

TABULAR FORM

1.	Serial Number	:	Sessions Case No .143/2025
2.	Name of Police Station and Crime No. of the offence	:	Kannavam Police Station Crime No. 71/2025

DESCRIPTION OF THE ACCUSED

3	4	5	6	7
Name	Father's Name	Occu- pation	Residence	Age
Adarsh K K	Saresh	--	Kuttimakkool House, Mooriyad, Mathottam. Kuthuparamba, Kannur District.	24/2025

DATE OF

8.	Occurrence	:	26-01-2025
9.	Complaint	:	27-01-2025
10.	Apprehension of the accused	:	27-01-2025
11.	Release on bail	:	24-03-2025
12.	Commitment	:	--
13.	Commencement of trial	:	01-09-2025
13.A	Commencement of evidence	:	18-11-2025
14.	Close of trial	:	23-03-2026
15.	Sentence/Order	:	30-03-2026
16.	Service of copy of judgment or finding on accused	:	--
17.	Explanation for delay	:	No delay
18.	Period of detention undergone during investigation, enquiry or trial for the purpose of Sec. 428 Cr.P.C.	:	From 27-01-2025 to 24-03-2025

Fast Track Special Court, Mattannur
Dated: 30-03-2026

Sd/-
SPECIAL JUDGE

**IN THE COURT OF SPECIAL JUDGE
FAST TRACK SPECIAL COURT, MATTANNUR**

Present:- Smt. Anit Joseph, Special Judge, Fast Track Special Court,
Mattannur.

Monday the 30th day of March 2026/ 9th Chaithra 1948

SESSIONS CASE No. 143/2025

(Crime No. 71/2025 of Kannavam Police Station)

Complainant	: State: S.H.O Kannavam Police Station : (Prosecution conducted by : Smt. P.V. Sheena, Spl. Public Prosecutor, : Mattannur).
Accused	: Adarsh K K , : S/o.Saresh., Age.24/2025, Kuttimakkool : House, Mooriyad, Mathottam. : Kuthuparamba,Kannur District. : (Defended by Adv. Prajeesh K and Adv. : Manu M Thomas)
Charge	: Under Section 332(c) , 75(1)(i) of BNS : and U/s. 7 r/w Sec.8, 11 (i) r/w Sec.12 of : POCSO Act .
Plea of the accused	: Not Guilty.
Finding of the Judge	: Not Guilty.
Sentence / Order:	: Accused is acquitted under section 258 : of BNSS of the offenses punishable : under sections 332(c), 75(1)(i)(2) of : BNS and section 7 r/w 8, 11(i) r/w 12 of : The POCSO. The bail bond of the : accused shall be in force for 6 months for : the purpose of Section 481 of BNSS.

J U D G M E N T

1. This is a case instituted upon a final report filed by the Sub Inspector of Police, Kannavam police station in Crime No. 71/2025 of that Police station. In the case, the accused person named above, stands charged for the offenses punishable under Sec. 332(c) 75, 78 of BNS and Sec.11(i) of The Protection of Children from Sexual Offenses Act 2012, hereinafter referred to as the POCSO Act.

1.1 All precautions are taken so as to ensure that the identity of the alleged victim girl is not disclosed in any manner.

2. The prosecution's case is briefly as follows: On 26-01-2025 at 11.30 PM, the accused criminally trespassed into house No. XIII/487G, at Valiyavelicham, Manantheri amsom, within Chittariparamba Grama Panchayat. He entered a south-east bedroom where the survivor, a 14-year-old girl, was sleeping alone. Once inside, the accused undressed, exposed himself to the survivor, and hugged her with sexual intent.

3. The prosecution contends that on the night of the incident, the survivor's mother, who was sleeping in a room opposite to the survivor's, woke up to use the toilet. She noticed that the survivor's room was unusually

locked and called out to her, asking her to open the door. Upon opening the door, the survivor appeared perplexed. Sensing something was wrong, the mother looked underneath the cot, where she discovered the accused lying naked. Baffled, the mother called her husband, who also came and witnessed the accused under PW1's cot. Meanwhile, the mother asked her younger daughter to get her phone. Once she brought the phone, the mother dialed 100. When the call was answered, she reported that a person had trespassed into her daughter's room. Shortly thereafter, the Kannavam police called her to ask for the location of her house, which she provided. Sometime later, a police party arrived at her house in a jeep and took the accused into custody. The following day, the survivor and her parents went to the police station, where a WCPO recorded her statement, on the basis of which the FIR was registered.

4. As indicated above, the first information statement (Ext. P1) was lodged by the victim with CW14, A.S.I Kannavam Police station. Based on the FIS, CW15, IPSHO, Kannavam police station registered the case as Kannavam P.S Crime No.71/2025 under Sec. 332(c), 75, 78 of BNS and Sec. 11(1) r/w Sec. 12 of the POCSO Act. CW16, Inspector of Police, Kannavam police station conducted an investigation in the case and after

completing investigation he laid a final report before the court.

5. During the course of investigation, the investigating officer, apart from recording the statement of material witnesses, had also procured the birth certificate of the victim, made arrangements for recording the statement of victim under section 183 of BNSS and also for her medical examination. The accused was arrested and remanded to judicial custody. After completion of the investigation, CW16 filed a report under Section 173(2) of BNSS on which, 1st Additional District and Sessions Court, Thalassery (Principal court for POCSO cases) took cognizance of the offences as empowered under Sec. 33(1) of the POCSO Act.

6. The case was taken on the file of Honorable Court of Sessions Thalassery as SC.143/2025. Thereafter the case was considered by First Additional District and Sessions Court, Thalassery. On the appearance of the accused before the said court, he was enlarged on bail.

7. Later, the case was transferred to this court for disposal as per the order of Hon'ble Sessions Judge Thalassery dated 25-03-2025. The accused appeared before this court on 25-06-2025. He was allowed to

continue the same bail bond. Copies of relevant documents relied on by prosecution were furnished to him. He was defended by a counsel appointed by him.

8. On the appearance of the accused, both prosecution and defense were heard about the grounds of the allegations levelled against the accused and the evidence proposed to be adduced by prosecution to prove the guilt of the accused. After hearing both sides, and after perusing the materials available before the court, I found that there is ground for presuming that the accused had committed the offences punishable under sections 332(c), 75(1)(i)(2) of BNS and sections 7 r/w 8, 11(i)r/w 12 of the POCSO Act. Hence, charges under said Section were framed against the accused. The Charges were read over to the accused in Malayalam, to which he pleaded not guilty and claimed to be tried.

9. In the trial, PWs.1 to PW9 were examined and Exts. P1 to P13 were marked on the side of prosecution.

10. Upon the conclusion of the prosecution's evidence, the accused was questioned under Sec. 351 of BNSS. He denied all the incriminating circumstances presented in the evidence against him. The accused's position

during the trial and inquiry under section 351 BNSS was that the survivor's mother had a grudge towards him for disclosing his illicit relationship-a compromising photo with a third man- to her husband. In that context upon her mother's instigation PW1 had filed the case against him, and the investigation was not conducted properly. Therefore, a false charge sheet was filed against him.

11. Then both sides were heard under Sec.255 of BNSS. After evaluating the evidence of prosecution, the defence version and hearing both sides, I found that there is no scope to pass an order of acquittal at that stage. Thus, the accused was called upon to enter on his defence. The defence examined none but marked Exts. D1 to D5 through prosecution witnesses. Thereafter, I heard the learned Special Public Prosecutor as well as the Learned defence counsel.

12. I have framed the following points for determination :-

1. Has the prosecution succeeded in proving that the victim/PW1 was a child as on the date of the incident?
2. Did the accused trespass into house No. XIII/487G, at Valiyavelicham, Manantheri amsom, within Chittariparamba

Grama Panchayat, on 26-01-2025 at 11.30 PM, in order to commit an offense punishable with imprisonment, thereby commit the offences punishable under section 332(c) of the Bharatiya Nyaya Sanhita?

3. Did the accused, on the above date and time, in the bedroom of PW1, with sexual intent, hug the said child and thereby commit the offence punishable under section 75(1)(i)(2) of the Bharatiya Nyaya Sanhita?
4. Did the accused, on the above date and time, in the bedroom of PW1, with sexual intent, hug the said child and thereby commit the offence punishable under section 7 r/w 8 of the Protection of Children from Sexual Offences Act 2012?
5. Did the accused, on the above date and time, in the bedroom of PW1, with sexual intent, expose himself to the said child and thereby commit the offence punishable under section 11(i)r/w 12 of the Protection of Children from Sexual Offences Act 2012?
6. If the accused is found guilty of any of the offences, what shall be the sentence to be imposed?

13. **Point No.1:-** Since the case is one involving POCSO Act offences, the first and foremost aspect to be proved by the prosecution is that PW1, the alleged victim, was a child as on the date of the incident. As provided under section 94 of JJ Act, to determine the age of a child, who is a victim of a crime, the procedure in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2017 is to be applied. As per section 94(2) (i) of the Act, the first document that can be taken into account in preferential order is date of birth certificate from the school or matriculation or equivalent certificate from the concerned examination board, if available. By virtue of section 94(2)(ii), in 2nd place comes the date of birth certificate given by the Corporation or a Municipal Authority or a Panchayath.

14. In the instant case prosecution produced the Birth Certificate of PW1 to prove her age as on the date of incident. The prosecution examined PW3 to prove the Birth Certificate issued by him along with the required certificate under section 63 of BSA. Before the court PW3 identified the Birth Certificate issued by him while working as the Registrar, Births and Deaths in Thalassery Municipality. It is important to note that Ext. P3 is the second document that can be taken into account to determine the age

of a child. In the circumstances, I do not find any reason to disregard Ext. P3. As per Ext. P3, the date of birth of PW1 is 08-03-2011. Simply by relying on Ext.P3, it can be held that at the time of the incident which allegedly took place on 26-01-2025, PW1 was only 13+ years old. That apart, defence has not disputed the age of PW1 mentioned by the prosecution. In the absence of dispute from the part of defence, it can be conclusively held that as on the date of the incident PW1 was 13 years 10 months and 13 days old. The upshot of the discussion is that as on the date of the incident PW1 was a child as defined u/s 2(1) (d) of the POCSO Act and prosecution has succeeded in establishing the same before the court. Point No.1 is found in favour of prosecution.

15. **Points No. 2 to 5**:- These points are interlinked and the evidence to be appreciated is also the same. So, for the sake of convenience and brevity, these points are discussed together. On these material points, both sides made substantive arguments. The Learned Special Public Prosecutor would argue that the victim, in her statement before the Learned Judicial Magistrate as well as before this court, reiterated that on 26th January 2025 when she was sleeping in her bedroom, the accused stealthily came near her

after trespassing into their house through upstairs, after sometime her mother called out her, when she opened the door, the mother found the accused underneath her coat. Upon hearing the mother's cry, the father also woke up and saw the accused underneath the cot. The mother suddenly contacted the police through the phone. The police party that came to the spot took away the accused. According to the learned prosecutor, this part of PW1's evidence could not be rebutted by the defense in any manner. She submitted that the accusations against the accused person has been supported by PW1's father and mother, who testified as eyewitnesses to the major part of the transactions. In the light of the above, the learned prosecutor submitted that the accused person, who is a sexual pervert, has committed the heinous offense after trespassing into the survivor's house, and therefore he is liable to be punished with the maximum punishment provided by the law.

16. Per contra, the learned defence counsel submitted that there is no evidence to hold that the accused was caught red-handed from PW1's house. PW1 herself stated to the magistrate that the accused never sexually assaulted her. She further stated that her mother had a grudge towards the accused for disclosing his illicit relationship- a compromising photo with a

third man- to her husband, in that context upon her mother's instigation she had filed the case. After registering the FIR on the basis of the false complaint, the accused was taken into custody from Kannavam bus shelter. The prosecution case will fail solely on the ground that sufficient evidence was not presented to prove the apprehension of the accused from the survivor's house. The Prosecution miserably failed to establish foundational facts by adducing convincing and cogent evidence. According to learned defense counsel, it is imprudent and injudicious to fasten criminal liability on the accused by relying on the vague and ambiguous evidence brought by the prosecution. Pointing out the above, he prayed for acquitting the accused person of all the charges leveled against him.

17. I have heard the rival contentions advanced on behalf of the parties. Also perused the records. Let me now analyze the evidence on record so as to find out whether the prosecution has been able to prove the guilt against the accused person in accordance with the relevant law or not.

18. The victim testified as PW1 is the prime witness. Hence, it is appropriate to evaluate her evidence first. The PW1 explained the incident in

the following lines. The accused is familiar to her. When her father had back pain, the accused took him to the hospital in a car. After meeting the accused, he followed her for some time, and they were in a relationship. Then, on October 8, 2024, he posted a photo of him and her on his Instagram story. Her uncle informed this to her. When that became an issue at home, she took BP tablets and ended up in the hospital. She then filed a case against the accused at the Koothuparamba police station, which was later settled.

19. Then on 26/01/20025, while she was sleeping at night, someone called her name and patted her. She realized it was the accused. Then he locked the door and took off all his clothes. When PW1 asked what was going on, he said nothing and grabbed her hand and pulled her towards him. Then she heard a knock on the door. Hearing the knocking, the accused hid under the bed. It was her mother who knocked on the door. After opening the door, when her mother saw her expression, she became suspicious and looked underneath. Then she saw the accused under the bed. When she saw him, she called out to her husband. Soon the father came and saw the accused. Father and mother together pulled the accused from underneath the cot. Then the accused tried to run away by wriggling out, but her father and

mother held him tightly. At that moment, her sister took out a phone and the mother called from it to the police station. She passed the message to the police station and accordingly, within 10 minutes, the police party reached her house. Meanwhile, the accused was trying to run away. At that time, he did not have any protective clothing. Seeing the light of the jeep, her mother gave him clothes to wear. The police came to the house and took the accused away. The next day, her mother and father went to the police station and filed a complaint. After that, a police woman came to the house and recorded her statement. The police wrote down what she had said, got her signature.

20. During cross-examination, PW1 admitted that her father was sleeping in the room, there was enough space for one person to walk past the bed, and that the room had a metal door. The witness admitted that in the statement given to the magistrate, she stated that Adarsh had entered the room and removed his dress saying it was so hot, and he had done nothing else. She also admitted that he had not physically or sexually abused her, apart from holding her hand he had not done anything else. She admitted her further statement before the magistrate that the accused had seen an inappropriate photo of her mother and another person on his mother's phone.

Later, the accused had told her father about this. After that, her father and mother had a problem. She had to stay away from the house. So her mother, who was angry with the accused, forced her to file this case. However, finally, she denied that her mother has personal grudge towards the accused and on account of such enmity upon mother's instruction she had filed the case against the accused.

21. After completing the chief examination as well cross examination, the witness sought permission and voluntarily submitted that before she was giving a statement to the Magistrate, one woman police officer advised her to change her statement warning that proceeding with the case would affect her future. She further stated that the same officer advised her not to give consent for a medical examination. During further cross-examination, the defence counsel suggested that the present explanation in the court is a cooked up story after consulting with the experts. However, the witness denied it.

22. The first and foremost aspect to be remembered is that the victim is a teenage girl from a village background. It is an established principle that child witnesses are dangerous witnesses as they are pliable and

liable to be influenced easily. Section 119 of BSA says that the evidence provided by a child witness must be assessed carefully and with caution as they are easily influenceable.

23. **In a landmark case, Suresh Vs State of UP 2001 (3) SCC 673 the Supreme Court** held that a testimony of a 5 year old is admissible as the girl could comprehend and understand the question, the court conclusively held that as long as the child is able to comprehend and understand the question their testimony shall be admissible. What is to be ensured is whether the child was able to express discreet opinion after fully understanding the nature and context of the questions put to him or her.

24. On close observation of the evidence tendered by PW1, the ability of the child to comprehend the questions and give rational answers to them can be definitely deciphered. She narrated the incident well by giving a scene by scene description after recollecting the events from the memory.

25. Here, the predicament is that on certain material points, the version given by PW1 before the court was contradictory to her earlier

version before the magistrate. In fact, her case before the police and the magistrate was contradictory to each other. Before the court, PW1 stood firm on her case before the police that the accused stealthily entered her room, locked the door, undressed himself, pulled her by the hand towards him, and hugged her. Meanwhile, her mother pounded on the door and, seeing her nervousness, checked underneath the cot and found the accused lying naked there. However, her statement to the magistrate was different. What she stated to the magistrate was that the accused entered her room and just removed his banyan, saying it was so hot, and nothing more happened. She categorically stated that the accused never exposed himself to her nor hugged her in the room.

26. We have already seen that PW1 did not deny her specific previous statement. That itself proves the contradiction, which is always a weapon for the defense to contend that the witness is not a reliable and trustworthy witness. Though PW1 did not deny the statement, she disowned the statement, saying that she had given the statement under the influence of a Woman Police Officer. As indicated earlier, after completing the cross-examination, the witness voluntarily made such a submission. However, the defense highlighted these discrepancies in the evidence of

PW1 to establish that she has no consistent case and, hence, she is not a reliable and trustworthy witness.

27. The contradictions admitted by PW1 are not trivial and negligible contradictions on an immaterial aspect. They concern a crucial fact for determination. Therefore, they can not be ignored as immaterial. The learned defense counsel contended that the witness had falsely brought the accusation due to the pressure of her mother, and when she obtained a free, uncompelled opportunity before the magistrate, she had revealed the truth. In order to substantiate this argument, he relied on the following further statement of the survivor in her statement under section 183 of BNSS.

"അമ്മയും വേറെ ഒരാളും തമ്മിലുള്ള മോശമായ photo ആദർശ് അമ്മയുടെ phone ൽ കണ്ടിരുന്നു. അക്കാര്യം ആദർശ് അച്ഛനോട് പറഞ്ഞു കൊടുത്തിരുന്നു. അതിനു ശേഷം അച്ഛനും അമ്മയും തമ്മിൽ പ്രശ്നമായി . 'അമ്മ കുറച്ച ദിവസം അമ്മയുടെ വീട്ടിൽ പോയി താമസിച്ചിരുന്നു. പിന്നീട് അച്ഛൻ തന്നെ അമ്മയെ വിളിച്ചു കൊണ്ട് വന്നു. ഈ കാര്യം മാമന്മാരോട് ഞാനാണ് പറഞ്ഞത്. ആയതിനാൽ അമ്മയ്ക്ക് എനോട് ദേഷ്യമാണ്. അത് കൊണ്ട് 'അമ്മ നിർബന്ധിച്ചാണ് ഈ കേസ് കൊടുത്ത്'.

28. No doubt, the above statement by the survivor would add strength to the defense version that the mother framed the accused by bringing the false case against him using the survivor as a tool. At any rate, the discrepancies are serious and would undermine the credibility of PW1.

29. A contradiction occurs when a witness's statement or testimony conflicts with his or her previous statements, other witnesses' testimony, physical evidence and documentary evidence. If the contradiction relates to a crucial fact or issue in the case, it can be said to be a material contradiction. Likewise, a contradiction that relates to a minor or insignificant detail is an immaterial contradiction. Contradictions and omissions can undermine credibility of the witness by casting doubt on the witness's reliability. This would suggest that the witness may be dishonest or biased. Overall, it would reduce the weightage of the witness's testimony. When evaluating the contradictions and omissions, the court should consider whether it was intentional or accidental. The next aspect to be ascertained is materiality. This can be determined by assessing whether the contradiction/ omission relate to a crucial fact. The 3rd aspect to be evaluated is the consistency of the statements. The final aspect to be appraised is the motivation, i.e is the

witness motivated to deceive or conceal significant information from the court.

30. In the instant case, the prosecution tried to seek shelter under the statement of the survivor that due to the influence of a woman Police Officer, she changed her testimony before the magistrate. According to the learned special PP, this explanation by the survivor alone is sufficient to presume that the survivor herself knowingly never changed her version. This argument appears hyper-technical. If a police officer had influenced a POCSO case survivor to change her testimony, it is a criminal offence warranting punishment. Instead of making such a hollow argument, the prosecutor could have exposed the specific police officer before the court. Had they been able to cross-examine the officer and expose her infidelity and lack of integrity before the court, the contradiction in the 183 BNS statement could have been considered as the byproduct of this influence. Without bringing evidence to prove the alleged manipulation, the voluntary statement by the survivor cannot be taken into account. This statement would not remove the doubt regarding the witness's reliability.

31. It cannot be ignored that PW1 presented consistent evidence

regarding the trespass allegedly committed by the accused. In order to prove this overt act, there would be other witnesses and materials. Therefore, the said part can be left open for further discussion. Now, based on the detailed evaluation made above, it can be undoubtedly held that regarding the charges of exposure and sexual assault, PW1 failed to adduce trustworthy and inspiring evidence.

32. We may now evaluate the evidence of other witnesses to see whether the charges would sustain against the accused. PW2 is the father of PW1 and PW4 is her mother. Regarding the previous acquaintance with the accused, the alleged trespass, and its subsequent transactions, these witnesses provided evidence in tune with the evidence adduced by PW1.

33. PW2, the father, categorically stated that on the specific night, after hearing his wife's cry and waking up, he had seen the accused in PW1's room underneath her coat, fully naked. During cross-examination when it was suggested to this witness that PW1 was sad because he had scolded her after the accused posted her photo on Instagram, the witness clarified that PW1 was sad not because of the scolding, but the accused had posted her

photo. This witness admitted that the door of his staircase room is made up of iron pipe; however, he denied that any noise was heard while opening the door .

34. PW4, the mother, plaintively explained the additional aspects of the incident. According to PW4, on that specific night, she woke up in the middle of the night to use the toilet and looked toward PW1's room, which was opposite her and her son's room. Noticing that PW1's room was unusually locked, she called out to PW1 and asked her to open it. Though PW1 eventually opened the door, she appeared perplexed. Upon further inspection, PW4 looked underneath the coat and saw the accused lying there, fully naked. She immediately called her husband and raised an alarm. Meanwhile, she asked her younger daughter to bring a mobile phone. Once she had the phone, she dialed 100 and informed the operator that someone had trespassed into her daughter's room. Within minutes, the Kannavam police called her to ask for the house's location. She provided the details and the police soon arrived in a jeep. After the police parking the jeep and entering the house, she gave the accused his pants. Thereafter, the police took the accused away in the jeep.

35. The next day, the police summoned them to the police station. Accordingly, PW4 and her husband went to the police station. Later, the police recorded PW1's statement at their residence. While explaining the incident, PW4 stated that on a prior occasion, when the accused had posted PW1's photo on Instagram, PW1 had consumed some tablets. Following this, she was taken to a hospital, and a police complaint was filed against the accused. PW4 strongly denied that the accused had ever seen her photos in a compromising position with a third man; she further denied that when the accused informed her husband of the same, issues arose between them causing her to stay at her own house for some time. She further stated that she had not learned of her daughter giving such a statement to the Magistrate. PW2 and PW4 harmoniously stated that the next day when the police inspected their house and premises, they showed them the ladder used by the accused to climb upstairs and the chapels left by the accused near the ladder.

36. To have a comprehensive analysis, before dissecting the evidence of PW2 and PW4, we need to examine the evidence of other witnesses. The scene mahazar, site plan, and building ownership certificate, leading light to undisputed facts, have been rightly proved before the court through proper

witnesses.(PW5 and PW7).

37. Evidence presented by PW6, a WASI attached to Kannavam police station would show that the mandate of Section 24(1) of the POCSO Act that the statement of the victim should be recorded by a woman police officer not below the rank of Sub Inspector is strictly complied with.

38. PW9 registered the FIR in the case while working as an Inspector of police at the Kannavam Police station on 27.01.2025. According to this witness, on the night of 26th January, based on information received from the Police Flying Squad Thiruvananthapuram, Sub-Inspector Rajeevan-who was on night duty-visited the residence of PW1 along with other officers. They took the accused, who was found detained there, into custody, brought him to the police station, and placed him in lock-up after registering an FIR for preventive arrest. On the following morning, when PW9 reached the station, the accused was already in lock-up. After PW6 placed the FIS made by PW1 before him, he registered the FIR. Apart from observing the accused in the station lock up, and registering the FIR in the aforementioned context ,PW9 has no role in the case.

39. PW8 conducted an investigation in the case and thus played a pivotal role. This witness also explained the transactions allegedly took place on the night of 26th January 2025, in the manner as described by PW9. A crucial step adopted by this witness was the arrest of the accused. According to PW8, on 27.01.2025 by 12:30, PW7 recorded the statement of PW1 at her residence and then placed it before the SHO(PW9), on the basis of which the FIR was registered. After registering the FIR, he took over the investigation, and arrested the accused, who was in the lock-up at 4.45 PM. On the following days he completed the investigation by finishing the rest of the formalities. He prepared Ext. P4 scene mahazar on 28.01.2025. Obtained the birth certificate of the victim and the site plan from the officials concerned. After completing the investigation he laid a final report before the court.

40. During cross-examination, PW8 said that he did not know everyone who was in the police party that visited PW1's house on the night of 26.01.2025, and that he did not list any of them as witnesses in this case. He admitted that no documents had been produced before the court to prove that the accused was taken into custody from the victim's house. He further

admitted that, apart from the arrest memo and inspection memo, he had prepared a custody memo. The custody memo identified by the witness was marked as Ext. D3. A crucial admission made by PW8 was that the place of arrest shown in Ext. D3 custody memo was the Kannavam Bus Shelter, and the time shown therein was 16.30 hours. However, he denied the suggestion that the accused never trespassed into PW1's house, or that he was not caught red-handed by her parents first and police second. He further denied that PW4 had falsely brought the case against the accused due to a personal vendetta, using PW1 as a tool.

41. The defence has not succeeded in proving the specific previous enmity circumstances through this witness. However, they succeeded in bringing out serious irregularities in the investigation conducted by this witness. In fact, after the examination of the investigating officer, instead of clarifying the matter, utter confusion and suspicion have been created. The lack of clarity emerging from the evidence of the investigating officer is significant and undermines the entire case. Therefore, it is impossible to hold that all the material facts brought by the prosecution go against the accused person.

42. As mentioned herein before, the main argument by the learned defense counsel was that there is no evidence to prove that the accused was caught red-handed at PW1's residence on the night in question by her parents. Furthermore, upon their information, the police reached the spot in a jeep, took the accused into custody, and brought him to the police station. This argument is very significant. It cannot be ignored that even after receiving information regarding a cognizable offense and apprehending the accused from inside the house, no FIR was registered immediately. The FIR was registered only on the next day, when PW1 lodged a complaint. This is against the fundamentals of BNSS.

43. What is more pathetic was the investigation conducted in the case. There are records before the court to show that the accused was taken into custody on 27.01.2025 at 4.30 PM from the Kannavam Bus Shelter- (Ext.D3). This contradicts the prosecution's claim that the police took the accused into custody from PW1's house on the previous night, i.e the night of the 26th January,2025. During chief examination of PW8, though the prosecution cunningly avoided marking the custody memo- which postulates custody from Kannavam Bus Shelter- under cross-examination, PW8 (the

investigating officer) admitted to and identified the custody memo; thus, it was marked as Ext. D3. When Ext. D3 demonstrates custody from the bus shelter, the "red handed" catch from PW1's house and the continuous lock-up in police station until the arrest on the 27th, as explained by PW8 cannot be believed. During Re- examination by the special PP, PW8 stated that the place of custody shown in Ext. D3 as 'Kannavam Bus Shelter', is a mistake. This evasive answer will not relieve him of liability. By preparing such a document, he has spoiled the credibility of the prosecution's case.

44. At any rate, there is a direct contradiction between the physical reality of the custody (At the house) and the documentary evidence (At the bus stop). When an investigating officer provides evidence of "bus stop custody" that contradicts the witness's testimony of a "house custody" it is definitely fatal to the prosecution's case. This scenario cannot be viewed just as a mistake as explained by PW8, but an attempt by the police to help the accused. If the suspect was already in custody as taken from the victim's house, this could have been easily proved through the oral evidence as well as documentary evidence. Instead of adopting this simple course, complicated contradictory evidence has been presented to prove this fact.

This contradiction on the material point creates a lacuna in the prosecution's story. However, by fabricating a place of arrest PW8 caused utter suspicion. Since, the burden of proof lies on the prosecution, any significant suspicion regarding the investigation is a reason to end the case in acquittal.

45. Other serious omissions are also important. While PW1 and her parents consistently deposed that the accused entered the upper floor and came down to PW1,s room, the route taken by the accused to reach the upstairs is a crucial aspect. Without proving the definite method adopted by the accused, this primary fact cannot be proved. Though PW1 and her parents categorically stated that the accused used an iron ladder to reach the upper floor, and that the ladder and the accused's sandals were there at the specific spot, the police did not find them. They neither recovered them as material objects nor indicated their presence at the place of occurrence in the scene mahazar. The investigating officer has no excuse for neglecting such significant material objects.

46. Apart from that, he failed to bring certain crucial witnesses and documents before the court. The police officials, who are said to have taken

the accused into custody from PW1's house on the night of the 26th, are crucial witnesses. Still, none of them were added as witnesses in the case. Likewise, while in the witness box, PW9 claimed that immediately after bringing the accused to the police station, an FIR -under preventive arrest provisions- was registered against him. Despite having such a definite case, the prosecution failed to produce the FIR before the court. Had those police officials been brought as witnesses, and the FIR produced to prove the preventive arrest, proper corroboration of the testimony of PW1, PW2 and PW4- at least regarding the trespass- could have been easily established. The absence of evidence to prove this part of the police intervention is a material shortfall affecting the prosecution case adversely.

47. The investigation flaws discussed above are significant and they have a serious adverse impact. The court cannot overlook the glaring contradiction between the oral testimony of the eye witnesses and the documentary evidence prepared by the investigating officer (PW8). While the witnesses consistently state that the accused was apprehended at the place of occurrence immediately following the incident, the police records- specifically, Ext.D3 custody memo-falsely project the custody as having

occurred at the Kannavam bus shelter at 16.30 hours the following day. Such deliberate 'padding' and fabrication of the place of custody cannot be considered as mere procedural lapses; it is a calculated attempt to mislead the court. This act of the investigating officer is not only improper and biased but strikes at the very root of the prosecution's integrity. The investigating agency is expected to be a seeker of truth, not a creator of convenient narratives.

48. While evaluating the overall approach of the investigating officer, the argument provided by the learned defense counsel cannot be completely discarded. After closely examining the facts and circumstances unveiled before the court, I can not fully believe that there was no foul play on the part of the investigating officer. However, the witless actions of the investigating officer caused much damage to the prosecution's case. It gave an opportunity to the accused person to contend that the entire investigation is faulty and that he is the victim of such a faulty investigation. We have already seen the explanation by the survivor that before giving the statement to the magistrate, a woman police officer advised her to change her version; thus, she happened to make contradictory statements. If they had

deliberately engaged in such misconduct, it is definitely a serious impropriety.

49. All those improprieties are good grounds to hold that the investigation conducted in the case was apparently defective. A tainted and biased investigation would result in denial of justice to the victims. No doubt, a conviction based on such a defective investigation would cause miscarriage of justice. It is trite law that mere irregularities cannot affect the fate of the trial and grant a benefit to the accused.

50. **In Union of India Vs Prakash P Hinduja 2003 SC 2612**; it is held as follows; *“As a general principle it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused”*. In any case where there are any lapses in the investigation the prosecution story shall be examined independently of such omission by the investigating agency. If an investigation is intentionally flawed, the court must assess the evidence impartially, identify any procedural errors, and uphold the law to ensure a fair trial, possibly dismissing or rectifying the defective

investigation. The solemn duty cast on the court is to evaluate the evidence impartially and ensure fairness and justice in trial.

51. No doubt, trial proceedings shall not be prejudicial to the accused. At the same time, the accused shall not be allowed to take advantage of investigation flaws or other technical snags. In this scenario, there shall be clear violation of the rights of the accused; however, the ultimate adverse effect is the compromise of the victim's rights and a miscarriage of justice. Even while applying the above principles, the damage caused to this case due to investigation flaws cannot be circumvented. The materials presented by the investigating officer are diametrically opposed to the case presented by PW1, PW2 and PW4. If the oral testimony and the investigation procedures explain an entirely different story, it is a strong reason to doubt the prosecution's case. No reliance can be placed upon such evidence.

52. It is settled that prosecution is first bound to prove foundational facts against the accused beyond reasonable doubt. Unless the prosecution is able to prove foundational facts in the context of the allegations made against the accused under the POCSO Act, the presumption u/s 29 of said act would not operate against the accused. In the instant case, the instances of sexual

assaults explained by PW1 were already found to be doubtful due to lack of clarity, i.e. inconsistency.

53. In a criminal trial establishing the chain of circumstances without missing any link is crucial. Proving said circumstances before the court by convincing and cogent chain of evidence is also important. In the instant case, prosecution has not succeeded in establishing a convincing and cogent chain of circumstances. The survivor provided contradictory evidence on a crucial point for determination. The defense succeeded in proving it before the court by discrediting the said witness through effective cross examination. They also succeeded in exposing the patent absurdities and inherent infirmities in the investigation. That is sufficient to rebut the presumption available in favour of the prosecution by virtue of Sec. 29 of the Act.

54. On the basis of the discussion in the foregoing paragraphs it can be undoubtedly held that the prosecution failed to bring evidence that inspires the court to believe the existence of a fact beyond reasonable doubt. At the same time, after evaluating all the points put forward by the defence, I

feel that the existence of the circumstances projected by the defense is so probable that a prudent man would act upon them. The accused had discharged his onus and established his innocence in the given facts of the case. At any rate the evidence on record is not convincing and conclusive to establish the charges against the accused person. Points No. 2 to 5 are found against the prosecution.

55. Succinctly, it can be held that prosecution has not succeeded in proving the charges under sections 332(c), 75(1)(i)(2) of BNS as well as Sec. 7 r/w 8, 11(i) r/w 12 of The Protection of Children from Sexual Offenses Act 2012, against the accused person.

56. **Point No. 6 :-** In the light of my finding on point Nos. 2 to 5, the accused is found not guilty of the offences charged against him. Hence this point does not arise for consideration.

57. In the result, the accused is acquitted of the offenses punishable under sections 332(c), 75(1)(i)(2) of BNS and section 7 r/w 8, 11(i) r/w 12 of The Protection of Children from Sexual Offenses Act 2012, under section

258 of BNSS. The bail bond of the accused shall be in force for 6 months for the purpose of Section 481 of BNSS.

Properties received as Item No. 204/2025, 205/2025 and 210/2025, being the waste cloths and samples, shall be destroyed after the appeal period is over as per Rules.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open Court, this the 30th day of March, 2026).

Sd/-
ANIT JOSEPH, SPECIAL JUDGE
FAST TRACK SPECIAL COURT, MATTANNUR

APPENDIX

WITNESSES FOR THE PROSECUTION:

<u>Witness No</u>	<u>Name of Witness</u>	<u>Description</u>
PW1 CW1	Name with held	Victim
PW2 CW2	Name with held	Other Witness
PW3 CW9	Bindu Mol, Birth Registrar	Other Witness
PW4 CW3	Name with held	Other Witness
PW5 CW4	Gireesh K G	Other Witness
PW6 CW14	Rejtiha M	Police Witness
PW7 CW11	Navya P, Village Assistant, Manantheri	Other Witness
PW8 CW16	Prakashan, Sub Inspector Kannavam PS	Police Witness
PW9 CW15	Umeshan, Inspector of Police, Kannvam PS	Investigating Officer

EXHIBITS FOR THE PROSECUTION:

<u>No</u>	<u>Date of document</u>	<u>Description of the Exhibit</u>	<u>Proved by</u>
P1	27-01-2025	FIS in Cr.71/2025 of Kannavan PS	PW1
P2	27-01-2025	Relevant portion in 183 Statement of PW1	PW1
P3	07-02-2025	Birth Certificate	PW3
P3(a)	07-02-2025	Certificate U/s 63 of Evidence Act	PW3
P4	28-01-2025	Scene Mahazar	PW5
P5	28-01-2025	Seizhure Mahazar	PW5
P6	18-02-2025	Site Plan	PW7
P7	27-01-2025	Arrest Memo	PW8
P8	27-01-2025	Inspection Memo	PW8
P9	27-01-2025	Address adding report	PW8
P10	27-01-2025	Seizhure Mahazar	PW8
P11	27-01-2025	Seizhure Mahazar	PW8
P12	20-02-2025	Ownership Certificate	PW8
P13	27-01-2025	FIR in Cr.71/2025 of Kannavam PS	PW9

WITNESSES FOR THE DEFENCE: NIL**EXHIBITS FOR THE DEFENCE:**

D1	Omission in 162 statement of PW2	PW2
D2	Omission in 162 statement of PW4	PW4
D3	Custody memo	PW8
D4	Contradiction in Deposition of PW2	PW8
D5	Omission in 162 statement of PW4	PW8

MATERIAL OBJECTS: NIL

Sd/-
ANIT JOSEPH, SPECIAL JUDGE
FAST TRACK SPECIAL COURT, MATTANNUR

//True Copy//

Fair/Copy of Judgment

**IN THE COURT OF SPECIAL JUDGE
FAST TRACK SPECIAL COURT,
MATTANNUR.**

SESSIONS CASE No. 143 OF 2025

J U D G M E N T

30-03-2026

To

- 1 The Registrar,
High Court of Kerala,
Ernakulam, Kochi – 682 031.
- 2 The District Police Chief,
Kannur City.
- 3 The Public Prosecutor, Mattannur.
- 4 The Accused
- 5 Superintendent, Central Prison,
Kannur