/12/2018, at approximately 8:30 p.m., while PW1, who is a member of a Scheduled Caste/Scheduled Tribe community, was waiting for her husband in front of the house of one Viswambharan, the accused, belonging to a non-Scheduled Caste/Scheduled Tribe (non-SC/ST) community, dragged her to a rocky place at Arthootippara in Kuttikkole Village and committed rape on her, knowingly that she was a member of the Scheduled Caste/Scheduled Tribe community. Furthermore, after committing the offence, the accused threatened to cause her death if she disclosed the incident to anybody.

3. When this appeal came up for admission, upon perusal of the impugned judgment, we entertained a doubt as to whether the appeal requires admission or is liable to be summarily dismissed. Accordingly, we heard Smt. Sherly Mol Thomas, learned counsel for the appellant, and Smt. Sheeba Thomas, learned Public Prosecutor,

appearing for the 2nd respondent and perused the impugned judgment and the appeal memorandum.

4. Undisputedly, the right of a victim to file an appeal is a statutory right. When a victim approaches the Court with an appeal challenging a judgment of acquittal, particularly in a case involving sexual offences, the appeal would ordinarily merit admission if there is, at least prima facie, an arguable case in favour of the victim. Once such an appeal is admitted, it can thereafter be dismissed only on the merits and after calling for the records. However, while considering the admission of a victim's appeal against an acquittal, the inconvenience and stigma that may be caused to the accused until the appeal is finally decided cannot be ignored. This is especially relevant because the allegations in such cases can have a drastic impact on the accused's family life, social standing, and even the future of his children, if any. After having secured an order of acquittal, if an appeal is admitted casually and notice is issued to the accused, such proceedings may hang as a 'Damocles' sword' over his head until the appeal is concluded.

5. It is also a matter of common experience that, on certain occasions, allegations of sexual offences are raised with the intention of effecting out-of-court settlements or extracting money under the guise of compromise. At the same time, we are conscious of instances where accused persons have been acquitted due to

improper appreciation of evidence. Thus, in matters relating to the admission of appeals, particularly in cases involving sexual offences, the Court must ordinarily adopt a victim-centric approach, bearing in mind the vulnerability of victims. Nevertheless, where there is not even prima facie materials to take a view different from the view already taken by the trial court while acquitting the accused, the appeal is liable to be summarily dismissed.

6. Moreover, it is to be borne in mind that the legal yardsticks applicable to an appeal against acquittal are different from those applicable to an appeal against conviction. Ordinarily, an appellate court would not interfere with a judgment of acquittal unless it is demonstrated that the trial court's view is perverse, manifestly illegal, or grossly unjust, and that the only possible conclusion, on the basis of the evidence on record, was that the accused was guilty of the offence alleged. Likewise, if two views are possible on the basis of the evidence, and the trial court has taken one such view leading to acquittal, the appellate court would generally refrain from substituting its own view merely because it might have arrived at a different conclusion. (See **Sanwat Singh and Others v. State of Rajasthan** (AIR 1961 SC 715), **K.Gopal Reddy v. State of Andhra Pradesh** (1979) 1 SCC 355), **Chandrappa and Others v. State of Karnataka** (2007) 4 SCC 415)) However, that does not mean that the appellate court cannot

reverse an erroneous acquittal. More specifically, when the appreciation of evidence by the trial court is patently erroneous or perverse or runs contrary to the settled principles of law, and when the evidence on record clearly establishes the guilt of the accused, leaving no room for any other plausible conclusion, the appellate court is well within its power to reverse the finding of acquittal and convict the accused.

7. Keeping in mind the above principles, and applying them to the present case, it is evident that the sole evidence relied upon by the prosecution to establish the occurrence of the incident is the testimony of the alleged survivor (PW1). Upon a holistic evaluation of her evidence, the trial court found that the solitary testimony of PW1 was neither convincing nor trustworthy and, therefore, could not form the basis for a conviction. The trial judge assigned several reasons to support the conclusion that her testimony lacked credibility.

8. In the impugned judgment, it is mentioned that when the victim of the offence was examined as PW1, she deposed that the incident took place while she, her husband, and son were en route to a New Year's celebration, which included her daughter's dance performance. According to PW1, when they reached in front of the house of one Vishambharan, her husband and son had entered the house of the said Vishambharan to give him an amount of Rs. 500/-,

while she waited outside the gate of the said house. Then the accused, who came there, caught hold of her hand and took her to a nearby rocky place and raped her after undressing her. According to PW1, after the incident, while she was walking by the side of the road, she met her husband, and he asked “where she was till this time”. Since she was unable to reply due to fear, her husband allegedly assaulted her in a public place and told her not to accompany him unless she disclosed what had transpired. She was therefore constrained to go to her paternal home, which is situated nearby. She returned to her matrimonial home after one week, but her husband's physical abuse persisted. It was only then that she felt compelled to disclose the incident to her husband. Thereafter, on 26.02.2019, she gave a statement to the police regarding the incident in this case.

9. The learned Sessions Judge, after appreciating the evidence of PW1, found it highly suspicious that PW1 did not raise any alarm when the accused allegedly dragged her away from the front of Viswambharan's house, especially since her husband and son were present inside the house at that time. Similarly, the trial court took serious note of the fact that although PW1 met her husband immediately after the incident and he specifically inquired about her whereabouts, she failed to disclose the incident to him. Furthermore, PW1's evidence indicated that her silence provoked her husband,

leading him to assault her in a public place and instruct her not to return to his house until she disclosed the truth. We are also of the view that the fact that even then PW1 did not disclose the incident to her husband is a serious circumstance which favours the case of the accused that PW1 was a consenting party to the alleged coitus. It is true that when the court put a definite question to PW1 as to why she did not raise any alarm, she offered an explanation that it was because she was gagged by the accused. However, the trial court itself entered into a finding that the said explanation is not at all believable, as PW1 offered such an explanation only at the time of trial, that too as a reply to a court question.

10. A perusal of the judgment further reveals that the trial court took note of the long delay in reporting the matter to the police and found the delay to be fatal. We are also of the view that when there is an inordinate delay in lodging an FIR, the possibility of deliberations, consultations and exaggerations cannot be ruled out. However, we are not oblivious that delay in lodging the FIR in cases involving sexual offences is generally not treated as fatal, as various factors such as concerns regarding married life, the future of children, and the stigma attached to the family may weigh in the mind of the victim. In the present case, the explanation offered by the victim (PW1) for the delay was that the accused had threatened to kill her if she disclosed the incident to anyone. Nevertheless, the

trial court recorded a finding that the victim did not mention this threat when her statement was recorded by the learned Magistrate under Section 164 of the Code of Criminal Procedure (Cr.P.C.). Instead, she stated to the Magistrate that the accused threatened to commit suicide if she disclosed the matter. We recognize that the question of whether these omissions and contradictions are fully proven can only be determined after verifying the statements of the relevant witnesses before the court. However, while considering the delay in lodging the FIR, it cannot be ignored that PW1, the victim, is a mature, married woman with two children. Therefore, in the specific facts and circumstances of the present case, we find no reason to disagree with the finding of the trial court that the delay in lodging the FIR is fatal.

11. In the impugned judgment, it is further mentioned that although the prosecution alleged the accused had dragged the victim to a rocky area and committed rape upon her, there was no evidence to show she had sustained any physical injury in the incident. This particular fact was taken note of by the trial judge to enter into a conclusion that she was also a consenting party to the incident. Likewise, the trial court further found that no tear or damage occurred to the dress materials worn by the victim; this absence of damage, particularly when the alleged rape was committed in a rocky area, also raised serious doubt regarding the veracity of the

testimony of PW1 concerning forceful sexual intercourse. In the light of these aspects, we are of the considered view that the learned trial judge has assigned sufficient reasons for acquitting the accused. We also believe that there is no necessity to call for the records of the case since, even if we were to re-appreciate the evidence in this case, the view taken by the trial court cannot be said to be patently erroneous, perverse or contrary to the settled principles of law.

12. As already noted, this appeal has been filed against an order of acquittal. An interference in such an order cannot be done in a casual manner. As there is already an order of acquittal, a *prima facie* presumption of innocence is available in favour of the accused. Interference with an order of acquittal is warranted only when it is shown that the view taken by the trial court is perverse, illegal, or grossly unjust. In the present case, the view taken by the trial court cannot be said to be perverse or unreasonable. We also find that although the Bharatiya Nagarik Suraksha Sanhita does not contain any specific provision for the summary dismissal of an appeal filed by a victim challenging an order of acquittal, the provision for summary dismissal of appeals under Section 425 BNSS will apply *mutatis mutandis* to the summary dismissal of an appeal filed by a victim under the proviso to Section 413 BNSS.

In the result, we are of the view that there is not even prima facie material to show that the victim has an arguable case in her

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favour, and the present appeal challenging the judgment of acquittal is liable to be summarily dismissed. We therefore dismiss the appeal in limine.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

vdv