

IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, CHANGANASSERY

Present : Smt. Saima P.S., Special Judge.

THURSDAY THE 27th DAY OF DECEMBER, 2024
6th day of Pousham 1946

SESSIONS CASE No: 95/2024

(Crime No.2246/2023 of Changanacherry Police Station)

COMPLAINANT : State of Kerala, Represented by
the Inspector of Police,
Changanacherry.

By Special Public Prosecutor : Sri. P.S. Manoj.

ACCUSED : Thankappan @ Velayudhan Krishnan,
S/o. Velayudhan, aged 82/23 years,
Vandanathu Kunnumpuram House,
Samskarika Nilayam Bhagam,
Cheeranchira.P.O., Chethippuzha Village.

By Advocate : K. Madhavan Pillai.

CHARGE : U/Ss. 376, 376 AB, 323 of IPC, sec 8 r/w 3(b),
6 r/w 5(l) (m) of POCSO Act.

PLEA : Not guilty

FINDING : Guilty u/s. 6 r/w 5 (m), 4(2) r/w 3 (b), 8 r/w 7,
of POCSO Act, and Sec. 323, 376, 376-AB
of IPC. Not guilty u/s. 5 (l) of POCSO Act.

SENTENCE/ORDER: The accused is convicted u/s. 235 (2) of Cr.P.C
and he is sentenced to undergo rigorous
imprisonment for a period of 20 years (twenty
years) and to pay fine of Rs. 50,000/- (Rupees
fifty thousand only) in default of payment to
undergo rigorous imprisonment for 1 year (one
year) u/s. 6 r/w 5(m) of POCSO Act, rigorous

imprisonment for a period of 20 years (twenty years) and to pay fine of Rs. 50,000/- (Rupees fifty thousand only) in default of payment to undergo rigorous imprisonment for 1 year (one year) u/s. 4(2) r/w 3(b) of POCSO Act. rigorous imprisonment for a period of 10 years (ten years) and to pay fine of Rs. 50,000/- (Rupees fifty thousand only) in default of payment to undergo rigorous imprisonment for 1 year (one year) u/s. 376 of IPC, rigorous imprisonment for a period of 3 years (three years) and to pay fine of Rs. 10,000/- (Rupees ten thousand only) in default of payment to undergo rigorous imprisonment for 3 months (three months) u/s. 8 r/w 7 of POCSO Act, rigorous imprisonment for a period of 6 months u/s. 323 IPC. Though offences punishable u/s. 376-AB of IPC and sec. 6 r/w 5 (m) of POCSO Act is proved and accused is convicted thereunder, in the light of sec. 42 of POCSO Act, I am not imposing separate sentence to the accused u/s. 376 -AB of IPC. The substantive sentences of imprisonment shall run concurrently. Set off is allowed u/s. 428 Cr.P.C for the period from 21.09.2023 till 09.11.2023 during which the accused had undergone detention in connection with the investigation and inquiry of this case. If the fine amount is realised, it shall be paid to PW1 the victim as compensation u/s. 357 (1)(b) of Cr.P.C. The accused is found not guilty of the offence u/s. 5(l) of POCSO Act and he is acquitted of the said offence u/s. 235(1) Cr.P.C.

DATE OF TRIAL : 08.07.2024, 09.07.2024, 10.07.2024, 17.07.2024,
29.07.2024, 12.08.2024, 12.09.2024, 10.12.2024.

HEARING : 27.12.2024

JUDGMENT : 27/12/2024

TABULAR FORM

Serial No. : S.C. No. 95/2024

Name of Police station : Changancherry Police Station.
of and Cr. No. of offence : Crime No. 2246/2023.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Father's Name	Occupation	Religion	Residence	Age
1.	Thankappan @ Velayudhan	Velayudhan	--	Hindu	Vandanathu Kunnumpuram House, Saskarika Nilayam Bhagam, Cheeranchira P.O., Chethipuzha Village.	83

Date of

Occurrence : 01/08/2023 to 13/09/2023

Complaint : 15/09/2023

Apprehension : 21/09/2023

Release on bail : 09/11/2023

Commitment : Nil

Commencement of trial : 08/07/2024

Close of Trial : 10/12/2024

Sentence or order :

Service of copy of judgment or finding on accused : N.A.

Explanation for delay : No delay.

This Sessions Case coming on for final hearing on 27.12.2024 in the presence of the Special Public Prosecutor and having stood over for consideration on the same day and the court on the same day delivered the following:

J U D G M E N T

This case is instituted upon the final report submitted by the Inspector of Police, Changanacherry Police Station in Crime no. 2246/2023, alleging offences punishable u/s. 376, 376AB, 323 of IPC, secs. 4 r/w 3(b), 6 r/w 5(l), (m), 8 r/w 7 of POCSO Act.

2. The case of the prosecution unfolded from the materials on record is as follows:-

CW1 the victim girl was aged 9 years in 2023. The accused is her neighbour. In order to gratify his passion for lust, on a day before Onam at about 2 p.m and prior to that day, on several occasions at the hall room of the house of the accused, named 'Vandanathu Kunnumpuram' that situates at Chethipuzha, he grasped the breast of the victim and kissed her, pulled out her undergarment (ചുവ്വ) halfway, committed penetrative sexual assault on her by inserting his finger into her vagina and thereafter on 13.09.2023 at about 5 p.m while the victim was watching TV at the hall room of the aforesaid house, he gagged her

mouth, lifted the skirt worn by her, removed the buttons of her shorts, pressed her private parts and also pressed her right breast over the banyan causing pain to her and thereafter he again gagged her mouth, took her to his bedroom, made her to lie on the cot, pulled out her skirt, touched and pinched her thigh and private parts and thereafter he unfastened his dhoti and asked her to hold his penis. Thereby the accused is alleged to have committed the aforesaid offences.

3. On completion of investigation CW20, the Inspector of Police, Changanacherry Police Station submitted the final report before the Addl. District and Sessions (POCSO) Court-I, Kottayam on 13.11.2023. The said Court has taken this case on file as S.C. 95/2024 and thereafter as per Order No. SS.I- 50/2024 dated 31.01.2024 of the Hon'ble Sessions Judge, Kottayam the case was transferred to this court for trial and disposal in accordance with the law.

4. In pursuance of summons accused appeared before the court. Copies of relevant prosecution records were furnished to him. After hearing the learned Special Public Prosecutor and also the learned counsel appearing for the accused u/s. 227 Cr.P.C, as there was no ground to discharge him u/s. 227 Cr.P.C, charge was framed against the accused u/ss. 376, 376-AB, 323 of IPC, secs. 8 r/w 7, 4(2) r/w 3(b),

6 r/w 5(l), 6 r/w 5(m) of POCSO Act. That charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. On the side of the prosecution, PWs 1 to 20 were examined and Exts. P1 to P28 were marked. MO1 to MO5 were also marked. CW10 was given up by the learned Special Public Prosecutor.

6. After completing the prosecution evidence, accused was examined u/s 313 (1) (b) of Cr.P.C. He stated that he doesn't know anything and has nothing to say.

7. Thereafter this case was adjourned for hearing u/s. 232 of Cr.P.C. Since this court is satisfied that this is not a case of 'no evidence' to order an acquittal u/s. 232 of Cr.P.C, the accused was called upon to enter on his defence and to adduce any evidence which he might have in support thereof. No oral or documentary evidence has been adduced by the accused.

8. Heard both sides.

9. The points that arises for consideration are:-

1. Was PW1 the victim, a child at the time of commission of the alleged offence?
2. Whether the accused committed penetrative sexual assault on PW1 the

victim child who was below the age of 16 years and thereby committed offence punishable u/s.4(2) r/w 3(b) of the POCSO Act?

3. Whether the accused committed rape on PW1 the victim and thereby committed offence punishable u/s. 376 of IPC?
4. Whether the accused committed rape on PW1 the victim who was under 12 years of age and thereby committed offence punishable u/s. 376-AB of IPC?
5. Whether the accused committed penetrative sexual assault on PW1 the victim child who was below 12 years and thereby committed offence punishable u/s. 6 r/w 5(m) of the POCSO Act?
6. Whether the accused committed penetrative sexual assault on PW1 the victim child repeatedly and thereby committed an offence punishable u/s. 6 r/w 5(l) of the POCSO Act?
7. Whether the accused with sexual intent committed sexual assault on PW1 the victim child and thereby committed offence punishable u/s. 8 r/w 7 of the POCSO Act?
8. Whether the accused voluntarily caused hurt to PW1 the victim and thereby committed the offence punishable u/s. 323 of IPC

9. Sentence or order.

10. The case advanced by the prosecution can be narrated in brief for the purpose of understanding the same at a glance.

11. On 15.09.2023, PW1 the victim child gave Ext. P1 FI Statement before PW10 the Asst. Sub Inspector of Police , Changanacherry Police Station alleging that accused committed sexual abuse on her repeatedly. On the basis of Ext. P1 FI Statement PW3 the Sub Inspector of Police, Changanacherry Police Station registered Ext. P2 FIR u/ss. 376, 376AB, 323 of IPC, secs. 4 , 3(b), 6, 5(l), 5(m), 8, 7 of POCSO Act. The victim was sent to the General Hospital, Changanacherry for medical examination. She was accompanied by PW17 the Asst. Sub Inspector of Police, Changanacherry and was examined by PW12 the Junior Consultant Obstetrics & Gynecology who has issued Ext. P11 Report of Medico-Legal Examination of Survivor of Sexual Offence. Thereafter PW19 the Inspector of Police, Chanaganacherry Police Station took the charge of investigation of this case. The place of occurrence was shown to him by PW1 and he has prepared Ext. P3 scene mahazar. PW4 is an attesor to Ext. P3 mahazar. He has produced Ext. P11 before the court along with Ext. P14 form-15. The statement of the

victim u/s. 164 Cr.P.C was recorded on 18.09.2023 by the Judicial first Class Magistrate -I, Changanacherry. PW19 has arrested the accused on 21.09.2023 and in connection with his arrest has prepared Exts. P15 arrest memo, P16 inspection memo, P17 arrest intimation and P18 custody memo. He has also prepared Ext. P26 address report of the accused. He has seized MO4 & MO5 the dresses worn by the accused at the time of alleged occurrence under Ext. P7 seizure mahazar. PW8 the CPO, Changanacherry Police Station is an attestor to Ext. P7 mahazar. The accused was sent to the General Hospital, Changanacherry for medical examination and was accompanied by PW7 the CPO, Changanacherry Police Station. PW16 the Casualty Medical Officer, General Hospital, Changanacherry conducted potency examination on the accused and has issued Ext. P12 Potency Certificate. The accused was produced before the jurisdictional Magistrate on 21.09.2023 and was remanded to judicial custody. PW16 handed over the blood samples and other material objects that were collected from the accused at the time of his examination to PW7 and he in turn has produced the same before PW19 and he has seized it under Ext. P8 seizure mahazar and has produced the same before the court along with Ext. P27 property list. PW8 is an attestor to Ext. P8 mahazar also.

PW19 has produced Ext. P12 Potency Certificate before the court along with Ext.P20 form -15. Thereafter PW2 the mother of the victim produced MO1 to MO3, the dresses worn by the victim at the time of alleged occurrence before PW19 and he has seized the same under Ext. P9 seizure mahazar. PW9 the CPO, Changanacherry Police Station is an attester to Ext. P9 mahazar . PW19 has produced MO1 to MO3 that were seized under Ext. P9 mahazar and MO4 and MO5 that were seized under Ext. P7 mahazar before the court along with Exts. P21 & P19 property lists respectively. PW19 has also produced Ext. P13 counselling report of the victim that was issued by PW18 the Clinical Psychologist, Govt. General Hospital, Kottayam, Ext. P4 Ownership Certificate with respect to the place of occurrence that was issued by PW5 the Asst. Secretary, Vazhappally Grama Panchayath, Ext. P10 Birth Certificate of the victim issued by PW11 the Sub Registrar of Birth & Death, Vijayapuram Grama Panchayath before the court along with Exts. P22 to P24 Form-15 respectively. He has also produced Ext. P5 scene plan and Ext. P6 possession certificate that were issued by PW6 the Village Officer, Chethipuzha before the court along with Ext. P25 Form-15. The accused was enlarged on bail on 09.11.2023. On

completion of investigation PW19 submitted the final report before the court.

12. Point no. 1:-

The age of the victim is a foundational fact that has to be proved beyond reasonable doubt before the presumption under the POCSO Act can be raised against the accused. It must be proved by cogent evidence that the victim was in fact a 'child' as defined in sec. 2 (d) of the POCSO Act. *"The age is the most significant and basic element to attract the offences under POCSO Act and unless it is established by adducing positive evidence, the rigour of the provisions in the POCSO Act cannot be pressed into service"* (**Santhosh V State of Kerala 2021 (3) KLJ 927**).

13. As per the prosecution case the alleged occurrence took place in the year 2023. When testified PW1 categorically stated that her date of birth is 09.06.2015. She has stated that at the alleged time of occurrence she was aged 9 years and was studying in 4th standard. The prosecution has produced Ext.P10 Birth Certificate issued by PW11. As per Ext. P10, the date of birth of the victim is 09.06.2015. PW20 the Headmistress of the school wherein the victim was studying at the time of alleged occurrence has produced the Attendance Register of the said

school and Ext. P28, the attested copy of the relevant page of the said Admission Register wherein the admission details of the victim was noted. It is evident from Ext. P28, that the victim was admitted in the 1st standard in the said school during 2020-2021. As per Ext. P28 the date of birth of the victim is 09.06.2015. That means at the time of alleged occurrence the victim was 8 years old. Regarding the date of birth of the victim when PW1 was examined there was no cross-examination. The accused has not raised any objection regarding the age of the victim. In the circumstances the material placed by the prosecution does establish that the victim was infact a child. The point is found in favour of the prosecution.

14. Point nos. 2 to 8:-

For convenience these points are considered together.

PW1 the victim would depose that she used to go to the house of Thankappachan (the accused herein) which is her neighbouring house everyday, to watch TV. While so, Thankappachan used to pinch on her private parts and insert his finger into her vagina. She further stated that at the hall room of his house, he lifted the skirt worn by her, removed her shorts and pressed her private parts. Since he gagged her mouth she couldn't raise alarm . By gagging her mouth, he took her to his room,

made her to lie on the cot and lifted her skirt. He then unfastened his dhoti and asked her to hold his penis. When Rajammama, the wife of Thankappachan came back after her bath, suddenly Thankappachan wore his dhoti and concealed her shorts. When Rajammama went to their neighbouring house, he returned her shorts. He then pinched on her thigh and warned her not to divulge about the incident to anyone. Since she was frightened, she didn't disclose about the incident to anyone. She further stated that on a day before Onam, at about 2 p.m when she went to the house of Thankappachan for watching TV, he lifted her skirt, removed the buttons of her shorts, pulled down the shorts to a little extent and inserted his finger into her vagina. He then scratched her thigh and asked her to kiss him. She refused to do so. He then pressed her breast. On 14.09.2023 when she suffered from stomach pain, her mother enquired with her about the reason for it. She then narrated about the incident that took place on the previous day to her mother. She further stated that in connection with the occurrence she has given Ext. P1 FI Statement and she was taken to hospital by the police officials on 15.09.2023 and has also given statement before the Magistrate on 18.09.2023. She identified the accused in the dock.

15. PW2, the mother of PW1 the victim would depose that on 14.09.2023 she was told by PW1 that she is suffering from stomach pain. When she enquired about it with PW1, she narrated the incident that took place in the house of Thankappachan. She was told by PW1 that on 13.09.2023 at 5 p.m while she (PW1) was watching TV in the house of Thankappachan who is their neighbour, he came beside her, lifted her skirt, removed the buttons of her shorts, inserted his finger into her vagina and pressed her right breast. He then gagged her mouth and took her to a room, made her to lie on the cot, removed her shorts, caught hold of and pinched, her private parts. Thereafter he unfastened his dhoti and asked her to hold his penis. She refused to do so. He then concealed her shorts. On seeing his wife Rajamma Chechi, he freed PW1. When Rajamma Chechi went away, he returned the shorts to PW1 and warned her not to divulge about the incident to anyone. She was also told by PW1 that on a day before Onam, at about 2 p.m accused inserted his finger into her vagina repeatedly and kissed her. PW2 stated that when her husband returned after his job she informed him about the sexual abuse towards their child. She further stated that she was told by PW1 that due to fear she didn't disclose about the incident to anyone. She has also stated that she has produced the

dresses worn by PW1 at the time of alleged occurrence before the investigating officer. She identified those dresses which were marked in evidence as MO1 to MO3.

16. PW12 the doctor would depose that on 15.09.2023 at 9.20 p.m she had examined PW1 the victim and had issued Ext. P11 report. According to her, the history of sexual assault is as follows:-

"13.09.2023 ഏകദേശം 4.30 pm ന് അടുത്ത വീട്ടിലെ തങ്കപ്പൻ എന്ന ആളിന്റെ വീട്ടിൽ TV കാണാൻ പോവുകയും, TV കാണാൻ അയാൾ അകത്തേക്ക് വിളിക്കുകയും ചെയ്തു. അയാൾ വാതിൽ ചാരിവെച്ച് എന്നെ അടുത്തേക്ക് ചേർത്ത് പിടിച്ചു. അയാൾ ഉമ്മ ചോദിക്കുകയും നെഞ്ച് ഭാഗത്ത് പിടിക്കുകയും ചെയ്തു. അപ്പോൾ എനിക്ക് വേദനയെടുത്തു. വാപൊത്തിപ്പിടിച്ചതിനു ശേഷം നിക്കർ ഊരി . Skirt -ന്റെ അകത്തുകൂടി മൃത്രമൊഴിക്കുന്ന ഭാഗത്ത് പിടിക്കുകയും ചെയ്തു . മൃത്രമൊഴിക്കുന്ന ഭാഗത്ത് വിരലിടുകയും ചെയ്തു. ആ സമയത്ത് രായമ്മച്ചി (തങ്കപ്പച്ചന്റെ ഭാര്യ) വന്നപ്പോൾ തങ്കപ്പച്ചൻ നിക്കറെടുത്ത് കട്ടിലിന്റടിയിൽ ഒളിപ്പിച്ചു. Rajammama മറ്റൊരു വീട്ടിലേക്ക് പോയപ്പോൾ നിക്കർ തിരിച്ചു നൽകി . ഇത് പറയരുതെന്ന് പറഞ്ഞു. ഞാൻ പിന്നെ കളിക്കുവാൻ അമൃതയുടെ കൂടെ പോയി".

PW12 specifically stated that on examination **redness was present over sub urethral area** of the victim and that area was **congested**. According to her, her findings are consistent with the alleged history.

17. PW13 the father of the victim would depose that his daughter (PW1) used to go to the house of Thankappachan every day at about 5 p.m for watching TV. On 14.09.2023 in the evening when he returned to his house after his job, his wife (PW2) told him that their daughter (PW1) complained of stomach pain and when she enquired about it with her (PW1), she stated that on 13.09.2023 Thankappachan caught hold of her breast and kissed her. Thereafter on 15.09.2023 he complained about the incident to CWC Kottayam. He specifically stated that he has only hearsay knowledge about the incident.

18. PW14 who is the neighbour of the victim and accused and who is the mother of Amrutha, the friend of the victim disowned the statement given by her to the police. She turned hostile to the prosecution case.

19. PW15 the wife of the accused also disowned the statement given by her to the police . She also turned hostile to the prosecution case. Thereafter when she was cross-examined by the learned Public Prosecutor she stated that on some days she won't be available in her house and at that time her husband will be there alone. She admitted the fact that PW1 used to come to her house along with her mother and often she comes alone, to watch TV.

20. PW16 the doctor who had examined the accused and issued Ext. P10 Potency Certificate stated that on examination of the accused there is nothing to suggest that he is incapable of performing the sexual act.

21. According to PW19 who had conducted the entire investigation in this case and submitted final report, PW1 has given Ext. P1 statement in connection with the incidents that took place on 13.09.2023, on a day before Onam and prior to that, for committing sexual abuse on her.

22. The remaining witnesses are mostly official witnesses examined for the compliance of legal formalities.

23. The evidence tendered by PW2 & PW13 the parents of the victim would make it clear that they are having only hearsay knowledge about the incidents. PWs 14 & 15 didn't support the prosecution case.

24. When cross-examined PW1 stated that Thankappachan was watching TV at the sit out of the house for sometime and thereafter he came beside her at the hall room and gagged her mouth. She further stated that on 14.09.2023 Thankappachan inserted his finger into her vagina on several times. Though at first she has stated that he did the aforesaid act on 14.09.2023, subsequently specifically stated that it was

before Onam that the accused inserted his finger into her vagina and she is not remembering that date. She also stated that she narrated both the incidents to her friend Amrutha after 2 days of the 2nd incident.

25. When examined-in-chief at first PW1 stated that the date of occurrence was on 14.09.2023. Subsequently she stated that the occurrence took place on 12.09.2023 and further she stated that she doesn't remember the date of occurrence. She then stated that she lodged Ext. P1 statement on 13.09.2023. At the fag end of examination-in-chief she has stated that on 14.09.2023 she suffered from stomach pain and when her mother enquired with her about it she narrated the incident to her mother. She affirmed to the suggestion that the occurrence took place on the day previous to the day she suffered from stomach pain.

26. When cross-examined PW2 stated that she came to know from the mother of Amrutha (PW14) who is the friend of PW1 that the accused committed sexual abuse on her daughter. Thereafter when PW1 told her that she is suffering from stomach pain she asked her about the alleged incidents. According to PW2, on 15.09.2023 they went to the Child line along with PW1 and thereafter on 16.09.2023 they went to the police station and complained about the incident. While so, the police officials came to her residence and recorded the statement of the

victim. According to her, she had also narrated the incidents to the police . She stated that she used to go to the house of accused along with PW1 to watch TV and often PW1 goes there along with her brother and Amrutha to watch TV. She further stated that at the time of alleged occurrence PW1 alone was there to watch the TV.

27. The only person having direct knowledge of the sexual assault is PW1, the victim child. In **Shivasharanappa vs. State of Karnataka 2013 KHC 4381** the Hon'ble Supreme Court held that; "Court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the Court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, applies to a child witness who is competent and whose version is reliable."

In **Alagupandi @ Alagupandian V State of Tamil Nadu (2012 KHC 4314)** it was held thus, “ *a child witness can be a competent*

witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis of conviction as well.”

28. To hold the accused guilty for commission of the offence as alleged by the prosecution, the solitary evidence of PW1 is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. The question as to who can be said to be a sterling witness has been considered by the Apex Court in **Rai Sandeep @ Deepu And Another V State of NCT of Delhi (2012 KHC 4419)** as under :

“the ‘sterling witnesses’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the

court. It should be natural and consistent with the case of the prosecution *qua* the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the *factum* of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant material ,

namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

29. It is evident from the aforesaid decision that the evidence of a sterling witness is one that appears natural and consistent with the case of the prosecution qua the accused; that such witnesses, under no circumstances, shall give room for any doubt as to the factum of the occurrence and that the evidence shall have co-relation with each and every supporting materials. To put it differently, the version of such witnesses on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary, and the material objects should match the said version in material particulars.

30. When testified at first PW1 was not specific with respect to the date of occurrence. She affirmed to the suggestion that the occurrence took place on the day previous to the day she suffered from stomach pain. According to her she suffered stomach pain on 14.09.2023. That means the occurrence took place on 13.09.2023.

31. In Ext.P1, PW1 has stated that on a day before Onam accused inserted his finger into her vagina. In her statement u/s. 164 Cr.P.C she

has stated that on 13.09.2023 at about 4.30 p.m and on a day before Onam he has inserted his finger into her vagina. When examined though at first she has stated that the accused committed penetrative sexual assault on her repeatedly on 14.09.2023, later categorically stated that he did fingering before Onam and she is not remembering that date. It is to be noted that at the time of alleged occurrence the victim was only 8 years old. She has testified before the court at the age of 9 years. One cannot expect a child of 9 years to remember each and every important dates and to speak about the incidents one by one, in order, without making any omission or mistake. It is evident from the testimony of PW1 that it was at the first instance, accused committed penetrative sexual assault on her and it can be inferred from her testimony that the said incident took place on a day before 2023 Onam.

32. The prosecution alleges that the accused committed offence punishable u/s. 323 IPC. It is evident from the testimony of PW1 that on 13.09.2023 accused pressed her private parts and pinched her thigh and on 14.09.2023 she suffered from stomach pain and on a day before Onam he pressed her breast. It is to be noted that PW1 was examined by PW12 on 15.09.2023. The evidence tendered by PW12 coupled with Ext. P11 medical report makes it clear that at the time of examination of

the victim there was **congestion on her Sub urethral area**. The testimony of PW1 corroborates with medical evidence. Thus the evidence on record reveals that that the accused voluntarily caused hurt to the victim.

33. Sec. 7 of the POCSO Act defines sexual assault as follows:-

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

34. The evidence on record established that the accused pinched and scratched on the thigh of the victim and grasped her breast. Touching of private parts of minor would come within the purview of sec. 7 of the POCSO Act.

35. The accused was also charged for committing the offences punishable u/s. 4(2) r/w 3(b) and sec. 6 r/w 5(m) of POCSO Act. As per sec. 3(b) of the POCSO Act, a person is said to commit penetrative sexual assault if he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person. Sec. 4

(2) of the POCSO Act deals with punishment for committing penetrative sexual assault on a child below 16 years of age.

Sec. 5(m) of the POCSO Act denotes that, whoever commits penetrative sexual assault on a child below 12 years is said to commit aggravated penetrative sexual assault and sec. 6 of the POCSO Act deals with punishment for aggravated penetrative sexual assault.

36. Here the evidence let in by the victim would establish that she who was then aged 8 years was subjected to penetrative sexual assault by the accused on a day before Onam by inserting his finger into her vagina.

37. Though prosecution alleges that the accused committed penetrative sexual assault on her more than once and thus committed an offence u/s. 5(l) of the POCSO Act has not let in any sort of evidence to substantiate the same.

38. The victim has narrated in detail how the incident has taken place. It is worth mentioning here that the accused has not seriously disputed the allegations of sexual assault and penetrative sexual assault on the victim while cross-examining her and rather satisfied himself with mere suggestion that he has not committed any sexual assault on her which was emphatically denied by her.

39. Though the victim has been put to cross-examination at length, nothing could really be elicited from her cross-examination by the defence to show that her evidence as regards the sexual assault and penetrative sexual assault committed on her by the accused was untrue or false. Her testimony in cross-examination remained wholly unshaken. Her evidence is consistent from the very beginning to the end . She has fully supported the case of the prosecution. The minor inconsistencies or improvements brought on record in the evidence of PW1 who is aged 9 years are not significant and they do not go to the root of the matter to help the defence. They do not render her evidence unreliable.

40. It is to be noted that the victim in this case had no animosity against the accused person, also had no reason to falsely implicate him, nor it seemed that she was deposing at the behest of anybody who had animosity against the accused. There is no reason to depose against the accused by the victim girl. The counsel for the accused failed to present a compelling reason for the victim's family to falsely implicate the accused. The evidence let in by her reveals that she was subjected to sexual violence as put forth by the prosecution and the same has been not only corroborated by the medical evidence but also by the other

facts and circumstances of the case. Her testimony is free from blemish or infirmity and it has a ring of truth and it inspires confidence.

41. Thus on an evaluation of the materials on record, I am of the view that the evidence tendered by the victim in this case satisfies the requirement of a sterling witness. The evidence tendered by her is reliable and trustworthy. I do not see any good reason not to rely upon her deposition. As such the solitary testimony of the victim can be relied on.

42. In this case the foundational facts of the prosecution case has been established by leading evidence. So the burden of proving the contrary against the statutory presumption under section 29 of the POCSO Act lie on the shoulder of the accused. Here the accused didn't rebut the same by disproving such presumption.

43. Thus from the evidence on record I am of the considered view that the prosecution has proved the guilt of the accused beyond reasonable doubt by leading cogent evidence. So I find the accused guilty of committing the offences punishable u/ss. 376, 376-AB, 323 of IPC, secs. 8 r/w 7, 4(2) r/w 3(b), 6 r/w 5(m) of POCSO Act and he is found not guilty u/s. 6 r/w 5(l) of POCSO Act. The points are found accordingly.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 27th day of December, 2024.

Sd/-
SAIMA P.S.
SPECIAL JUDGE.

44 . I have heard the accused u/s. 235 (2) of Cr.P.C on the question of sentences to be imposed on him. He submitted that he is aged 83 years. He is suffering from ailments. His wife is a cancer patient and he is being looked after by his daughter .

45. Thereafter I have heard the learned counsel for the accused and the Special Public Prosecutor. The learned Special Public Prosecutor would submit that punishment is a message to the society. The accused is not entitled to any leniency in the matter of imposing punishment on him.

46. Per-contra, the learned counsel appearing for the accused submitted that the accused is suffering from ailments and considering his age, minimum punishment is to be imposed.

47. Considering the facts and circumstances of the case and the offences proved against the accused, I am of the opinion that this is not a fit case in which the benevolent provisions of the Probation of Offenders Act are to be invoked.

48. Sexual abuse is the worst kind of cruelty which can be committed against the children. Here in this case the accused was aged 82 years at the time of commission of offence. He is found to have committed aggravated penetrative sexual assault on a girl child aged 8 years which demonstrates his mental state or mindset. The impact of the obnoxious act on the mind of the victim will be life long. The impact is bound to adversely affect the healthy growth of the victim. The accused who is the neighbour of the victim instead of showing grandfather's love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. Therefore, the accused doesn't deserve any sympathy or any leniency. But considering the fact that the accused is 84 years old now and himself and his wife are suffering from ailments and he has no criminal antecedents, I am of the considered view that extreme punishment can be avoided in the interest of justice.

In the result,

The accused is convicted u/s. 235 (2) of Cr.P.C and he is sentenced to undergo;

(1) rigorous imprisonment for a period of 20 years (twenty years) and to pay fine of Rs. 50,000/- (Rupees fifty thousand only) in default of

payment to undergo rigorous imprisonment for 1 year (one year) u/s. 6 r/w 5(m) of POCSO Act.

(2) rigorous imprisonment for a period of 20 years (twenty years) and to pay fine of Rs. 50,000/- (Rupees fifty thousand only) in default of payment to undergo rigorous imprisonment for 1 year (one year) u/s. 4(2) r/w 3(b) of POCSO Act.

(3) rigorous imprisonment for a period of 10 years (ten years) and to pay fine of Rs. 50,000/- (Rupees fifty thousand only) in default of payment to undergo rigorous imprisonment for 1 year (one year) u/s. 376 of IPC.

(4) rigorous imprisonment for a period of 3 years (three years) and to pay fine of Rs. 10,000/- (Rupees ten thousand only) in default of payment to undergo rigorous imprisonment for 3 months (three months) u/s. 8 r/w 7 of POCSO Act.

(5) rigorous imprisonment for a period of 6 months u/s. 323 IPC.

(6) Though offences punishable u/s. 376 AB of IPC and sec. 6 r/w 5 (m) of POCSO Act is proved and accused is convicted thereunder, in the light of sec. 42 of POCSO Act, I am not imposing separate sentence to the accused u/s. 376 AB of IPC.

(7) the substantive sentences of imprisonment shall run concurrently. Set off is allowed u/s. 428 Cr.P.C for the period from 21.09.2023 till 09.11.2023 during which the accused had undergone detention in connection with the investigation and inquiry of this case. If the fine amount is realised, it shall be paid to PW1 the victim as compensation u/s. 357 (1)(b) of Cr.P.C.

(8) the accused is found not guilty of the offence u/s. 5(l) of POCSO Act and he is acquitted of the said offence u/s. 235(1) Cr.P.C.

(9) MO1 to MO5 being valueless are to be destroyed after the period of appeal.

Recommendation for Victim compensation

Considering the gravity of the offences and the severity of the mental agony suffered by PW1 the victim consequent to the sexual assault, in my opinion, the victim deserves to get compensation under the provisions of sec. 357-A of Cr.P.C r/w Rule 9 of POCSO Rules 2020. Though compensation is ordered to be paid u/s. 357 (1) (b) of Cr.P.C herein above, that is not adequate for rehabilitation of the victim. Hence it is recommended to DLSA, Kottayam to provide sufficient compensation to the victim for the purpose of rehabilitation under the

Victim compensation scheme. A copy of this judgment shall be forwarded to the District Legal Services Authority, Kottayam for necessary action.

Comply with sec. 365 of Cr.P.C.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this the 27th day of December, 2024.

**Sd/-
SAIMA P.S,
SPECIAL JUDGE.**

APPENDIX

EXHIBITS FOR PROSECUTION :

P1	15.09.23	:	First Information Statement
P2	15.09.23	:	First Information Statement
P3	16.09.23	:	Scene Mahazar
P4	09.10.23	:	Ownership Certificate
P5	01.11.23	:	Scene Plan
P6	01.01.23	:	Possession Certificate
P7	21.09.23	:	Seizure Mahazar (Dress of Accused)
P8	21.09.23	:	Seizure Mahazar
P9	25.09.23	:	Seizure Mahazar (Dress of Victim)
P10	10.10.23	:	Birth Certificate of victim
P11	15.09.23	:	Medical Examination Report of Victim
P12	21.09.23	:	Report of examination of accused including potency
P13	03.10.23	:	Counseling Report
P14	16.09.23	:	For 15 (Medical examination report of victim)
P15	21.09.23	:	Arrest Memo
P16	21.09.23	:	Inspection Memo

P17	21.09.23	:	Arrest Intimation Memo
P18	21.09.23	:	Custody Memo
P19	21.09.23	:	Property List (T 44723)
P20	21.09.23	:	For 15 (Report of examination of accused including potency
P21	25.09.23	:	Property List (T 467/23)
P22	20.10.23	:	Form 15 (counseling report)
P23	20.10.23	:	Form 15 (Ownership Certificate)
P24	20.10.23	:	Form 15 (Birth certificate of victim)
P25	02.11.23	:	Form 15 (Scene Plan and Possession Certificate)
P26	21.09.23	:	Address Report
P27	21.09.23	:	Property List (T 458/23)
P28	---	:	Attested copy of relevant page of School Admission Register

EXHIBITS FOR DEFENCE : NIL.

EXHIBITS FOR COURT : NIL.

WITNESSES FOR PROSECUTION :

PW1	08.07.2024	:	Victim.
PW2	08.07.2024	:	Asha Rajeev
PW3	09.07.2024	:	Jayakrishnan M.
PW4	09.07.2024	:	Joseph P.
PW5	09.07.2024	:	Shyju Jacob
PW6	09.07.2024	:	Zeenath I.M,
PW7	09.07.2024	:	Praveen P.
PW8	09.07.2024	:	Kuriakose Abraham
PW9	09.07.2024	:	Anish Kumar. P.T
PW10	09.07.2024	:	Jubeena Beevi. K.
PW11	09.07.2024	:	Vinu Mathews
PW12	10.07.2024	:	Dr. Angel Lucy James
PW13	17.07.2024	:	Rajeev. R.K

PW14	17.07.2024	:	Sajitha Viswanath
PW15	17.07.2024	:	Rajamma
PW16	29.07.2024	:	Dr. Remya. M
PW17	29.07.2024	:	Asha K.A.
PW18	12.08.2024	:	Dr. Sarin
PW19	12.09.2024	:	Richard Varghese
PW20	10.12.2024	:	Baby Kurian

WITNESSES FOR DEFENCE : NIL.

WITNESSES FOR COURT : NIL.

MATERIAL OBJECTS MARKED :

MO1	:	Skirt
MO2	:	T Shirt
MO3	:	Trouser
MO4	:	Dhoti
MO5	:	T Shirt

Id/-
SPECIAL JUDGE.