

IN THE FAST TRACK SPECIAL COURT, IDUKKI, PAINAVU.

Present:- Sri.T.G.Varghese, Special Judge (PoCSO Act)

Thursday the 29th day of September, 2022.

S.C.No.600/2021

(Crime No.352/2021 of Devikulam Police Station)

Complainant : State-represented by the Inspector of Police,
Devikulam.

Accused : By Adv.Sri.Saneesh.S.S. Special Public Prosecutor
Manikandan, aged 40/21, S/o Subramani, Ward
No.7/161, Devikulam Grama Panchayath,
KDH quarters, Aruvikkad Estate Factory
Division, KDH Village.

By Adv:-Sri. Joby George

Offence : U/s 376(1)(2)(f)(3) Sec.6 r/w 5(l)(n), 8 r/w 7, 10
r/w 9(m)(l)(n) of PoCSO Act 12 and Section
75 of JJ Act.

Plea : Not guilty.

Finding : Not guilty.

Sentence or Order : Accused is acquitted U/s 235(2) Cr.P.C.

Description of Accused

Name	Father's Name	Occupation	Religion/ Caste	Residence	Age
Manikandan	Subramani	Cooly	Hindu	Devikulam	40/21

Occurrence	Report	Apprehension	Release on bail	Committal	Commencement of trial	Close of trial	Sentence or order	Copy given to accused	Reason for delay
On a day in the year Nov. 2020	12/11/21	07/07/21	11/10/21	--	22/3/22	26/9/22	29/9/22	29/9/22	--

This case, having been heard on this 26/09/2022 the court on this 29/09/2022 delivered the following:-

JUDGMENT

This is a case charged by the SHO, Devikolam Police Station in crime No 352/2021 against the accused alleging commission of offenses U/s 376 (1), 376 (2) (f) 376 (3) IPC and under sections 5 (l), 5 (n) r/w section 6, 9 (m), 9 (n) r/w section 10, 7 r/w S.8, of PoCSO Act and under section 75 of JJ Act.

2. The prosecution case is briefly stated as follows: CW1 is the victim. She was aged below 12 years at the time of alleged commission of offenses. She is the biological daughter of the accused. CW1, her grandmother, grand father and the accused were residing in the house bearing door No. V11/161 of Devikulam Grama Panchayath situated in Aruvikkad Estate factory division, KDH village. From the time when the CW1 was studying in the 7th std, accused committed penetrative as well as non penetrative sexual assaults on the CW1 by putting his male

genital organ in between the legs of the Cw1, besides rubbing the same on her vagina and thereby accused is alleged to have committed the said offenses.

3. CW24 completed investigation and filed final report before the Hon'ble Special Court for PoCSO cases, Thodupuzha. The Hon'ble Special Court took cognizance with respect to the offenses and issued summons to the accused.

4. When the accused entered appearance, they were served with copies of the documents U/s 207 Cr.P.C. and the court made over the case to this court for trial after releasing the accused person on bail.

5. The case was opened by hearing the prosecutor U/s 226 Cr.P.C. When the accused entered appearance, both the prosecution and the counsel for the accused were heard on the question of framing charges and upon finding materials for framing charges, this court framed charges for the offenses u/s 376 (2) n, 376 (2) (f) 376 (3), 354 Ai IPC and under section 5 (l), 5 (n), 5 (m) r/w section 6, 9 (m), 9 (n), 9 (l) r/w section 10 of PoCSO Act and under section 75 of JJ Act, read over and explained to the accused. He pleaded not guilty to the charges and wanted to be tried.

6. Prosecution evidence consists of oral evidences of Pws 1 to Pw22 and documentary evidence marked as exhibits P1 to P8, P8 (a), P8 (b), P9 to P19. After cross examination, prosecution evidence was closed.

7. CW1 examined as Pw13 is the victim girl. The status roles of other witnesses and particulars relating to documents will be discussed in the further part of the judgment.

8. The accused was questioned u/s 313(1)b Cr.P.C. with reference to incriminating circumstances. Accused denied all the incriminating circumstances put to him except that the Pw13 is his own daughter and stated that this is a foisted case. Accused filed a separate statement as part of answering the questions U/S 313 (l) (b) Crpc contending as follows- This case is a foisted one. His wife committed suicide two years ago. Due to the death of his wife, he fell into a depressive mood. During this time the victim became very much addicted to mobile phone use and also started visiting the near by house and spending time till 10 pm. This created a discontent in him. Besides, the victim girl had the habit of interacting with one Vijayakumar and though the accused repeatedly warned against engaging in undesirable chats and interactions, she continued the same. Hence accused sent away the victim along with her grandmother (Pw20) out of the house requiring the grand mother to dump the victim at any place of her choice. On account of enmity arising from the act of sending her away and in the expectation of getting accommodation under CWC, she filed false case against him.

9. Both the counsels for the accused and the learned prosecutor were heard U/s 232 Cr.P.C.

10. There are no materials to record an order of acquittal U/s 232 Cr.P.C. Though the accused was called upon to enter upon his defense evidence, he did not adduce any oral or documentary evidence.

11. This court has heard the learned prosecutor and the counsel for the accused U/s 234 Cr.P.C and perused the argument note and the decision reported in 2018 Legal Eagle (P&H) 152.

12. Points for consideration.

1. Was the victim a child as defined U/S 2(d) of Pocso Act when the Pw13 was subjected to penetrative and non penetrative sexual assault as alleged ?

2. Did the accused commit rape on PW13 repeatedly and thereby commit offenses U/s 376 (2) n IPC ?

3. Did the accused commit rape on PW13, who is the biological daughter of the accused and thereby commit offenses U/S 376 2 (f) IPC as alleged ?

4. Did the accused commit rape on PW13 who is aged below 16 and thereby commit offenses U/S 376 (2)i IPC or alternatively U/S 376 (3) IPC as alleged ?

5. Did the accused commit aggravated form of penetrative Sexual assault on the PW13 repeatedly and thereby commit offenses U/S 5 (l) r/w 6 of PoCSO Act?

6. Did the accused commit aggravated form of penetrative sexual assault on the PW13 who is aged below 12 and thereby commit offense under section 5 (m) r/w 6 of Pocso Act.

7. Did the accused commit aggravated form penetrative sexual assault on PW13 who is the biological daughter of accused while they

were residing under the same roof and thereby commit offense U/s 5 (n) r/w 6 of PoCSO Act.

8. Did the accused commit sexual assault on PW13 who is the biological daughter of accused while they were residing under the same roof and thereby commit offense U/s 9 (n) r/w 10 of PoCSO Act.

9. Did the accused commit sexual assault repeatedly on PW13 who is the biological daughter of accused and thereby commit offense U/s 9 (n) r/w 10 of PoCSO Act.

10. Did the accused commit sexual assault on PW13 who is aged below 12 and thereby commit offense U/s 9 (m) r/w 10 of PoCSO Act.

11. Did the accused kiss on the vaginal region and press on the breast of PW13 and thereby commit offense U/s 354 A(i) IPC.

12. Did the accused commit offense U/s 75 of JJ Act 2015 as alleged?

13. If so, what is the order as to sentences and compensations?

13. Point-No 1:-

This point relates to the age of the victim. PW1 is the paternal grand father of PW13. He conceded that accused is his son and that PW13 is the biological daughter of the accused. He admitted his signature to be on Ext. P2 Scene Mahazar and Ext.P3 mahazer under which the dresses worn by the accused was taken in to custody.

14. PW2 is the maternal grandmother of PW13 . She says that her daughter Menaka committed suicide by consuming poison. She also does not have knowledge about the date on which the girl was born.

15. PW11 is the gramapanchayat secretary of Adimali Grama panchayath. He says that the girl was born on 17.09.2008 to one Manikandan s. and Menaka with address Ellappetty Estate K.K. division Munnar. PW11 proved Ext.P8 which shows the girl as having born on 17.09.2008. PW13 is the victim girl. She says that she was born on 17.09.2008. PW22 produced the original Birth and Death Register and proved Ext.P8 (b) certified extract which shows that the girl was born on 18.09.2008. (There is deference of one day) As per the prosecution case, the alleged sexual assault started when the girl was studying in 7th standard and continued same till the Ext.P10 was lodged on 7.07.2021. Hence, the evidences referred to above reveal that the PW13 was a child when the alleged sexual assault took place. The point is accordingly answered in favor of the prosecution.

16. Point 2 to 11

PW1 is the paternal grand father of the PW13. He did not fully support the case despite being put with questions permissible in cross examination. PW2 is the maternal grandmother of PW13. PW3 is a neighbor to house of the accused who was examined to prove that the parents of the accused, accused and PW13 were residing in the Layam house situated in Aruvikkara estate factory Division. Pw4 is a team member under Munnar child line . PW4 is working as a co-ordinator in Munnar child line. PW6, the factory officer Aruvikkad Estate was examined to prove that the accused was working in the factory and was residing in the factory quarters. PW8 Devikulam Grama Panchayat secretary was examined to prove the ownership of Layam No. bearing 7/161 with the MD KDH. He proved Ext.P4. PW8 KDH village officer

proved Ext.P5 scene mahazar. PW9 Estate manager proved Ext.P6 and stated that the quarters bearing door No. 7/161 of was allotted to one Subryamanyan who is the father of accused. PW10 examined the victim on 7/7/2021 and issued Ext.P7. She says that there was no evidence of penetration or injury on the vagina of Pw3. PW12 conducted genital examination on the accused and issued Ext P9 certificate certifying that there is nothing to suggest that he is incapable of performing sexual act. PW13 the victim proved statement recorded U/S 164 Crpc and P10 recorded U/S 154 CRPC. PW14 is a neighbor to the house of the accused and he says that PW20 and PW13 came to his house and resided at his house. PW15 CPO recorded Ext.P10 from the victim and produced before the SHO. The statement of the victim was recorded in the presence of PW17. PW18 conducted main part of the investigation. PW19 filed final report. PW20 is the paternal grandmother of PW 13. She was examined to prove res gueste evidence. Pw21 sub Inspector registered exhibit P15 FIR, prepared the scene mahazar marked as exhibit P2, recorded statements from the witnesses and conducted main part of the investigation.

17. The first question to be decided is as to whether the accused is the biological father of the victim girl. In this regard, we have reliable oral evidences from the Pw13, Pw1, Pw2 and Pw20 and admission from the accused during his questioning under section 313 (b) Crpc, besides documentary evidence, which show that the accused is the biological father of the victim. Notably, the versions of witnesses relating to the fatherhood of the victim with the accused has not been challenged in

cross examination. Accordingly, this court is of the view that the accused is the biological father of the victim.

18. The next question to be decided is as to whether the accused subjected the PW13, herein after referred to as 'the victim' to penetrative and non penetrative sexual assault. In this regard, we are essentially to relay on the evidence PW13 along with other circumstantial evidences, because we cannot expect direct witnesses to a sexual act or attempted sexual act between a biological father and a minor girl aged about 12 years within the four walls of their house when the other occupants of the house were away from the house.

19. The counsel for the accused has filed an argument note reciting his arguments one by one. A court has to deal with those arguments which have legal significance and relevance with respect to the facts elicited during the chief and cross examination. The counsel has submitted that there is a long and unexplained delay in reporting the matter to the police by lodging Ext. P10 FIS. The counsel further submitted that after the wife of the accused committed suicide, accused was emotionally distressed and when he found that the victim was having addiction to mobile use and developed an undesirable habit of spending time even up to 10 pm almost everyday without any necessity at the house of a neighbor boy, he scolded her. On account of that reason she filed a false case against him. The counsel further submitted that even if the entire prosecution case was taken as gospel truth, It would not attract the charged serious offenses as the allegations go to the only extent that the accused had put his penis between her legs, which act is not a penetrative sexual assault. He

further submitted that the medical evidences tendered by the doctor (Pw10) does not reveal any ruptured hymen and according to the doctor, there is no evidence of penetration. The evidence of PW13 and other material witnesses are fully riddled with contradictions and omission amounting to contradiction.

20. Countering these arguments, prosecutor submitted that there are no contradictions and omissions amounting to contradictions with respect to material part of the case. He further submitted the delay is fully and satisfactorily explained. The fact that medical evidence does not prove penetration will not help the defense as the prosecution itself has no case that there was any deep penetration in to the vagina so as to cause rupture of hymen. Similarly, absence of injury on the private part of the girl will not help the prosecution. The alleged delay of one month in reporting the matter to the police after the last round of sexual assault is quiet natural because of the particular nature of the allegations.

21. Now, this court may examine the evidence of the victim. Victim in his chief examination says that when she was studying in the 7th std, accused touched her with bad intention. But, it became a subject of criminal case only when she reached 9th std. She further says that during the month of November 2020, she was alone at her house at Aruvikkadu estate. Her father accused was at the house. Her patti (Pw20) had gone to the church. At that time accused approached the victim and instructed her to remove her dress. she refused. In the meanwhile accused pressed on her breast. Thereafter, accused raised her nighty and put his male genital organ in between her thighs.

Immediately, she pushed him aside. Victim further stated that accused had altogether subjected her to such types of acts for three times. She proved exhibit P10 and exhibit P11.

22. Section 29 of the POCSO Act says that where a person is prosecuted for committing or abetting or attempting to commit any offense under section 3,5,7 and section 9 of Pocso Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offense, as the case may be, unless the contrary is provided. Section 30 of the said Act says that in any prosecution for any offense under POCSO Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state, but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offense in that prosecution. Sub section 2 of the said provision provides that a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation to the said section defines culpable mental state as including intention, motive, knowledge of a fact and the belief in or reason to believe a fact.

23. In the decision reported in 2020 (6) KHC page 546 (Justin @ Renjith and Others and Union of India and others) hon'ble Kerala High court has held that even though the section 30 (2) of the Pocso Act says that in order to rebut the presumption under section 29, proof beyond reasonable doubt is required, the hon'ble High Court, relaying on various binding precedents/ decisions rendered by Hon'ble

supreme Court and other High Courts held that presumption under section 29 of the Pocso Act can be rebutted by evidence on part with the standard of of preponderance of probability. In the very same decision, the hon'ble Kerala High court has made certain crucial observations in paragraph 74 of the judgment as to how and by what standard of evidence the foundational facts are to be established as a prelude to invoking section 29 of Pocso Act. Hon'ble High Court held that foundational facts in a PoCSO case include the proof that the victim is the child, that alleged incident has taken place, that the accused has committed the offense and when ever physical injury is alleged to have caused, it has to be established with supporting medical evidence .

24. Similarly, in the very same decision, the hon'ble Kerala High court has also made certain crucial observations in paragraph 74 of the judgment as to how to rebut the legal presumption under section 29 of Pocso Act established by the prosecution on proof of foundational facts. The observations demonstrate that If the foundational facts of the prosecution case is laid by the prosecution by leading legally admissible evidence, the duty of the accused is to rebut it, by establishing from the evidence on record that he has not committed the offense. This can be achieved by eliciting patent absurdities or inherent infirmities in the version of prosecution or in the oral testimonies of witnesses or the existence of enmity between the accused and victim or bringing out the peculiar features of the particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favor, or bringing out material contradictions and omissions in the

evidence of witnesses, or establishing that the victim and witnesses are unreliable or that there is considerable unexplained delay in lodging the complaint or that the victim is not a child. Accused may reach that end by discrediting and demolishing prosecution witnesses by effective cross examination. Only if he is not fully able to do so, he needs only to rebut the presumption by leading defense evidence. Still, whether to offer himself as a witness is the choice of the accused. Fundamentally – the process of adducing evidence in a PoCSO case does not substantially differ from any other criminal trial; except that in a trial under the PoCSO Act, the prosecution is additionally armed with the presumptions and the corresponding obligation on the accused to rebut the presumption.

25. Now the question arises for consideration is as to whether the testimonies of the victim during her chief examination is sufficient to invoke the section 29 of the Pocso Act. It is true that no medical evidence is forth coming to prove penetration. But, it is worth noting here that the victim herself has no case that the accused had inserted his male genital organ in to her vagina. Hence, we can not expect a torn hymen or injury inside or near the vicinity of the vagina of the victim. In the particular facts and circumstances of this case, this court is of the view that the sole testimony of the victim to the effect that her father had put or rubbed his genital organ in between her thighs or legs is sufficient to attract the operation and play of section 29 of Pocso Act.

26. The next question requiring a closer scrutiny is as to whether the defense has been successful in discharging the statutory presumptions in relation to charged Pocso offenses and whether the

prosecution has been further successful in proving the charged offenses under the Penal code independent of presumptions. For examining this aspect, we need a deeper analysis of the facts elicited during the cross examination of the victim. During the cross examination of the victim, the following facts were elicited. The victim conceded that she was used to go to the house of Balu who is the father of the Pw14. But she was not in the habit of spending time till late night. She had got a mobile phone from her mother's house for online study purpose. On Vijayakumar aged about 18 years was staying in the house of Balu. Accused had advised the victim not to visit that house. Accused had also advised not to use the mobile phone continuously. It was further elicited that accused had sent away the victim and her paternal grand mother (Pw20) out of the house on the previous night of lodging exhibit P1 with the police and that both of them stayed at the house of Balu. It was further brought out that Pw13 first informed about the sexual assault to Pw14 and later to the Pw20. The last round of sexual assault took place about one month before the lodging of exhibit P10 with the police. She further conceded that she had the child line phone number with her from the time when she was studying in the 7th std and that she had a fair amount of idea about what is a good touch and what is a bad touch. The suggestion that the victim filed this false case with a view to getting free accommodation from the child line was denied by her as untrue. During the re-examination prosecutor got clarified that she has had no difficulties to go to her mother's house and stay there. She added that her maternal grand parents and uncles were ready to look after her. She further stated that as the police did not ask the reason for the delay in lodging

complaint, she did not reveal anything about the delay. To the court question as to whether she was prepared to go and stay at the house of accused in case the accused vacated from the house and gave vacant possession to her, she replied that she is not willing. To the further court question as to what was her attitude to the accused before the sexual assault, she replied that she had a loving attitude. To the court question as to what her attitude was to the accused after the sexual assault, she replied that she has a hating attitude.

27. It is now well settled that testimonies of child victim of sexual abuse can be believed even without corroboration and corroboration is not mandatory except in exceptional cases. Hon'ble Supreme Court in in the decision reported in AIR 1996 (SC) page 1393 held that in cases involving rape, corroboration is necessary only in the presence of compelling reasons. Corroborative evidence is not an imperative component in every case of rape. Courts should examine the broader probability of a case. It should not get swayed by minor contradictions or insignificant discrepancies in the statement of the victim. The testimony of prosecutrix must be appreciated in the background of the entire case. In the decision reported in 2018 (18) SCC pag 34, Hon'ble Supreme court has observed that we are conscious that courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such case with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix

inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. (see State of Punjab vs, Gurmit Singh, 1996(2)SCC 384(para 21). It was further observed that It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not over look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases

amounts to adding insult to injury. (see *Ranjit Hazarika vs. State of Assam*, 1998 KHC 1588 1998(8) SCC 635). It is also relevant to note the following observations of this Court in the case of *Raju vs. State of M.P.* 2009 KHC 4344: 2008(15) SCC 133, which read thus:-“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration”. In the decision reported in AIR 1952(SC) page 54 (para 16) Hon’ble Supreme Court held that a woman raped is not an accomplice to the crime and corroboration of evidence of child witness is not always necessary. In the decision reported in 1983 (3) SCC page 217 (para 7, 9, 11) the Hon’ble Supreme Court has

made the following observations: In Indian settings refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to the injury. In the decision n reported in 2010 (8) SCC page 191, the Hon'ble Supreme Court has made the following observations: a woman who is a victim on sexual assault is not an accomplice to the crime but is a victim to another person's lust and therefore her evidence need not be tested with the same amount of suspicion as that of an accomplice. Evidence of a victim of rape or sexual assault need not be corroborated in material particulars in all situations. Evidence of a victim of sexual offence must receive the same weight as that of an injured in the case of a physical violence.

28. In the case on hand, the victim did not complain about sexual acts being committed on her by the accused over a period of two years either to the child line or to any body else, though she had child line phone number with her and she had a fair idea about what a fair touch is and what a bad touch is. There is a delay of one month in reporting the sexual assault after the last round of sexual assault. She has not even disclosed about the reasons for such delay to the police. It is true that she did not disclose the reasons for the delay as the police did not ask her about the reasons for the delay. Any hwo, in the particular facts and circumstances of the case and keeping in mind the legal parameters set by the apex court while appreciating the evidence of an alleged rape major or minor victim, this court is of the view that it is unsafe to relay on the evidence of the victim without corroboration. Therefore, this court may examine other evidences which are of alleged corroborative nature, according to the prosecutor.

29. Pw1 is the paternal grand father of the victim. His evidence shows that Pw1 along with the victim, accused, and Pw20 (mother) were residing in the layam house at Aruvikadu estate. When the Pw1 refused to support the prosecution case further, prosecutor treated him as a hostile witness and put with questions permissible in cross examination. However, Pw1 repeated all most the same version. It is now well settled that the evidence of a hostile witness can be relayed on by the prosecution to the extent it supports the prosecution and by the defense to the extent it supports the defense (relayed on the decision reported in 2013 (4) KLJ 210 paras 19 and 20) Cross examination of the Pw1 revealed that the victim had a habit of playing game on mobile phone without attending studies. Hence the evidence of Pw1 goes to establish that the victim was residing with the accused, Pw1 and Pw20 and that she had a habit of the playing game on mobile phone without attending studies. Victim being a daughter to accused, there is nothing unusual with such a conduct of both residing under a roof. Hence the evidence of the Pw1 will not provide any helpful support to the prosecution.

29. Pw2 is the maternal grand mother of the victim. Her evidence shows that her daughter (mother of the victim) had committed suicide. Thereafter, the victim stayed initially with the Pw2 and later came to Aruvikadu estate to stay with the accused. The victim informed the Pw2 over phone during midnight of of day the following matter to the Pw2. The statement in malayalam reads as follows- 'Appa enne adichu; thottu; ninte amma ini illallo; neeyanu ullathu'. Cross examination of Pw2 shows that she did not disclose the above matter to the police. This

is a serious omission with respect to core part of her evidence. Hence, her alleged resqueste evidence stands not proved so as to corroborate the claim of the victim. The only thing that is revealed from the Pw2 is that victim had a mobile phone with her and that she was used to watch vedeos and playing games on it.

30. Pw3 is a neighbor to the Pw13. She says that Pw13, accused, and his parents were residing in the house. This evidence has no legal significance on account of the reason stated above.

31. Pw4 says that when she met the Pw13, she conveyed to her that accused was used to stay at the house after consuming liquor and that she needed shelter to reside. As the victim did not reveal about the sexual assault specifically, evidence of Pw4 also will not helpful to corroborate the testimonies of the victim. Pw5 is child line co-ordinator. He has only hearsay knowledge. Hence his evidence will not be helpful to corroborate the testimonies of the victim

32. Evidence of Pw6, a factory officer shows that the accused was a temporary staff in the factory and was residing in the quarters. This evidence also will not be helpful to corroborate the testimonies of the victim

33. Pw10 doctor examined the victim and issued exhibit P7 certifying that there is no evidence of penetration or injury on the private part of the victim. However, Pw10 disclosed the victim as having stated to her during the examination that the father accused had touched and rubbed with his penis on her thighs. This can not be treated as a resqueste. It was only a narration as to what had happened

to her. A statement to be resgeste as defined in section 6 of Evidence Act, it must have been made either immediately before the occurrence or simulteneous with the occurrence or immediately after the occurrence.

34. Pw14 is the daughter of Balu and a nieghbour to the victim. She is aged 23, and has completed B-tech graduation. Her evidence in chief examination shows that she learned from the victim and her grand mother that the accused was a drunkard and trouble maker at home, and was in the habit of quarreling with the victim and her grand mother. Due to this kind of goon like behavior, Pw20 and the victim had to come and stay at her house on a night. Pw14 has further disclosed the victim as having told her that accused had a habit of misbehaving with her. At that juncture the Pw14 informed the victim about the accomodation facilities being provided by the Child Line officials. Cross examination of the Pw14 reveals that the victim was used to stay till 10 Pm in her house in connection with doing of her home work and studies and that Pw14 was in the habit of helping her in her studies and that on those occasions the victim was not used to bring her mobile phone with her. Evidence of Pw14 further shows that when she inquired with the victim as to what had happened to her from the side of her father, she was was incessantly crying stating that she had a bad experience from her father. However, Pw14 conceded that the victim did not disclose about any specific sexually colored behavior or acts from the side of the father. To a specific court question as what Pw14 guessed

and understood from the words and body languages of the victim when the victim was disclosing about the bad acts from the side of her father, she replied that she felt those acts to be of sexual nature. She further clarified that the above disclosure was made by the victim 4 to 5 days prior to the incident of the accused driving away the victim and Pw20 during the night hours. Here, we have to note that the victim was regularly seeing and interacting with the Pw14 and despite the elaps of about 25 days since the date of last round of alleged sexual assault, she did not reveal anything about it in specific words. Hence her evidence can not be treated as resqueste.

35. Pw15 recorded exhibit P10 from the victim. Pw15 stated that the victim did not reveal to her that accused had sexually assaulted her one month prior to the lodging of exhibit P10. But the victim had told about the inappropriate behavior to the Pw14. Here also there is serious omission with respect to the core part of the prosecution case.

36. Pw20 is the paternal grand mother of the victim. Her evidence shows that Pw20, Pw1, victim and the accused were residing at the Aruvikadu estate. She deposed that the victim did not disclose about any sexual assault from the accused. Thereupon, the prosecutor with the permission of the court put with questions permissible in cross examination to the witness. However, she did not support the prosecution. During the re- examination, it was elicited that the victim was addicted to use of mobile phone and had a habit of spending time up to 9 to 10 pm in the house of Balu. In connection with this disorderly behavior, the accused was used to scold the victim. She further stated that there was an incident in which the she and the victim were driven

out of the house during night hours and the both staying at the house of the Pw14. Re-examination has substantiated that the victim had very cordial and sisterly love for P14 who is the daughter of Balu. But the victim did not reveal anything in specific terms. Hence, her evidence can not be used to corroborate the weak evidence of the victim.

37. It is very much evident from the above discussions that the evidences of other alleged material witnesses are not sufficient to corroborate the evidence of the victim. For the reasons stated above, the evidence of the victim is very weak and unreliable. It is unsafe to rely on such evidence without other inspiring and reliable corroborative evidence from independent sources. No such evidence is forthcoming. Hence, this court is of the view that the prosecution failed to prove the charged offenses beyond reasonable doubt. Accordingly, points 2 to 11 are found against the prosecution.

38. Point-12.

In view of the findings on points 2 to 11, point-no 12 does not arise for consideration.

39. In the result, the accused is not found guilty of committing offenses under sections 376 (2) n, 376 (2) (f), 376 (3), 354 A of IPC and under section 5 (l), 5 (n), 5 (m) r/w section 6, 9 (m), 9 (n), 9 (l) r/w section 10 of PoCSO Act and under section 75 of JJ Act and therefore he is acquitted under section 235 (2) Crpc and his bail bonds have been canceled,

he is set at liberty forthwith. Unmarked valueless properties, if any are directed to be destroyed after appeal period.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this 29th day of September 2022.

T.G.Varghese,
Special Judge,
Fast Track Special Court,Painavu.

APPENDIX

Witnesses examined for the prosecution:

- PW1 – Dated 09/05/2022- Subramahnyan
- PW2 — Dated 13/06/2022 - Mallika
- PW3 – Dated 14/06/2022- Balu
- PW4 – Dated 14/06/2022- Jancy Rajan
- PW5 - Dated 14/06/2022- Renjith Tom
- PW6 – Dated 14/06/2022 – Biju Joseph.
- PW7- Dated 14/06/2022 – V.S. Palswamy
- PW8- Dated 14/06/2022 – Soumini P.R
- PW9- Dated 14/06/2022 - Xaviour
- PW10- Dated 15/06/2022 – Dr.Gazia Marian Peter
- PW11- Dated 15/06/2022- Sahajan K.N
- PW12-Dated 21/06/2022 – Dr. Divya V.S
- PW13- Dated 21/06/2022- Sivaranjini
- PW14- Dated 21/06/2022- Sindhu B.
- PW15- Dated 21/06/2022- Shimi Sivan

PW16- Dated 21/06/2022- Athira P. Rajeev

PW17- Dated 21/06/2022- Bindhumol P. George

PW18- Dated 21/06/2022- Jayakumar S.

PW19- Dated 21/06/2022- Sivalal S.

PW20- Dated 05/07/2022- Annapurnima

PW21- Dated 05/07/2022- Bibin T.B

Additional Witness

PW22- Dated 05/08/2022- P.K. Satheesh Kumar

Exhibits marked for the prosecution:

Ext.P1 – 161 Statement of PW1 dated 08/07/2021.

Ext.P2 – Scene mahazar dated 08/07/2021.

Ext.P3 – Seizer Mahaze dated 08/07/2021.

Ext.P4 - Ownership Certificate dated 26/07/2021.

Ext.P5 –Sketch dated 11/08/2021.

Ext.P6 – Estimate Allotment dated 04/08/2021.

Ext.P7 – Examination of Victim dated 07/07/2021

Ext.P8 – Birth Register dated 23/07/2021.

Exp P8 (a) – Birth report dated 18/09/2008.

Ext.P8(b) – Birth Certificate dated 22.07.2022.

Ext.P9 – Examination of Potency dated 07/07/2021.

Ext.P10 – FIS dated 07/07/2021.

Ext.P11 –164 statement dated 08/07/2021.

Ext.P12 – Seizer mahazer dated 08/07/2021.

Ext. P13- Report dated 08/09/2021.

Ext. P14- 161 Statement of PW 20 dated 08/07/2021

Ext. P15 – FIR dated 07/07/2021

Ext. P16 – Arrest Memo dated 07/07/2021

Ext. P17- Section Alteration report dated 02/09/2021

Ext.P18(series)- Property list dated 08/07/2021

Ext.P19- Forwarding note dated 08/07/2021

Material objects marked: NIL.

Witnesses examined for the defence: NIL.

Exhibits marked for the defence: NIL.

T.G.Varghese,
Special Judge,
Fast Track Special Court, Painavu.

Rr/-
Compared By :