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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1654 OF 2010

P.J.MATHEW Appellant(s)

VERSUS

STATE OF KERALA Respondent(s)

O R D E R

1. Aggrieved by his conviction under Section 376 IPC and sentence of RI for seven years, the accused-appellant has filed the present appeal.

2. We have heard the learned counsels for the parties.

3. The prosecutrix PW-1 was at the relevant point of time 16 years and 3 months. The accused was a neighbour and in fact the wife of the accused and the mother of the prosecutrix were friends. These are the facts on which no dispute has been raised by the accused.

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Date: 2019.10.08 16:56:30 IST
Reason:

4. The incident happened on 11.01.1996. It is

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only in the month of May/June-1996 that the prosecutrix reported the incident to her mother as she was missing her cycle. The mother (PW-2) took her to the doctor who confirmed that the proseutrix was five months pregnant. The FIR was filed in the month of July-1996 and the explanation for the delay is that the prosecutrix and her family, including PW-2, did not want to spoil the reputation or bring disharmony in the family of the accused who were well-known to them. The complaint was filed only after the accused refused to provide funds for carrying out the abortion.

5. Notwithstanding the delay in lodging the FIR and the admission made in the statement of the mother that the FIR was filed only when the accused had failed to pay the cost of the abortion, the cardinal issue that has to be decided is whether the initial act was consensual or a forcible act. The close relation between the families and the explanation given by the prosecutrix and her mother for the delay in lodging the FIR cannot be brushed aside. It is an

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incident that the prosecutrix, as stated in her evidence, wanted to forget and lead a normal life. The fact that there was a solitary incident and was not followed by repeated acts also goes against any conclusion that the act was consensual.

7. In the totality of the circumstances, we are inclined to take a view that the prosecution has succeeded in proving that it was a forcible act and not consensual. The appeal, therefore, has to fail. It is, accordingly, dismissed. The conviction and sentence of the accused-appellant is upheld.

.....,CJI.
(RANJAN GOGOI)

.....,J.
(SANJAY KISHAN KAUL)

.....,J.
(K.M. JOSEPH)

NEW DELHI
OCTOBER 4, 2018

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ITEM NO.108 COURT NO.1 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.1654 OF 2010

P.J.MATHEW **Appellant(s)**

VERSUS

STATE OF KERALA **Respondent(s)**

Date : 04-10-2018 This appeal was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) **Mr. Raghenth Basant, Adv.**
Ms. Namita Wali, Adv.
Ms. Liz Mathew, AOR

For Respondent(s) **Mr. K.N. Balgopal, Sr. Adv.**
Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA ARORA) **(ASHA SONI)**
COURT MASTER **ASSISTANT REGISTRAR**
(Signed order is placed on the file)