



2026:KER:72978

Crl.A.No.109/2014

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2026 / 31ST BHADRA, 1948

CRL.A NO. 109 OF 2014

CRIME NO.507/2010 OF Kattappana Police Station, Idukki

AGAINST THE JUDGMENT DATED 06.12.2013 IN SC NO.179 OF 2011 OF
DISTRICT COURT & SESSIONS COURT, THODUPUZHA ARISING OUT OF THE
ORDER/JUDGMENT IN CP NO.57 OF 2010 OF JUDICIAL MAGISTRATE OF FIRST
CLASS, KATTAPPANA

APPELLANT/ACCUSED:

BIJU
THATTAYKKATU HOUSE, POOVER'S MOUNT BHAGOM, KOCHUTHOVALA
KARA, KATTAPPANA VILLAGE.

BY ADVS.
SRI.C.K.VIDYASAGAR
SHRI.P.CHANDY JOSEPH

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682 031.

PUBLIC PROSECUTOR SRI M A SHIHAB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.08.2026,
THE COURT ON 22.09.2026 DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.Appeal No.109 of 2014******Dated this the 22nd day of September, 2026******J U D G M E N T***

The sole accused in S.C.No.179/2011 on the files of the Sessions Court, Thodupuzha, has preferred this appeal assailing the judgment dated 06.12.2013 in the said case.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the prosecution. Perused the verdict under challenge and the evidence available.

3. Here the prosecution alleges commission of offences punishable under Sections 323, 452 and Section 511 r/w 376 of the Indian Penal Code ('IPC' for short), by the appellant/accused. The prosecution allegation is that at about 5.30 p.m on 03.07.2010, when the defacto complainant was alone at her house, the accused trespassed into her house,



armed with a knife, and attempted to commit rape on her. But the accused failed to complete the offence. 4. The learned Special Judge recorded evidence on completion of the pre-trial formalities. PW1 to PW8 were examined and Exts.P1 to P6 were marked on the side of the prosecution. On the side of defense, during cross examination of PW8, Ext.D1 contradiction was marked. Thereafter, the learned Special Judge evaluated the evidence and found that the appellant/accused committed the offences punishable under Sections 323, 354 and 452 of the IPC and accordingly he was convicted and sentenced as under:

“For the offence under section 323 of the Indian Penal Code the accused is sentenced to undergo rigorous imprisonment for 6 (six) months and to pay a fine of ₹1,000/- (One thousand only) and in default of payment of it, to undergo rigorous imprisonment for a further period of one month.

For the offence under section 354 of the Indian Penal Code he is sentence to undergo rigorous imprisonment for one year and to pay a fine of ₹2,000/- (Two thousand only) and in default of payment of it, to undergo rigorous imprisonment for a further period of two months.

For the offence under section 452 of the Indian Penal Code he is sentenced to undergo rigorous imprisonment for 4 (four) years and to pay a fine of ₹3,000/- (Three thousand only) and in default of payment of it, to undergo rigorous imprisonment for a further period of 3



(three) months. The fine, if recovered, will be paid to the victim (PW1).

The sentences shall run concurrently. The accused is entitled to set off the period from 05.07.2010 to 02.09.2010 (both days inclusive) during which he has been in judicial custody during the investigation.

5. According to the learned counsel for the appellant/accused, the evidence available would not suggest the ingredients for commission of offence punishable under Section 323, 452 and 354 of IPC and, therefore, the learned Sessions Judge went wrong in finding commission of the said offences.

6. Whereas the learned Public Prosecutor would submit that, in the instant case, in fact, the offence under Section 511 r/w 376 of IPC to be found from the evidence along with the offence punishable under Sections 323 and 452 of IPC. However, he fairly conceded that no appeal or revision had been filed by the prosecution challenging the wrong finding, according to him.

7. As on 21.07.2026, this Court, on appreciation of evidence, found that the offence punishable under Section 511 r/w 376 of IPC is made out. Therefore, this Court was inclined to register a *suo motu*



revision. Accordingly, the matter had been placed before the Honourable the Chief Justice in terms of official circular No.1/2024 dated 29/05/2024 in HCKL/4708/2024-A7, then the Honourable the Chief Justice, after highlighting the decision reported in [2025 INSC 802 : 2025 KHC OnLine 7668] (actually the same is `7368'), ***Nagarajan v. State of Tamil Nadu***, noted that “*suo motu* registration of revision is not permissible”.

8. In ***Nagarajan's*** case (*supra*) the Apex Court held as under:

“In our considered view, the appellate court in an appeal filed by the accused cannot while maintaining the conviction enhance the sentence. While exercising its appellate jurisdiction, the High Court cannot act as a revisional court, particularly. when no appeal or revision has been filed either by the State, victim or complainant for seeking enhancement of sentence against accused. In other words, in an appeal filed only by the accused/convict, the High Court cannot suo motu exercise its revisional jurisdiction and enhance the sentence against the accused while maintaining the conviction. All that the High Court can do is to set-aside the judgment of conviction and sentence and acquit the accused, or while doing so, order for a retrial, or in the



alternative, while maintaining the conviction, reduce the sentence. What is pertinent is that under S.401 of Cr.P.C, the High Court is not authorised to convert the findings of acquittal into one of conviction by exercise of revisional jurisdiction. This salutary principle can be

extended to also mean that the High Court cannot enhance the sentence imposed by a Trial Court on conviction in an appeal filed by the accused/convict. There is no doubt that the appellate court while maintaining the conviction can reduce the sentence and grant partial relief to an accused but in an appeal filed by the appellant-accused, can the appellate court not only affirm the conviction but go a step further and seek to enhance the sentence than what has been imposed by the Trial Court. In an appeal from a conviction, it has been expressly stated that there cannot be enhancement of the sentence. We are of the view that in an appeal filed by the accused/convict and in the absence of any appeal filed by the victim, complainant or the State, the High Court cannot exercise suo motu revision either to enhance the sentence or to convict the appellant on any other charge. The reasons for coming to such a conclusion have been discussed above.”

9. Further in **Nagarajan’s** case (*supra*) it was held in paragraph No.11 as under:

‘ “This means if a State, complainant or the victim who have the right to file an appeal do not opt to do so, then the High Court cannot entertain a revision at its behest. Therefore, where an appeal has been filed by the accused challenging the conviction and the



sentence, the revisional jurisdiction cannot be exercised by the High Court so as to remand the matter to the Trial Court for the purpose of enhancement of the sentence.”

10. At the same time, even though the decision in ***Nagarajan’s*** case (*supra*) was rendered on 04.06.2025, later on 19.12.2025, again the Apex Court considered the question of revision in the decision reported in [MANU/SC/1719/2025], ***Syed Shahnawaz Ali v. The State of Madhya Pradesh and Ors.***, where in paragraph Nos.13 to 15 the Apex Court referred the earlier Constitution Bench decision. Relevant paragraph Nos.13 to 15 are extracted as under:

“13. In *Praban Kumar Mitra v. State of West Bengal & Anr.* MANU/SC/0055/1958 : 1958:INSC:74 : AIR 1959 SC 144: 1959 Cri LJ 256: 1959 Supp (1) SCR 63, a Constitution Bench of this Court discussed the nature of revisional powers of a High Court Under Section 439 of the old Code (i.e., Code of Criminal Procedure 1898), which is in *pari materia* Section 4018 of the 1973 Code, read with Section 435 of the old Code, which is in *pari materia* Section 3979 of the 1973 Code. In that regard, it was held that the revisional power is a discretionary power which is to be exercised in aid of justice. Whether the High Court should exercise its revisional jurisdiction depends upon the facts and circumstances of that case and once it entertains an application for revision and issues a Rule, that Rule has to be heard and determined in accordance with law,



whether or not the Petitioner is alive or dead, or whether he is represented in court by a legal practitioner. For ready reference, the relevant portion of that judgment is extracted below:

6. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Court. On the other hand, as already indicated, a right of appeal is a statutory right which has got to be recognized by the Courts, and the right to appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. The legislature has, therefore, specifically provided, by Section 43110 of the Code, the rules governing the right of substitution in case of death of an Appellant, but there is no corresponding provision in Chapter XXXII, dealing with the question of abatement and the right of substitution in a criminal revision. We may assume that the Legislature was aware of the decision of the Bombay High Court, referred to above, when it enacted Section 431 for the first time in the Code of 1882. If the Legislature intended that all application in revision pending in a High Court, should be dealt with on the same footing as a pending appeal, it would have enacted accordingly. But in the absence of any such enactment, we may infer that the



power of revision vested in the High Court under Chapter XXXII of the Code was left untouched -- to be exercised according to the exigencies of each case. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, as some of the single Judge decisions placed before us, would seem to indicate. The High Court has been left complete discretion to deal with a pending matter on the death of the Petitioner in accordance with the requirements of justice. The Petitioner in the High Court may have been an Accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed Under Section 250 of the Code to pay compensation to an Accused person upon his discharge or acquittal. Whether it was an Accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a Rule, that Rule has to be heard and determined in accordance with law, whether or not the Petitioner in the High Court is alive or dead, or whether he is represented in court by a legal practitioner. In hearing and determining cases Under Section 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the considerations applying to abatement of an appeal, may



not apply to the case of revisional applications....."

14. In Honnaiah T.H. v. State of Karnataka & Ors. MANU/SC/0993/2022 on the issue of locus to maintain a revision under Code of Criminal Procedure, it was observed:

16. The challenge to the maintainability of the revision at the instance of the Appellant impugning an order passed during the pendency of the trial must also be rejected. The revisional jurisdiction of a High Court Under Section 397 read with Section 401 of the Code of Criminal Procedure, is a discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court. As the power of revision can be exercised by the High Court even suo moto , there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen. Holding a revision petition instituted by a complainant maintainable, Justice Santosh Hegde writing for this Court in K. Pandurangan v. SSR Velusamy and Anr. MANU/SC/0736/2003 : (2003) 8 SCC 625 observed:

6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an outsider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily



that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court. In this regard, we may note the following judgment of this Court in the case of Nadir Khan v. State (Delhi Admn).

15. The legal principles deducible from the afore-quoted extracts may be summarised thus:

- (a) revisional power under Code of Criminal Procedure is a discretionary power, the exercise of which cannot be claimed as of right;*
- (b) exercise of revisional power is not entirely dependent on who petitions the Court, inasmuch as it can be exercised suo motu;*
- (c) the role of the revisionist is essentially that of a person who invites attention of the Court that an occasion to exercise the revisional power has arisen;*
- (d) once a Rule is issued, ordinarily, that Rule has to be heard and determined in accordance with law, whether or not the Petitioner is alive or dead, or whether he is represented in court by a legal practitioner; and*
- (e) the Court while exercising revisional power discharges a statutory function of supervising the administration of justice on the criminal side and in furtherance thereof examines the correctness, legality or propriety of an order passed by the court subordinate to it.”*

11. In view of the above, the following points arise for consideration:



(i) Whether the Sessions Court is right in holding that the accused committed the offence punishable under Section 323 of IPC?

(ii) Whether the Sessions Court went wrong in holding that the accused committed the offence punishable under Section 354 of IPC?

(iii) Whether the Sessions Court is justified in holding that the accused committed the offence punishable under Section 452 of IPC?

(iv) Whether the Sessions Court went wrong in not finding any other offence made out from the evidence available?

(v) Is it necessary to interfere with the impugned judgment in any manner?

(vi) The order to be passed?

Point Nos.(i) to (vi)

12. In this case, the crucial witness is PW1. She deposed that she had been residing in Kochu Thoala at Poovers Mount along with her parents. The accused was her neighbour. She was born on 08.03.1993. According to her, at about 5.30 hours on 03.07.2010, the accused trespassed into her house while she was alone at the house. At the time of occurrence, she was a Plus Two student and 03.07.2010 was a holiday.



There were 3 rooms in the house and while she was sitting at the middle room, the accused had reached the courtyard of the house and called her father's name. During this time, her father had gone to the ration shop; mother had gone to market in Kattappana and her younger brother had gone to temple. When PW1 informed the accused that there were no one at the house, the accused asked as to whether she was able to deal with mobile phone and she replied in the negative. Thereafter, she had engaged in taking rice from a packet from the bed room. Then the accused had come from behind and covered her mouth. She did not see the accused coming. She had attempted to escape, but the accused caught hold of her and put her on the cot available. Then he had mounted over her and at that time she had worn churidar and panties alone and the accused had attempted to remove the same. Then he had kissed on her face and caught hold on her breast, chest and other parts of the body as also on her private parts. In this occurrence her panties and top were torn and also she had sustained injury on her right thumb, which was due to the contact with nail. When she had attempted to escape, the accused had hit her head against the crassy and she had suffered pain. At the time of occurrence,



the accused had worn a white shirt and lungi. Further he was wearing a sweater. He had also carried a knife. Then she had pushed down the accused and ran to the house of Padmakumar, who is her father's younger brother. Then she had informed the same to Padmakumar and his wife, by weeping. Then they had informed the same to her parents and brought them. She told the same to her parents also then she was taken to St.John's Hospital, Kattappana. Then Dr.Kiran had examined her and stated that she was afraid of and was given counselling. Thereafter she had gone back to her house. Thereafter they reached back in the house at 10 p.m and on the very next day Ext.P1 was lodged and she admitted the same. She also deposed that her mother had handed over the panties and top that she wore at the time of occurrence to the police and she identified the same as M.O1 and M.O2.

13. Even though PW1 was subjected to searching cross examination, in fact, nothing extracted from her to disbelieve her version.

14. Apart from the evidence of PW1, the prosecution examined other witnesses. PW2 Padmakumar deposed about what the victim told to him. According to PW2, PW1 told him that the accused



caught hold of PW1. She did not mention to him the remaining part of the overt acts spoken by her in her evidence. Perhaps, she might be ashamed of narrating the details to him (her uncle).

15. PW3 examined in this case is Sabu. He testified that he was staying in his house, 100 meter north to the house of PW1 and the accused was residing on the northern side, abutting the road. On the date of occurrence, he had seen the accused moving through the road in a swift manner. When he had asked about his fast movement, he did not reply anything. Later, mother of PW1 had informed PW3 about the occurrence.

16. Regarding medical examination of the accused, to prove his potency, PW4, Doctor K.E.Sebastian, was examined and Ext.P3 potency certificate was tendered in evidence; PW4 deposed that “there was nothing to suggest that he was incapable of performing the sexual act”. Ext.P4 is the scene mahazar prepared by PW5, who admitted his signature therein, though he stated that he did not see anything being written on the same. Ext.P5 is the sketch prepared by the Village Officer, Kattappana, and he supported the same. PW7 examined in this case is the Sub Inspector of Police, Kattappana, as on 04.07.2010 and, according to



him, he had recorded Ext.P1 statement given by PW1 and he had registered Ext.P6 FIR. During cross examination, he had admitted that even though FIR was registered on 04.07.2010, the same reached court at 10.30 a.m on 05.07.2011 only. PW8 examined in this case is the Circle Inspector of Police, Kattapana as on 04.07.2010. He had given evidence supporting the prosecution case by detailing the investigation he had done. According to him, he had recorded the statements of the witnesses and he had prepared Ext.P4 mahazar. Regarding the recovery of M.O1 and M.O2, he had prepared Ext.P2, which was produced before the court along with the list. Ext.C1 is the chemical analysis report of vaginal swab, smear, pubic hair, nail clippings. The evidence of PW8 was consistent with the evidence of PW7, the Investigating Officer.

17. The learned Public Prosecutor placed decisions of the Apex Court reported in [2009 KHC 786 : 2009 (2) KLD 323 : 2009(9) SCALE 62 : AIR 2010 SC 1453 : 2009 (14) SCC 537 : 2010 (1) SCC (Cri) 1441], *Pandharinath v. State of Maharashtra* and [1997 Supreme (SC) 1218 : 1997 4 AICLR 511 : 1997 AIR(SC) 3986 : 1997 AIR (SCW) 3923 : 1997 2 ALD(Crl)(SC) 490; 1997 35 AllCriC 652 : 1997 2 ALT (Cri)(SC)



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751 : 1997 2 BLJR 1644 : 1997 2 CHN(SC) 90 : 1997 8 JT 43 : 1997 6 Scale 80 : 1997 8 SCC 386 : 1997 SCR 68 : 1997 KHC 1103 : 1997 8 Supreme 129], *State of Maharashtra v. Rajendra Jawanmal Gandhi*, [2026 KHC OnLine 358 : 2026 KHC 358 : 2026 (2) KLD 26 : 2026 KER 33900 : 2026 KLT OnLine 1709], *Suresh @ Kadakam v. State of Kerala*. In *Suresh @ Kadakam v. State of Kerala*'s case (*supra*), this Court referred a decision of the Apex Court reported in [2004 KHC 959 : 2004(4) SCC 379 : AIR 2004 SC 14970, *Aman Kumar and another v. State of Haryana* and held as under:

“In the decision of the Apex Court reported in [2004 KHC 959 : 2004 (4) SCC 379 :AIR 2004 SC 1497] Aman Kumar and Another v. State of Haryana, the Apex Court considered the essentials to apply Section 511 read with 376 of IPC and held in paragraph Nos.8 to 14 as under:

"8. The plea relating to applicability of S.376 read with S.511, IPC needs careful consideration. In every crime, there is first, intention to commit, secondly preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the act. S.511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It



makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

9. A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of S.511 require. An attempt to commit a crime is to be distinguished from an intention to commit it, and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from



attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under S.122 (waging war against the Government of India) and S.399(preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in S.511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, Court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify



his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.

12. Though the prosecutrix's version in Court was of rape, when it is compared with the one given during investigation, certain irreconcilable discrepancies are noticed. The evidence regarding actual commission of rape is at variance from what was recorded by police during evidence. The evidence of PW-11, the father who according to prosecution made departure from what he allegedly stated during investigation is to the effect that his wife PW-9 told her that the prosecutrix was teased by the accused persons. Merely because he was termed as a hostile witness his entire evidence does not get effected. Significantly, the evidence of prosecutrix and the doctor does not specifically refer to penetration which 2026:KER:33900 is sine qua non for the offence of rape.

13. There is no material to show that the accused were determined to have sexual intercourse in all events. In the aforesaid background, the offence cannot be said to be an attempt to commit rape to attract culpability under S.376/511 IPC. But the case is certainly one of indecent assault upon a woman. Essential ingredients of the offence punishable under S.354 IPC are that the person assaulted must be a woman, and the accused must have used criminal force on her intending thereby to outrage her modesty. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman,



removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows: "Decorous in manner and conduct; not forward or lewd; Shame-fast: Scrupulously chaste."

14. Modesty can be described as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in Rex v. James Llyod (1876) 7 C&P 817. In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her."

18. In paragraph 22 of the judgment impugned, the learned Sessions Judge addressed the argument advanced by the learned counsel for the appellant/accused before him contending that the evidence of the prosecution would at the best prove that the accused outraged the modesty



of PW1 and, in this regard a decision reported in [1996 CriLJ 3705] *State v. Balan* and [1996 CriLJ 2039], *Jaichand v. State*, was given much prominence by the learned Sessions Judge, wherein the Delhi High Court held that Section 511 of the IPC would not get attracted while holding that Section 354 of the IPC would get attracted. In this connection, the evidence of PW2 had been given emphasis by the learned Sessions Judge stating that even though PW1 told him that the accused caught hold of her, she did not mention about the remaining overt acts spoken by her.

19. Thereafter, the learned Sessions Judge found that the prosecution was succeeded in proving that the accused trespassed upon the victim's house along with a knife and thereby committed the offences punishable under Sections 323, 452 as well as 354 of the IPC. In fact, the learned Sessions Judge relied on the evidence of PW2 along with the evidence of PW3, in order to disbelieve the overt acts spoken by PW1 and the said exercise at the instance of the learned Special Judge is found to be not sustainable. In this connection, it is worthwhile to mention the legal position regarding the evidence required to prove the allegation of rape,



attempt to commit rape and other types of sexual molestation. It is well settled law that, in a case of sexual assault, the evidence of the victim, if found to be of sterling quality, can be acted upon as the sole basis of conviction. Since the finding entered by the learned Sessions Judge disbelieving the evidence of PW1 with the aid of the evidence given by PW2, found to be not justifiable, in the eye of law, this Court is of the view that the same would require reconsideration.

20. Now the question poses is, what are the options available to this Court in view of the law laid down by the Apex Court, as already discussed? In this context, it is relevant to hold that, as per the decision in *Nagarajan's* case (*supra*), High Court cannot *suo motu* exercise its revisional jurisdiction and enhance the sentence against the accused while maintaining the conviction. It was held further that, all that the High Court can do is : (i) to set aside the judgment of conviction and sentence and acquit the accused; (ii) while doing so, **order for a retrial** and (iii) in the alternative, while maintaining the conviction, reduce the sentence.

21. Thus going by the ratio in *Nagarajan's* case (*supra*), the



High Court has the power **to order retrial** of this case, in view of the facts and evidence discussed. But coming to the ratio in *Syed Shahnawaz Ali v. The State of Madhya Pradesh and Ors.*'s case (supra), referring to the Constitution Bench decision in [MANU/SC/0055/1958 : 1958 INSC 74 : AIR 1959 SC 144 : 1959 Cri LJ 256 : 1959 Supp (1) SCR 63], *Praban Kumar Mitra v. State of West Bengal & Anr.*, the legal position is that the revisional power is a discretionary power, which is to be exercised in aid of justice and whether the High Court should exercise its revisional jurisdiction depends upon the facts and circumstances of each case that case and once the court decides to exercise its power of revision to address an illegality or impropriety to meet the ends of justice, the same has to be exercised to hear and determine the same in accordance with law.

22. Here going through the judgment impugned, this Court is of the view that the learned Sessions Judge not considered the evidence in its entirety while finding that the accused only committed the offences punishable under Sections 323, 354 as well as 442 of IPC. In the said circumstances, this Court is of the view that this matter would require



retrial, as held in *Nagarajan's* case (*supra*).

23. In fact, trial starts from framing of charge and concludes on delivery of judgment. In the instant case, evidence was already recorded and, in such view of the matter, though the trial carried out by the learned Sessions Judge is reverted to the stage of hearing the matter on merits, the trial before that stage, is kept in tact. Thus the learned Sessions Judge shall hear both sides and to deliver a judgment in accordance with law, regarding the offences made out from the evidence available.

24. In the above circumstances, the appeal is allowed. The conviction and sentence imposed on the appellant/accused for the offences punishable under Sections 323, 452 and 354 of the IPC are set aside. The learned Sessions Judge is directed to hear and decide, what offences have been committed by the appellant/accused from the evidence available and to pass an appropriate judgment, in accordance with law.

25. The appellant/accused is directed to surrender before the Sessions Court, Thodupuzha, on 22.10.2026. The interim order granting bail to the appellant/accused after suspending the sentence shall be in force till 11.00 a.m on 22.10.2026 and the same shall stand cancelled with effect



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from 11.01 a.m on 22.10.2026, with liberty to the accused to apply for regular bail before the Sessions Court, on his appearance on 22.10.2026.

26. The learned Sessions Judge is directed to hear the matter and render judgment within six weeks from the date of receipt of this judgment.

Registry is directed to forward a copy of this judgment to the learned Sessions Judge, Thodupuzha, for compliance and for further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/