

IN THE FAST TRACK SPECIAL COURT, PATTAMBI

Present: Sri.Dinesh M Pillai, Special Judge

Friday, the 15th day of May 2026/ 25th Vaisakha, 1948

SESSIONS CASE No.575/2020

(Cr.No.301/2020 of Thrithala Police Station)

Complainant	State of Kerala represented by the Inspector of Police, Thrithala Police Station.
	<i>(Rep. by Adv.Sri.Sandeep.K, Spl. Public Prosecutor)</i>
Accused	Ansarul Haque, Aged-24, S/o.Abdul Salam, VIII/Town, Gagalmari, Mayong Marigaon, Assam.
	Rep.by Advs.K.T.Sitheesh, S.Radhakrishnan
Charge	U/Ss. 450, 376(2)(n) & 376(2)(l) of IPC.
Plea of the accused	Not guilty
Finding of the Judge	Not guilty

Sentence/Order	The accused is found not guilty of the offences punishable u/Ss.450 & 376(2)(l) & 376(2)(m) of IPC and he is acquitted of the said offences u/S.235(1) of Cr.PC;
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Description of the accused

Sl.No.	Name of the Police Station and Crime No.of the accused	Name	Rank	Father's Name	Occupation
1	Cr.No.301/2020 of Thrithala Police Station	Ansarul Haque	-	Abdul Salam	Coolie

Sl.No	Residence	Age	Occurrence	Date of Complaint (Final report)	Apprehension
1	Assam	24	12.04.2020 & 17.04.2020	17.07.2020	19.05.2020

Release on Bail	Committal	Commencement of trial	Commencement of evidence	Close of trial	Sentence or Order
13.08.2020	--	26.06.2025	12.08.2025	05.05.2026	15.05.2026

Service of copy of Judgment or finding on accused	Period of detention undergone during investigation inquiry or trial for the purpose of section 428 Cr.PC.	Explanation for delay
No right for free copy	---	No delay

This case, having been finally heard on 05.05.2026 and the court on the same day delivered the following:-

J U D G M E N T

1. This case is based on a final report, filed by the Inspector of Police, Thrithala Police station, in Crime.No.301/2020 of that Police Station, alleging offences u/Ss. 450 & 376(2)(n), (I) of IPC.

2. Case of the prosecution is as follows:- On 12.04.2020 at 11.00am & on 17.04.2020 during day time, the accused had trespassed in to the rental quarters No.VI/150 of Thrithala Panchayath at Njangattiri and committed rape on CW1 who was undergoing treatment for mental-illness, at the reception room & Kitchen of the above building and thus committed the offences alleged.

3. The case was registered by CW18, based on the F.I.Statement of CW1, recorded by himself. Investigation in the case was conducted by CW18 and he himself filed the final report in the case. The accused who had been arrested on 19.05.2020 was remanded to judicial custody and he was released on bail on 13.08.2020. The final report was originally filed before the Judicial First-Class Magistrate Court-I, Pattambi, where it was taken as CP.29/2020.

4. The Learned Magistrate after complying the formalities u/S.207 Cr.PC had committed the case to the Sessions Court, Palakkad u/S.209(a) Cr.PC. The Sessions Court, Palakkad which took up the case as SC.No.575/2020 had later made it over to the Assistant Sessions Court, Ottappalam. While so, the case was transferred to this Court as per order of the Principal Sessions Court, Palakkad.

5. Before this Court, the accused entered appearance and after hearing both side, the charge against the accused u/Ss. 450, 376(2)(n) & 376(2)(I) of IPC was framed. The charge so framed was read over and explained with the assistance of a translator; to which the accused pleaded not guilty.

6. Prosecution had examined PW1 to PW13 and marked Exts. P1 to P21 on its side. Accused marked Ext.D1 through PW1. CWs 3, 5, 12 & 14 were given up by the prosecution. CW16 is no more.

7. On questioning u/S.313(1)(b) Cr.P.C, the accused denied all the inculpatory aspects and filed a written statement maintaining his stand of innocence. Since there was no circumstance to acquit the accused u/S.232 Cr.P.C, he was called upon to enter upon his defence. But no defence evidence was adduced.

8. Heard.

9. **The points that arise for consideration are:-**

- i *Whether PW1 was suffering any mental disability as on the time of the alleged offence?*
- ii *Whether on 12.04.2020 at 11.00am & on 17.04.2020 during day time, the accused had trespassed in to the rental quarters No.VI/150 of Thrithala Panchayath at Njangattiri, with intention to commit rape on PW1 and thereby committed the offence punishable u/S. 450 of IPC?*
- iii *Whether on the above dates & time, the accused had committed rape on PW1, at the reception room & Kitchen of the above building and thereby committed the offences punishable u/Ss.376 (2)(n) & 376 (2)(I) of IPC ?*
- iv *Order or sentence?*

10. **Point No. i :-** Accused is also charged with the offence u/S.376(2)(I) of IPC which deals with rape on a woman suffering from mental or physical disability. In the final report, Prosecution has no case that the victim in this case is suffering any mental disability and it is only stated that she is undergoing treatment for mental illness. Naturally, the charge framed by this Court is also only to that effect and the accused would argue that for attracting the offence u/S.376(2)(I) IPC, it must be proved that the victim was suffering mental disability and a mental-illness as such is not sufficient.

11. According to the accused, the mental disability of a person shall be proved through a certificate to that effect by a duly constituted medical board under the Mental Health Act 2007. The accused had called the attention of the Court to S.2(s) of the Mental Health Act which reads as follows:- mental illness means a substantial disorder or thinking mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demand of life, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence.

12. S.2(s) of the Right of Persons with Disabilities Act defines person with disability as a person with long-term physical, mental, intellectual or sensory impairment, which in interaction with barriers, hinders his full & effective participation in society equally with others.

13. The victim as PW1 has deposed that she was under treatment for mental illness from the age of 18 years and she who had been earlier treated at the Medical College Hospital, Thrissur is presently being treated at the Taluk Hospital, Pattambi. The father of PW1 as PW2 has deposed that PW1 was brought to the Taluk Hospital, Pattambi on the last Tuesday of every month for getting medicine for her mental illness. PW2 also deposed that he had produced before the Police, the records relating to the treatment of PW1 for mental illness. PW13, the Investigating Officer has also deposed that he had seized the records relating to the treatment of PW1 for mental-illness under a mahazar as it was produced by PW2. But no such document or mahazar had been produced in the case and no explanation is offered for the same.

14. PW5 was the Junior Consultant, Psychiatry at the Taluk Hospital, Ottappalam and on 30.06.2020, he issued Ext.P4, certificate stating that from the age of 16 years, PW1 was on continuous regular treatment for Bipolar affective disorder and she needs life-long continuous treatment. Admittedly, PW5 had not treated PW1 and it was one Deepu.C.Nair, who was treating PW1 at the Taluk Hospital, Pattambi. In the above circumstances, it is not discernible why the Prosecution had obtained Ext.P4 certificate from the Taluk Hospital, Ottappalam, where PW1 was not treated. So also, no explanation is coming from the part of the Prosecution why Dr.Deepu.C.Nair, who actually treated PW1 at the Taluk Hospital, Pattambi was not cited as a witness in the case.

15. Though it is deposed by PW5 that he had issued Ext.P4 after perusing the treatment records of PW1 from the age of 16 years, no such record had been made available in the case and in Ext.P4 also there is no mention of perusing any such record. It is also stated in Ext.P4 that PW1 was not under the treatment of PW5 and it is not at all discernible on what basis PW5 had issued Ext.P5 certificate. As noted earlier, the deposition of PW1 before the Court and also her statement in Ext.P1 F.I. Statement is that she was under treatment for mental illness from the age of 18 years and the same is contrary to Ext.P4 that the treatment was from the age of 16 years.

16. Prosecution would argue that the Doctors who examined PW1 for this case had noted in the medical records that PW1 was under medication for mental-illness and the same will prove that PW1 is suffering mental disability. The suggestions of the accused while cross-examining PW1 & PW2 that PW1 had falsely indicted the accused with this case for her mental illness is also relied on by the Prosecution to support their argument. But in the said medical records, marked as Exts.P5 & P11, there is no finding that PW1 had shown any symptom of mental-illness and it is only stated that PW1 had given the history of Bipolar disease and that she was under medication for the same.

17. In Ext.P5 prepared on 19.05.2020, the general mental condition & memory and orientation of time & space by PW11 are noted as normal. In Ext.P11, the consent for the abortion of pregnancy of PW1 was obtained from PW1 herself who put signature for the same and there is nothing to suggest that the Doctor concerned had treated PW1 as a person suffering mental disability.

18. In the voir-dire examination conducted on PW1, she was found as capable of understanding the questions put to her and to give rational answers to the same. During the course of her examination as a witness before the Court also, PW1 had acted in normal manner and answered all the questions put to her lucidly and with precision and nothing was available to suggest that she was suffering any mental disability. PW1 has admitted in cross-examination that she studied up to 7th standard in an ordinary school and she knows to write & read.

19. PW1 has deposed that she had called the accused over telephone and she admitted that the accused who hails from the State of Assam does not know Malayalam. It is seen that the statement of PW1 before the Police,

Magistrate & the Doctors were recorded directly without the assistance of any interpreter or any of her relatives.

20. Accused had called the attention of the Court to the meaning of the term 'Bipolar disorder' in medical dictionary as an affective disorder (mood disorder) defined by recurring episodes of extreme mood swings, alternating between intense highs (mania or hypo-mania) and severe lows (depression). It suggests that the said condition is actually a disorder in the behaviour of the particular person and the same will not stand in the way of the person understanding the events happening before her and responding to the same in rational way. It means that the above condition itself cannot be found as a mental disability which means that the particular person is having low cognitive or other defect in the functioning of his/her brain so as to prevent the said person from acting & reacting to the events in normal way.

21. Here, the Prosecution as well as the victim & her family have no case that PW1 is suffering any mental disability as such and they only claim that PW1 is undergoing treatment for mental illness. Absolutely, no material has been made available in the case to prove the alleged mental illness of PW1 or the treatment for the same and as noted earlier, Ext.P4 certificate being the only record produced on the aspect is not at all sufficient for the reason that PW5 who issued the same had not treated PW1 and there is no mention in the document that PW5 have perused any records relating to the treatment of PW1.

22. Though, it is deposed by PW2 & PW13 that the treatment records of PW1 were produced and the same were seized under a mahazar, no such record has been produced before the Court. In the above circumstances, this Court finds that the Prosecution has failed to prove that PW1 is suffering from any mental disability so as to attract the offence as defined u/S.376(2)(I) of IPC. The point is answered accordingly.

23. **Point Nos. ii & iii:-** These points are considered together since materials on it are the same and therefore to avoid repetition of discussion on it. PW1 is also the informant in the case. As noted earlier, though, PW1 is stated by the Prosecution as undergoing treatment for mental-illness, in the voir-dire examination conducted on her, she was found as understanding the questions put to her and is capable of giving rational answer to the questions.

24. PW1 deposed that on 12.04.2020 at 11.00 am, she was alone in the quarters since her parents had gone to the ration-shop and the elder brother gone for job. At that time, the accused who is an Assamee and residing in another quarters in the same building came in to the quarters of PW1, caught PW1 from behind, gagged her, untied her Churidar, held on her breast and groin and engaged in sexual intercourse with PW1, after removing his dress. Thereafter, the accused threatened to kill PW1, in case she disclosed the incident to the outer-world and demanded PW1 to keep the door opened while others were sleeping. PW1 feared the accused and hence on 2 nights, she opened the door while others were sleeping. In those nights, the accused again came inside the house and had sexual intercourse with PW1.

25. Further deposition of PW1 is that while she went to the Taluk Hospital, Pattambi with her parents for buying medicine for mental-illness, she consulted with a Lady Doctor and the said Doctor after testing her blood had said that PW1 was pregnant. Consequently, PW1 along with her father went to the Police Station and gave the complaint which she identified as Ext.P1, bearing her signature. PW1 has also identified the statement she made before the Magistrate bearing her signature. PW1 has added that the accused had told her that he would marry PW1. She further deposed that her pregnancy was aborted by the Doctor at the Taluk Hospital, Pattambi.

26. PW2 is the father of PW1 and he deposed that on 19.05.2020 while PW1 was brought to the Taluk Hospital, Pattambi for buying medicine for her mental illness, she went on missing and later found with a paper in her hand. PW2 could not understand what was written in the said paper and later, the Doctor told him that PW1 was pregnant. On questioning, PW1 said that she had been impregnated by the accused and consequently they reached the Thrithala Police Station and gave the complaint. Later, the pregnancy of PW1 was aborted at the Taluk Hospital, Pattambi.

27. PW3 is conducting a shop at CK Apartment at Njangattiri and attested to Ext.P2 mahazar, prepared by the Police on the said Apartment. PW3 has further deposed that the accused was also residing in the CK Apartment. PW11 is the owner of the CK Apartment and he deposed that the accused as well as PW1 with her family were residing in his apartment during 2020, in

different portions. PW12 is the Secretary, Thrithala Panchayath and he issued Ext.P10 certificate, stating that the building No.VI/150 was owned by PW11.

28. PW6 was the Junior consultant at the Taluk Hospital, Pattambi and on 19.05.2020 at 4.37pm, she examined PW1 and found her as pregnant. PW6 had identified Ext.P5 as the certificate issued by her for the above procedure. PW4 was the Junior Consultant at the Taluk Hospital, Pattambi and on 27.05.2020 she conducted medical termination of pregnancy of PW1 and handed over the product of consumption to the Police on 01.06.2020 in sealed condition with Ext.P3 request to the FSL to do the DNA Profiling.

29. PW7 was the CMO at the Taluk Hospital, Pattambi and on 02.07.2020, he collected the blood-sample of PW1 for DNA Profiling and handed it over to the Police on the same day in sealed cover with label, along with Ext.P6 certificate of collection of sample. PW9 was the staff-nurse of the Taluk Hospital, Pattambi and on 02.07.2020, she was present when the blood-sample of PW1 collected by the Doctor was handed over to the Police and attested to Ext.P8 mahazar prepared for the above procedure.

30. PW10 was the Jr.Consultant at the Taluk Hospital, Chittur and on 05.06.2020, he collected the blood-sample of the accused and handed it over to the Police. PW8 was the CPO, Thrithala Police Station and on 05.06.2020, he had attested to Ext.P7 mahazar, prepared for seizing the samples collected from the accused at the Taluk Hospital, Chittur.

31. PW13 was the IP-SHO, Thrithala Police Station and on 19.05.2020 he registered Ext.P12 FIR in the case, based on Ext.P1 F.I.Statement of PW1. PW13 had arrested the accused on 19.05.2020 after preparing Ext.P13 arrest memo, Ext.P14 arrest intimation, Ext.P15 inspection memo and Ext.P16 address report. PW13 had identified Ext.P17 as the potency certificate of the accused and the same was marked, subject to the examination of the Doctor who issued the same.

32. Ext.P18 is the mahazar under which PW13 had seized the dresses of the accused wore at the time of the incident and Ext.P19 is another mahazar under which PW13 had seized the product of consumption produced by the Doctor who conducted the termination of pregnancy of PW1. PW13 had

identified Ext.P20 as the site-plan of the place of occurrence prepared by the Village officer, who since died.

33. Though, PW13 had deposed that on 30.06.2020, he had seized the records related to the treatment of PW1 for mental illness as it was produced by her father, no such document or seizure-mahazar was found in the case-bundle. Ext.P21 is the forwarding-note submitted by PW13 for sending the samples seized in the case for forensic examination. On completion of the investigation, PW13 had laid the final report before the Court on 17.07.2020.

34. Prosecution would argue that the evidence available in the form of deposition of PW1 along with the corroborative materials including the medical evidence when applied with the presumption u/S.114A of the Evidence Act will prove it beyond doubt that the accused had committed rape on PW1 on more than one occasion, after trespassing in to her residence and thus committed the offences charged against him.

35. Per-contra, the accused would argue that the solitary deposition of PW1 on the alleged rape which suffers from serious infirmities is not sufficient to bring home the charges levelled against him. According to the accused, the materials produced by the Prosecution itself will disprove their case by making the Prosecution version totally unbelievable. It is also argued by the accused that in the absence of proof that he had sexual intercourse with PW1, no presumption u/S.114A of the Evidence Act can be pressed in to service.

36. Accused also cited **Joseph @ Baby V. SI of Police, Munnar (2014 KHC 255)** wherein the Division bench of the Hon'ble High Court while considering the scope of S.114A of the Evidence Act has held that "though the conviction for an offence of rape can be based on the sole testimony of prosecutrix, it must be found that the said testimony is natural or trustworthy and the Court is not required to accept the same, if it is improbable and belies logic and it cannot be taken as gospel truth in all circumstances. It is also held that a Court needs to remind itself that persons accused of sexual assault also need its protection from false accusation & implication. False charges of rape loaded with ill-motives are not uncommon".

37. The only evidence available to support the Prosecution version is the solitary deposition of PW1 that the accused on more than one occasion had entered in to her quarters and had sexual intercourse with her. It is now settled that in cases of sexual assault, the solitary testimony of the victim can be acted upon to prove the offence and corroboration as such is not mandatory. But for acting upon the solitary deposition of the victim, the same should be of sterling and of a very high quality & caliber whose version should be unassailable. It should have the consistency 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. There should not be any prevarication in her version.

38. So, the question is whether PW1 is a sterling witness and hence her testimony can be accepted, even without any corroboration, so as to fasten the accused with the offences alleged. Of course, S.114-A of the Evidence Act provides that in a prosecution of offence u/S.376(2) of IPC where sexual intercourse by accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. But for attracting the said presumption, first of all, it should be proved that PW1 had been raped by the accused and PW1 should have deposed that she did not consent for the sexual intercourse with the accused.

39. In order to assail the prosecution evidence, naturally the accused relies on some contradictions & omissions in the deposition of PW1 and other witnesses from each other and also from their earlier statement before the Police. PW1 has deposed that the accused had committed rape on her on 12.04.2020 at 11.00am while she was alone in her residence and on 2 other days also, the accused had sexual intercourse with her during night by making PW1 to keep the door opened after threatening her with death. But in the cross-examination, PW1 has deposed that the accused had sexual intercourse with her for several times and she did not know the exact number of the same.

40. So also, in her statement before the Police or Magistrate, PW1 had not stated that she was made by the accused to keep the door open, by threat.

In Ext.P1 F.I statement, the version of PW1 was that the accused had committed rape on her on 3 days and she specified 2 of the said dates as 12.04.2020 & 17.04.2020. PW1 has stated before the Magistrate that the accused had committed rape on her on several time and she did not specify any date of the same. In Ext.P5 medical certificate, PW1 had given the history that the accused did sexual intercourse with her on 17.04.2020, 19.04.2020 & 22.04.2020 and the term 'forceful' to qualify the said sexual intercourse is seen added by interlineation.

41. Regarding the place of occurrence also, the Prosecution is having distorted versions. As per the final report, the accused committed rape on PW1 only on 2 days ie. on 12.04.2020 at 11.00am in the reception room and on 17.04.2020 during day-time in the kitchen of the residence of PW1. But the deposition of PW1 in the cross-examination is that all the sexual intercourse between herself & accused occurred in the lean-to of the kitchen. In Ext.P2 scene mahazar, the floors of the hall & the kitchen in the residence are shown as the places of occurrence and Ext.P20 site-plan prepared by the Village Officer is not at all helpful in identifying the places of occurrence in the case.

42. As per the deposition of PW1, the 1st incident on 12.04.2020 was when she was alone in her residence and the accused who entered in to the said house had committed rape on her. In Ext.P1 F.I statement also, PW1 had stated that the accused came inside her house silently and committed rape on her at the 'Kolayi' (reception room). But in her statement before the Magistrate, PW1 had stated that the accused made entry in to her house when she opened the door and the same on denial by PW1 was marked by the accused as Ext.D1.

43. It has come out that both PW1 and the accused were residing in the same building with about 10 quarters in it, occupied by different families. Other immigrant workers were also occupying the building and PW1 deposed that the accused who followed her had given his phone number to her. PW1 who deposed that the accused did not know Malayalam had only asked her to come. At the same time, PW1 admitted her statement before the Magistrate that it was she who called the accused over telephone.

44. PW1 has deposed that the first sexual intercourse on her by the accused was without her consent and thereafter he did the same by threatening her that he would kill her. But in her statement before the Police or Magistrate, PW1 had no such case and she even did not say that the accused used any force on her. It is also the deposition of PW1 that the accused had sexual intercourse with her during several nights by entering in to the house through the door kept open by PW1. It is already found that her deposition that she kept the door open as above for the threat of the accused is absent in her statement before the Police & Magistrate. Admittedly, the parents & elder brother of PW1 were occupying the same quarters, which is a small one with only 2 bedrooms, one hall & a kitchen and the accused would argue that it is impossible for the accused to commit the alleged multiple rape on PW1, without getting noticed by other occupants of the building.

45. PW1 has not stated before the Police or Magistrate that the accused had demanded to keep the door open in the night or that he would kill PW1, if the incident was disclosed to others. PW1 has admitted in cross-examination that she liked the accused and added that initially she did not like him and the accused later made her to like him. It is further deposed by PW1 that the accused had sexual intercourse with her by offering to marry her. But PW1 had no such case before the Police or the Magistrate.

46. PW1 has deposed that she suspected pregnancy even before going to the Hospital and informed the same to the accused. PW1 added that the accused at that time abandoned her by saying that PW1 could do anything and he did not want her. Further the accused asked PW1 to come near the Pattambi river. It is also deposed by PW1 that the accused did not ask her to abort the pregnancy and that she did not go to the Hospital as demanded by the accused. The statement of the accused before the Police, Magistrate & the Doctor are absent of all these particulars.

47. Accused would argue that the above material contradictions & omissions in the deposition of PW1 from her previous statement before the Police, Magistrate & the Doctor will make her solitary deposition on the alleged incident totally untrustworthy and hence cannot be acted upon by the Court of Law. According to the accused, PW1 who got mutually contradictory versions

on the incident at different points of time cannot be found as a sterling witness and hence her solitary deposition cannot be relied up on to decide the matter, in the absence of any other materials to corroborate the same.

48. As noted earlier, the parents and the elder brother of PW1 were residing with PW1 at the time of occurrence of the alleged rape on her by the accused on several occasions and none of them had any knowledge on the incidents till PW1 was found pregnant on 19.05.2020 at the Taluk Hospital, Pattambi. It is also found that the building in which PW1 had been residing was occupied by 10 families and no other occupants of the building could be cited by the Prosecution to prove the presence of the accused in the residence of PW1 on any of the occasions of the alleged incident.

49. The deposition of the father of PW1 as PW2 is only to the effect that on 19.05.2020 while PW1 was brought to the Taluk Hospital, Pattambi for buying medicine for PW1, the Doctor informed that PW1 was pregnant and on enquiry, PW1 told to him that the accused had impregnated her. The said disclosure of PW1 made to PW2 after the lapse of nearly one month of the alleged incident can have no corroborative value and as such will not give any credence to the testimony of PW1. This aspect has to be viewed in the light of deposition of PW1 that she was suspicious of her pregnancy, even before visiting the Hospital and that the same was informed to the accused.

50. The medical evidence in the form of Ext.P5 Medico-legal certificate prepared on the examination of PW1 on 19.05.2020 shows only that PW1 was found as pregnant and it is also noted that her hymen was absent and vagina admitted 2 fingers. Though the dresses of both the accused & PW1 were seized for the purpose of this case and send for forensic examination, no seminal stains or human spermatozoa were detected in it. It means that apart from the deposition of PW1, there is no other material to corroborate her version that the accused had committed rape on her on more than one occasion.

51. This is a case in which the Prosecution alleges that the accused had committed rape on PW1, resulting her to become pregnant. In fact, it was on the finding on 19.05.2020 at the Taluk Hospital, Pattambi that PW1 was pregnant, this case has been initiated and the medical records in the case will prove the said fact. As noted earlier, in Ext.P5 medical certificate dated 19.05.2020, it is noted that PW1 was found pregnant on urine pregnancy test.

52. It has come out that the said pregnancy of PW1 was terminated and samples were collected in the form of product of consumption and the blood-samples of the accused as well as PW1 and the same were sent to the FSL for DNA profiling to identify whether the accused is the biological father of the fetus conceived by PW1. The RFSL, Thrissur which examined the said samples at the direction of the concerned Magistrate had forwarded its report dated 03.01.2022 to the effect that the DNA profile of the embryo could not be obtained from the undifferentiated mass of tissue, which was produced as the product of consumption collected on the abortion conducted on PW1.

53. Since PW1 had become pregnant, it could have been an easy task for the Prosecution to prove the alleged sexual intercourse between the accused & PW1 by establishing that the accused was the biological father of the fetus conceived by PW1 through DNA profiling. Unfortunately, the product of consumption collected on the abortion conducted on PW1 was found at the FSL as not fit for DNA profiling. On going through the report of the FSL which was not tendered in evidence from either side, it is not discernible why the DNA profile of the embryo could not be obtained and there was no attempt by the Prosecution to probe in to and to offer a valid explanation for the same.

54. Accused would argue that the Police as well as the Doctors involved in the case had done serious foul play in the matter so as to manipulate the samples collected in the case and the object was to hide the identity of the actual biological father of the fetus, conceived by PW1. The defence version of the accused is that PW1 who was having sexual hallucinations had sexual intercourse with some other person or persons, resulting in to her pregnancy and the Police and the Doctors had manipulated the evidence in the case to see that the product of consumption collected on the abortion of PW1 was not fit for DNA profiling to identify the actual biological father of the embryo, who had the sexual intercourse with PW1.

55. In order to substantiate his above argument, the accused had called the attention of the court to the impact of bipolar disorder in the sexuality of the affected person that the same will cause shift between hypersexuality during maniac and hyposexuality during depressive episodes. The accused pointed out some serious latches and misdeeds on the part of the

Doctors & the Police who handled the case. PW4 was the Jr.Consultant in Gynecology at the Taluk Hospital, Pattambi who conducted Medical Termination of Pregnancy on PW1 on 27.05.2020. In the first spell of her examination on 09.10.2025, PW1 deposed that she had collected the product of consumption on the termination of pregnancy on PW1 on 27.05.2020 and handed over the same to the Police on 01.06.2020 along with a request to the FSL to do the DNA profiling, which request was marked as Ext.P3.

56. In the cross-examination, PW4 has deposed that PW1 herself had approached her for termination of pregnancy and she conducted the MTP on PW1 without obtaining the consent of any other person or authority. This aspect becomes more relevant when in the medical records, it is specifically stated that PW1 was suffering bipolar disease and was under treatment for the same. So also, PW4 has deposed that she was aware of pendency of case at the Police Station and she received the request from the Police for conducting the MTP and to collect the Product of Consumption only on 01.06.2020.

57. Ext.P3 will show that the product of consumption was handed over to the Police by PW4 only on 01.06.2020 and it is stated that till the time, the same was kept in locker in sealed condition. But in her statement before the Police, PW4 has not stated that the sample was kept in lockers in sealed condition. With regard to the collection of blood sample of the accused also, accused is raising serious anomalies. The reason is that PW10 has deposed that he had collected the blood sample of the accused on 05.06.2020 and identified Exhibit P9 as the label affixed on the cover in which the blood sample was sealed, stating 05.06.2020 as the date of collection of the blood sample. But it is seen that the Police had recorded the statement of PW10 on 01.06.2022 to state that he had collected the blood sample of PW10 on 05.06.2020.

58. Accused would argue that the prosecution has failed to adduce the best evidence in the case in the form of phone call details between the accused & PW1. The reason for the argument is that PW1 has deposed that she used to contact the accused over telephone. The argument of the accused is that a forensic examination of the mobile phones of the accused & PW1 would have proved the genuineness or otherwise of the above claim of PW1 and the

absence of such an exercise is fatal to the prosecution. Considering the facts and circumstances of the case, especially in the absence of any other material to prove the relationship between the accused & PW1, it cannot be said that the above argument of the accused is without force.

59. Having appreciated the evidence available in the case, it can be found that there is nothing on record to corroborate the testimony of PW1 and again the question is whether the solitary version of PW1 on the alleged rape on her by the accused is believable and whether PW1 is a sterling witness. It is now settled by the Apex Court that, in case Prosecution is based on wholly unreliable testimony of a single witness, the Court has no option than to acquit the accused (See **Rajasthan v. Babu Beena (2013) 2 SCC Cri.364**).

60. Generally speaking, a witness may be classified into 3 categories, namely: (i) wholly reliable (ii) wholly unreliable (iii) Neither wholly reliable nor wholly unreliable. In the case of categories (i) and (ii) the Court should have no difficulty in coming to a conclusion about the credibility or otherwise of the witness. It is with regard to the 3rd category of witnesses that the Court will have to be circumspect and will have to look for corroboration in material particulars by way of direct or circumstantial evidence. (**See Vadivelu Thevar v. State of Madras AIR 1957 SC 614**).

61. This Court has already analyzed the solitary deposition of PW1 on the alleged offences to find some material contradictions & omissions in it from her statement before the Police & the Magistrate. Regarding the number of sexual assaults alleged to have been committed by the accused on her, the date and time of the same and even the place of occurrence of the incidents, PW1 is having distorted versions at different point of time. There are broad improbabilities in the deposition of PW1 to disbelieve her version on the incident and her response to the alleged incidents are not at all natural or supporting her version on the incidents.

62. Prosecutor could not prove or even probablise any relationship between the accused and PW1 and even her father has deposed that he was not aware of any relationship between the accused & PW1, till PW1 was found pregnant. The failure of the Prosecution to seize the mobile-phones of the accused & PW1 and to bring forth a Forensic report on the same so as to

establish the relationship between them is fatal to the Prosecution, especially when the Prosecution alleges that there were contact between the accused & PW1 over telephone and the accused denies any sort of relationship with PW1.

63. PW1, who originally deposed that the accused had sexual intercourse with her on several occasions, by force and using threat, had later deviated from her above version to say that she was in love-affair with the accused. She also deposed that she had kept the door of her quarters opened in the night and she did not raise any alarm when the accused committed rape on her. It is already found that the parents and elder brother of PW1 were available in the quarters of PW1 at the time of the alleged repeated rape on her by the accused and it is improbable rather impossible for the accused to commit the alleged rape without getting noticed by other occupants in the building.

64. It is already found that the prosecution has failed to prove that PW1 is suffering any mental disability as such, and they also failed to prove that PW1 was undergoing treatment for any mental illness. Though the product of consumption of PW1 collected on the termination of her pregnancy, along with the blood samples of the accused & PW1 were subjected to forensic examination, it could not be established that the accused is the biological father of the embryo of PW1 and that the accused had the sexual intercourse with PW1 and impregnated her.

65. When the available materials are analyzed in the light of the above discussion, it cannot be believed for a moment that PW1 is a sterling witness. Her deposition which suffers from so many infirmities and lacks any corroboration is not sufficient to inspire the confidence of the Court to believe her version, especially in the light of the negative forensic report on the embryo of PW1. The serious discrepancies noted on the part of the Police officers & Doctors in the collection of the samples from the accused & PW1 for the forensic examination coupled with the negative report on the same from the FSL will cast serious doubt on the veracity of the prosecution case and thereby place the entire prosecution version in the shadow of doubt.

66. Net result of the above discussion on the materials available is that the same will lead this Court to the irresistible conclusion that the Prosecution has miserably failed to prove that the accused had trespassed in to the rental

quarters of PW1 and committed repeated rape on her against her will or by force and thereby committed the offences punishable u/Ss.450 & 376(2)(m) of IPC also. The points are accordingly answered against the Prosecution.

67. Before parting with the case, this Court finds it only apposite and imperative to consider an important & disturbing fact involved in the case. PW1 was found pregnant on 19.05.2020, whereupon this case had been registered by the Police, based on the complaint of PW1. Said pregnancy of PW1 was terminated at the Taluk Hospital, Pattambi on 27.05.2020, without obtaining permission or order from any other person or authority, even when PW1 was found as suffering bipolar disorder and was undergoing treatment for the same.

68. The Gynecologist at the Pattambi Taluk Hospital, who conducted the termination of the pregnancy of PW1 on 27.05.2020 had kept the product of consumption with her till 01.06.2020. The Police who collected the said sample from the Hospital on 01.06.2020 had produced it before the Court only on 02.06.2020 and the same was forwarded to the forensic lab only on 13.07.2020. In their report dated 29.12.2021, the Forensic Lab had stated that they could not extract the DNA from the sample forwarded to them as the product of consumption.

69. Admittedly PW1, an unmarried woman, aged 35 years had become pregnant and it means that she was subjected to sexual intercourse by somebody. According to the Prosecution, PW1 was suffering mental illness and hence the said sexual intercourse will amount to an offence u/S.376(2)(I) of IPC. When the prosecution itself claims that PW1 was suffering mental illness, the State had added responsibility to protect her from any sexual assault and the failure for the same will make the State more responsible.

70. Prosecution could not prove the involvement of the accused herein for its failure to bring forth a proper DNA report on the product or consumption expelled from PW1 on the termination of her pregnancy and the ultimate result is that the actual culprit in the case who had sexual intercourse with PW1 and impregnated her could not be identified and punished. This failure of the prosecution, according to this Court is directly attributable to the State itself, for the latches of its machinery as narrated above.

71. The purpose & theory behind the Victim Compensation Scheme is that the State has the responsibility to prevent criminal offences against its citizen and on its failure, the State has to compensate the victims in such cases from the State-fund. Here, the State which failed to prevent the offence against PW1 has also failed to obtain the exact sample on the termination of pregnancy of PW1 and to preserve it properly, which resulted into a negative report from the FSL and consequential acquittal of the accused.

72. No doubt, the State itself is responsible for the situation wherein the biological father of the embryo conceived by PW1 could not be identified, so as to identify the person who had sexual intercourse with PW1 and thus impregnated her. Naturally, the said failure on the part of the Prosecution will make the State liable to compensate the victim, PW1 for the offence committed on her and hence, I recommend and order the District Legal Services Authority, Palakkad by invoking the power u/S.357A Cr.P.C to pay necessary compensation to PW1 under the Victim Compensation scheme.

73. **Point No.iv:-** In the result,

A	The accused is found not guilty of the offences punishable u/Ss.450 & 376(2)(l) & 376(2)(m) of IPC and he is acquitted of the said offences u/S.235(1) of Cr.PC;
B	The accused is set at liberty after cancelling her bail bond.
C	The District Legal Services Authority (DLSA), Palakkad is recommended for providing compensation to the victim under the Kerala State Victim Compensation Scheme.
D	The office of this Court is directed to send a copy of the judgment to the DLSA, forthwith.

Sd/-

Dinesh M Pillai
Special judge.

APPENDIX**A, Prosecution witnesses**

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
PW1/CW1	---	Victim
PW2/CW2	---	Father of victim
PW3/CW4	M.C. Rajan	Attester to seizure mahazar
PW4/CW7	Dr.Zeenath	Jr.Consultant, THQH, Pattambi
PW5/CW10	Dr.Deepu C Nair	Jr. Consultant, Psychiatry, THQH, Ottappalam.
PW6/CW6	Dr.Lincy P Baby	Jr.Consultant, THQH, Pattambi
PW7/CW8	Dr.Basheer.P.K	CMO, THQH, Pattambi
PW8/CW11	Sunil.E	CPO, Thrithala P.S
PW9/CW13	Geetha M.K	Staff nurse, THQH, Pattambi
PW10/CW9	Dr.Bijoy Jose	Jr.Consultant, THQH, Chittoor.
PW11/CW15	Aboobacker Haji	Building Owner.
PW12/CW17	Thaju P.A	Secretary, Thrithala Panchayath.
PW13/CW18	C.Vijayakumaran	IP-SHO, Thrithala P.S.

B. Prosecution Exhibits

Sl.No	Exhibit Number	Date	Description
1	Ext.P1/PW1	19.05.2020	FIS.
2	Ext.P2/PW3	20.05.2020	Scene mahazar
3	Ext.P3/PW4	27.05.2020	Report for DNA profiling
4	Ext.P4/PW5	30.06.2020	Medical certificate
5	Ext.P5/PW6	19.05.2020	MLR
6	Ext.P6/PW7	02.07.2020	Certificate for collecting MOs
7	Ext.P7/PW8	05.06.2020	Seizure mahazar
8	Ext.P8/PW9	02.07.2020	Seizure mahazar
9	Ext.P9/PW10	--	Label on sample
10	Ext.P10/PW12	15.06.2020	Ownership certificate
11	Ext.P11/PW4	26.05.2020	Case sheet
12	Ext.P12/PW13	19.05.2020	FIR
13	Ext.P13/PW13	19.05.2020	Arrest Memo
14	Ext.P14/PW13	19.05.2020	Arrest Intimation
15	Ext.P15/PW13	19.05.2020	Inspection-Memo
16	Ext.P16/PW13	19.05.2020	Address report

17	Ext.P17/PW13	19.05.2020	Potency certificate
18	Ext.P18/PW13	19.05.2020	Seizure mahazar
19	Ext.P19/PW13	01.06.2020	Seizure mahazar
20	Ext.P20/PW13	28.06.2020	Scene plan
21	Ext.P21/PW13	13.07.2020	Forwarding-note

C. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
Nil	NIL	NIL

D. Defence Exhibits

Sl.No.	Exhibit Number	Date	Description
1	Ext.D1	19.05.2020	164 Statement of PW1

E. Court Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
Nil	NIL	NIL

F. Court Exhibits

Sl.No.	Exhibit Number	Description
Nil	NIL	NIL

G. Material Objects

Sl.No.	Exhibit Number	Description
Nil	NIL	NIL

//True Copy//

Sd/-
DINESH M PILLAI,
SPECIAL JUDGE

DINESH M PILLAI,
SPECIAL JUDGE

Fair/Copy Judgment
SC.No.575/2020
Date:15.05.2026.