2024:KER:40029

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 12TH DAY OF JUNE 2024/22ND JYAISHTA, 1946

CRL.A.NO.1069 OF 2016

CRIME NO.234/2015 OF KALAMASSERY POLICE STATION, ERNAKULAM
AGAINST THE ORDER/JUDGMENT DATED 18.07.2016 IN S.C.NO.439 OF 2015
OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST
WOMEN & CHILDREN), ERNAKULAM

APPELLANT:

ATHUL
AGED 23 YEARS
S/O.DIVAKARAN, PARAKKAT HOUSE, THEVAKKAL BHAGAM,
THRIKKAKKARA NORTH, ERNAKULAM.

BY ADV.P.PARAMESWARAN NAIR
BY ADV.SRI.C.R.SYAMKUMAR
BY ADV.SMT.V.A.HARITHA
BY ADV.SMT.MARY RESHMA GEORGE
BY ADV.SMT.P.M.MAZNA MANSOOR
BY ADV.SRI.SOORAJ T.ELENJICKAL
BY ADV.SMT.SANDHYA R.NAIR

RESPONDENTS:

1 STATE OF KERALA
THROUGH CIRCLE INSPECTOR OF POLICE, KALAMASSERY,
ERNAKULAM DISTRICT, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031.

2 ADDL. XXX (VICTIM)
XXX (IMPLEADED AS PER ORDER DATED 08.11.2022 IN
CRL.M.A.1/2022 IN CRL.A.1069/16)

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR
BY ADV.SRI.RAMESH. P
BY ADV.SMT.FATHIMA NARGIS K.A.
BY ADV.SRI.BINIYAMIN K.S.
BY ADV.SMT.SANGEERTHANA M.
BY ADV.SRI.BLEIMY T.JOSE(K/1596/2023)

2024:KER:40029

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.06.2024 ALONG WITH CRL.A.807/2016 AND CONNECTED CASES, THE COURT ON 12.06.2024 DELIVERED THE FOLLOWING:

2024:KER:40029

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 12TH DAY OF JUNE 2024/22ND JYAISHTA, 1946

CRL.A.NO.807 OF 2016

CRIME NO.234/2015 OF KALAMASSERY POLICE STATION, ERNAKULAM
AGAINST THE JUDGMENT DATED 18.07.2016 IN SC NO.439 OF 2015
OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

APPELLANT/ACCUSED NO.6:

JASMINE
AGED 35 YEARS, KUPPASSERY HOUSE,
KANGARAPPADYKARA, THRIKKAKARA NORTH VILLAGE

BY ADV.SRI.A.S.FARIDIN

RESPONDENT COMPLAINANT/ADDL. RESPONDENT:

1 STATE OF KERALA
REP. BY CIRCLE INSPECTOR OF POLICE, KALAMASSERY,
POLICE STATION, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2 ADDL.RESPONDENT:
XXX
(ADDL.RESPONDENT IS IMPLEADED AS PER ORDER DATED 09.01.2023 IN CRL.M.A.1/2022)

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR
BY ADV.SRI.RAMESH .P

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.06.2024 ALONG WITH CRL.A.1069/2016 AND CONNECTED CASES, THE COURT ON 12.06.2024 DELIVERED THE FOLLOWING:

2024:KER:40029

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 12TH DAY OF JUNE 2024/22ND JYAISHTA, 1946

CRL.A.NO.820 OF 2016

CRIME NO.234/2015 OF KALAMASSERY POLICE STATION, ERNAKULAM
AGAINST THE JUDGMENT DATED 18.07.2016 IN S.C.NO.439 OF 2015
OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

APPELLANT/5TH ACCUSED:

BINISH
AGED 32 YEARS
KURUPPASSERY HOUSE, KANGARAPADYKARA,
THRIKKAKARA NORTH VILLAGE.

BY ADV.SRI.A.S.FARIDIN

RESPONDENT/COMPLAINANT:

1 THE STATE OF KERALA
REPRESENTED BY THE C.I OF POLICE,
KALAMASSERY POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. PIN - 682 031.

2 ADDL.RESPONDENT:
XXX (VICTIM)
(ADDL.RESPONDENT IS IMPLEADED AS PER ORDER DATED 03.01.2023 IN CRL.M.A.1/2022)

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR
BY ADV.SRI.RAMESH .P

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.06.2024 ALONG WITH CRL.A.1069/2016 AND CONNECTED CASES, THE COURT ON 12.06.2024 DELIVERED THE FOLLOWING:

2024:KER:40029

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 12TH DAY OF JUNE 2024/22ND JYAISHTA, 1946

CRL.A.NO.1072 OF 2016

CRIME NO.234/2015 OF KALAMASSERY POLICE STATION, ERNAKULAM
AGAINST THE JUDGMENT DATED 18.07.2016 IN SC NO.439 OF 2015
OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

APPELLANTS/ACCUSED NO.2 & 3:

1 ANEESH
AGED 28 YEARS
S/O.NARAYANAN, KOLLARA HOUSE, MUTHIKKATTUMUKAL,
EDATHALA KARA, ALUVA EAST VILLAGE.

2 MANOJ
AGED 21 YEARS
S/O.RAJAN, PARAYIL HOUSE,
MANLIMUKKU BHAGOM, ALUVA.

BY ADV.SRI.JOSEPH M.P.
BY ADV.SRI.JOHN VIPIN
BY ADV.SRI.V.K.KISHOR

RESPONDENT/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

2 ADDL.RESPONDENT:
XXX

(ADDL.RESPONDENT IS IMPLEADED AS PER ORDER DATED 08.11.2022 IN CRL.M.A.1/2022)

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR
BY ADV.SRI.RAMESH .P
BY ADV.SMT.FATHIMA NARGIS K.A.
BY ADV.SRI.BINIYAMIN K.S.

2024:KER:40029

BY ADV.SMT.SANGEERTHANA M.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.06.2024 ALONG WITH CRL.A.1069/2016 AND CONNECTED CASES, THE COURT ON 12.06.2024 DELIVERED THE FOLLOWING:

2024:KER:40029

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 12TH DAY OF JUNE 2024/22ND JYAISHTA, 1946

CRL.A.NO.1101 OF 2016

CRIME NO.234/2015 OF KALAMASSERY POLICE STATION, ERNAKULAM
AGAINST THE JUDGMENT DATED 18.07.2016 IN SC NO.439 OF 2015
OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

APPELLANT/ACCUSED NO.4:

NIYAS @ MASTHAN
AGED 28 YEARS, S/O NAINAR, MUNDAKKAL HOUSE,
MUNDAKKAL BHAGAM, KANGARAPPADI, THRIKKAKKARA
NORTH VILLAGE, ERNAKULAM DISTRICT.

BY ADV.SRI.RENJITH B.MARAR (K/000240/2003)
BY ADV.SRI.M.J.SANTHOSH
BY ADV.SRI.ANTONY PAUL(K/1377/2021)

RESPONDENT/COMPLAINANT:

1 THE STATE OF KERALA
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.

2 ADDL. RESPONDENT:
XXX
(ADDL. RESPONDENT ISIMPLEADED AS PER ORDER DATED 08/11/2022 IN CRL.MA.NO.3/2022)

BY ADV.SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR
BY ADV.SRI.RAMESH.P
BY ADV.SMT.FATHIMA NARGIS K.A.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.06.2024 ALONG WITH CRL.A.1069/2016 AND CONNECTED CASES, THE COURT ON 12.06.2024 DELIVERED THE FOLLOWING:

2024:KER:40029

"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

These Criminal Appeals are filed against the judgment of the Court of the Sessions Judge, Ernakulam in S.C.No.439 of 2015 arising out of Crime No.234/2015 of Kalamassery Police Station. The appeals are preferred by A1 to A4 against their conviction and sentence under Sections 120B(1), 366, 376D, 394, 323 and 342 of the Indian Penal Code [hereinafter referred to as the 'IPC']; and by A5 and A6 against their conviction and sentence under Section 212 read with Sections 34, 411 and 414 of IPC.

2. The prosecution case is that A1 to A4 hatched a criminal conspiracy to commit abduction, rape and robbery. Accordingly, on 14.02.2015 at about 8 a.m., A1 to A4 reached Edapally Toll in an autorickshaw bearing registration No.KL-40/F-2019 driven by A4, where PW1 and PW2 were waiting in anticipation of work. A1 to A4 took PW1 and PW2 in the aforementioned auto, under the pretext of taking them for cutting grass near a Ladies hostel of Cochin University. En route to the location, A2 and A3 boarded the auto near Mithra Super Market, indicating that they were also workers for cutting grass. PW1 and PW2 were taken to a beaten

track in the middle of a barren hill near to building No.XIV/223 of Kalamassery Municipality. At about 8.30 a.m., A1 laid PW1 on the ground, and while A2 caught her shoulders, A1 had sexual intercourse with PW1 by force and without consent. Meanwhile A2 forcibly removed her $3^1/_2$ sovereign gold chain with thali and $^1/_2$ sovereign ring. While PW2 tried to prevent them, A3 and A4 wrongfully confined her and took Rs.150/- from her. Then A2 to A4 had sexual intercourse with PW1 against her will. Thereafter, A4, with the intention of outraging her modesty, intentionally took her nude photographs and when it was objected by PW1, A4 beat her on the face and other parts of her body and took her ¼ sovereign earrings, samsung mobile and Rs.400/- from her shirt pocket. A1 to A4 also threatened PW1 and PW2 with dire consequences if they revealed the incident to anybody and also threatened to publish the photographs taken on the internet. The prosecution also has a case that A5 and A6, with the knowledge that A1 to A4 had committed the above offence, permitted them to reside in their house and received the gold ornaments with the knowledge that they were stolen properties and assisted them in concealing and disposing the same.

3. The case was registered by CW47, S.I of Police, Kalamassery on the basis of the F.I. Statement of PW1, recorded by PW27, WCPO. The case was investigated by PW33, C.I of Police,

Kalamassery. On completion of the investigation, he laid the charge sheet before the Judicial First Class Magistrate Court, Kalamassery and taken on file as C.P.No.5/15. After complying with the provisions of Section 207 of the Cr.P.C., the learned Magistrate committed the case to the Court of Sessions, Ernakulam under Section 209 of Cr.P.C and the case was taken on file as S.C.No.439/2015 and later made over for trial and disposal.

4. Accused Nos.1 to 4 were in custody and were produced in accordance with the production warrants. A5 and A6 appeared in court. After hearing the prosecution and the defence, charges were framed under Sections 120B(1), 376D, 376(2)(n), 394, 366, 342, 323, 506(2) read with Section 34 IPC and Section 67A of the Information Technology Act, against A1 to A4. A5 and A6 were charged under Sections 212, 411 and 414 read with Section 34 of the IPC. The charges were read over and explained to A1 to A6 in Malayalam, and they pleaded not guilty.

5. The Prosecution examined PW1 to PW33 and marked Exts.P1 to P45. MOs.1 to 28 were identified. After that the accused were examined under Section 313(1)(b) of the Cr.P.C. They denied all the incriminating evidence brought out by the prosecution. Thereafter, the prosecution and the defence were heard under Section 232 of Cr.P.C. Finding that there was no scope for acquittal, the accused were called upon to enter on their

defence. On the side of the defence, the mother of A1 was examined as DW1. Copies of the FIR and medical certificate of A1 were marked as Exts.D1 and D2. While identifying the material objects, the earrings (grape model) and the jeans of A1 were together referred to as MO13(a). After MO25, instead of marking the MO's as MOs.26 to 28, they were marked as MOs.27 to 29 although they were referred as MOs.26 to 28 before the trial court. Since there was an error in the 5th head of the charge, it was corrected and read over and explained to the accused. They pleaded not guilty. Thereafter, the prosecution and defence were heard again. Once again the charge was altered as under Sections 120B(1), 366, 376D, 376(2)(n), 394, 342, 323, 506(ii) read with Section 120B of IPC, under Section 66E of the Information Technology Act, against A1 to A4 and under Sections 212, 411, 412 read with Section 34 of IPC against A5 and A6. The altered charges were again read over and explained to the accused and they pleaded not guilty. Both prosecution and the defence submitted that they didn't want to recall any witness for further examination. However, the prosecution later filed CMP.No.616/16, for recalling PWs.1, 2 and 20. After hearing both sides, it was dismissed on 02.07.2016. The Prosecution and defence were heard again.

6. The trial court found A1 to A4 guilty under Sections 120B(1) IPC and under Sections 366, 376D, 394, 323 and 342 read with Section 120B of IPC and sentenced them to undergo rigorous

imprisonment for life, which shall mean imprisonment for the remainder of their natural life, and to pay a fine of Rs.10,000/- each under Section 120B(1) of IPC. In default of payment of fine amount, they were sentenced to undergo rigorous imprisonment for another two months. They were also sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each under Section 366 read with Section 120B of IPC. In default of payment of fine amount, they were to undergo rigorous imprisonment for another two months. They were also sentenced to undergo rigorous imprisonment for life, which shall mean imprisonment for the remainder of their natural life and to pay a fine of Rs.25,000/- each under Section 376D read with Section 120B of IPC. In default of payment of fine amount, they were to undergo rigorous imprisonment for another six months. They were further sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each under Section 394 read with Section 120B of IPC. In default of payment of fine amount, they were to undergo rigorous imprisonment for another two months. They were also sentenced to undergo rigorous imprisonment for one year under Section 342 read with Section 120B of IPC and rigorous imprisonment for one year under Section 323 read with Section 120B of IPC. The substantive sentence of imprisonment was to run concurrently and set off was also allowed. The said accused were also found not guilty under Sections 376(2)(n), 506(ii) read with Section 120B IPC and Sections 66A of the Information Technology

Act and they were acquitted under Section 235(1) of the Cr.P.C. for those offences.

7. As regards A5 and A6, they were found guilty under Section 212 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each under Section 212 read with Section 34 IPC. In default of payment of fine amount, they were to undergo rigorous imprisonment for another one month. Accused No.6 was further found guilty under Sections 411 and 414 of IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- under Section 411 of IPC. In default of payment of the fine amount, she was to undergo rigorous imprisonment for another one month. She was also sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- under Section 414 of IPC, and in default of payment of the fine amount, she was to undergo rigorous imprisonment for another one month. The substantive sentences of imprisonment of A5 and A6 were to run concurrently and set off was also allowed. The trial court also found that the fine amount, if realised, will be given to PW1 as compensation under Section 357(1) of the Cr.P.C. There was a further direction to return the properties MOs.1 to 5 to PW1 and MO13 series and cash of Rs.7,000/- to PW19, who was the *bona fide* purchaser. Other properties and mobile phones were to be confiscated. A recommendation was also made to the District

Legal Services Authority, Ernakulam to award sufficient compensation to the victim PW1 as per the provisions of the Victim Compensation Scheme.

8. In the appeals before us, we have heard Sri.P. Parameswaran Nair, Sri.Renjith B. Marar and Sri.A.S.Faridin, the learned counsel for the appellants and Sri.Alex M. Thombra, the learned Public Prosecutor for the respondent State.

9. The submissions of Sri.Parameswaran Nair, the learned counsel appearing for A1 to A3, briefly stated, are as follows:

- The testimony of PW1 before the court is not consistent with the statements made before the doctor at first instance, her F.I. Statement [Ext.P1] and the FIR [Ext.P27]. While there is a discrepancy with regard to the date of the alleged incident, there is also ambiguity with regard to the identity of those who allegedly raped her as also in respect of the number of persons who raped her.

- The injuries noticed on the body of PW1, as revealed by Exts.P15 and P15(a) certificates, are not consistent with the suggestion of gang rape, more so when there were no injuries noticed on her private parts. Further, the chemical examination report [Ext.P43] is also not conclusive when it suggests the detection of spermatozoa on the dress of the victim as also in the vaginal swabs taken from her without linking it definitely to any particular accused.

- The testimony of DW1, the mother of A1 would clearly reveal that the police had an axe to grind against A1 since he had a verbal altercation with them a few days before the alleged incident of rape in connection with the case of seizure of his motorcycle for an offence under the Motor Vehicles Act.

- On the aspect of sentencing, it is contended that the trial court imposed the maximum sentence of imprisonment for the remainder of the life of the accused without giving any reason for the imposition of the maximum punishment. It is contended that since the legislature prescribes only a minimum mandatory sentence of 20 years, it was incumbent upon the trial court to provide reasons to justify a sentence above the prescribed minimum.

10. The submissions of Sri.Renjith B. Marar, the learned counsel for A4, over and above what has been urged on behalf of A1 to A3, briefly stated, are as follows:

- There is no evidence to establish that A4 was a member of the four member gang that allegedly committed the gang rape. While there is inconsistency in the version of PW1, PW2 and PW4 with regard to the identity of the person who drove the autorickshaw that picked them up from Edapally Toll, they have also not identified A4 properly in court. That apart, the testimony of PW11, who saw PW1 and PW2 alight from the autorickshaw near the crime scene, also corroborates the theory that he was not there at the time of the incident. It is contended that the inconsistencies

established in their respective testimonies render the testimonies of PW1, PW2 and PW4 unreliable. Reliance is placed on the decisions in **Vayalali Girishan & Others v. State of Kerala - [2016 KHC 204], Rahul v. State of Delhi Ministry of Home Affairs - [2022 KHC 7172], Santosh Prasad @ Santosh Kumar v. State of Bihar - [(2020) 3 SCC 443]** and **Nirmal Premkumar v. State Rep. by Inspector of Police - [2024 SCC Online SC 260]**.

- There is no evidence to establish that A4 had raped PW1 or had snatched the earrings of PW1. While there is an inconsistency in the deposition of PW1 with regard to identifying A4 as the driver of the autorickshaw, there has been no recovery of any khakhi shirt from A4, which, according to PW1, was what he was wearing on the day of the incident. This is relevant because the prosecution case is that A4 did not change his clothes till the time of his arrest on 16.02.2015. Further, the recovery of the gold ornaments [MOs.2 to 4] from his house was not witnessed by anyone. PW14 had turned hostile to the prosecution and the other witness cited [PW15] deposed to not knowing the description of the ornaments seized from the house.

- The prosecution has not established that the autorickshaw seized by the police is the same as the one that was involved in the case.

- It is contended that Exts.P15 and P15(a) certificates were prepared at a later point in time since the alleged incident as recorded in the said reports showing to be a rape by four unknown persons whereas in Ext.P1 F.I. Statement recorded later that day, PW1 did not have a case that she had been raped by four persons.

There is also discrepancy in the recording of injuries in Exts.P15 and P15(a) certificates.

- The Test Identification Parade [TI Parade] was not properly conducted, and further, PW1 and PW2 had not properly identified A4 at the TI Parade. There was also no proper identification of A4 by PW1 or PW2 in court. Reliance is placed on the decision reported in **Wakil Singh and Others v. State of Bihar - [1981 (Supp) SCC 28]**.

- Reliance was placed on the decision reported in **Mehraj Singh v. State of U.P. - [(1994) 5 SCC 188]** to suggest that the FIR was not reliable since there was an overwriting of the date of the FIR, in the sense that the date 15.02.2015 that was generated by the computer had been struck off and the date 14.02.2015 overwritten therein. It is submitted that the chemical examination report cannot be relied upon against A4 since the collection, sealing and handling of material was done in a shoddy manner and there was a huge delay in forwarding the material to the chemical laboratory. While the dress and the vaginal swabs of PW1 were collected on 14.02.2015 and handed over to the Investigating Officer on 19.02.2015 and the blood samples of A1 to A4 were collected on 25.02.2015, they were all sent to the Judicial First Class Magistrate Court only on 28.02.2015 and from there to the chemical laboratory only on 08.05.2015. It is also pointed out that the findings in the report are inconclusive. While spermatozoa was detected in his own underwear, merely because A4's blood group was “O” and that blood group matched with the spermatozoa found on PW1's dress, it cannot be inferred that A4 was either present or involved in the alleged incident.

- There was no evidence whatsoever to convict A4 under Section 120B.

- On the aspect of sentence, it is contended that the trial court did not give any reason to justify the imposition of the maximum punishment in circumstances where the legislature had prescribed a minimum sentence of only 20 years.

11. Per contra, the submissions of Sri.Alex M. Thombra, the learned Public Prosecutor were more in justification of the findings of the trial court. He contended that the discrepancies pointed out by the learned counsel for the appellants were only trivial in nature and not so material as to demolish the prosecution case. He adds that the minor discrepancies were also explained by the witnesses concerned during cross examination and re-examination.

Discussion and Finding:

12. We have considered the submissions made by counsel on either side and also perused the evidence adduced in the instant case as also the impugned judgment of the trial court.

13. A Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. It is therefore that courts usually examine the broader probabilities of the case and do not get swayed by minor contradictions or insignificant

discrepancies in the statement of the prosecutrix, which are not of fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. The court must 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 a rape on her **[State of Punjab v. Gurmit Singh and Others - [(1996) 2 SCC 384]]**.

14. In the instant case, the allegation is not of a rape simpliciter but of gang rape of the prosecutrix by four of the accused persons. Through an amendment effected to the IPC in 2018, the legislature has made the penal provisions relating to rape more stringent and also introduced new provisions to deal separately with gang rape and its punishment. Section 376D of the IPC reads as under:

> "**376D. Gang rape**
>
> Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
>
> PROVIDED that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim;
>
> PROVIDED FURTHER that any fine imposed under this section shall be paid to the victim."

15. It is against the backdrop of the above definition that we have to appreciate the evidence in this case which consists primarily of the evidence of the prosecutrix [PW1] and the evidence of an eye witness to the incident [PW2]. In particular, we have to bear in mind the law relating to appreciation of evidence in such cases which states that in order to hold an accused guilty for commission of rape, the solitary evidence of a prosecutrix is sufficient, provided the same inspires confidence and appears to be trustworthy, unblemished and is of sterling quality **[Krishan Kumar Malik v. State of Haryana - [(2011) 7 SCC 130]** and **Ganesan v. State represented by its Inspector of Police - [(2020) 10 SCC 573]]**. Since the presumption under Section 114A of the Evidence Act is extremely restricted in its applicability, when the allegation against an accused is of rape, the evidence of a prosecutrix must be examined in the same manner as that of an injured witness whose presence at the spot is probable. At the same time, it can never be presumed that her statement should, without exception, be taken as gospel truth. Further, her statement can be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely **[Raju and Others v. State of Madhya Pradesh – [(2008) 15 SCC 133]]**. While considering the evidence of a victim subjected to a sexual offence, the court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to

provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version **[Nirmal Premkumar v. State Rep. by Inspector of Police - [2024 SCC Online SC 260]].** In fact, if a court were to seek corroboration of her statement, as a rule, before relying upon the same, it would tantamount to adding insult to injury **[Ranjit Hazarika v. State of Assam - [(1998) 8 SCC 635]].**

16. The evidence of the prosecutrix [PW1] and the eye witness [PW2] assume great importance in this case. PW1 deposed that at about 8 am on 16.02.2015 A1 and A4 came in an autorickshaw to the Edapally Toll Junction, where she, along with PW2, were standing in anticipation of being engaged for work. When told that there was some grass cutting work to be done near a ladies hostel, they accompanied A1 and A4 in the autorickshaw. That en route A2 and A3 also got into the autorickshaw, and all six of them alighted at a pathway by the side of a road. When they asked where the other workers were, they were told that the other workers would arrive shortly and that, in the meanwhile they should go and change their clothes for work. While doing so, A1 to A4 pushed her [PW1] down, and A1 dragged her for a short distance, assaulted her, and then committed rape on her. At that

time, PW2 was restrained by A3 and A4, who threatened her with dire consequences if she mentioned anything about the incident to the police or anybody else. PW1 also deposed that while A1 assaulted her, A2 removed her gold chain and thali as also a gold bangle. That after A1 had raped her, A2 and then A3 and A4 also committed rape on her. Thereafter A1 again got on top of her and troubled her. A3 then came and lifted her skirt, and A2 took photos of her and threatened to post them on the internet. Around the same time, A4 tried to forcibly remove her earrings, and out of fear, she removed the earrings herself and gave it to him. A1 to A4 also took her mobile phone and Rs.450/-, and all four accused left the place.

17. PW2 deposed that she used to stand at the Edapally Toll Junction in anticipation of work, and on 16.02.2015, at around 8 – 8.30 a.m., two persons came there in an autorickshaw, and one of them asked for two persons to accompany him for grass cutting work. That she and PW1 accompanied the said persons in the autorickshaw. When the autorickshaw reached near the supermarket at Pookkatupadi, two more persons got in to the autorickshaw. After travelling for some time, the autorickshaw stopped in front of a house, and they walked therefrom through a narrow pathway. They reached the top of a hill and then asked A1 to A4 where the college was, near which they had to cut grass, and why they had been brought elsewhere. They were told that the

college was yet to come up and that the machine for cutting grass will be brought soon. She, along with PW1, then went to change their dress. At that point, two among the four accused laid PW1 down and held her down by the shoulder. Thereafter, three of the accused restrained PW1, and one among them lifted her saree. She further deposed that A1 to A4 had committed rape on PW1, and she identified A1, A2 and A3 specifically from the box and A4, by identifying him as one of the four persons other than A1, A2 and A3 who had raped PW1. She also deposed that A1 to A4 snatched the gold chain, earrings, and ring of PW1 as also her mobile phone, and that the accused also threatened them with dire consequences if they disclosed the incident to anybody.

18. It is probably on account of the realisation that the testimony of the prosecutrix and the eye witness would be accorded great evidentiary value before this Court that the attempts by the learned counsel for the appellants have, understandably, been to try and discredit the said witnesses by pointing to inconsistencies in their statements at various stages of the investigation of the case. In particular, it is contended that both PW1 and PW2 had deposed that the incident took place on 16.02.2015 whereas the prosecution case was that it took place on 14.02.2015. We do not, however, find this to be of any significance because there are other pieces of evidence in the form of medical certificates [Exts.P15 and P15(a)], F.I Statement [Ext.P1], the FIR [Ext.P27] and Ext.P2 statement of

PW1 to the Magistrate under Section 164 of the Cr.P.C. that clearly point to the incident having taken place on 14.02.2015 and not 16.02.2015. The appellants would then contend that there is no consistency in the version of the prosecutrix as regards the incident itself and of the role played by the various accused in the crime. It is pointed out that while in Ext.P15(a) certificate prepared by the doctor at 1.10 p.m. on 14.02.2015, it is recorded that the prosecutrix was assaulted by four persons, in Ext.P15 certificate that was prepared almost contemporaneously, the number of assailants is not seen mentioned. Further, while in Ext.P1 F.I. Statement, it is recorded that the prosecutrix was sexually outraged by four persons, in the details provided thereafter, there is a mention of actual rape by only one of the accused persons. In the court, however, the prosecutrix clearly stated that she was raped by all four accused. It is further pointed out that the injuries recorded in the medical certificates are also not consistent with the suggestion of gang rape.

19. We find ourselves unable to accept the above contentions of the appellants to disbelieve the evidence of the prosecutrix. Her consistent stand in all the statements aforementioned has been that she was sexually assaulted by a group of four persons. While she may have emphasised only on the actual physical rape by one of the accused, she has never contradicted her statement that she was sexually assaulted by all four of them. Her deposition in court is

also corroborated by the testimony of the eye witness PW2, whose deposition that she saw all four of the accused raping the prosecutrix was not challenged in cross examination. The unimpeached testimony of PW2, who is an eye-witness to the incident satisfies the requirements of the testimony of a sterling witness as explained by the Supreme Court in **Rai Sandeep v. State (NCT of Delhi) – [(2012) 8 SCC 21]** as follows:

> "In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to seive the other supporting materials for holding the offender guilty of the charge alleged."

20. Further, while the medical certificates clearly indicate the opinion of the doctor that the injuries are suggestive of the sexual assault as alleged namely, that they were caused by four persons, we are also not impressed with the argument that the injuries were not suggestive of gang rape. It is trite that victims of

sexual assaults do not react in any standard way, and one cannot expect a uniformity in the manner in which such victims of sexual assault react in situations where there is a threat of bodily injury. Physical manifestations of violent struggles are not a necessary pre-condition for entering a finding of gang rape. We are therefore of the view that in the light of the testimony of the prosecutrix, as corroborated by the testimony of the eye witness PW2 as also the medical certificates [Ext.P15 and P15(a)] and the statement of the prosecutrix in Ext.P1 F.I. Statement, there is no reason to disbelieve the version of the prosecutrix that she had been a victim of gang rape by A1 to A4. The said version of the prosecutrix is also corroborated by Ext.P2 statement that she gave before the Magistrate under Section 164 of the Cr.P.C. We also take note of the definition of 'gang rape' as contained in Section 376D of the IPC, referred to above, which clearly indicates that even if a woman is raped by only one among a group of persons acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and punished in accordance with the said provision. Thus, the alleged discrepancy in the testimony of the prosecutrix with regard to the number of persons who had actually committed physical rape on her may not be very significant when viewed against the backdrop of the statutory provisions with which the accused are charged. It may not also be out of context at this juncture to notice that Ext.P43 chemical examination report indicates the possibility of a sexual

assault having taken place and the detection of spermatozoa in the vaginal swab of the prosecutrix which in turn contained blood of groups 'A' and 'O', that matched with the blood groups of A1 and A3, who have 'A' group blood as well as A2 and A4, who have 'O' group blood. We therefore see no reason to upset the finding of the trial court with regard to the commission of gang rape on the prosecutrix by A1 to A4.

21. The learned counsel for A4 has a definite case that the prosecution has not established that A4 was, in fact, one of the four persons who committed the offence of gang rape on the prosecutrix. He points to the inadequate identification of A4 by the prosecutrix and PW2, both at the time of TI Parade as also later in court, to substantiate his contention that the presence of A4 at the crime scene was never established. He would further rely on the deposition of PW11 to point out that while she had deposed to seeing the prosecutrix and PW2 alighting from an autorickshaw near her house, she had also seen the driver of the autorickshaw go away from there after the prosecutrix and PW2 got out of the autorickshaw. It is the submission of the learned counsel for A4 that the identification of A4 has always been as the autorickshaw driver, and inasmuch as PW11 has stated that the autorickshaw had left the scene, it has to be inferred that A4, who was identified as an autorickshaw driver, was not present at the scene of crime at the time of the incident.

22. We find ourselves unable to accept the said submission of the learned counsel for A4. While it may be a fact that during the TI Parade that was conducted on 04.03.2015, PW2 had identified A4 on the first occasion but not on the second occasion, the prosecutrix had identified A4 on both occassions. Similarly, while the learned counsel would point to certain irregularities in the conduct of the TI Parade itself, by alleging that the non-suspects chosen to stand along with the suspects were not similar in profile to the suspects, on a perusal of the testimony of PW16 Magistrate through whom Ext.P10 TI report was marked, we are convinced that all procedural safeguards had been adopted for ensuring fairness in the TI Parade. It is also significant that while the prosecutrix identified each of the accused, including A4, in court, PW2 identified A4 by exclusion, having independently identified A1 to A3 and then pointed to all four of the accused [A1 to A4] while identifying them as the four persons who had committed the gang rape. Both the prosecutrix and PW2 had identified A4 as the person who was wearing a khakhi shirt on the date of the incident. Most importantly, however, we find that the gold ornaments, [MOs.2 to 4] except a gold chain [MO1] that had been taken from the person of the prosecutrix during the time of the incident, were subsequently recovered from the house of A4 pursuant to the disclosure statement given by A4 to the Investigating agencies as is evident from Ext.P9 recovery mahazar. The said evidence clearly

points to the presence of A4 also at the scene of the crime on the date of the incident.

23. As regards A5 and A6, we find that the finding of the trial court on their complicity in relation to the offences under Section 212 of the IPC, takes note of the testimonies of PW6 Leena, who was an employee in the jewellery shop owned by PW19 Baby, PW7 Antony who was witness to Ext.P5 seizure mahazar relating to MO1 from PW19's jewellery shop, PW9 Kuriakose, the owner of the premises that was rented out to A5 and A6, who confirmed that he had let out the premises to the said accused and marked Ext.P7 lease agreement, PW10 Sivan, who was a witness to Ext.P8 seizure mahazar through which Ext.P7 lease agreement was seized, PW18 Joseph Paul, through whom Ext.P11 seizure mahazar whereby the licence of the jewellery was seized. Of the above, the seizure of MO1 gold chain based on the disclosure statement of A6 is sufficient evidence against A6 to show her complicity in the offence under Section 411 of IPC [receiving stolen property]. The testimony of PW6 Leena, who identified A6 as the person who came to the jewellary shop owned by PW19 Baby to sell MO1 chain is sufficient to show her complicity in the offence under Section 414 IPC [assisting in disposing stolen property]. The above evidence also suffices to sustain her conviction for the offence under Section 212 for harbouring A1 to A4. We find, however, that the conviction of A5 for the offence under Section 212 of IPC is not supported by

the evidence on record. The trial court has convicted him based solely on the depositions of PW9 Kuriakose, the landlord of the premises that was let out to A5 and A6 and PW32 Paul C. Kuriakose, who turned hostile to the case of the prosecution. There is nothing in the depositions of the aforesaid witnesses that would unambiguously point to the existence of knowledge in A5 of A1 to A4 being offenders as envisaged under Section 212 of the IPC. It is also significant that there is no evidence brought on record to show that A5 and A6 were husband and wife so as to impute the knowledge of the wife to the husband. We are therefore of the view that the conviction and sentence imposed on A5 under Section 212 read with Section 34 of the IPC cannot be legally sustained.

24. We must now deal with the arguments of the learned counsel for the appellants/A1 to A4 that there was no evidence whatsoever to sustain the conviction under Section 120B(1) IPC on them. We note from a reading of Section 120A IPC, which defines 'criminal conspiracy', that it envisages an agreement between two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The proviso to the said Section makes it clear that it is only an agreement to commit an offence that would attract the definition of 'criminal conspiracy' unless some act besides an agreement simplicitor is done by one or more parties to such agreement in pursuance thereof. An explanation to the Section also makes it clear that it is immaterial

whether the illegal act is the ultimate object of such agreement or is merely incidental to that object. Section 120B IPC, which deals with punishment of criminal conspiracy, makes it clear that a party to a criminal conspiracy to commit the offence punishable with death, imprisonment for life, or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such an offence.

25. In these appeals, we are to see whether the ingredients of the offence under Section 120A have been made out by the Prosecution. The existence of an agreement to pursue an illegal object, being the essence of the offence of conspiracy, and the formation of an agreement between two or more persons being a mental state that is difficult to establish through direct evidence, we have necessarily to examine the circumstantial evidence obtaining in these cases, duly analysed in the manner prescribed under Section 10 of the Evidence Act to infer the existence of such an agreement. A perusal of Section 10 of the Evidence Act shows that the provision mandates that (i) there has to be *prima facie* evidence affording a reasonable ground for the court to believe that two or more persons are members of a conspiracy; (ii) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (iii) anything said, done or written by him should

have been said, done or written by him after the intention was formed by any one of them; (iv) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and (v) it can only be used only against a co-conspirator and not in his favour. When we examine the proved circumstances obtaining in these cases, we find that there is absolutely no evidence that would afford a reasonable ground for this Court to believe that any of the accused were members of a conspiracy to commit gang rape. The attempt of the prosecutor, with a view to sustain the finding of the trial court, has been to suggest that an inference can be drawn of the existence of such a conspiracy from the fact that there was sufficient evidence to prove beyond reasonable doubt that A1 to A4 had committed gang rape. We are afraid, we cannot subscribe to the said contention. The mandate of Section 10 of the Evidence Act is to insist on the existence of *prima facie* evidence affording reasonable grounds for the court to believe that two or more persons are members of conspiracy. For there to be a reasonable ground for the court to believe that two or more persons are members of the conspiracy, there must be the independent existence of circumstances that would lead to such an inference. In other words, the evidence pointing to the existence of a conspiracy must exist independently in point of time before the commission of the act that was conspired to be done. We do not find any such circumstance having been

established in the instant appeals. The finding of the trial court that through the establishment of the gang rape by the four accused, the conspiracy to commit the said rape can also be inferred is one that cannot be legally sustained. We therefore find A1 to A4 not guilty under Section 120B(1) of the IPC and they are accordingly acquitted under Section 235(1) of the Cr.P.C. for the said offence.

26. Having found the accused A1 to A4 not guilty of the offence under Section 120B(1) of the IPC, we have now to see whether their acquittal for the offence under Section 120B(1) would affect their conviction under Sections 366, 394, 323 and 342 of the IPC respectively, which the trial court had entered by reading the said provisions along with Section 120B of the IPC. In view of our finding that sets aside the conviction of A1 to A4 under Section 120B(1) of the IPC, their conviction under Sections 366, 394, 323 and 342 of the IPC can be sustained only if their complicity under each of these provisions is independently established. Proceeding on this basis, we find that notwithstanding the acquittal of A1 to A4 for the offence under Section 120B(1) IPC, they can be independently convicted under the other provisions aforementioned based on the evidence available on record. We find from the testimonies of PW1 and PW2 that the complicity of A1 to A4 for the offences punishable under Sections 323, 342 and 366 of the IPC are clearly established. While the infliction of harm for the purposes of

Section 323 and the wrongful confinement for the purposes of Section 342 of the IPC together with the requisite *mens rea* for the said offences are clearly established from the unimpeached testimonies of PW1 and PW2 and corroborated by the injuries reported in the medical certificates pertaining to the victim, their complicity in the offence under Section 366 [kidnapping and abduction] is also established from the testimonies of PW1 and PW2. This is notwithstanding that the evidence shows that it was A1 and A2 who initially came in the autorickshaw that picked up PW1 and PW2 from Edapally Toll Junction and that A3 and A4 had got into the autorickshaw only later but en route to the place where the gang rape and robbery were eventually committed on the victim. As regards the conviction under Section 394 IPC, we find that only A2 and A4 can be convicted for the offence under Section 394 IPC based on the testimony of PW1 and PW2 as corroborated by the fact of seizure of gold ornaments based on the disclosure by A4. There is nothing in the testimonies of PW1 and PW2 or any recovery effected based on any statement of theirs that can be used to find A1 and A3 guilty of the offence under Section 394 IPC.

27. In the result, we find as follows:

(i) A1 to A4 are found guilty under Section 366, 376D, 323 and 342 of the IPC. They are found not guilty of the offence under Section 120B IPC and are acquitted under Section 235(1) of the Cr.P.C. for the said offence.

(ii) A2 and A4 are also found guilty under Section 394 of the IPC. A1 and A3 are found not guilty of the offence under Section 394 IPC and are acquitted under Section 235(1) of the Cr.P.C. for the said offence.

(iii) A5 is found not guilty under Section 212 read with Section 34 IPC and is accordingly acquitted under Section 235(1) of the Cr.P.C. for the said offence.

(iv) A6 is found guilty under Sections 212, 411 and 414 of the IPC.

Sentencing:

28. The accused having been found guilty under the various provisions as aforesaid, we now proceed to consider the sentence that must be imposed on them. At the outset, we deem it fit to remind ourselves of the principles to be borne in mind when it comes to sentencing the accused in a case such as the one at hand. They have been recently reiterated by the Hon'ble Supreme Court in **Patan Jamal Vali v. State of Andhra Pradesh – [(2021) 16 SCC 225]** as including the following:

(i) The nature and gravity of the crime.
(ii) The circumstances surrounding the commission of the sexual assault.
(iii) The position of the person on whom the sexual assault is committed.
(iv) The whole role of the accused in relation to the person violated.
(v) The possibility of rehabilitation of the offender.

Over and in addition to the above, the age of the accused, the economic and social background to which they belong, their antecedents, the existence of any mitigating circumstances, the possibility of reformation and the chances of their re-integration into society, are also to be borne in mind while arriving at the sentence to be imposed on each of the accused **[Manoj Pratap Singh v. State of Rajasthan – [(2022) 9 SCC 353]; Madan v. State of U.P. - [2023 KHC 6986 (SC)]**.

29. Keeping the above principles in mind, we deemed it apposite to collect additional information by way of reports from the officers concerned of the prisons wherein A1 to A4 are currently lodged. The reports thus received contain details regarding the general behaviour of the accused while in prison and the avocation they engaged in during their incarceration. Accused Nos.1 to 4, we note have been in prison since 15.05.2017 and they have all completed around 9 years 3 months and 15 days in prison as on 30.05.2024 including set off. The behaviour of A1 to A3 has been termed as satisfactory in the reports forwarded. A minor infraction of having been found in possession of a *beedi* has been noted in the case of A4. The age of A1 to A4 are stated as A1 – 22 years, A2 – 28 years, A3 – 21 years and A4 – 28 years. The accused do not have any criminal antecedents.

30. Guided by the dictum in **Patan Jamal Vali (supra)**, where the court elucidated on the need to take adequate note of the intersectional identity of the victim and the additional vulnerabilities that he/she would have been subjected to due to the overlapping identities that he/she may possess, we note that the victim PW1 is a woman, aged 38 years answering to the description of a Tamil migrant labourer who was displaced from her place of birth by social and economic circumstances. She had migrated from her native place Dharmapuram in Tirupur District in the State of Tamil Nadu to Kerala looking for an avocation to eke out a living. She is also a mother of two children. She possesses all the vulnerabilities that an individual of such a migrant labourer group usually suffers from including linguistic handicap and socio-cultural alienation which the accused preyed upon, on the fateful day when she had been out looking for work so as to sustain herself and her family. It is clearly discernible from the evidence that the accused had targeted the most vulnerable in the locality viz., migrant women labourers, and had lured PW1 and PW2 under the pretext of offering them a job, exploiting the situation whereby the very nature of their avocation required them to travel to isolated unknown places along with, and on the instruction of, strangers. The intersectional analysis as discussed in **Patan Jamal Vali (supra)** requires us to take note of the distinct experience of a

subset of women who exist at the intersection of varied identities. PW1, the victim in this case, squarely falls within that subset and she finds herself placed at an intersection of varied identities as a woman from another State, with limited linguistic capabilities to understand and interact with the people in this State and as a laborer belonging to one of the socially, culturally and financially weaker sections of society. The underlying structures of inequality that made PW1 vulnerable and which the accused effectively exploited to her utter detriment, cannot thus be lost sight of while deciding the sentence to be imposed on the accused.

31. In these appeals, we have already found A1 to A4 guilty of the charges under Sections 366, 376D, 323 and 342 of the IPC. While doing so, we also set aside the conviction of A1 to A4 under Section 120B(1) of the IPC, the conviction of A1 and A3 under Section 394 of IPC and the conviction of A5 under Section 212 read with Section 34 IPC. We have, however, affirmed the conviction of A2 and A4 under Section 394 of IPC and that of A6 under Sections 212, 411 and 414 of the IPC.

32. Considering the nature and gravity of the offences for which they now stand convicted, we are of the view that A1 to A4 do not deserve any leniency in the matter of the sentence to be imposed for the offence under Section 376D IPC. At any rate, the minimum punishment that has to be mandatorily imposed while

confirming a conviction under Section 376D is 20 years imprisonment. However, the age of the accused, their behaviour during the 9 years of incarceration that they have already undergone, the possibility of their rehabilitation and assimilation back into the society can be taken into account while determining the punishment to be accorded to them, short of the maximum punishment that the trial court deemed fit to impose on them. Taking note of the contention of the learned counsel for A1 to A4, based on the judgment of the Supreme Court in **Sunitha Devi v. State of Bihar - [2024 KHC 6309]** that there has been no proper application of mind by the trial court while imposing the maximum sentence on A1 to A4 for each offence and that no details are forthcoming from the judgment as to how the maximum punishment was awarded for the various offences for which they were convicted, we are of the view that balancing the interests of the victim and the accused in these appeals based on the principles enumerated above, the ends of justice would be met by imposing the following sentences on the accused:

1. Accused Nos.1 to 4 are each sentenced to undergo rigorous imprisonment for a period of 30 years, and to pay a fine of Rs.25,000/- [Rupees Twenty five thousand only] each for the offence under Section 376D of the IPC. In default of payment of the fine amount, they shall undergo rigorous imprisonment for an additional period of six months. They are also each sentenced to undergo rigorous imprisonment

for 10 years, and to pay a fine of Rs.10,000/- [Rupees Ten thousand only] each for the offence under Section 366 of the IPC. In default of payment of the fine amount, they shall undergo two months rigorous imprisonment. Each of them is also sentenced to undergo rigorous imprisonment for one year for the offences under Sections 323 and 342 of the IPC. Accused Nos.2 and 4 are each sentenced to undergo rigorous imprisonment for ten years, and to pay a fine of Rs.10,000/- [Rupees Ten thousand only] each for the offence under Section 394 of the IPC. In default of payment of the fine amount, they shall undergo two months rigorous imprisonment.

2. Accused No.6 is sentenced to undergo rigorous imprisonment for 3 years, and to pay a fine of Rs.5,000/- [Rupees Five thousand only] for the offence under Section 212 of the IPC. In default of payment of fine, she shall undergo rigorous imprisonment for another one month. She is also sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- [Rupees Five thousand only] each for the offences under Sections 411 and 414 of the IPC. In default of payment of fine, she shall undergo rigorous imprisonment rigorous imprisonment for another one month for each of the said offences.

3. All sentences shall run concurrently. The accused shall also be entitled to set off as envisaged under Section 428 Cr.P.C.

4. Fine amount of Rs.1,75,000/-, if realised, shall be paid to PW1 as compensation under Section 357(10)(b) of the Cr.PC.

5. We note that the District Legal Services Authority, Ernakulam has already awarded a compensation of

Rs.6,00,000/- to the victim PW1 as per the provisions of the Victim Compensation Scheme, pursuant to the directions of the trial court. Under the circumstances, we do not see the need to direct further amounts to be paid to PW1 by way of compensation.

The Criminal Appeals are disposed as above.

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

Sd/-
SYAM KUMAR V.M.
JUDGE

prp/