



2025:KER:76538

Crl.M.C.No.7885/2025

1

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 16TH DAY OF OCTOBER 2025 / 24TH ASWINA, 1947

CRL.MC NO. 7885 OF 2025

CRIME NO.1505/2021 OF Ernakulam North Police Station,

Ernakulam

SC NO.1073 OF 2022 OF ADDITIONAL DISTRICT COURT & SESSIONS
COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/ACCUSED:

ANU.C.R.
AGED 51 YEARS
S/O LATE RAVINDRAN, CHANAYIL HOUSE, PAUL
THERUVILPARAMBIL ROAD, KUMBALANGI VILLAGE.P.O.,
ERNAKULAM, PIN - 682007

BY ADVS.
SRI.A.RAJASIMHAN
KUM.VYKHARI.K.U

RESPONDENT/STATE:

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

SRI SUDHEER.G, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
26.09.2025, THE COURT ON 16.10.2025 PASSED THE FOLLOWING:

**ORDER**

The refusal of the Additional Sessions Judge dealing with the trial of cases relating to atrocities and sexual violence against women and children, Ernakulam, to permit the defence lawyer in S.C No.1073/2022 to confront PW2 during cross-examination by showing two documents, is under challenge in this petition filed by the accused in that case under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The offences alleged against the accused are rape under the false promise of marriage and cheating, coming under Section 376(2)(n) and Section 420 I.P.C respectively. One of the places where the accused allegedly indulged in sexual relationship with the survivor by giving the false promise of marriage, is the ground floor of a building which PW2 leased out to the accused for conducting a stitching unit. During the cross examination of PW2, the learned counsel for the accused asked about the area and other peculiar features of the aforesaid building portion which he had leased out to the accused. Though PW2 answered about the area of that building and also its nature, he stated that he does not know how many stitching machines were there in that building. At that time, the learned counsel for the accused attempted to confront that witness by



showing a photograph which was purportedly the interior portion of that shop room containing various stitching machines. The learned Additional Sessions Judge refused permission to proceed with the cross examination on the basis of the said document, stating the reason that the aforesaid photograph is not pertaining to the witness, or made by the witness, and it is not falling within the purview of Section 145 of the Evidence Act. Another attempt made by the learned defence counsel to confront PW2 by showing the site plan prepared by the Village Officer, which formed part of the prosecution records, was also refused by the learned Additional Sessions Judge stating the reason that the aforesaid site plan is not prepared by that witness. Aggrieved by the above interference on the part of the learned Additional Sessions Judge, the accused has filed the present petition before this Court for passing appropriate orders for redressing his grievance.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

4. As per Section 143(2) of the Bharatiya Sakshya Adhiniyam, 2023 (BSA, 2023), the examination-in-chief and the cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination



in chief. The aforesaid section corresponds to the second part of Section 138 of the Indian Evidence Act, 1872. As per Section 5 of the BSA, 2023 (Section 7 of Indian Evidence Act, 1872), facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant. In a prosecution for the offence of rape, the building or the place where the sexual intercourse between the offender and the survivor took place, is one of the facts which constitute the state of things under which the occasion or cause of rape happened. Likewise, as per Section 7 of BSA (Section 9 of Indian Evidence Act), facts necessary to introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which fix the time or place at which any fact in issue or relevant fact happened are relevant insofar as they are necessary for that purpose. Thus, a photograph of the place of occurrence, which purportedly revealed the impossibility of the commission of rape there, cannot be said to be an irrelevant document. When viewed in the above perspective, the questions put to the owner of the building where the crime is said to have taken



place, as to whether the photograph and the plan shown to him related to the building which he leased out to the accused, cannot be said to be irrelevant. The learned Additional Sessions Judge cannot disallow a question put by the learned counsel for the accused to PW2, by showing the photo of interior of the building in which the alleged incident is said to have happened, as to whether it is the building portion which the witness had leased out to the accused. If the witness gives an affirmative answer to the above question, and says that it is the very same building portion which he had leased out to the accused, then the learned defence counsel will be justified in insisting for the marking of that photograph, though it had not been produced by him earlier, provided the necessary formalities for its production are complied immediately thereafter. On the other hand, if the witness says, by perusing that photograph, that he is not in a position to say as to whether it is the portion of the building which he had leased out to the accused, the learned counsel for the accused cannot thereafter insist for further questions on the basis of that document. Likewise, the learned counsel for the accused is entitled to show the site plan prepared by the Village Officer, and produced from the part of the prosecution, to the witness and ask the question as to whether the



aforesaid site plan was in respect of the building which he had leased out to the accused. If an affirmative answer is given by the witness, then the learned counsel would be entitled to ask further questions pertaining to the aforesaid plan and also to get that document marked. But, since the document is one produced from the part of the prosecution, it has to be marked as a prosecution document, marked at the instance of the accused. If the witness says that he is not able to say anything about the plan so prepared by the Village Officer, then the learned counsel for the accused cannot insist on recording further questions on that point.

5. The course of procedure to be adopted when an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, has been dealt with by the Hon'ble Apex Court in **Bipin Shantilal Panchal v. State of Gujarat [(2001) 3 SCC 1]**. It has been held by the Hon'ble Supreme Court in the aforesaid decision that when such objections are raised, the Trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. It has been further observed in



that decision that if the court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration. However, a three Judge Bench of the Hon'ble Supreme Court differed from the above view in **Criminal Trials Guidelines regarding inadequacies and deficiencies, In re [(2021) 10 SCC 598]** wherein it has been held that if the above course laid down in **Bipin Shantilal Panchal** is followed, irrelevant, vague and speculative answers would enter the records cluttering it with a jumble of irrelevant details which at best can be distracting, and at worst, prejudicial to the accused. Paragraph No.15 of the above said decision is extracted hereunder for the sake of convenience and easy reference:

"15. Apart from Section 148, there are other provisions of the Evidence Act (Sections 149-154) which define the ground rules for cross-examination. During questioning, no doubt, the counsel for the party seeking cross-examination has considerable leeway; cross-examination is not confined to matters in issue, but extends to all relevant facts. However, if the court is not empowered to rule, during the proceeding, whether a line of questioning is relevant, the danger lies in irrelevant, vague and speculative answers entering the record. Further, based on the answers to what (subsequently turn out to be irrelevant, vague or otherwise impermissible questions) more questions might be asked and answered. If this process



were to be repeated in case of most witnesses, the record would be cluttered with a jumble of irrelevant details, which at best can be distracting, and at worst, prejudicial to the accused. Therefore, this Court is of opinion that the view in Bipin Shantilal Panchal [Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1 : 2001 SCC (Cri) 417] should not be considered as binding. The Presiding Officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the witness concerned. This will result in de-cluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in Bipin Shantilal Panchal [Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1 : 2001 SCC (Cri) 417] shall stand modified in the above terms.”

6. In the light of the guidelines laid down by the Hon’ble Apex Court in the aforesaid decision, the Trial Court has to decide then and there about the admissibility of the documents sought to be brought in evidence, when the witness is cross-examined by confronting him with regard to the contents of such documents. However, while deciding the admissibility, due regard shall be there with regard to the relevancy of such documents in the light of the pertinent provisions of Bharatiya Sakshya Adhiniyam (Indian Evidence Act).



7. In this context, an observation made by a Three Judge Bench of the Hon'ble Supreme Court in paragraph 69 of the judgment rendered in **Anees v. State Government of NCT [2024 KHC 6256]** assumes much relevance. The aforesaid observation is extracted hereunder:

....."The object of the cross - examination is to impeach the accuracy, credibility and general value of the evidence given in - chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross - examining party.".....

8. Though the aforesaid dictum has been laid down by the Apex Court while dealing with the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth and also establish that the witness is speaking lie, the law laid down by the Apex Court in the above matter has got relevancy in the cross-examination done by the defence counsel as well.

9. Having regard to the position of law elucidated above, I am of the view that the learned Additional Sessions Judge went wrong in disallowing the counsel for the accused from proceeding with the confrontation of PW2 by showing the photograph of the interior



portion of the building where the incident is said to have happened and also by showing the site plan prepared by the Village Officer.

In the result, the petition stands allowed as follows:

i) The learned Additional Sessions Judge is directed to permit the counsel for the accused to confront PW2 by showing the photograph of the interior of the building which he had leased out to the accused (Annexure-A3) and to ask whether it is the photograph of the interior portion of the building which he had leased out to the accused.

ii) If the witness gives an affirmative answer to the above question, the defence counsel shall be permitted to ask further questions related to it, with due regard to its relevancy, and to get the said document marked as an exhibit on the part of the accused, subject to production of that document immediately thereafter, following the formalities prescribed in that regard.

iii) If the witness denied the above suggestion, or says that he is not able to say anything on the basis of the above document, the counsel for the accused need not be permitted to proceed with further questions on that document.

iv) The learned Additional Sessions Judge is directed to permit the counsel for the defence to confront PW2 by showing the site plan prepared by the Village Officer and ask



whether the aforesaid document was the plan of the building which he had rented out to the accused.

v) If the witness gives an affirmative answer to the above question, then the defence counsel should be permitted to ask further questions on that site plan, with due regard to its relevancy, and also to admit the document as an exhibit of the prosecution, marked at the instance of the accused.

vi) If the witness denies the suggestion, or says that he is not able to state anything about it, then the defence counsel need not be permitted to ask further questions on that document to that witness.

(Sd/-)

G. GIRISH, JUDGE



2025:KER:76538

Crl.M.C.No.7885/2025

12

APPENDIX OF CRL.MC 7885/2025

PETITIONER ANNEXURES

Annexure A3	TRUE COPY OF THE PHOTOGRAPH
Annexure A4	TRUE COPY OF THE LIST OF DOCUMENTS FILED BY THE PETITIONER
Annexure A5	TRUE COPY OF THE CERTIFICATE UNDER SECTION OF 63 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023
Annexure A6	TRUE COPY OF THE DEPOSITION OF PW2