

IN THE COURT OF FAST TRACK SPECIAL COURT, PALAKKAD

Present: Sri.T.SANJU, SPECIAL JUDGE

Saturday, the 6th day of April, 2024
17th day of Chaithra, 1946 S.E.

SESSIONS CASE No. 178/2022

Complainant	:	State represented by the Sub Inspector of Police, Sholayur Police Station. Crime No.41/2021.
Name of accused	:	Sivan, aged 28 years, S/o Perumal, Maruthanchala, Sholayur.
Charge	:	Punishable Under Sections 9(m) r/w 10, 9 (n) r/w 10, of the Protection of Children from Sexual Offence Act, 2012 and Section 75 of Juvenile Justice (Care and Protection of Children) Act.
Plea of the accused	:	Not guilty.
Finding of the Judge	:	Not guilty.
Sentence or Order	:	The accused is found not guilty of the offences Punishable Under Sections 9(m) r/w 10, 9 (n) r/w 10 of the Protection of Children from Sexual Offence Act, 2012 and Section 75 of Juvenile Justice (Care and Protection of Children) Act and he is acquitted under Section 235 of Cr.P.C.
Name of Police Station : and Crime Number	:	No.41/2021 Sholayur Police Station.
Name and designation of : committing Magistrate and the No. of the case on his file.	:	Nil

Prosecution conducted by : Smt.Remiak.C,
Special Public Prosecutor,
Fast Track Special Court, Palakkad.

Accused defended by : Smt.Vijili.K, Advocate, Palakkad
(LADC)

J U D G M E N T

The accused herein originally stood charge-sheeted by the Sub Inspector of Police, Sholayur Police Station in respect of the offences under sections 354 of the Indian Penal Code, Section 7 r/w 8,9(m) r/w 10,9(n) r/w 10 of the Protection of Children from Sexual Offences Act 2012 and Section 75 of Juvenile Justice(Care and Protection of Children) Act.

2. The case of the prosecution in brief is as follows:-

The accused was a blood relative of the mother of the female child survivor aged 9 years. With the intention to abuse her sexually, while others were absent in their house at a place called Maruthanchala, he grabbed the hand of CW1 who was standing in front of her house and pulled her by his hand near the fencing of the house. Hearing the cry of the survivor, her grandmother who was grazing the cattle rushed to the spot and the accused freed her. Had the grandmother not rushed to the spot, the accused who was the uncle of the survivor could have forced her into the

forests and abused her sexually. By the above mentioned acts, the accused committed the offences under sections 354 of the Indian Penal Code, Section 7 r/w 8,9(m) r/w 10,9(n) r/w 10 of the Protection of Children from Sexual Offences Act 2012 and Section 75 of Juvenile Justice(Care and Protection of Children) Act.

3. The First Information Report was registered on 03.06.2021. On filing final report on 10.02.2022, cognizance was taken in respect of the offences u/ss 354 of the Indian Penal Code, Section 7 r/w 8,9(m) r/w 10,9(n) r/w 10 of the Protection of Children from Sexual Offences Act 2012, and, Section 75 of Juvenile Justice(Care and Protection of Children) Act.

4. On making over the case to this Court, summons was issued to the accused and on his appearance, copies of the prosecution records were served upon the accused. He was permitted to continue on bail that he had already availed during crime stage.

5. After compliance of Sec.207 of Cr.P.C. and after conducting preliminary hearing u/s. 227 of Cr.P.C, charge u/S 9(m) r/w 10,9(n) r/w 10 and Section 75 of Juvenile Justice(Care

and Protection of Children) Act was framed, read over and explained to the accused . He pleaded not guilty and claimed to be tried.

6. On behalf of prosecution, PWs 1 to 12 were examined and Exts. P1 to P21 were marked in evidence.

7. CW3,CW5, CW7 to CW13,CW15, CW17, CW19, CW22 and CW23 were given up by the learned Public Prosecutor.

8. After the close of the prosecution, the accused was questioned u/s. 313 (1)(b) Cr.P.C. He denied the incriminating circumstances.

9. Heard learned Special Public Prosecutor (POCSO) as well as the learned defence counsel u/s. 232 of Cr.P.C. As this is not a fit case to invoke that provision, the accused was not acquitted u/s. 232 Cr.P.C.

10. The accused was called upon to enter his defence. Ext D1 was marked on the side of defence.

11. I heard learned Special Public Prosecutor (POCSO) as well as the learned defence counsel u/s. 234(1) Cr.P.C.

12. The following points arise for determination :-

1	Did the accused sexually assault CW1 around 10:00 A.M on 29-05-2021 by holding her hand and by dragging her to the fence of her house?
2	Whether he was related to the child by blood?
3	Whether he was in actual charge and control over the child and whether he abused her sexually causing unnecessarily physical and mental stress?
4	What shall be the sentence or order to be passed?

13. **Point Nos 1 to 3:-** For the sake of brevity and convenience these points are considered together.

PW1 was the child survivor aged 13 years, who was a 7th standard student.

14. PW2 conducted the Medico-Legal examination of PW1, in the Government Tribal Specialty hospital, Kottathra and recorded the history directed against the accused.

15. PW3, Village Officer prepared Ext.P3 Certificate in respect of the place of occurrence which is only a statement given by the witness in the course of the investigation and therefore, hit by the proviso to Section 162 of Cr.P.C. He also

prepared Ext. P4 Scene Plan and Ext.P5 the certificate of relation between PW1 as well as the accused.

16. PW4, attested Ext. P6 Scene Mahazar. PW5 recorded Ext.P1 FIS lodged by PW1.

17. PW6, the grandmother of PW1 turned hostile denying having seen the incident herself and having made statement to the Police. Exts. P7 and P8 contradictions were marked through PW6.

18. PW7 the mother of PW1 had only hearsay information of the allegation as told by the daughter.

19. PW8, ASI of Sholayoor Police Station attested Ext. P9 Seizure Mahazar.

20. PW10 was the witness to Ext.P12 arrest memo. PW11 produced Ext. P14 School Admission Register Extract in proof of the date of birth of PW1.

21. PW12 carried out the rest of the investigation and ultimately laid the charge sheet.

22. As per the prosecution case, there is evidence of PW1 survivor as well as the evidence of PW6 Grandmother. PW6 contradicted her Section 161 statement as per which she had actually witnessed the accused holding the hand of PW1. The

relevant contradictions in her previous statement were marked as Exts. P7 and P8. The only advantage of her evidence to the prosecution is that she found the accused sitting on the ground near the fence of the house of PW1. In crystal clear terms, she denied having seen the actual incident. All what is left to the prosecution is the oral evidence of PW1.

23. Let me start with the narrative of PW1. According to her when she was studying in the 5th standard she had lodged a statement against the accused who was none other than her uncle. He grabbed her hand and pulled her around 10:00 A.M on an unspecified day. She could not recollect the date. He grabbed her hand and attempted to drag her into the forest to abuse her. When her grandmother came, he freed her left the place. Two days later, the accused attacked her father who later died after six months. There is no one else to look after the family. At present, her mother is doing job in a far away place. Since the incident happened on a Saturday she did not go to the school. Her parents had gone to a ration shop. Her grandmother had gone to the forest to graze cattle. When a court question was put to her as to, what she intended by saying the accused attempted to 'misbehave' her, she explained that he attempted

to touch her shoulders. She pointed out her shoulders. She had lodged Ext.P1 FIS and identified the accused.

24. PW12 the Investigating Officer Abdul Khayyum had admitted that the accused was indicted in Crime No. 39/2021 which is yet another crime purportedly lodged at the behest of the father of PW1. The question, herein is whether the evidence of PW1 can be said to be 'wholly reliable' and of 'sterling quality'. For multiple reasons, this Court is not prepared to reckon the evidence of PW1 as of sterling quality. Firstly, the delay of more than five days appear to be material in the peculiar circumstances of the case. As mentioned above, PW1 admitted in cross-examination that two days after the present incident, there was another incident in which the accused had beaten the father of PW1 in front of her courtyard in which the former had even used a knife. Cumulatively taken, the present complaint was lodged on 03-06-2021, i.e, possibly after the other incident in which the accused had allegedly attacked the father of PW1. There is crux of the contention of the defence that this case might have been foisted by PW1 to teach a lesson to the accused in connection with the incident related to her father. Not even a single question was asked by the prosecution as to why

there occurred a delay. Any Tom, Dick and Harry can come to the Court and say that somebody touched his or her hand with sexual intent. If at all, it is assumed that the accused had pulled her hand, there is no guarantee for a reasonable man that it was out of sexual intent or with the intention to satisfy his lust. There is discrepancy as to whether the accused had actually carried her to the forest or whether the accused had freed her before entering the forest and on seeing the grandmother. There is no clarity on this aspect.

25. It would be relevant to scan the evidence of PW6 who is none other than the grandmother of PW1. Though she was declared as a hostile witness under Section 154 of the Indian Evidence Act and permission was granted to the prosecution to ask such questions that can be asked in cross-examination, she fairly testified that she had not seen the actual incident. Hearing the sound of PW1, PW6 went to the spot only to find that the accused sitting near the fence. The contradiction in her section 161 statement to the effect that she had actually seen the accused dragging PW1 to the fence, that he had freed her finding her and that the accused was doing the same deliberately, are denied by PW6 and these contradictions were

marked as Exts. P7 and P8.

26. That the accused pulled the hand of PW1 with sexual intent in broad day light and attempted to lift her to the forest in the premises of her house, is the prosecution allegation. The first question is whether the offence is made out, if at all the version of PW1 is taken as gospel truth. On a close scrutiny of her version in her examination-in-chief, around 10:00 a.m the accused who was her uncle on her paternal side grabbed her hand, and pulled her towards the forest. As soon as her grandmother came to the spot, he freed her. Two days thereafter there occurred an incident in which the accused inflicted a cut blow on the head of her father. Initially PW1 testified that the accused had attempted to carry her to the forest only to sexually assault her. In fact, the terminology, 'sexual assault' was never employed by her. She only stated that the intention of the accused was to misbehave her. She used the terminology "മോശമായി ചെയ്യാൻ" To a court question as to what was meant by the above words, she clarified that the accused touched her shoulders. The F.I Statement is marked as Ext. P1. A colloquial terminology had been employed in Ext. P1 that if her grandmother had not come the accused would have taken her to

the forest and something could have been done to her. The colloquial terminology which was used in Ext. P1 is this :- "ഇരിക്കാൻ വച്ചേനെ ". Practically the sole allegation is that the accused pulled her hand. On a close scrutiny of Ext. P1, it is clear that the accused freed her beside the fence of her house which is very well indicative of fact that PW1 was not actually taken to the woods.

27. During cross-examination, it has come out that there was longstanding enmity between her father and the accused who are known by the very same name 'Sivan'. Further it has come out that PW1 had cried out nobody turned for any help and only her grandmother came to the spot. In cross-examination, there is an improvement to the effect by PW1 that she was actually taken to the forest by the accused. But on further progress of the cross-examination, PW1 took a somersault and testified that by the time she was taken to the forest her grandmother had come. She also admitted that there was the presence of other inhabitants of the same " Ooru" that two days later her father had beaten the accused in the courtyard of her house and that he had even used his knife against the accused is also admitted by PW1.

28. Thus on a combined reading of the evidence of PW1 and PW6, one thing is clear for certain that on a certain day there occurred some ruckus in the premises of the house of PW1. At the most the accused might have come into physical contact with PW1 by grabbing her hand. But to give it a colour of sexual aggression something better, rather some concrete evidence needs to be there, especially, when a pretty severe punishment is staring at the accused. The materials on record, particularly the evidence of PW1 is far from satisfactory material to form a concrete opinion regarding the sexual intent on the part of the accused, if at all the physical contact is taken as proved.

29. The other evidences such as the evidence of PW2 Doctor who recorded the history in the Medico-Legal report has only corroborative effect.

30. PW2 Dr.VasanthaKumari, testified that the history was actually recorded by her office staff as she could not read and write Malayalam. Thus the Medico -Legal Report itself is unworthy of acceptance due to the above disclosure made by PW2.

31. The evidence of PW3 Village Officer who prepared Ext.P3 Possession Certificate and P4 Scene Plan and Ext. P5 relationship

certificate, PW4 attesor to Ext. P6 Scene Mahazar, PW5 who recorded the FIS, PW7 mother who had only hearsay knowledge to deliver, PW8 attesor to Ext.P9 Seizure Mahazar,PW9 who registered Ext.P10 FIR, PW10 attesor to Ext.P12 arrest memo and PW11 Headmaster of the school concerned who produced the school admission register marked as Ext. P14 do not have any relevance and are not capable of improving the prosecution case any further.

32. As there is absolute dearth of substantive evidence the evidence of PW1 is found to be not wholly reliable which only prompts this court to insist for corroboration which also is lacking. Necessarily the prosecution fails.

Points are answered against the prosecution and in favour of the accused.

33. Point number 5;- In view of my findings on Point Nos.1 to 4 the accused is found not guilty of the offences punishable under section 354 of the Indian Penal Code, Section 7 r/w 8,9(m) r/w 10,9(n) r/w 10 of the Protection of Children from Sexual Offences Act 2012 and Section 75 of Juvenile Justice(Care and Protection of Children) Act. and he is acquitted u/s 235 (1) of Cr.P.C .

In the result,

a)	Accused is acquitted u/s 235(1) of Cr.P.C.
b)	Bail bond of the accused stands cancelled.
c)	Properties produced in this case shall be destroyed as per Rules after expiry of the period of appeal.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 6th day of April, 2024)

Sd/-
Special Judge,
Fast Track Special Court, Palakkad

A P P E N D I X

The following witnesses were examined for the Prosecution :

PW1	:	Survivor of Sexual Offence**
PW2	:	Mother of victim.
PW3	:	Dineshkumar R, S/o Rajan, Agali, Attapadi, (Village Asst. Sholayur).
PW4	:	Chinnan, S/o Sivan, Sholayur, Mannarkkad.
PW5	:	Beena K P, D/o Poullose.K, Agali, (Grade SCPO, Sholayur PS).
PW6	:	Badu D/o Thamadan, Sholayur, Mannarkkad.
PW7	:	Chithra, D/o Appukutty, Sholayur, Mannarkkad.
PW8	:	Shajahan P.B., S/o Bappu, Marutharod, Palakkad, (ASI, Sholayur Police Station).
PW9	:	Vinodkrishnan T K, S/o Kunju Pilla, Adinadu, Karunagappaly, (Inspector of Police, Sholayur Police Station).
PW10	:	Shaji, S/o Pazhanimala, Elavencherry, Chittur, (SCPO, Sholayur Police Station).

PW11	:	Joseph Antony, S/o KJ Antony, Agali, (Head Master, GUPS, Kookkenpalayam)
PW12	:	Abdul Khayyum C M, S/o Moideen, Ottapalam II(Sub Inspector of Police, Sholayur Police Station)

* For the purpose of keeping the anonymity, name of the victim is not stated.

Witnesses Examined for the Defence : Nil

The following Exhibits were marked for the Prosecution :

P1	:	03.06.2021	:	First Information Statement.
P2	:	04.06.2021	:	Medico-Legal Report.
P3	:	02.08.2021	:	Possession Certificate.
P4	:	02.08.2021	:	Scene Plan.
P5	:	02.08.2021	:	Relationship Certificate.
P6	:	05.06.2021	:	Scene Mahazar.
P7	:	05.06.2021	:	Portion of 161 Statement of CW2(PW6).
P8	:	05.06.2021	:	Portion of 161 Statement of CW2(PW6).
P9	:	04.06.2021	:	Seizure Mahazar.
P10	:	03.06.2021	:	First Information Report.
P11	:	05.06.2021	:	Property List.
P12	:	04.06.2021	:	Arrest Memo.
P13	:	04-06-2021	:	Inspection Memo.
P14	:	--	:	School Admission Extract.
P15	:	14-06-2021	:	Potency Test Certificate.
P16	:	--	:	Section adding report.
P17	:	15.06.2021	:	Seizure Mahazar.
P18	:	21.06.2021	:	Seizure Mahazar.
P19	:	27.07.2021	:	Forwarding Note.
P20	:	15.06.2021	:	Property List.

P21	:	21.06.2021	:	Property List.
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Exhibits Marked For the Defence :

D1	:	02.06.2021	:	Certified Copy of FIR in Crime No. 39/21 of Sholayur Police Station.
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Material Objects marked: NIL

Sd/-
Special Judge
Fast Track Special Court, Palakkad

Tabular Statement as per Rule 132 Criminal Rule of Practice of Kerala.

1. Serial No. :
2. Name of Police Station : Sholayur Police Station,
and Crime No. of the In Crime 41/2021.
offence
- 3 Description of the : Sivan, aged 28 years,
accused S/o Perumal, Maruthanchala,
Sholayur.
- 4. Date of** :
- Occurrence : 03.06.2021
- Complaint : 03.06.2021
- Apprehension : 04.06.2021
- Released on Bail : 03.09.2021
- Commitment : --
- Commencement of trial : Charge framed on 14.10.2022
and evidence commenced
on 03.06.2023

Close of trial : 26.03.2024
Date of Judgment : 06.04.2024

Explanation for the delay : Nil.

Sd/-
Special Judge
Fast Track Special Court, Palakkad

Typed by: Annamma
Compared by: Kesavankutty

/true copy/

Special Judge
Fast Track Special Court, Palakkad

**FAIR/COPY OF JUDGMENT
IN
S.C 178/2022 Dated:06.04.2024**