

IN THE FAST TRACK SPECIAL COURT, PATTAMBI

Present: Sri.Dinesh M Pillai, Special Judge

Tuesday, the 12th day of May 2026/ 22nd Vaisakha, 1948

SESSIONS CASE No.850/2023

(Crime No.287/2023 of Koppam Police Station)

Complainant	State of Kerala represented by the Inspector of Police, Koppam Police Station.
	<i>(Rep. by Adv.Sandeep.K, Spl. Public Prosecutor)</i>
Accused	Muhammed Shahid A, Aged-22/2023, S/o.Ummer, Edannarakkattil house, Mannemkode, Kornnothpadi, Koppam.
	<i>(Rep.by Adv.V.K. Krishnakumar)</i>
Charge	U/Ss.450 & 376(2)(n) of IPC and u/S.6 r/w S.5(l) & u/S.4(1) r/w S.3(a) of the PoCSO Act .
Plea of the accused	Not guilty
Finding of the Judge	Accused is found guilty of the offences punishable u/S. 376(2)(n) of IPC and also u/S.6 r/w S.5(l) of the PoCSO Act and he is convicted of the said offences u/S.235 Cr.P.C. The accused is found not guilty of the offence punishable u/S. 450 IPC and he is acquitted of the said offence u/S. 235(1) of the Cr.P.C.

Sentence/Order	a	The convict is sentenced to undergo R.I for 20 (twenty) years and to pay a fine of ₹30,000/- (rupees Thirty thousand only) for the offence punishable u/S. 6 r/w. S. 5(l) of the PoCSO Act. In default in paying the fine, he shall undergo R.I for a further period of six (6) months;
	b	No separate punishment is awarded for the offence u/S. 376(2)(n) IPC for the bar u/S 42 of the PoCSO Act.
	c	The convict is allowed set off u/S.428 of Cr.PC for the period of detention already undergone by him as an under-trial prisoner from 14.07.2023 to 23.08.2023 against the substantive

	sentence of imprisonment;
d	If the fine amount is paid or realised, as ordered above, it shall be released to the victim as compensation u/S.357(1)(b) Cr.PC.;

Description of the accused

Sl. No.	Name of the Police Station and Crime No.of the accused	Name/s	Rank	Father's Name	Occupation
1	Crime No.287/2023 of Koppam Police Station	Muhammed Shahid .A	-	Ummer	--

Sl. No	Residence	Age	Occurrence	Date of Complaint (Final report)	Apprehension
1	Mannemkode	22/2023	On 06.05.2023 at 1.00am; on 13 th , 21 st & 28 th in May 2023, on 3 rd , 11 th , 17 th & 24 th of June 2023 and on 04.07.2023.	21.08.2023	14.07.2023

Release on Bail	Committal	Commencement of trial	Commencement of evidence	Close of trial	Sentence or Order
23.08.2023	-	22.01.2024	21.07.2025	28.04.2026	12.05.2026

Service of copy of Judgment or finding on accused	Period of detention undergone during investigation inquiry or trial for the purpose of section 428 Cr.PC.	Explanation for delay
Free copy served on 12.05.2026	14.07.2023 to 23.08.2023	No delay

This case, having been finally heard on 28.04.2026 and having stood over to this day for consideration, the court delivered the following:-

J U D G M E N T

1. This case is based on a final report filed by the Sub Inspector of Police, Koppam Police Station in Crime No.287/2023 of that Police Station, alleging offences u/Ss.450 & 376(2)(n) of IPC and u/S.6 r/w S.5(l) & u/S.4(1) r/w S.3(a) of the PoCSO Act.

2. Case of the prosecution is as follows:- On 06.05.2023 at 1.00am; on 13th, 21st & 28th in May 2023, on 3rd, 11th, 17th & 24th of June 2023 and on 04.07.2023, at 2.00am, the accused had trespassed in to the bathroom adjacent to the kitchen on the northern side of the building No.VI/12 of Koppam Panchayath at Mannenkode-Vandumkavu Jaaram and subjected CW1, who was then aged 16 years with repeated penetrative sexual assault and thus committed the offences alleged.

3. The case was registered by CW22 on 14.07.2023, based on the F.I. Statement of CW1. The accused who had been arrested on 14.07.2023 was remanded to judicial custody and on 23.08.2023 he was released on bail. Investigation in the case was conducted by CWs.22 & 23 and CW23 filed the final report before the 1st Additional Sessions Court, Palakkad. Later, the case was made over to this Court for trial & disposal.

4. Before this Court, the accused entered appearance and after ensuring that the accused was served with copies of all relevant records in the case, both sides were heard on the charge. Charge against the accused for the offences u/Ss.450 & 376(2)(n) of IPC and u/S.6 r/w S.5(l) & u/S.4(1) r/w S.3(a) of the PoCSO Act was framed. The charge so framed was read over and explained; to which the accused pleaded not guilty.

5. Prosecution had examined PWs.1 to 15 and marked Exts. P1 to P18 on its side. CWs.3, 6, 9 to 11 & 15 were given up by the prosecution. CW22 is no more. CW21, the Judicial Magistrate who recorded the 164 statement of CW1 was not examined.

6. On questioning u/S.313(1)(b) Cr.P.C, the accused denied all the inculcating aspects and filed a written statement as follows:- Accused who was in gulf-countries was not at the place on the dates of alleged incidents. Accused got no acquaintance with the victim and he got no connection with her. Accused sustained injury to his head and other parts of his body in a motor-bike accident and is undergoing treatment. Presently, accused cannot work properly and he cannot speak well, for the missing of teeth.

7. Since there was no circumstance to acquit the accused u/S. 232 Cr.P.C, he was called upon to enter upon his defence. Accused marked Exts. D1 to D4 towards his defence evidence.

8. Heard both side.

9. **The points that arise for consideration are:-**

i	<i>Whether PW1 was a child at the time of occurrence of the crime; if so, what was her age at that time?</i>
ii	<i>Whether on 06.05.2023 at 1.00am; on 13th, 21st & 28th in May 2023, on 3rd, 11th, 17th & 24th of June 2023 & on 04.07.2023, during night, the accused had trespassed in to the bathroom of the building No.VI/12 of Koppam Panchayath at Mannenkode-Vandumkavu Jaaram with intention to subject PW1 with penetrative sexual assault and thus committed the offence punishable u/S.450 of IPC?</i>
iii	<i>Whether at the above place & time, the accused had subjected PW1 with repeated penetrative sexual assault and thus committed the offences punishable u/S.376(2)(n) of IPC and u/S.6(1) r/w 5(l) of the PoCSO Act?</i>
iv	<i>What shall be the order or sentence?</i>

10. **Point No.(i):-** PW1 is the victim and she deposed that her date of birth is on 30.01.2007 and her mother as PW2 also affirmed the same. PW12 was the Headmistress of the School in which PW1 joined the 1st standard and she identified Ext.P10 as the School admission extract & Ext.P11 as the attested copy of the relevant page of the School admission register relating to PW1, with Ext.P11(a) entry therein, mentioning her date of birth as on 30.01.2007. PW7 was the Registrar of Birth & Death, Pattambi Municipality and he identified Ext.P6 as the birth certificate of PW1 issued by him, stating her date of birth as on 30.01.2007.

11. It is now settled by the Apex Court in **P. Yuvaprakash v. State (2023 KHC 6709)** that '*Wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the PoCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the J Act and that the Court concerned has to determine the age by considering the following documents, namely, (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof, (ii) the birth certificate given by a Corporation or a Municipal Authority or a Panchayat. It has been held that,*

Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination Board has to be preferred first and in the absence of those documents, birth certificate issued by the Corporation, Municipality or Panchayath has to be considered.'

12. Here, the victim & her mother had affirmed that the date of birth of PW1 is on 30.01.2007 and there was no challenge on the same. Prosecution marked Ext.P10 extract, Ext.P11 attested copy of the school admission register & Ext.P6, birth certificate of PW1, wherein the date of birth of PW1 is stated as 30.01.2007. In the light of the above materials, it is only to be found that the actual date of birth of PW1 is on 30.01.2007. Period of occurrence of alleged crime is in between 06.05.2023 & 04.07.2023 and in that case, PW1 who was aged 16 years as on the said period will come within the definition of child u/S.2(1)(d) of the PoCSO Act. The point is answered accordingly.

13. **Point No.ii:-** Prosecution alleges that the accused had trespassed in to the bathroom of the residence of PW1 on several days during night and by subjecting PW1 with penetrative sexual assault therein, he committed the offence u/S.450 IPC. But it has come out that PW1 who was in love-affair with the accused herself had allowed the accused to enter in to the said bathroom, which was followed by the alleged sexual intercourse between them.

14. While the accused & PW1 were meeting in the said bathroom, the other members of the family were present in the house and PW1 herself was keen in seeing that their presence was not noticed by other members of the family. It means that the entry of the accused in to the bathroom of the building was, with the consent, connivance and even with the active participation of PW1, who was an occupant in the said building.

15. Moreover, the accused had entered only into the outer bathroom of the building and the prosecution has no case that he made entry into any dwelling portion of the said building. In the above circumstances, this Court finds that the entry of the accused as above into the bathroom of the building occupied by PW1 & others, even if taken as proved, will not attract the offence of house trespass and consequently it is found that the prosecution has failed

to prove the offence against the accused u/S. 450 IPC. The point is accordingly answered against the prosecution.

16. **Point. No.iii:-** PW1 deposed that she loved the accused while she was studying in the 7th standard. Accused went abroad while PW1 was studying in 8th standard and he used to send messages and to call PW1, in the mobile phone of her mother. Accused who returned to native place by December 2023 used to send messages to PW1 by demanding to meet her in the night. One day in May 2023, the accused came behind her residence and sent message, demanding her to come out. Since the accused had repeated the messages, PW1 opened the door of the bathroom which got doors from both side. The accused in the bathroom had hugged and kissed PW1. As demanded by the accused, PW1 removed her pants. Thereafter, the accused inserted his urinating organ in to her urinating portion. After doing as above for some time, the accused left the place.

17. Further deposition of PW1 is that after the above incident, the accused on 7-8 nights, repeated the same and on those occasions, the accused had offered to marry and look after PW1. On 04.07.2023, the mother of PW1 found PW1 & the accused in the bathroom and as called by the mother, other residents of the house came and saw them. On 14.07.2023, Police reached the residence and recorded the statement of PW1 which she identified as Ext.P1. PW1 also deposed that she was brought to the Govt. Hospital, Pattambi where she told the incidents to the Doctor. Further she identified her statement before the Magistrate at Pattambi, bearing her signature.

18. PW2 is the mother of PW1 and she deposed that one day at 1.00am, she found PW1 & the accused in the bathroom of her residence and as intimated by PW2, the other residents of the house also reached the place. Consequently, in the morning, complaint was given to the Police. On enquiring with PW1, she said that the accused had threatened and held on her body. PW13 is the brother of PW1 and he deposed that on 04.07.2023 at 2.00am, as called by her mother, he reached the bathroom and found the accused & PW1 therein and consequently, case was filed before the Police.

19. PW11 was the SCPO, Koppam Police Station and on 14.07.2023 at 11.20am, she recorded Ext.P1 F.I. Statement of PW1 at the residence of PW1 in

the presence of her mother. PW11 had also attested Ext.P9 mahazar prepared for seizing the dresses of PW1, as it was produced by her mother. PW14 had attested to the scene mahazar in the case. PW6 was the Assistant Secretary, Koppam Panchayath and he issued Ext.P5 certificate stating that the building No.VI/12 was owned by Khadeeja. PW8 was the Village Officer, Koppam Village and he prepared Ext.P7 site-plan on the place of occurrence.

20. PW10 was the SCPO of Koppam Police Station and he deposed that on 15.07.2023, he had attested to a mahazar prepared by the Sub Inspector for seizing the Motor cycle No.KL-52-J-1085. But no such mahazar was found in the case bundle. PW5 was the Joint RTO, Pattambi and he issued Ext.P4 RC Particulars of the Motor cycle No.KL-65-J-1085, stating that the same was owned by the accused herein.

21. PW3 was the Medical Officer, Taluk Hospital, Pattambi and on 14.07.2023 at 1.57pm, she examined PW1 and issued Ext.P2 medical certificate. PW4 was the CMO, Taluk Hospital, Pattambi and on 14.07.2023, he examined the accused and issued Ext.P3 potency certificate. PW9 was the CPO of Koppam Police Station and on 14.07.2023, he had attested to Ext.P8 mahazar, prepared for seizing the samples collected by the Doctor who examined the accused.

22. PW15 was the Sub Inspector of Police, Koppam Police Station and he identified Ext.P13 as the FIR registered in the case on 14.07.2023 by CW22, who has since died. PW15 has also identified Exts.P14 to P17 as the arrest memo, arrest intimation, inspection memo & address report prepared by CW22 who had arrested the accused on 14.07.2023 at 3.30pm. PW15 who took over the investigation in the case on 15.07.2023 had prepared Ext.P12 scene mahazar in the case.

23. PW15 had also obtained Ext.P10 School admission extract, Ext.P6 extract of birth register of PW1, Ext.P5 ownership certificate of the building involved in the case and Ext.P7 site-plan of the place of occurrence. PW15 had seized the dresses of the victim under Ext.P9 mahazar. He also seized the Bullet Motorcycle of the accused and obtained Ext.P4 RC particulars of the same. Ext.P18 is a report submitted by PW15 for adding S.3(a) of PoCSO Act &

S.450 IPC. On completion of the investigation, PW15 had laid the final report before the Court on 21.08.2023.

24. Prosecution would argue that the deposition of PW1, when applied with the presumption u/S.29 of the PoCSO Act will prove it beyond doubt that the accused in several nights from May 2023 till 4.07.2023 had subjected PW1 with penetrative sexual assault in the bathroom of her residence and thus committed the offences charged against him. Said evidence, according to the Prosecution stands corroborated by the deposition of her mother as PW2 and brother as PW13 that on the last day of the incident, they found PW1 with the accused in the above bathroom in the night. It is also argued by the Prosecution that the medical evidence in the case that the hymen of PW1 was not intact will further corroborate the evidence of PW1.

25. Per-contra, the accused would argue that the solitary deposition of PW1 on the alleged repeated penetrative sexual assault which suffers from serious infirmities is not sufficient to bring home the charges levelled against him. It is also argued by the accused that in the absence of proving the basic foundations of the offences alleged against him, no presumption u/S.29 of the PoCSO Act can be pressed into service. According to the accused, the broad improbabilities in the deposition of PW1 itself will rebut whatever presumption against him and thereby disprove the Prosecution version.

26. S.29 of the PoCSO Act mandates the Courts to presume that the accused had committed the offences u/Ss. 3,5,7 or 9, once he is prosecuted for the said offence. But for availing the said presumption against the accused, the Prosecution should prove the basic foundations of the offence, alleged against him. The Law is well settled that the initial burden is on the Prosecution to prove a prima-facie case to constitute the ingredients of the offences alleged against the accused beyond reasonable doubt to raise the presumption u/S. 29 of the PoCSO Act. (See **David Vs. State of Kerala (2020(4) KHC 717) & Justin @ Renjith Vs. Union of India (2020(6) KHC 546)**).

27. Prosecution has already proved that PW1 was a child at the time when the alleged incident took place and thereby established the foremost of the foundational facts. In order to prove the offence charged under the PoCSO Act, the Prosecution has adduced direct evidence of the victim in the case.

PW1 has testified that the accused, in several nights from May 2023 till 04.07.2023 had subjected her with penetrative sexual assault in the bathroom of her residence. Above evidence, according to the Prosecution will bring home the ingredients of penetrative sexual assault as defined u/S.3 of the PoCSO Act, establishing the foundation/basic facts and thereby press the presumption u/S.29 of the PoCSO Act in to service.

28. The only evidence available to support the Prosecution case that the accused had subjected PW1 with repeated penetrative sexual assault in the bathroom of her residence is the solitary deposition of PW1 and the question is whether the said deposition of PW1 alone, is sufficient to inspire the confidence of the Court to believe her version and thereby to prove the Prosecution case. As rightly argued by the Prosecution, considering the nature of the offence in the form of rape committed in the bathroom of PW1, during night, within the privacy of the accused & PW1, no evidence other than the deposition of PW1 can be expected or insisted to prove the incident.

29. PW1 has deposed that on the last night of the penetrative sexual assault on her by the accused on 04.07.2023, her mother found them at the place and as informed by her, other residents also reached the place. The mother of PW1 as PW2 has deposed that she found PW1 along with the accused in the bathroom and PW2 brought the other residents of the house to the spot. The brother of PW1 as PW13 has deposed that on 04.07.2023 at 2.00am, he reached the bathroom of his residence as it was called by his mother to see PW1 along with the accused in the said bathroom.

30. It is true that there is some confusion in the deposition of PW2 with regard to the date of her detecting PW1 & the accused as above in the bathroom and in the cross-examination, she stated that the said incident was at 1.00am on 15.07.2023. But the same can only be a mistake when it has come out that PW1 had given Ext.P1 F.I. Statement in the case on 14.07.2023. PW2 has further deposed that in the morning of the day of finding PW1 with the accused in the bathroom, she along with PW1 went to the Police Station and gave a complaint. It is also deposed by PW2 that on 15.07.2023, PW1 had given a written complaint at the Police Station.

31. Accused would argue that the above discrepancy in the deposition of PW2 regarding the detection of PW1 with the accused in the bathroom and also regarding the date of making the complaint to the Police will render the entire case of the Prosecution unbelievable. Further argument of the accused is that the Police had suppressed the earlier written complaint of PW1 and the same is also fatal to the Prosecution. But as noted earlier, PW1 had given Ext.P1 F.I. Statement on 14.07.2023 and in that case, the deposition of PW2 that she along with PW1 went to the Police Station on 15.07.2023 is factually incorrect and hence not tenable.

32. For the same reason, it is also not believable that PW1 had given any written complaint to the Police before giving Ext.P1 F.I. Statement. It is true that PW1 has also admitted in the cross-examination that she had given a written complaint under her own hand. But it is not brought out on which date she had prepared such a written complaint and what was the authority before whom she submitted the said complaint. In the cross-examination, PW1 specifically deposed that she did not give any other complaint to the Police, before giving Ext.P1 F.I Statement.

33. The deposition of PW2 is to the effect that at the time of detecting PW1 with the accused in the bathroom, PW1 stated only that the accused had threatened and touched on her body and no incident of penetrative sexual assault had been revealed by PW1, at that time. There are sufficient indications in the deposition of PW2 & PW15 that PW1 was subjected to counselling at the Child Welfare Committee, before the registration of the case.

34. It has come out that PW1 was in love-affair with the accused and she deposed that the accused had subjected her with penetrative sexual assault by offering to marry and to look after her. Naturally, PW1 was not ready to make the complaint against the accused as on the time of detecting her with the accused and as deposed by her, it was only later on 14.07.2023 that she was prepared to give Ext.P1 F.I. Statement revealing the incidents. In the above circumstances, this Court finds that the above discrepancy in the deposition of PW2 regarding the date of detecting PW1 with the accused in the bathroom or that PW1 had given a written complaint to the Police is having no relevance sufficient enough to affect the credibility of the Prosecution case.

35. The accused is challenging the medical evidence in the case on the ground that PW3 who examined PW1 on 14.07.2023 for preparing Ext.P2 medico-legal certificate was not a Gynecologist and hence not competent for the same. But the mere fact that PW3 is not a Gynecologist is not a reason to discard the medical evidence in the case which is specific to the effect that the hymen of PW1 was found as not intact and hence suggestive of sexual intercourse. In the history spoken to PW3, PW1 has detailed the incidents of repeated penetrative sexual assault on her by the accused and the same will further corroborate the testimony of PW1.

36. It is true that no forensic report had been made available in the case to support the Prosecution case and it has come out that the Police had forwarded through the Court, the dresses of PW1 and also the samples collected by the Doctor from the accused, at the time of his examination. In Ext.P2 medical certificate, it is stated that no sample had been collected from PW1 and the reason is that the last intercourse was on June last week. But in the history, it is noted that the accused had come to the residence of PW1 for the last time on 04.07.2023.

37. Accused would argue that a medical examination of PW1 immediately after the alleged detection of her with the accused would have proved the genuineness or otherwise of the claim of sexual assault on her by the accused and the absence of such an exercise will show that the entire case of the Prosecution is false & concocted. But as noted earlier, PW1 who was in love-affair with the accused was not ready to disclose the penetrative sexual assault on her by the accused when her mother had found her in the night of 04.07.2023 with the accused in the bathroom and it was only on 14.07.2023 that she became prepared to reveal the actual incidents to the Police. In the above circumstances, the absence of medical examination of PW1 even before such a disclosure on the incidents by PW1 is not practically possible and hence cannot form a circumstance adverse to the Prosecution.

38. As noted earlier, the only evidence available to establish the alleged repeated penetrative sexual assault on PW1 by the accused is the solitary deposition of PW1. It is now settled that conviction of accused in rape case is possible based on the solitary deposition of the Prosecutrix and no

corroboration is necessary, if the evidence of the Prosecutrix is trustworthy. (See **State of HP V. Asharam (AIR 2006 SC 381)**). It is also held that corroboration as a condition for Judicial reliance on the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given circumstances. In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (AIR 1983 SC 753)** the Apex Court pointed out that in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury.

39. Generally speaking, witnesses may be classified into 3 categories, namely: (i) wholly reliable (ii) wholly unreliable (iii) Neither wholly reliable nor wholly unreliable. In the case of categories (i) and (ii) the Court should have no difficulty in coming to a conclusion about the credibility or otherwise of the witness. It is with regard to the 3rd category of witnesses that the Court will have to be circumspect and will have to look for corroboration in material particulars by way of direct or circumstantial evidence. (See **Vadivelu Thevar v. State of Madras - AIR 1957 SC 614**).

40. In **Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21**, the Apex Court has held that “for branding a witness as sterling, the Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. What is relevant is the truthfulness of the statement made by such a witness and its consistency right from the starting point till the end 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. The said version should consistently match with the version of every other witnesses. The version of the witness on the core spectrum of the crime should remain intact while all other attendant materials, namely oral, documentary and material object 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 material for holding the offender guilty of the charge alleged”.

41. So, it is settled that, if evidence of the witness is of sterling character, no corroboration is required to accept the same. A sterling witness should be of a very high quality and caliber whose version should be unassailable. It should have

the consistency 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. There should not be any prevarication in the version of such a witness. Now, the question is whether PW1 is a sterling witness and hence her testimony on the incidents alleged by her can be accepted as reliable, even without any corroboration. The question corollary is whether the accused had succeeded in rebutting the presumption available against him u/S. 29 of the PoCSO Act.

42. The deposition of PW1 is specific to the effect that she who got acquainted with the accused while she was studying in the 7th standard had fell in love with him and from May 2023 till 04.07.2023, the accused at the bathroom of her residence had subjected her with penetrative sexual assault on 7-8 nights by inserting his penis in to her vagina. So also, the mother of PW1 as PW2 and her brother as PW13 have deposed that they found PW1 with the accused in a night before the lodging of the complaint in the bathroom and consequently this case had been filed.

43. Though, the accused had subjected the said witnesses with lengthy cross-examination, nothing had been brought out to discredit them or to disbelieve their above version. On the other hand, the testimonies of the said witnesses even after the test of cross-examination are still worth enough to inspire the confidence of the Court to believe them. Accused could not bring out any circumstance in which the said witnesses should depose against him by raising false allegations, which has the ultimate effect of tarnishing the image of PW1 who was then aged only 16 years, bringing disgrace to the entire family and affecting the future of PW1.

44. Accused would argue that the Prosecution had suppressed the best evidence in the case in the form of the telephone messages between the accused & PW1 and the same will make the case of the Prosecution untrustworthy. Reason for the argument is that PW1 has deposed that the accused used to call her and sent messages to her in the mobile-phone of her mother right from her study in the 8th standard and he used to send messages when he came to her residence before committing penetrative sexual assault on her.

45. Argument of the accused is that an examination of the mobile-phone of the mother of PW1 would have proved the above claim of PW1 and absence of the same is fatal to the Prosecution. It is also argued by the accused that the tower-location of the mobile-phone of the accused would have proved the presence of the accused at the place of occurrence at the relevant time, if at all the case of the Prosecution was genuine.

46. It is true that the examination of the mobile-phone of the mother of PW1 and a forensic test on the same would have brought out more evidence in the case on the offences alleged, especially when PW1 deposed that the accused had sent messages to her in the said phone as above. Admittedly, the said mobile-phone of the mother of PW1 or that of the accused were not seized for the case and as such no forensic report is available on the same.

47. But the mere fact that the investigating agency had omitted or failed to seize the mobile-phones of the mother of PW1 or the accused alone is not a reason to disbelieve PW1 and thereby to discard the entire Prosecution case. The accused did not care to put any question on this aspect to PW1, PW2 or the Investigating Officer, who was examined in the case as PW15. So also, there is nothing available to show that the mobile-phone of PW1 was having the messages sent to PW1 by the accused, as on the time of registration of this case and no question was put by the accused in that regard also, while cross examining the Prosecution witnesses. In the absence of cross examining the witnesses on the said aspects and without obtaining their explanation on the same, this Court is of the view that the accused cannot make use of the above latches on the part of the investigating officer to seize the mobile-phones and to subject the same with forensic examination.

48. Even otherwise, the failure or latches on the part of the Investigating agency in the collection of evidence alone cannot affect the Prosecution case, adversely. In **State of Panjab V. Gurmith Singh (1996 KHC 711)**, the Apex Court has held that, if the Investigating Officer did not conduct the Investigation properly or was negligent in it, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an Investigating Officer could not affect the credibility of the statement of the prosecutrix.

49. Another ground of attack on the Prosecution case by the accused is based on some confusion regarding the seizure of the motorcycle owned by the accused for this case. According to PW15, the Bullet motor cycle of the accused had been seized under a mahazar and the vehicle was produced before the Court. He also identified Ext.P4 as the RC particulars of the above vehicle in the name of the accused. But no such mahazar is seen produced in the case and PW15 has admitted that the motorcycle of the accused was seized by the Police on 11.07.2023, even before the registration of this case for the absence of insurance coverage and the vehicle was already kept in the premises of the Police Station.

50. Argument of the accused is that the custody of the motorcycle of the accused with the Police, even before the registration of this case will make the entire case of the Prosecution spurious. But PW15 has deposed that the vehicle was taken in to custody for the failure to pay the insurance premium and this Court finds it difficult to find any abnormality in it. Moreover, the Police had seized the vehicle as the one in which the accused had reached near the place of occurrence. In fact, PW1, PW2 or PW13 have no case that they found the accused reaching the place of occurrence in the above vehicle and no question was put on this aspect to the witnesses by the Prosecution or the accused. It is only a routine for the Police to seize the vehicle of the accused involved in a PoCSO case and here also the seizure of the vehicle of the accused is having not much relevance to the context of the case.

51. It is true that apart from the deposition of PW1, there is no other material to prove that the sexual intercourse between the accused & PW1 was forceful or against her consent and there is no evidence to prove that PW1 had resisted the same. In fact, the deposition of PW1 is that she had allowed the accused to enter in to the bathroom and had sexual intercourse with him without any protest. It has also come out that PW1 did not disclose the sexual intercourse with the accused at the 1st instance when she was found by her mother & others during night in the bathroom along with the accused.

52. PW1 also deposed that the accused had sexual intercourse with her by offering to marry and look after her. Accused would argue that all these materials would show that the sexual intercourse, even if occurred between

the accused & PW1, was only with the consent of PW1. But the question, whether the sexual intercourse between the accused & PW1 was forceful or against her consent or willingness has no relevance in this case, since it has come out that PW1 was aged 16 years and thus not competent to give consent for sexual intercourse.

53. It is seen that the accused is not having a consistent defence version in the case and he was having different versions at different points of time, during the trial of the case. At the time of cross-examining PW1, his stand was that PW1 had raised false allegation of sexual assault by the accused due to hallucination by viewing bad-cinemas and the case was filed to prevent the accused from going to gulf-countries. While cross-examining PW2, his suggestion was that this case had been foisted to prevent the accused from going to gulf-countries and to extract money from him.

54. In his statement u/S.313(1)(b) Cr.P.C, the accused came up with a new defence that he was not available at the place of occurrence as on the dates of occurrence since he was in gulf-countries. So also, he raised a new contention that PW1 was not even acquainted to him. Further he introduced a new version that he was undergoing treatment for head-injury, sustained in a motor accident wherein he cannot speak well for the missing of teeth and is unable to do work properly. While cross examining PW15, the accused went one more step ahead to suggest that he is not normal after the accident.

55. Accused had marked Exts.D1 to D3, the scene mahazar, medical certificate and the final report in Crime No.863/2022 of Pattambi Police Station regarding an accident occurred on 06.12.2022, involving the motor cycle of the accused and a lorry wherein the accused had sustained some injury. Ext.D4 is the copy of the petition in OP.(MP).No.224/2023 filed by the accused before the MACT, Ottappalam, seeking compensation for the injury sustained in the above motor accident. As per the above records, it is stated that the accused had sustained fracture to his nasal bone and loss of teeth and he had been treated as inpatient in the Hospital from 07.12.2022 to 09.12.2022.

56. Even after hearing the counsel for the accused at length, this Court could not understand the real purpose of marking the above documents and it appears that the accused is attempting to canvas an argument that he was

ailing from the injuries sustained in the accident and hence could not have committed the offences alleged. But the date of occurrence of the accident in which the accused sustained injury was on 06.12.2022 and the offences alleged in this case had occurred in between May 2023 & 04.07.2023. As noted earlier, PW1 had sustained injuries in the form of fracture to his nasal bone and loss of teeth and he was treated in the hospital only till 09.12.2022.

57. There is nothing to show that the accused sustained head injury and suffered any mental illness due to the accident. At any rate, the accused had no such case while cross-examining PW1, PW2 & PW13 and as noted earlier, it was only while answering the questioning u/S.313(1)(b) Cr.P.C that the accused had come up with such a defence. In the above circumstance, this Court finds that the accused could not succeed in establishing that he was suffering any mental or physical ailment due to the motor accident occurred on 06.12.2022 and hence was unable to commit the offences alleged against him.

58. It is normally unbelievable that a girl-child will raise false allegation of sexual assault on her, which has the ultimate effect of destroying her own dignity & pride by making herself open to the public criticism & ostracism and thereby losing the prospects in her future life, in all respect. Apex Court in State of **Maharashtra Vs. Chandraprakash Kewal Chand Jain (1990 KHC 737)** has observed that a prosecutrix of sexual offence cannot be put on par with an accomplice and the Court while trying the offence of rape especially on minors should not ignore the psychology of an Indian woman belonging to the traditional orthodox Society. It is also held by the Apex Court that rarely will a girl in India will make false allegation of sexual assault, since the same will adversely affect her future & career and also the dignity of her family.

59. Though the above observations were made 36 years back, with regard to women from rural, unsophisticated Society, the same is squarely applicable in the case of PW1 also, while considering the contention of the accused that this case has been foisted by her. It has to be appreciated that PW1 who is aged 16 years has come forward to make disclosure on the sexual assault on her by the accused, at the risk of her pride and dignity. It is quite unbelievable and not appealing to common sense that PW1 had raised the

allegation of repeated penetrative sexual assault on her by the accused due to any hallucination or to prevent the accused from going to gulf-countries.

60. This Court has already found that PW1 who was in love-affair with the accused was reluctant to disclose the incidents of penetrative sexual assault on her by the accused at the first instance when she was found with the accused in the bathroom by her family-members in odd hours of night. The said attitude of PW1 will also justify the delay in lodging the complaint only on 14.07.2023, even when PW1 along with the accused was found by her relatives as above on 04.07.2023 during night.

61. In this regard, the following words of the Apex Court in **State of Punjab v. Gurbit Singh and Ors (1996 SCC (2) 384)** are relevant:- 'The Courts cannot over-look the fact that in sexual offences delay in launching of the FIR can be due to variety of reasons, particularly the reluctance of the Prosecutrix or her family members to go through the Police and complain about the incident which concerns the reputation of the Prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual assault is generally launched'. In **Ramadas V. State of Maharashtra (2007KHC 3044)**, the Apex Court has held that mere delay in lodging the report may not itself be fatal to the Prosecution, but the delay has to be considered in the background of the facts and circumstances in each case.

62. Appreciation of evidence of child witness is a tricky affair and conflicting considerations come into play in the evaluation in the testimony of such a witness. Generally, children are assumed to bear no ill-will and malice against any one and as such they cannot be expected to foist another. At the same time, there is likelihood of a child-witness being tutored. Judicial approach advised by the Higher Courts in evaluation of the evidence of a child witness is the exercise of care and caution. See **Sasi v. state of Kerala (2022 KHC 2378); State of UP v. Krishna Master (AIR 2010 SC 3071) and State of M.P. v.Ramesh and another (2011) 4 SCC 786**).

63. This Court has already analysed the evidence of PW1 to find that the same even after the test of cross examination by the accused is fully worth enough to inspire the confidence of the Court to believe that on several days during night, in between May 2023 & 04.07.2023, the accused had subjected

PW1 with penetrative sexual assault by inserting his penis in to her vagina at the bathroom of her residence. The said evidence of PW1 stands corroborated by the evidence of her mother as PW2 & brother as PW13 that they found PW1 with the accused in the bathroom in odd hours of night and also by the medical evidence in the case. Cross-examination of the witness by the accused has not brought out anything to discredit them or to disbelieve their version.

64. No doubt, PW1 who got a consistent case from the very FIS in the case, which she stuck on during her statements before the Doctor as well as the Magistrate and also while making her deposition before this Court is a sterling witness. Naturally the presumption u/S.29 of the PoCSO Act will come in to application and the accused has miserably failed to prove or even probablise his defence version and thereby to rebut the presumption. In fact, the accused has even failed to set out a defence version which is sufficient to convince an ordinary prudent man.

65. Net result of the above discussion on the materials available is that the same will lead this Court to the irresistible conclusion that during several nights from May 2023 till 04.07.2023, the accused had subjected PW1 with repeated penetrative sexual assault by inserting his penis in to her vagina at the bathroom of her residence. Naturally the said sexual intercourse by the accused with PW1 who was aged only 16 years, will constitute the offence of rape as defined u/S. 375(a) IPC as well as penetrative sexual assault u/S. 3(a) of the PoCSO Act and is punishable u/S. 376(2)(n) of IPC and u/S.6 r/w S.5(l) of the PoCSO Act. The point is answered accordingly.

66. **Point No.iv:-** In the result, the accused is found guilty of the offences punishable u/S. 376(2)(n) of IPC and also u/S.6 r/w S.5(l) of the PoCSO Act and he is convicted of the said offences u/S.235 Cr.P.C. The accused is found not guilty of the offences punishable u/S. 450 IPC and he is acquitted of the said offences u/S. 235(1) of the Cr.P.C.

(Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open Court on this the 12th day of May, 2026).

sd/-
Dinesh M Pillai
Special Judge.

12.05.2026 3.00pm

67. The accused is heard on the question of sentence u/S. 235(2) Cr.P.C. He stated that he is having his father who is a heart patient, his mother & unmarried sister in his family and he had been maintaining the family through his job as an interior-designer. The accused who studied Plus-two & Accountancy had joined the job, for maintaining his family. The accused who sustained serious injuries in a motor accident in December 2022 is still suffering the ailments therefrom.

68. Considering the nature of the offences and sentence provided as punishment, the benevolent provisions of the Probation of Offenders Act have no application in the case. The Special Public Prosecutor presses for maximum punishment and the defence counsel pleads for maximum leniency in the sentence.

69. The acts proved against the accused constitutes the offence punishable u/S.6 r/w S.5(l) of the PoCSO Act and also u/S. 376(2)(n) IPC. S.42 of the PoCSO Act provides that where an act or omission constitutes an offence punishable under the PoCSO Act and also under the IPC, then the offender shall be liable to punishment only under one of the said Acts, which is greater in degree. S.6 r/w S.5(l) of the PoCSO Act provides for the punishment greater in degree and hence punishment under the same shall be awarded and separate sentence S.376(2)(n) of IPC is avoided.

70. The accused is convicted for the offence in the form of repeated penetrative sexual assault on a 16-year-old girl, at the bathroom of her residence. However, it has come out that the accused and PW1 were in love affair and considering the facts & circumstances involved and also the social and economic back-ground of the accused and that he is the sole breadwinner of his family and has no criminal antecedents, some clemency has to be shown to the accused with regard to the sentence. It appears that there is every chance of his reformation.

71. On weighing the aggravating and mitigating circumstances, some leniency has to be shown to him in the matter of punishment. The minimum

punishment provided by the relevant penal provision would suffice to meet the ends of Justice. His indigency is also considered while fixing the fine amount.

72. There is nothing to show that PW1 is suffering any trauma of the offence involved in the case and that she needs any rehabilitation or financial aid from the public exchequer. In the above circumstance, this Court finds it not necessary to compensate PW1 at the expense of the State by invoking power u/s.33(8) of the POCSO Act coupled with R.9(2) of PoCSO Rules, 2020 and S.357A Cr.PC.

73. In the result:-

- 1) *The convict is sentenced to undergo rigorous imprisonment for 20 (twenty) years and to pay a fine of ₹ 30,000/- (rupees Thirty thousand only) for the offence punishable u/S. 6 r/w. S. 5(l) of the PoCSO Act. In default in paying the fine, he shall undergo Rigorous Imprisonment for a further period of six (6) months;*
- 2) *No separate punishment is awarded for the offence u/S. 376(2)(n) IPC for the bar u/S 42 of the PoCSO Act.*
- 3) *The convict is allowed set off u/S.428 of Cr.PC for the period of detention already undergone by him as an under-trial prisoner from 14.07.2023 to 23.08.2023 against the substantive sentence of imprisonment;*
- 4) *If the fine amount is paid or realised, as ordered above, it shall be released to the victim as compensation u/S.357(1)(b) Cr.PC.*

(Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open Court, this the 12th day of May, 2026)

Sd/-
Dinesh M Pillai
Special Judge.

APPENDIX**A. Prosecution Witness**

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
PW1/CW1	---	Victim
PW2/CW2	---	Mother of victim
PW3/CW7	Dr.Anumol K.K	CMO, THQH Pattambi
PW4/CW8	Dr.Fathimath Shouheela	CMO, THQH Pattambi
PW5/CW18	Reghu.K.B	Joint RTO, Pattambi
PW6/CW17	Harilal D.B	Asst.Secretary, Koppam Panchayath
PW7/CW16	Asharaf A	Registrar(Birth and Death), Pattambi Municipality
PW8/CW19	Ali A	Village Officer, Koppam
PW9/CW12	Rajesh M	CPO, Koppam P.S
PW10/CW14	Ranjith C.R	SCPO, Koppam P.S
PW11/CW13	Salma K	SCPO, Koppam P.S
PW12/CW20	P. Raveendran	Headmaster, AUP School, Mannemkode
PW13/CW4	--	Brother of victim
PW14/CW5	--	Attester to seizure mahazar
PW15/CW23	Rajesh M B	Sub Inspector, Koppam P.S

B. Prosecution Exhibits

Sl.No	Exhibit Number	Date	Description
1	Exit.P1/PW1	14.07.2023	FIS
2	Exit.P2/PW1	14.07.2023	MLR
3	Exit. P3/PW4	14.07.2023	Potency certificate
4	Exit. P4/PW5	03.08.2023	Vehicle particulars
5	Exit. P5/PW6	22.07.2023	Ownership certificate
6	Exit. P6/PW7	24.07.2023	Birth register extract
7	Exit. P7/PW8	05.08.2023	Scene plan
8	Exit. P8/PW9	14.07.2023	Seizure mahazar
9	Exit. P9/PW11	15.07.2023	Seizure mahazar
10	Exit. P10/PW12	--	Admission register extract
11	Exit. P11/PW12	---	Copy of admission register
	Exit.P11(a)/PW12	---	Relevant entry in admission register

12	Exit. P12/PW14	15.07.2023	Scene mahazar
13	Exit. P13/PW15	14.07.2023	FIR
14	Exit. P14/PW15	14.07.2023	Arrest memo
15	Exit. P15/PW15	14.07.2023	Arrest intimation
16	Exit. P16/PW15	14.07.2023	Inspection memo
17	Exit. P17/PW15	14.07.2023	Address adding report of the accused
18	Exit.P18 /PW15	14.07.2023	Section adding report of the accused

C. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
--	NIL	NIL

D. Defence Exhibits

Sl.No.	Exhibit Number	Date	Description
1	Ext.D1	11.12.2022	Copy of scene mahazar
2	Ext.D2	07.12.2022	Copy of wound certificate
3	Ext.D3	19.12.2022	Copy of final report.No.890/2022
4	Ext.D4	24.05.2023	Copy of OP(MV)No.224/2023

E. Court Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
---	NIL	NIL

F. Court Exhibits

Sl. No.	Exhibit Number	Description
---	NIL	NIL

G. Material Objects

Sl.No.	Exhibit Number	Description
	NIL	NIL

Sd/-
Dinesh M Pillai
Special Judge.

//true copy//

Dinesh M Pillai
Special Judge

Fair/Copy Judgment in
SC.No.850/2023
Dated : 12.05.2026