

IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, HARIPAD

(SESSIONS DIVISION, ALAPPUZHA)

Present:- Sri. Hareesh G., Special Judge

Tuesday, the 17th day of March, 2026

S.C. No.1453/2024

(Crime No.1068/2024 of Mavelikara Police Station)

Complainant : State of Kerala - represented by Deputy Superintendent of Police, Chengannur.

(By Adv.Sri.S. Reghu, Spl. Public Prosecutor)

Accused : Shinoj.

(By Adv.Sri.M.A. Jayakrishnan)

Charge : u/Ss.74 & 75(1)(i) of Bharatiya Nyaya Sanhita, 2023, U/s.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and U/Ss.3(2)(va) & 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

Plea : Not guilty.

Finding : Not guilty u/Ss.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and guilty u/Ss.74 & 75(1)(i) of Bharatiya Nyaya Sanhita, 2023, U/s.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and U/Ss.3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

Sentence or Order : (i) **the accused is acquitted u/S.258(1) of B.N.S.S. for the**

offences punishable Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

- (ii) On conviction for the offence u/S.74 of the Bharathiya Nyaya Sanhitha 2023, the accused is sentenced to undergo Rigorous Imprisonment for two years (2) and to pay a fine ₹.10,000/- (Rupees ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for 2 months.
- (iii) On conviction for the offence u/S.75(2) r/W 75(1)(i) the accused is sentenced to undergo Rigorous Imprisonment for one year (1) and to pay a fine ₹.10,000/- (Rupees ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for 2 months.
- (iv) On conviction for the offence u/S.8 r/W 7 of the Protection of Children from Sexual offences Act, the accused is sentenced to undergo Rigorous Imprisonment for three years (3) and to pay a fine ₹.10,000/- (Rupees Ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for six months.
- (v) On conviction for the offence u/S.3(1)(w)(i) of the SC/ST

(Prevention of Atrocities) Act, the accused is sentenced to undergo Rigorous Imprisonment for three years (3) and to pay a fine ₹.10,000/- (Rupees Ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for six months.

(vi) Set off u/S.468 of B.N.S.S is allowed to the accused for the period of detention (if any) undergone by him as under trial prisoner in this case.

DESCRIPTION OF THE ACCUSED

Sl.No.	Name	Father's name	Religion	Occupation	Residence	Age
1	Shinoj S/o Mohanan, Mispa Veedu, Maruthorvattom Muri, Thanneermukkam Village, Cherthala Taluk.					49/24

Date of:-

Offence	Report	Apprehension	Release on bail	Committal
01/09/2024	25/11/2024	03/10/2024	06/11/2024	-
Commencement of trial	Close of trial	Sentence/order	Explanation for delay, if any	
09/06/2025	04/03/2026	17/03/2026	-	

This Sessions Case having been finally heard on 04/03/2026 and stood over for consideration to this day and the Court delivered the following:

J U D G M E N T

(1) This case is based on the final report filed by the Deputy Superintendent of Police, Chengannur in Crime No.1068/2024 of

the Mavelikara police station. The accused is put to trial alleging commission of the offences punishable u/Ss.74 & 75(1)(i) of the Bharatiya Nyaya Sanhita, 2023 (For short, BNS), u/s.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 (For short PoCSO Act) and U/Ss.3(1)(w)(i) & 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (For short SC/ST Act).

- (2)** The prosecution allegation against the accused is as follows:- that the accused belongs to Ezhava community of Hindu religion; he with his intention to sexually assault the victim girl, who was then aged 17 years and belonged to Scheduled Caste religion, at 07.30 pm on 01/09/2024 in the hall room of the house of CW11 bearing No.VI/267A of Chettikulangara Panchayat, pressed his hand on the belly of CW1 and thereafter, pressed her both breasts. As the victim girl tried to leave the place by pushing back the accused; he caught hold of the right hand of the victim and hugged her. thus, the accused committed sexual assault on the victim girl and thereby committed the offences u/Ss.74 & 75(1)(i) of the Bharatiya Nyaya Sanhita, 2023, u/s.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and U/Ss.3(1)(w)(i) & 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

- (3)** This case had its genesis on Ext.P1 FIS given by PW1 before PW17, the A.S.I. of Police attached to the police station at Mavelikkara; then PW24, the S.I. of Police attached to the police station at Mavelikkara registered the case as per Ext.P20 First Information Report. Then, after completing the investigation, PW25 has laid the final report before the Addl. Sessions Court-1, Alappuzha (the Special Court for trial of offences under the POCSO Act & Children's Court) by citing CWs 1 to 29 as charge witnesses. The Special Court took cognizance of the offences alleged in the final report and taken the case on the files under the present number and issued process to the accused. Thereafter, the case was made over to this Court for trial and disposal.
- (4)** Upon receipt of the case records, this Court issued process to the accused. The accused appeared before the Court in response to the process issued. On his appearance before the Court, the accused was furnished with copies of all relevant prosecution records and since he was enlarged on bail at the investigation stage of the case, the accused was permitted to continue on the same bail bond executed by him during the investigation of the case. The accused was defended by the counsel appointed by him.

- (5) The learned Special Public Prosecutor opened the case u/S.249 of Bharatiya Nagarik Sureksha Sanhitha (For short B.N.S.S.) by describing by what evidence he proposes to prove the guilt of the accused. Thereafter, the counsel for the accused and the Special Public Prosecutor were heard u/S.250 of the BNSS and since there is sufficient materials to frame charge against the accused, charge u/Ss.74 & 75(1)(i) of Bharatiya Nyaya Sanhita, 2023, U/s.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and U/Ss.3(2)(v) & 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was framed, read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried.
- (6) Thereafter, from the side of the prosecution, **PW1 to PW25** were examined, marked **Exts.P1 to 28 and MO1**.
- (7) After the closure of the prosecution evidence, the accused was examined u/S.351(1)(b) of BNSS with respect to incriminating circumstances appearing against him in the prosecution evidence. The accused denied all the incriminating circumstances brought against him and stated that he is innocent of the prosecution allegations. The accused further stated that, twice he has taken the brother of the victim girl to the de-

addiction centre and the said fact was known to others; then the family of the victim girl implicated him in this false case on the mistaken belief that it is he who has leaked the information regarding the visiting of the brother of PW1 in the de-addiction centre.

- (8)** Thereafter, the learned counsel for the accused and the learned S.P.P. were heard u/S.255 BNSS. Since there is evidence against the accused, it is found that the accused is not entitled to be acquitted u/S.255 of BNSS. From the side of the accused, no evidence was adduced when he was called upon to enter on his defence.
- (9)** Among the prosecution witnesses examined, PW1 is the victim girl; she has set the law in motion by lodging Ext.P1 FIS. PW2 is the father of the victim girl; he is examined to prove the incident. PW3 is the aunt of PW1 and she is also examined to prove the incident; she has also signed Ext.P2 scene mahazar. PW4 is the doctor attached to the District Hospital, Mavelikkara; he conducted potency examination on the accused and issued Ext.P3 certificate. PW5 is the teacher attached to the Govt. Girl Higher Secondary School, Mavelikkara; she was examined to prove the fact that the victim girl has informed her about the

sexual assault by the accused. PW6 is the teacher who was holding the charge of Headmistress in North L.P. School, Erezha; she has given Ext.P4 certificate to prove the date of birth of the victim girl. PW7 is the Registrar attached to the department of registration of births & deaths in the Municipal Office, Mavelikkara; he has issued Ext.P5 certificate with respect to the date of birth of PW1.

(10) PW8 is the Secretary attached to the Grama Panchayat Office, Chettikulangara; he has issued Ext.P6 ownership certificate with respect to the building bearing No.VI/267A (old No.1/3611) of Chettikulangara Grama Panchayat; he has also issued Ext.P7 certificate stating that no licence has been issued to anybody to sell grocery items in the said building. PW9 is the Village Officer attached to the Village Office, Kannamangalam; he has issued Ext.P8 scene plan with respect to the place of occurrence. PW10 is the Tahsildar attached to the Taluk Office, Mavelikkara; she has issued Ext.P9 caste certificate with respect to PW1. PW11 is the S.I. of Police attached to the DySP Office, Chengannur; he has signed Ext.P10 mahazar, which was prepared to seize the clothes of the victim girl; he is also an attestor of Ext.P11 mahazar which was prepared with respect to the rent agreement entered between the accused and the owner of the building in which the

offence was committed; PW11 also signed Ext.P12 mahazar which was prepared with respect to the marriage agreement between the accused and his wife.

(11) PW12 is the CPO attached to the DySP Office, Chengannur; he is also an attester of Exts.10 to P12 mahazars. PW13 is the mother of the victim girl; she is examined to prove the incident. PW14 is another independent witness examined to prove the occurrence; she did not support the prosecution. PW15 is the brother of the victim girl; he is an attester of Ext.P2 scene mahazar. PW16 is the house owner of the house in which the accused has been residing; through him, Ext.P13 rent agreement is marked. PW17 is the ASI of Police attached to the police station, Mavelikkara; she has recorded Ext.P1 FIS given by PW1.

(12) PW18 is the member attached to the Chettikulangara Grama Panchayat ward; she was examined to prove that she had knowledge about the incident. PW19 is the Village Officer attached to the Village Office, Thanneermukkam; he has issued Ext.P14 caste certificate with respect to the accused. PW20 is the CPO attached to the police station, Mavelikkara; he has taken the accused for medical examination. PW21 is the S.I. of Police attached to the police station, Mavelikkara; he has prepared

Ext.P2 mahazar and he has arrested the accused; the arrest memo and the arrest intimation prepared at the time of arresting the accused are marked as Exts.P15 & P16; he has sent the accused for potency examination and obtained Ext.P3 certificate; PW21 has filed Ext.P17 report to bring on record the address of the accused; he has also filed Ext.P18 report to incorporate additional penal sections in the case.

- (13)** PW22 is the consultant gynaecologist in the District Hospital, Mavelikkara; she has examined the victim girl and issued Ext.P19 series, medical certificate. PW23 is the SCPO attached to the police station, Mavelikkara; she has appointed as the Victim Liaison Officer of the victim and she has accompanied the victim girl for medical examination and also for recording statement by the Magistrate.
- (14)** PW24 is the SHO attached to the police station, Mavelikkara; he as registered the case as per Ext.P20 FIR. PW25 is the DySP of Chengannur; he has conducted the investigation and laid the final report. Through him, Exts.P21 to P28 documents are marked.
- (15)** The prosecution has given up CWs 9, 10, 11 & 21.
- (16)** Heard the learned SPP and the learned counsel for the accused.
- (17)** The following points arise for consideration:-

- 1) Has the prosecution proved that PW1 was a child as defined in the Protection of Children from Sexual Offences Act, 2012 when the incident took place?
- 2) Whether the accused outraged the modesty of PW1?
- 3) Whether the accused committed sexual harassment on PW1?
- 4) Whether the accused committed sexual assault on PW1?
- 5) Whether the accused, who does not belong to Scheduled Caste, touched PW1, who belongs to Scheduled Caste, with sexual intent?
- 6) Whether the accused sexually assaulted PW1, who belongs to a Scheduled Caste?
- 7) What, if any is the offence committed by the accused?
- 8) Regarding sentence or order?

(18) Point No.1:-

In this case, the prosecution alleges the offence punishable under Sec.8 r/W 7 of Protection of Children from Sexual Offences Act; therefore, the prosecution is bound to prove the age of the victim as a foundational fact. First of all, the mother of the victim girl, who testified before the court as PW13 deposed that her daughter was born on 27/08/2007. Though PW13 was cross-

examined at length by the learned defence counsel, no question disputing the date of birth of the victim was put to the said witness. So, it is found that the evidence of PW13 with regard to the date of birth of PW1 is admitted by the accused. The Hon'ble High Court of Kerala in **Raveendran V. S. v. Deputy Superintendent of Police [2025 KHC 226 :2025 KER 14285 :2025 KLT OnLine 1341]** held '**Undisputedly, the most competent person to depose about the age of a child is the child's mother.'**

(19) Again, that to prove the age of the victim girl, prosecution examined PW6, the teacher in-charge of the Headmistress in Erezha North L.P. School; she has issued **Ext.P4** certificate to prove the date of birth of the victim girl. The investigating officer (PW25) has also obtained **Ext.P4(a)** document, which is the extract of school admission register maintained in the aforesaid school. As per both those records, the date of birth of PW1 is on 27/08/2007. Furthermore, PW7 who was the Registrar attached to the department of registration of births & deaths in the Municipal Office, Mavelikara; has issued **Ext.P5** certificate stating that PW1 was born on 27/08/2007.

(20) As per S.2(1)(d) of the Protection of Children from Sexual Offences Act, '*child*' means any person below the age of 18 years. Regarding the mode of determination of the age of victims, there is no specific provision under the Protection of Children from Sexual Offences Act. S.34(2) of the Protection of Children from Sexual Offences Act states that if any question arises in any proceeding before the Special Court whether a person is a child or not, the Special Court shall determine such a question after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. However, no procedure is prescribed under the Act, or the rules made thereunder with the mode of age determination. Likewise, the Code of Criminal Procedure does not provide any such procedure.

(21) It is quite worthy to note that in **P. Yuvaprakash v. State represented by Inspector of Police (2023 KHC 6709)**, the Hon'ble Supreme Court held that conjoining reading of S.34(1) of Protection of Children from Sexual Offences Act and S.94 of the Juvenile Justice (Care & Protection of Children) Act would show that whenever there is a dispute with regard to the age of a person arises in the context of her/him being a victim under the Protection of Children from Sexual Offences Act the Court have to take recourse to the steps indicated in S.34 of the J.J. Act.

Furthermore, in **Biju v. State of Kerala (2024 (2) KHC 297)**, the Hon'ble High Court of Kerala held that for establishing the age of a child under the Protection of Children from Sexual Offences Act, anyone of the ways permitted under the Indian Evidence Act can be resorted to.

(22) In this case, the abovementioned evidence with regard to the date of birth of the victim is not challenged. So, there is nothing to reject to the aforesaid documents ie. Exts.P4, P4(a) & P5 which pertains to the date of birth of the victim girl. Here, in this case, as per the prosecution case, the accused sexually assaulted PW1 on 01/09/2024. Thus, it is found that on 01/09/2024, PW1 has not completed the age of 18 years and therefore, she is a child as defined in the PoCSO Act. This point is answered accordingly.

(23) Point No.2 to 6:-

The prosecution allegation is that the accused sexually assaulted PW1. Gist of the evidence of PW1 is that she has got acquaintance with the accused and the accused is the husband of her mother's friend. It is her evidence before the court that on 01/09/2024, the accused caught hold of her breast while she was in his house. PW1 deposed that she reached the house of the accused to purchase wheat flour. PW1 further deposed that her mother used to go to the house situated on the ground floor of

the building in which the accused residing and she also used to go to the said building to see her mother. PW1 deposed that on the date of the incident, while she reached the house of the accused for buying wheat flour, the accused grabbed her hand and told that she looks very lean. It is her evidence before the court that the accused then hugged her and then she pushed him back. She deposed that the accused pulled her hand backwards. PW1 further deposed that she told the incident to her class teacher. She deposed that in the termly examination, she scored less marks and her teacher asked her about her poor performance in the exams and then she divulged the matter to the teacher. PW1 deposed that the accused is a follower of Pentecost faith. The FIS given by PW1 is marked as **Ext.P1**.

- (24)** The mother of the victim girl testified before the court as PW13. She deposed that the accused is residing next door and she has got acquaintance with the wife of the accused. PW13 deposed that the accused conducted sale of RCM products in his house and she has given a statement to the police that the accused sexually assaulted her daughter. PW13 deposed that as directed by a lady in the neighbourhood, her daughter went to the house of the accused for buying wheat flour. It is her evidence before the court that her daughter did not tell the incident to her and

when she came to know about the incident, she along with her sister-in-law reached the house to enquire about the incident and then the accused requested apology. It is her evidence before the court that she was present along with her daughter while her daughter gave statement to the police. PW13 further deposed that while her daughter reached the house of the accused, the accused hugged her by holding her stomach and he also pressed her both breasts. She deposed that she has handed over the attire of her daughter which she had worn at the time of the incident to the police and the clothe is marked as **M.O1**. PW13 deposed that while her daughter scored less marks in the Onam exams her teacher asked about her poor performance and then she told the incident to her teacher.

(25) PW2 is the father of the victim girl; he deposed that the accused is running a grocery shop and the accused follows Pentecost faith. PW2 deposed that earlier the accused belonged to Ezhava community and he came to now about the sexual assault on her daughter through the teacher of his daughter. PW2 further deposed that his wife told him about the incident.

(26) PW3 is the aunt of the victim. She deposed that the accused is residing on the first floor of the building in which the mother of

the victim girl is working as maid. PW3 further deposed that the incident of sexual molestation of the victim girl was informed to her by the mother of PW1 and she along with the mother of the victim and the member attached to their panchayat ward, reached the house of the accused and enquired about the incident. PW3 deposed that then the accused confessed that he committed a mistake. PW3 deposed that the matter was informed to the police and she was present when the police party inspected the scene of occurrence. She deposed that she had put her signature in the mahazar which is marked as **Ext.P2**.

(27) PW4 is the doctor attached to the District Hospital, Mavelikara; he deposed that on 03/10/2024, he examined the accused in this case and issued a certificate stating that the accused is capable of performing sexual acts. The certificate issued by PW4 is marked as **Ext.P3**.

(28) PW5 is the teacher attached to the Govt. Girls Higher Secondary School, Mavelikkara; she deposed that she was the class teacher of the victim girl in this case and the victim showed poor performance in the examination. PW5 deposed that she enquired into the matter and the victim divulged that she was sexually assaulted by the person who is residing on the up stair of the

building in which her mother served as a maid. It is the evidence of PW5 that the victim told her that she is afraid of disclosing the matter to her mother. PW5 further deposed that she has informed the matter to the mother of the victim and also to the Headmistress and councillor of the school.

(29) PW8 is the Secretary attached to the Grama Panchayat Office, Chettikulangara; it is his evidence before the court that as directed from the police station, Mavelikara, he has issued ownership certificate with respect to the building bearing No.6/267A of Chettikulangara Grama Panchayat (old No.1/3611). The certificate issued by PW8 is marked as **Ext.P6**. He further deposed that he has also issued **Ext.P7** certificate stating that from the panchayat, no licence was issued in the name of Harikuttan, Suhitha Shinoj to sell grocery items in the abovementioned building.

(30) PW9 is the Village Officer attached to the Village Office, Kannamangalam; he deposed that he has prepared a plan with respect to the scene of occurrence and the said plan is marked as **Ext.P8**.

(31) PW10 is the Tahsildar attached to the Taluk Office, Mavelikara; she would depose that as directed by the DySP Office,

Chengannur, she has issued the caste certificate with respect to the victim girl and the said certificate is marked as **Ext.P9**.

(32) PW11 is the S.I. of Police attached to the DySP Office, Chengannur; he deposed that he has signed the mahazar which was prepared to take custody of the dress worn by the victim girl at the time of the occurrence. The said mahazar is marked as **Ext.P10**. He further deposed that he has also attested **Ext.P11** mahazar which was prepared with respect to the rent agreement executed by the accused to take the up stair of the house with name Kochutharayil situated in Ward 6 of Chettikulangara Panchayat. He further deposed that he has also signed **Ext.P12** mahazar which was prepared with respect to the marriage agreement executed between the wife of the accused and the accused.

(33) PW12 is another attestor of Exts.P10 to P12 mahazars; he deposed that he was working as the CPO in the DySP Office, Chengannur and he has signed the said mahazars.

(34) PW14 is one Ushakumari; as per the prosecution case, she was the person who sent the victim girl to the shop of the accused to purchase wheat flour; but, before the court, she did not support

the prosecution and deposed that she has not sent the victim girl to the aforesaid shop for purchasing wheat flour. She deposed that she is not aware of the arrest of the accused.

(35) PW15 is the brother of the victim girl; he deposed that the accused in this case is the husband of his mother's friend. PW15 deposed that his mother used to go to the ground floor of the building in which the accused is residing. He deposed that he accompanied the police to the place of occurrence and he has also signed Ext.P2 mahazar.

(36) PW16 is one Baby K. He deposed that the accused has taken his building on rent. He has produced the rent agreement before the police. The rent agreement is marked as **Ext.P13**. It is his evidence before the court that the building belonged to his nephew Jesson and he is looking after the building. Marking of Ext.P13 is objected by the counsel for the accused on the ground that the rent agreement does not contain the signature of PW16. Here, it is to be noted that it is PW16 who has produced the rent agreement. Accused has no case that PW16 is not the custodian of the said document. Since PW16 is the custodian of the document and he has produced the same before the investigating officer, it is found that the said document can be

marked through PW16. Hence, the document is admitted in evidence.

- (37)** PW17 is the ASI attached to the police station, Mavelikkara; she would depose that on 01/010/2024, she recorded Ext.P1 FIS given by PW1.
- (38)** PW18 is the member attached to the Chettikulangara Grama Panchayat; she deposed that she has got acquaintance with the victim girl and her family. PW18 deposed that the mother of the victim girl was informed about the incident and she along with the mother of the victim girl together with the aunt of the victim girl, reached the house of the accused and enquired the incident and then the accused admitted that he has committed a mistake.
- (39)** PW19 is the Village Officer, Thannermukkam; he deposed that he has issued a certificate to the investigating officer showing the religion of the accused and the said certificate is marked as **Ext.P14**. PW19 further deposed that as per the certificate issued by him, the accused belonged to Ezhava community of Hindu religion.

- (40)** PW20 is the CPO attached to the police station, Mavelikara; he deposed that on 03/10/2024, he has taken the accused to the hospital for medical examination.
- (41)** PW21 is the S.I. of Police attached to the police station, Mavelikara; he deposed that he has sent the victim girl for medical examination. PW21 deposed that he has inspected the scene of occurrence and prepared Ext.P2 mahazar. He deposed that he has arrested the accused and the arrest memo and the arrest intimation prepared at the time of arresting the accused are marked as **Exts.P15 & P16** respectively. It is his evidence before the court that he has sent the accused for medical examination and obtained Ext.P3 certificate. He further deposed that he has filed **Ext.P17** report to bring on record the address of the accused. He deposed that he has filed **Ext.P18** report to incorporate additional sections in the case.
- (42)** PW22 is the Consultant Gynaecologist in the District Hospital, Mavelikara; she deposed that on 02/10/2024, she examined the victim girl and issued **Ext.P19** series certificate. It is her evidence before the court that the girl was brought before her with the history that at 07.30 pm on 01/09/2024, the girl reached the house of one Sudha to purchase wheat flour and then Shinoj,

the husband of aforesaid Sudha, hugged her by holding her stomach and he also pressed her both breasts.

- (43)** PW23 is the SCPO attached to the police station, Mavelikara; she deposed that she was appointed at the VLO of the victim girl and she has accompanied to the victim girl to the hospital for medical examination and also to the Magistrate to recording statement.
- (44)** PW24 is the Inspector SHO attached to the police station, Mavelikkara; he deposed that on the basis of the FIS given by the victim, he registered the case on 01/10/2024 as per **Ext.P20** FIR.
- (45)** PW25 is the DySP attached to the DySP Office, Chengannur; he testified that as per the direction of the District Police Chief, he took over the investigation of the case and the order of the District Police Chief is marked as **Ext.P21**. PW25 deposed that he has then filed **Ext.P22** report before the court intimating that he is investigating the case. He deposed that vide Ext.P11 mahazar, he has taken custody of Ext.P13 rent agreement. PW25 further deposed that he has produced Ext.P13 document before the court as per **Ext.P23** property list. He then deposed that he filed **Ext.P24** report stating that the new number of the building in which the crime was committed is 267A. It is his evidence before the court that the marriage agreement executed by the

accused with CW9 for living together was seized as per Ext.P12 mahazar. PW25 deposed that vide **Ext.P25** property list, he has produced the said document before the court. The marriage agreement executed by the accused and CW9 is marked as **Ext.P26**.

(46) PW25 deposed that he has obtained Ext.P4 certificate from the school in which PW1 was studied to prove the date of birth of PW1 and the extract of the relevant page of the school admission register is marked as Ext.P4(a). PW25 deposed that he has then obtained Exts.P6 & P7 documents to prove the ownership of the building in which the crime was committed and also stating that in the said building, no licence was issued to anybody to conduct grocery business therein. He further deposed that he has obtained Ext.P8 scene plan with respect to the place of occurrence and he has also obtained Exts.P14 & P19 certificate to prove the caste of the accused and PW1. He deposed that vide Ext.P10 mahazar, he has seized the clothes of the victim, which she had worn at the time of the occurrence. PW25 further deposed that he has produced the seized material objects before the court as per **Ext.P27** property list. He further deposed that vide **Ext.P28** report, he has incorporated Sec.3(1)(w)(i) of SC/ST Act.in the case.

(47) The prosecution has adduced the abovementioned evidence to prove the charge against the accused. The counsel for the accused did not advance any oral argument, but filed an argument note. The first point highlighted by the counsel for the accused is that there is inconsistency in between the evidence of PW1 before the court and her statements in Ext.P1 FIS. The counsel for the accused further argued that PW1 has no consistent case with regard to the place of occurrence. In the argument note, it is also highlighted that PW14 (Usha), who sent the victim girl to the house of the accused to purchase wheat flour, did not support the prosecution and that is fatal to the prosecution. It is further stated in the argument note that there is delay in reporting the matter to the police. It is also highlighted in the argument note that as per the version of PW13, a written complaint was given in the police station, but that complaint was not produced before the court. It is further stated in the argument note that the accused was falsely implicated in this case by the family members of PW1. The case of the accused is that the brother of PW1 was using drugs and the accused took him to a de-addiction centre at Kayamkulam. It is the contention of the accused that the visitation of brother of PW1 in the de-addiction centre was later spread in the locality

and the parents of PW1 believed that it is the accused who leaked the information and in order to wreak vengeance against the accused, the parents of PW1 falsely foisted this case against the accused.

(48) The contentions raised from the side of the accused are put to scrutiny in the light of the evidence on record. Here, the first contention advanced from the side of the accused that the evidence given by PW1 before the court is not in consonance with her statement before the police. It is to be noted that the minor variations occurred in describing the incident before the court is of no consequences. What is to be considered is whether there are material inconsistencies in between the evidence of PW1 before the court and her statement in Ext.P1 FIS. Here, PW1 was very consistent in her statement that the accused held her hand, and hugged her by holding the stomach. PW1 clearly deposed before the court that the accused made a sexually coloured remarks to her and hugged her and held her hand. Thus, it is found that the minor differences pointed out by the accused with regard to the evidence of PW1 before the court and in her Ext.P1 FIS is of no consequences. It is to be noted that PW1 testified before the court after the elapse of one year from the date of the incident and it is quite natural for her to slightly deviate from her

Ext.P1 FIS. The minor variations occurred in her testimony before the court from Ext.P1 is only to be discarded.

(49) It is to be appreciated that even if there were any variations in the evidence with the statements that can be treated a natural as the witnesses were examined before the Court after years from the date of the incident. The Hon'ble Apex Court in **Balu Sudam Khalde v. State of Maharashtra (AIR 2023 SC 1736)** explained the parameters for appreciating the ocular evidence. It said that minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attacking importance to technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. By and large a witness cannot be expected to possess a photographic memory as to recall the details of an incident.

(50) The next point highlighted by the counsel for the accused is that the prosecution has failed to precisely prove the exact place of occurrence in this case. The contention of the accused is that before the police, PW1 maintained a case that the accused assaulted her in the store room, but before the court, she deposed that the incident happened in the hall of the house of

the accused. Here, it is to be noted that as per Ext.P2 mahazar, the place of occurrence is the hall room and the store room premises situated in the up stair of Kochutharayil house. Thus, it is found that there is not much difference between store room and the hall in the building in which the accused is residing. The store room as well as the hall in the said building were situated close to each other. So the mere mentioning of PW1 that the incident took place in the hall does not mean that there is a clear shifting of place of occurrence. From the mahazar as well as the evidence of PW1, it is quite discernible that the store room and the hall in the house of the accused were situated very closely and the place of occurrence can be described in both ways, ie. either in the store room or in the hall. That apart, PW1 in the cross-examination stated that firstly the accused caught hold of her hand while she was in the store and then she warded off the hand of the accused and reached the hall and then the accused caught hold of her hand from the rear side. This would show that the accused committed assault on PW1 both in the store and in the hall. To doubt the prosecution case, there should be clear shifting of the place of occurrence in the testimony of the witness from the scene mahazar. In this case, the testimony

of PW1 regarding the place of occurrence is in consonance with the recitals in the scene mahazar.

(51) In the argument note it is also highlighted that there are inconsistencies in between the evidence of PW1 before the court and her statement given to the Magistrate. As per the argument note, before the Magistrate, PW1 has not stated that the accused pressed her breast either in the hall room or in the store room or in the door of the store room. Here, it is to be noted that the said fact highlighted by the counsel for the accused cannot be termed as a material omission. The substantive evidence is the deposition of PW1 before the court, and she clearly stated before the court that the accused held her hand and hugged her. Merely there occurred some variations in between Ext.P1 and the statement of PW1 before the Magistrate, the abovementioned evidence adduced by PW1 before the court cannot be ignored.

(52) In the argument note, it is highlighted that PW1 failed to give the exact features of the house of the accused. It is to be noted that PW1 might have visited the house of the accused occasionally and she is not expected to the minute details of the house of the accused and thus, the omission on the part of PW1 to give the minute details of the house of the accused does not lead to the

conclusion that she has not reached the house of the accused and the incident did not happen.

(53) In the argument note, it is also argued that there is inordinate delay in lodging Ext.P1 FIS. It is to be borne in mind that in the case of sexual assault cases, it is quite natural that there would be some delay in revealing the assault by the victim to anybody. This is because firstly the victim would be under trauma of the incident and further she would be hesitant to disclose the incident to anybody out of fear and coyness. So, in the facts and circumstances of the case, the delay occurred in revealing the incident by PW1 to her teacher is quite natural and undue important should not be given to the said delay. In the argument note, it is also stated that as per the version of PW13, the matter was informed to the police on 28/09/2024, but the teacher has informed the matter to PW13 on 26/09/2024 itself and the FIR is registered only on 01/10/2024 and there occurred five days delay in registering the FIR.

(54) In this context, it is to be noted that PW13 cannot be expected to rush to the police as soon as she received the information. As already stated in case of sexual assault matters, the parties would contemplate several things before approaching the police.

Viewing in that perspective, it is found that the delay occurred in informing the matter to the police is justifiable.

(55) It is to be noted that delay in registering the case is not fatal in every case. The delay has to be viewed from the facts and circumstance of each case. Importance of the first information statement lies on the fact that it is the earliest version of the incident. It has to be promptly given in order to avoid embellishments. In this case, if the delay in informing the police is taken as a ground to view the prosecution case and its evidence with suspicion or to reject it on that technicality, the purpose and object of vindication of justice and consequently the interest of society will suffer. The accused has no case that PWs 1 has given an embellished version of the incident to the police after due deliberation and contemplation. Thus, it is found that the delay occurred in registering the case is negligible and that does not affect the root of the prosecution.

(56) The learned counsel for the accused in the argument highlighted that the prosecution has not produce any document to show that the accused is running grocery shop in his house. But, the oral evidence of PW1 and her mother (PW13) shows that the accused is doing the business of RCM produces and there is no ground to

disbelieve their versions. It is to be noted that the accused has not obtained any licence to run the grocery shop and therefore, the prosecution cannot produce any documents to prove that aspect. It is also pointed out in the argument note that the prosecution has not produced any document to prove that the accused and his wife are residing in the house. But, it is to be noted that the wife of the accused did not appear before the court to deny her signature in Ext.13 rent agreement. Here, it is to be noted that while cross-examining the prosecution witnesses, the accused has not taken any contention that he is not residing in the building in which the occurrence has happened. Thus, it is found that a mere contention that the prosecution has failed to prove that the accused and his wife are residing in the place of occurrence is not acceptable.

(57) In the argument note, it is stated that PW13 deposed before the court that she has complained at the police station, but the prosecution has not produced the complaint allegedly lodged by the mother of the victim in the police station. But, it is to be noted that nowhere in the evidence of PW13, it is not discernible that PW13 has lodged any written complaint. What is stated is that she has complained in the police station and that does not mean that a written complaint was given in the police station.

(58) Thus, on consideration of entire evidence and the contention raised by the accused, it is found that the contentions raised from the side of the accused are not sustainable, the defence case set up by the accused appears to be highly improbable in the facts and the circumstances of the case. Thus, it is found that the evidence of PW1 is acceptable.

(59) The case of PW1 is that the accused held her hand and hugged her. The said act of the accused amounts to use of criminal force against PW1. It is to be noted that as per the dictum laid down in **Justin @ Renjith & Anr. v. Union of India & Others (2020 (6) KHC 546)** and **David v. State of Kerala (2020 (4) KHC 717)**, if the foundational facts that the victim is a child and the alleged incident took place and the accused has committed the offence are proved by the prosecution the presumption u/S.30 of the Protection of Children from Sexual Offences Act will come into play and the Court can presume the culpable mental state of the accused in doing the said acts. To sum up, on the success of the prosecution to adduce convincing and weighty evidence to establish the guilt of the accused it is found that the accused has failed to rebut the presumptions u/Ss.29 and 30 of the Protection of Children from Sexual Offences Act, 2012, this Court is bound to

the presumptions u/Ss.29 & 30 of the Protection of Children from Sexual Offences Act.

(60) Thus, it is found that the offence defined u/Ss.74 & 75(1) of the BNS and Sec.8 r/W 7 of the PoCSO Act are clearly made out in this case.

(61) The prosecution alleges the offence u/S.3(1)(w)(i) of SC/ST Act. Sec. 3(1)(w)(i) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act reads thus: ***(w)(i) - intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent.*** The evidence of PW1 clearly shows that the accused has close acquaintance with her family and he is aware of her caste. The prosecution has produced the caste certificate of he accused as well as the victim and the accused has not challenged the said documents. It is already found that the accused committed sexual assault on PW1. Thus, it is found that the prosecution has also succeeded in proving the offence u/S.3(1)(w)(i) of SC/ST Act against the accused.

(62) Now with regard to the offence u/S.3(2)(va) of SC/ST Act. It is to be noted that to attract the offences under Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 is committed against her on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Sec.3(2) (v)(a) of the Act arises. In this case the victim or the prosecution has no case that she was sexually assaulted for the reason that he belongs to a scheduled tribe. It is to be noted that to make the offence under Sec.3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the offence should have been committed for the reason that the victim is a member of a Scheduled Caste community. In the final report or in the evidence of PW1 and her mother, there is no mentioning that the accused assaulted PW1 for the reason that she belong to a Scheduled Caste community. Thus, it is found that the ingredients of the offences under Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are also not made out in this case.

(63) That upshot of the discussion is that the prosecution has succeeded in proving that the accused has committed the offences punishable u/Ss.74 & 75(1) of the Bharatiya Nyaya Sanhita, 2023, Sec.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and u/s.3(1)(w)(i) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act and failed to prove the offence Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act against the accused. These points are answered accordingly.

(64) Point No.7:-

Vide discussions made in foregoing points, it is found that the prosecution has succeeded in proving that the accused has committed the offences punishable u/Ss.74 & 75(1) of the Bharatiya Nyaya Sanhita, 2023, Sec.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and u/s.3(1)(w)(i) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act and failed to prove the offence Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act against the accused. Therefore the accused is acquitted **u/S.258(1) of the Bharatiya Nagarik Suraksha Sanhitha 2023 (B.N.S.S.)** for the offence **punishable under Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes**

(Prevention of Atrocities) Act and he is **convicted u/S.258(2) of B.N.S.S.** for the offence punishable u/Ss.74 & 75(1) of the Bharatiya Nyaya Sanhita, 2023, Sec.8 r/W 7 of the Protection of Children from Sexual Offences Act, 2012 and u/s.3(1)(w)(i) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act. Considering the seriousness of the offence committed by the accused, it is found that this is not a fit case in which the benevolent provisions of Probation of Offenders Act are to be invoked. The accused is liable to be sentenced. This point is answered accordingly.

(Dictated to the Confidential Asst. directly typed on the computer, corrected and pronounced by me in Open Court on this the 17th day of March, 2026).

Sd/-
Special Judge,
Fast Track Special Court, Haripad.

17/03/2026

Point No.8:-

Heard both sides on the question of sentence. The accused stated that he is not an accused in any other crime and this is a mistake committed by him. The accused pleaded for leniency in sentence. On consideration of the entire facts and circumstances of the case, it is found that the accused offered no mitigating circumstances. No such circumstances are discernible from the facts of the case. The manner in which the offence was committed show that the accused does not deserve much leniency in the sentence.

In the result,

- (i) the accused is acquitted u/S.258(1) of B.N.S.S. for the offences punishable Sec.3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.**
- (ii) On conviction for the offence u/S.74 of the Bharathiya Nyaya Sanhitha 2023, the accused is sentenced to undergo Rigorous Imprisonment for two years (2) and to pay a fine ₹.10,000/- (Rupees ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for 2 months.**
- (iii) On conviction for the offence u/S.75(2) r/W 75(1)(i) the accused is sentenced to undergo Rigorous Imprisonment for**

one year (1) and to pay a fine ₹.10,000/- (Rupees ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for 2 months.

(iv) On conviction for the offence u/S.8 r/W 7 of the Protection of Children from Sexual offences Act, the accused is sentenced to undergo Rigorous Imprisonment for three years (3) and to pay a fine ₹.10,000/- (Rupees Ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for six months.

(v) On conviction for the offence u/S.3(1)(w)(i) of the SC/ST (Prevention of Atrocities) Act, the accused is sentenced to undergo Rigorous Imprisonment for three years (3) and to pay a fine ₹.10,000/- (Rupees Ten thousand only); in default of payment of fine, the accused is sentenced to undergo Rigorous Imprisonment for six months.

(vi) Set off u/S.468 of B.N.S.S is allowed to the accused for the period of detention (if any) undergone by him as under trial prisoner in this case.

(vii) The substantive sentence of imprisonment shall run concurrently.

(viii) Fine if realised shall be given to PW1 u/S.395(1)(b) of B.N.S.S. for the injury caused to her by the offence.

From the facts and circumstances of the case, it is found that PW1 suffered mental agony and distress in the incident.

Therefore, she is entitled to get compensation u/S.396 of B.N.S.S. Hence, a recommendation is given to the District Legal Service Authority, Alappuzha to award adequate compensation to PW1 for the mental agony and distress caused to her.

MO1 in DCTR 527/24 shall be destroyed as per rules after the expiry of the appeal period or if an appeal is filed the same shall be disposed subject to the direction of the Appellate Court.

(Dictated to the Confidential Assistant, she typed directly on computer, corrected and pronounced by me in Open Court on this the 17th day of March, 2026)

Sd/-

Special Judge,

Fast Track Special Court, Haripad.

APPENDIX

List of Prosecution/Defence/Court Witnesses:-

STATEMENT UNDER RULE 134 OF THE CRIMINAL RULES OF PRACTICE

A. WITNESSES FOR THE PROSECUTION:-

Rank	Name	Whether eye-witness, police witness, expert witness, medical witness, other witness	Date of deposition
PW1	Victim of the offence	-	12/01/26
PW2	Father of the victim	-	13/01/26
PW3	Aunt of the victim	-	13/01/26
PW4	Dr. Rejeesh	Asst. Surgeon, Dist. Hospital, Mavelikara	22/01/26
PW5	Sreeklumari P.	Teacher, Govt. HSS, Mavelikara	22/01/26
PW6	Sreelakshmi L.	Headmistress in-charge, Erezha North L.P.S.	23/01/26
PW7	Anilkumar S.	Registrar of Births & Deaths, Municipal Office, Mavelikara	23/01/26
PW8	Balanarayanan K.B.	Secretary, Chettikulangara Grama Panchayat	24/01/26

PW9	Suresh Kumar S.	Village Officer, Kannamangalam	24/01/26
PW10	Geethakumari T.S.	Tahsildar, Mavelikara	24/01/26
PW11	Rijumon	S.I. of Police, DySP Office, Chengannur	27/01/26
PW12	Rajesh Kumar K.	SCPO, DySP Office, Chengannur	27/01/26
PW13	Mother of the victim	-	31/01/26
PW14	Ushakumari S.	Witness	31/01/26
PW15	Brother of the victim	-	02/02/26
PW16	Baby K.	House owner of the accused	02/02/26
PW17	Sajumol S.	A.S.I. of Police, Mavelikara Police Station	02/02/26
PW18	Manju Anil	Member, Chettikulangara Grama Panchayat	02/02/26
PW19	P.B. Rajesh Kumar	Village Officer, Thanneermukkam Village Office	03/02/26
PW20	Jithin Krishna	CPO, Mavelikara Police Station	04/02/26
PW21	Sathyan P.B.	S.I. of Police, Mavelikara Police Station	04/02/26
PW22	Dr. Anu Philip	Gynecologist, District Hospital, Mavelikara	05/02/26
PW23	Remya R.	SCPO, Mavelikara Police Station	06/02/26
PW24	Sreejith C.	Inspector SHO, Mavelikara Police Station	06/02/26
PW25	Binukumar M.K.	Dy. Superintendent of Police, Chengannur	10/02/26

B. WITNESSES FOR THE DEFENCE:-

Rank	Name	Whether eye-witness, police witness, expert witness, medical witness, other witness	Date of deposition
-- N I L --			

C. WITNESSES FOR THE COURT:-

Rank	Name	Whether eye-witness, police witness, expert witness, medical witness, other witness	Date of deposition
- NIL -			

List of Prosecution/Defence/Court Exhibits:-

Sl.No.	Exhibit Number	Description	Date
1	P1/PW1	First Information Statement	01/10/24
2	P2/PW3	Scene mahazar	02/10/24
3	P3/PW4	Potency certificate	03/10/24
4	P4/PW6	Covering letter from school	24/10/24
5	P4(a)/PW6	Abstract of admission register	24/10/24
6	P5/PW7	Birth certificate	15/10/24
7	P6/PW8	Ownership certificate	15/10/24

8	P7/PW9	Certificate issued from Chettikulangara Grama Panchayat	29/10/24
9	P8/PW9	Scene plan	20/11/24
10	P9/PW10	Community certificate	07/11/24
11	P10/PW11	Seizure mahazar	12/10/24
12	P11/PW11	Mahazar on rent agreement	13/10/24
13	P12/PW11	Mahazar on wedding agreement	24/10/24
14	P13/PW16	Rent agreement	08/04/24
15	P14/PW19	Caste certificate	14/10/24
16	P15/PW21	Arrest memo	02/10/24
17	P16/PW21	Inspection memo	02/10/24
18	P17/PW21	Address report	03/10/24
19	P18/PW21	Section adding report	-
20	P19 series/PW22	Medical certificate	02/10/24
21	P20/PW24	First Information Report	01/10/24
22	P21/PW25	Order of Dist. Police Chief	-
23	P22/PW25	Investigation report	10/10/24
24	P23/PW25	Property list (rent agreement)	13/10/24
25	P24/PW25	Report regarding building number	16/10/24
26	P25/PW25	Property list (wedding agreement)	24/10/24
27	P26/PW25	Wedding contract	13/10/24
28	P27/PW25	Property list (dress)	12/10/24
29	P28/PW25	Section adding report	10/10/24

B. EXHIBITS FOR THE DEFENCE:-

Sl.No.	Exhibit Number	Description	Date
- N I L -			

C. EXHIBITS FOR THE COURT:-

Sl.No.	Exhibit Number	Description	Date
- N I L -			

D. MATERIALS OBJECTS:-

Sl.No.	Exhibit Number	Description	Date
1	MO.1/PW13	Dress of the victim	-

Sd/-
Special Judge,
Fast Track Special Court, Haripad.

-//True Copy//-

Special Judge,
Fast Track Special Court, Haripad.