

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II, ERNAKULAM

Present: Sri. BALRAM M.K., Judicial First Class Magistrate

Thursday, the 13th day of July, 2023/ 22nd Ashadam, 1945

C.C 553/2017

Complainant : State represented by the Sub Inspector of Police,
Central Police Station, Ernakulam in Crime No.
2758/2016.

(Rep. by Assistant Public Prosecutor,
Smt. Sheeja E.K.)

Accused : A1) Anilkumar, age 48/16,

...

....

A2) Sabu, age 52/16, .

.....

A3) Abhilash, age 36/16

.....

A4) Rinson, age 36/16,

.....

(By Adv. N.Satheesh)

Offences : U/s. 354 A, 341, 506 (i) r/w 34 of Indian Penal
Code.

Plea : Not guilty

Finding : Not guilty

Sentence/Order : The accused are found not guilty of the offences
punishable under Section 354 A, 341, 506 (i) r/w
34 of I.P.C. In the result, accused are hereby
acquitted of the said offences under Section
248 (1) of Cr.P.C. Their bail bonds stand
cancelled. They are set at liberty.

DESCRIPTION OF THE ACCUSED

Name	Father's Name	Occupation	Residence	Age
Anilkumar	Ravi	-	48/16

Sabu	Phillip	-	52/16
Abhilash	Sivanpilla	-	... ,, ...	36/16
Rinson	Xavier	-	36/16

DATE OF

Occurrence	Complaint	Apprehension of appearance	Release on bail	Commencement of trial
30.11.2016	30.11.2016	25.06.2018	25.06.2018	19.03.2019
	Close of trial	Sentence or Order	Explanation for delay	
	10.07.2023	13.07.2023	-	

J U D G M E N T

Accused stands charge sheeted by the Sub Inspector of Police, Central Police Station, Ernakulam for the offences punishable under Section 354 A, 341, 506 (i) r/w 34 of Indian Penal Code (herein after referred to as “I.P.C” for short).

2. **Prosecution case in brief is as follows:** On 30.11.2016 at 7.30 a.m at the main entrance of the Western side of Ernakulam South Railway Station, when C.W.1 got into an UBER Taxi, the accused obstructed the movement of Taxi by saying that there is no entry for UBER Taxi in the Railway Station and when C.W.1 took the video in her mobile phone, the accused threatened her by saying the they will destroy the mobile phone and also threatened that they will show her if she goes in that Taxi and thereby obstructed her and sexually harassed her.

Thus the accused committed offences punishable under Section 354 A, 341, 506 (i) r/w 34 of I.P.C.

3. All the accused are arrested on 01.12.2016 and are released on bail from the police station itself.

4. Upon issuance of summons, all accused entered into appearance and bail is granted to the accused. The copies of prosecution records are given to the accused. After hearing both sides on charge, charge was framed under Section 354 A, 341, 506 (i) r/w 34 of I.P.C and the same was read over and explained to the accused for which they pleaded not guilty.

5. From the side of prosecution P.W.1 to P.W.4 are examined and Ext.P1 to Ext.P6 are marked. After the closing of the prosecution evidence, all the accused are questioned under Section 313 (1) (b) of Cr.P.C with respect to the incriminating circumstances appearing in the prosecution evidence against them. The accused denied the same. From the side of the accused, no oral or documentary evidence is adduced.

6. Heard both respective side in detail.

7. The following points arise for consideration:-

1. Whether the accused wrongfully restrained C.W.1?
2. Whether the accused threatened C.W.1?
3. Whether the accused sexually harassed C.W.1?

4. Whether the accused acted in furtherance of common intention?
5. What is the order or sentence?

Point No.1 to 4

8. For the sake of brevity, convenience and to avoid repetition of facts point numbers 1 to 4 are considered together.

Altogether there are 6 witnesses cited in the final report, but only 4 witnesses are seen examined from the side of prosecution. Irrespective of giving repeated opportunities, the prosecution failed to procure the presence of C.W.2 and C.W.4. Steps against C.W.2 and C.W.4 are completed under Section 82 Cr.P.C.

9. C.W.1 is examined as P.W.1. The only occurrence witness in this case is C.W.2. C.W.2 is not examined in this case. C.W.3, is examined as P.W.2. P.W.2 has not seen the incident and he has knowledge as to what P.W.1 told him. C.W.5 is the Police Sub Inspector, who registered Ext.P2 F.I.R and he is examined as P.W.3. C.W.6 is the Investigating Officer, who is examined as P.W.4. The only evidence with respect to the incident is only the deposition of P.W.1.

10. P.W.1 has deposed to the effect that on 30.11.2016 at 7.30 a.m, the incident happened at Ernakulam South Railway Station. P.W.1 further deposed that she booked a UBER Taxi and when the Taxi came, she got into it

and at that time, 4 auto-rickshaw drivers came there and stated to UBER Taxi driver that UBER Taxi is not allowed inside the Railway Station and they forcefully opened the door on the side of driver and at this time, P.W.1 was recording the video in her mobile phone. P.W.1 further deposed that the accused told her that they will not permit her to travel in UBER Taxi and she has to travel by Taxi or Auto-rickshaw. P.W.1 further deposed that the accused threatened her by saying that if she does not get down from the Taxi, she has to go by walking. P.W.1 further deposed to the effect that she continued to take the video. As per the deposition of P.W.1, it is evident that P.W.1 has recorded the entire incident in her mobile phone. In the circumstances, the said video as well as the mobile phone is the most important piece of evidence to show exactly as to what happened. But, interestingly, neither the video visuals nor the mobile phone of C.W.1 is produced from the side of prosecution. P.W.1 in her cross examination has deposed that she has handed over the video to the police. But, no such video is seen produced from the side of prosecution. In fact, P.W.4 has deposed that P.W.1 has not produced video before him. This raises very serious suspicion as to why this video is not produced before the court and why the same is kept away from the court.

11. The learned counsel for the accused submitted that even though, P.W.1 has deposed in her examination in chief about she is threatened nothing

specifically of such matter is seen mentioned in Ext.P1 complaint. In cross examination, P.W.1 has deposed to the effect that she was not knowing that the same has to be mentioned specifically in the complaint. In the cross examination of P.W.4 has deposed that in Ext.P1, P.W.1 has not deposed as to what sort of threatening was made and who threatened her.

12. There is no case for prosecution that there was a physical contact and advances involving unwelcome and explicit sexual overtures or a demand or request for sexual favours or showing pornography against the will of a women or making sexually colored remarked by the accused. P.W.4 has deposed that P.W.1 has not stated that accused made any sexually colored remarks. P.W.4 also deposed that P.W.1 has also not stated as to what are the sexually colored remarks. There is no evidence adduced in this case to attract the offence under section 354 A of I.P.C.

13. The learned counsel for the accused submitted that P.W.1 has mentioned about one police officer, Mr.Nandagopal, who helped her at the time of incident. On perusal of Ext.P1 complaint, it is seen that P.W.1 has mentioned above one Mr.Nandagopal took the initiative to make sure that she reached home safe in the same cab. Interestingly, Mr.Nandagopal is not seen cited as a prosecution witness. P.W.4 has deposed that there is no reason for not taking the statement of Mr.Nandagopal and not making him a witness.

14. P.W.2 has deposed that P.W.1 is his Ex-wife. From the evidence of P.W.2, it is very clear that he has not see the incident and that he was not at the place of incident.

15. On considering entire evidence adduced in this case, I find that the prosecution could not prove that the accused committed the offences alleged against them. Prosecution also failed to prove that the accused acted in furtherance of common intention. Point Nos.1 to 4 are answered against the prosecution.

Point No.5

16. In the light of findings in Point Nos.1 to 4, all the accused are found not guilty of the offences punishable under Section 354 A, 341, 506 (i) r/w 34 of I.P.C. In the result, all the accused are acquitted for the said offences, under Section 248 (1) of Cr.P.C. Their bail bonds stand cancelled. They are set at liberty.

Dictated to confidential assistant, typed and corrected, pronounced in open court on this the 13th day of July, 2023.

Sd/-

**Judicial I Class Magistrate-II
Ernakulam**

APPENDIX

Prosecution Witnesses

P.W.1 (C.W.1)	: Vidya Gopalakrishnan	: 17.02.2020
P.W.2 (C.W.3)	: Sreejith	: 17.02.2020

P.W.3 (C.W.5) : S.Vijayasankar : 02.11.2022

P.W.4 (C.W.6) : T.V.Dharaneedharan : 03.05.2023

Prosecution Exhibits

- P1 : Complaint dated, 30.11.2016 marked through P.W.1 on 17.02.2020
P2 : F.I.R dated, 01.12.2016 marked through P.W.3 on 02.11.2022
P3 : Scene Mahazar dated, 01.12.2016 marked through P.W.4 on 03.05.2023
P4 : Bail Bond of accused Nos.1 and 2 dated, 01.12.2016 marked through P.W.4 on 03.05.2023
P5 : Bail Bond of accused Nos.3 and 4 dated, 01.12.2016 marked through P.W.4 on 03.05.2023
P6 : Address Report dated, 01.12.2016 marked through P.W.4 on 03.05.2023

Defence Witnesses : Nil

Defence Exhibits : Nil

Material objects marked : Nil

Sd/-

**Judicial I Class Magistrate-II
Ernakulam**

//True Copy//

**Judicial I Class Magistrate-II
Ernakulam**