

**IN THE SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER
THE PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT, 2012, IDUKKI AT PAINAVU**

Present:Smt. Laijumol Sherif., SPECIAL JUDGE

Monday, 30th day of December, 2024/ 9th day of Pausha, 1946 (S.E.)

SC No : 49/2023

(Crime No. 629/2022 of Kaliyar Police Station)

Complainant : State of Kerala, Represented by Inspector SHO
Police, Kaliyar Police Station.

By Sri.Shijomon Joseph,
Special Public Prosecutor.

Accused : Insam, Aged 20/22, S/o Nissar, Kanaparambil House,
Ambalapady Bhagam, Vannapuram Kara, Vannapuram
Village.

(By Adv Sri. Muhammed Abbas M.I.)

Charge : U/ss.450 & 376(1) of the Indian Penal Code and
U/s.4(1) r/w 3(a) and U/s.12 r/w 11(vi) of the
Protection of Children from Sexual Offences Act.

Plea : Not guilty

Finding : Not Guilty

Sentence or Order : Acquitted U/s.232 Cr.P.C.

DESCRIPTION OF ACCUSED

Sl. No.	Name of the Police Station and Crime No.	Name of the accused	Rank	Father's Name	Occupation
1	Kaliyar Police Station Crime No. 629/2022	Insam	-	Nissar	Salesman

Sl. No.	Residence	Age	Occurrence	Date of Complaint (Final Report)	Apprehension
1	Kanaparambil House, Ambalapady Bhagam, Vannapuram Kara, Vannapuram Village.	20/22	2022 July	12/17/22	21/10/22

Release on Bail	Committal	Commencement of trial	Commencement of evidence	Close of trial	Sentence or Order
12/23/22	---	09/20/24	12/16/24	12/30/24	12/30/24

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.P.C	Explanation for delay
Not Entitled For Free Copy	21/10/22 - 23/12/22	No delay

The Sessions case coming on for hearing be 30/12/24 for me, upon perusing the records of evidence and proceeding and upon duly considering the same after hearing the Special Public Prosecutor and Counsel for the accused on the same day I do adjudge and deliver the following;

JUDGMENT

The accused stand trial for offences U/ss.450&376(1) of IPC and U/s.12 r/w 11(vi) of POCSO Act.

2. The prosecution allegation, in a nutshell, is that the accused after 11 pm on the last week of July 2022 trespassed into the apartment of the victim child at Mulankuthy, Kaliyar wherein she was staying with her family, and subjected her to penetrative sexual assault. The accused thereby committed the aforesaid offences.

3. The case was registered by CW35 based on the F.I. Statement of CW1 recorded by CW27. The accused who had been arrested on 21/10/22 by CW35 was remanded to judicial custody and he was released on bail on 23/12/22. After completing the investigation, CW35 laid the final report before the Additional Sessions Court (Special Court under POCSO Act), Thodupuzha who took cognizance of the aforesaid offences. Thereafter, the case was transferred to this Court as per the order of the Principal Court of Sessions, Thodupuzha.

4. On the appearance of the accused before this Court, he was served with copies of the prosecution records U/s.207 Cr. P.C. The learned Special Prosecutor has opened the prosecution case U/s.226 Cr.P.C.

5. Upon consideration of the records of the case and the documents submitted therewith, and after hearing the submissions of the learned special prosecutor and the counsel for the accused, the charges were framed for the offences U/ss.450&376(1) of IPC and U/s.12 r/w 11(vi) of POCSO Act, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. On the side of the prosecution, PWs 1 to PW6 were examined and Exts.P1 to P27 were marked. The remaining witnesses were given up by the Prosecutor. As no incriminating circumstances appeared against the accused in the

prosecution evidence, his examinations under section 313 Cr.P.C was dispensed with.

7. Thereafter, both sides were heard under Sec.232 Cr.P.C.

8. The points that arise for consideration are;

- 1) Is there any piece of evidence to show that the accused has committed the offences with which he is charged?
- 2) Whether the accused is entitled to get an acquittal U/s.232 Cr.P.C ?
- 3) What shall be the sentence or order?

9. Point.No:- 1:-

PW1 the victim girl would admitted to have gave Ext.P1 statement. She identified her signature in exhibit P1 too. But she totally disowned her Ext.P and the involvement of the accused in the case. She denied of having given a statement to the police and the doctor that the accused sexually abused her, The Special Public Prosecutor was permitted to put questions to the witness which might be put in cross-examination by the adverse party, as provided under section 154 of the Indian Evidence Act and contradict her under proviso to section 162 (1) of Cr.P.C. PW1 denied Ext.P1(a) to P1(e) in her Ext.P1 FIS, narrating the incident as per the prosecution case. She also stated that her 164 statement, in conformity with the prosecution case, was given as directed by the police.

10. PW2 is the father of the victim. He too disowned her statement to the police further deposed that the accused never sexually abused his daughter. The learned Special Public Prosecutor was permitted to put questions to the witness which might be put in cross-examination by the adverse party, as provided under section 154 of the Indian Evidence Act and the proviso to section 162 (1) of Cr.P.C. PW3, the brother of the victim, and PW4 her mother also did not support the prosecution, and he denied statement given to the police to the effect that that the child shared with them that the accused abused her.

11. PW5 is the then Woman Civil Police Officer ,Kaliyar Police Station who recorded the Ext.P1 statement of PW1. PW6 is the investigating officer who also laid the final report in this case. He deposed that this case has been registered under Ext.P9 F.I.R on the basis of the Ext.P1 F.I. Statement of PW1. The witness also identified Exts.P10 to P27 as the documents prepared for this case.

12. The contradictions in the previous statements of PW1 were properly proved by the prosecution through PW5 as per the mode of proving the contradiction prescribed by the Honorable Supreme Court in the landmark judgment in **Tahsildar Singh Vs. State of U.P (AIR 1959 SC 1012)**.

13. In order to establish the offences allegedly committed by the accused, the prosecution mainly cited and examined PWs 1 to 4. But they denied the sexual acts against PW1 and the involvement of the accused in it, the evidence of PWs 1 to 4 is liable to be rejected as it has been contradicted with their previous statements. The contradicted portions of the statements recorded under S. 154, 164 and 161(3) Cr.P.C can be used for impeaching the credit of the witnesses, as provided under section 155 (3) of the Indian Evidence Act. Thus, the contradictions of the

witnesses, which are marked, are not 'substantive evidence', and the same can only be used for the purpose of assessing the reliability of the witnesses at the maximum. The prosecution has proved that PWs 1 to 4 are not reliable and trustworthy witnesses because they have deviated totally from their previous statements and thereby destroyed the very foundation of the prosecution case with their diametrically opposite evidence. Considering the fact that the material witnesses did not support the prosecution, the remaining witnesses were rightly given up by the learned Prosecutor. I am also satisfied that their examination will not serve any useful purpose, considering the hostile stand taken by the victim and her parents. Available evidence in the form of deposition of PWs.1 to 4 or the documents marked as Exts.P1 to P27 are not sufficient to prove the prosecution case that the accused had subjected PW1 with any sexual assault, as it is alleged. In the absence of evidence from the victim, the testimony of PW5, the woman police officer and PW6, the Investigating Officer alone is not sufficient to prove the alleged against the accused. On the other hand, the evidence of the victim as PW1 is totally against the case of the prosecution that the accused had subjected her with sexual assault. The available materials will not suggest anything to support the prosecution case and thereby to bring home the charges leveled against accused in the case.

14. In the circumstances, it is only be concluded that there is no evidence available in the case sufficient to establish the commission of the offences by the accused, as it is alleged in the case and there is no incriminating material available on record, I am fully satisfied that there is absolutely no evidence against the accused regarding the commission of the offences charged. Hence, no doubt, the point under consideration is only to be answered against the prosecution. Thus, answered accordingly.

15. **Point No.2** :- In view of my finding under point No.1, I hold that there is no evidence that the accused committed the offences. This point is also found against the prosecution.

16. **Point number 3.**

In the result

The accused is not found guilty of the offences punishable U/ss.450 & 376(1) of IPC and U/s.12 r/w 11(vi) of POCSO Act and is acquitted of these offences, U/s.232 of Cr.P.C; the bail bond executed by him stands cancelled, and he is set at liberty.

(Prepared by me on my computer, corrected and pronounced by me in open Court on the 30th day of December 2024)

Sd/-
Laijumol Sherif
Special Judge

APPENDIX

A. PROSECUTION WITNESS:

Rank	Name	Date	Whether eye witness, Police Witness, Expert Witness, Medical Witness, Other witness
PW1/CW1	Victim	12/16/24	Victim
PW2/CW2	Father of victim	12/16/24	Father of victim
PW3/CW3	Brother of victim	12/16/24	Brother of victim
PW4/CW4	Mother of victim	12/16/24	Mother of victim
PW5/CW27	Freeda Jancy Rani	12/20/24	Police Witness (ASI, Kaliyar Police Station)
PW6/CW35	Hony H.L.	12/20/24	Police Witness (Inspector of police, Kaliyar Police Station)

A. PROSECUTION EXHIBITS

Sl.No.	Exhibits Number	Date	Description
1	P1/PW1	12/16/24	FIS dated 21/10/22
2	P1(a)/PW1	12/16/24	Portion of FIS dated 21/10/22
3	P1(b)/PW1	12/16/24	Portion of FIS dated 21/10/22
4	P1(c)/PW1	12/16/24	Portion of FIS dated 21/10/22
5	P1(d)/PW1	12/16/24	Portion of FIS dated 21/10/22
6	P1(e)/PW1	12/16/24	Portion of FIS dated 21/10/22
7	P2/PW1	12/16/24	Portion of 164 statement dated 21/10/22
8	P2(a)/PW1	12/16/24	Portion of 164 statement dated 21/10/22
9	P2(b)/PW1	12/16/24	Portion of 164 statement dated 21/10/22
10	P2(c)/PW1	12/16/24	Portion of 164 statement dated 21/10/22

11	P2(d)/PW1	12/16/24	Portion of 164 statement dated 21/10/22
12	P2(e)/PW1	12/16/24	Portion of 164 statement dated 21/10/22
13	P3/PW1	12/16/24	Complaint of victim dated 20/10/2022
14	P4/PW1	12/16/24	Portion of additional statement of victim dated 16/11/2022
15	P5/PW2	12/16/24	Scene Mahazar dated 22/10/2022
16	P6/PW2	12/16/24	Seizure Mahazar (victim dress) dated 22/10/2022
17	P7/PW3	12/16/24	Seizure Mahazar (Complaint of victim) dated 23/10/2022
18	P8/PW4	12/16/24	Copy of Rent agreement dated 13/04/2022
19	P9/PW6	12/20/24	FIR dated 21/10/2022
20	P10/PW6	12/20/24	Seizure Mahazar (Sample of victim) dated 22/10/2022
21	P11/PW6	12/20/24	Arrest Memo dated 21/10/2022
22	P12/PW6	12/20/24	Seizure Mahazar (Mobile phone of accused) dated 21/10/2022
23	P13/PW6	12/20/24	Potency certificate dated 22/10/2022
24	P14/PW6	12/20/24	Seizure Mahazar (Sample of accused) dated 23/10/2022
25	P15/PW6	12/20/24	Seizure Mahazar (Dress of accused) dated 22/10/2022
26	P16/PW6	12/20/24	Medical Certificate of victim dated 21/10/2022
27	P17/PW6	12/20/24	Section altration report dated 17/12/2022
28	P18/PW6	12/20/24	Ownership Certificate dated 04/11/2022
29	P19/PW6	12/20/24	Extract of Birth Register dated 26/10/2022

30	P20/PW6	12/20/24	Scene Plan dated 25/11/2022
31	P21/PW6	12/20/24	Form 15 (complaint of accused) dated 23/10/2022
32	P22/PW6	12/20/24	Property List (body samples of accused) dated 23/10/2022
33	P23/PW6	12/20/24	Property List (body samples of victim) dated 22/10/2022
34	P24/PW6	12/20/24	Property List (Dress of victim) dated 24/10/2022
35	P25/PW6	12/20/24	Property List (Dress of accused) dated 22/10/2022
36	P26/PW6	12/20/24	Property List (Mobile phone of accused) dated 21/10/2022
37	P27PW6	10/20/24	Copy of Forwarding Note dated 29/11/2022

B. DEFENCE WITNESS : NIL

B. DEFENCE EXHIBITS : NIL

C. COURT WITNESS : NIL

C. COURT EXHIBITS : NIL

MATERIAL OBJECTS : NIL

Sd/-
Special Judge

//True Copy//

Special Judge
Fast Track Special Court,
Idukki at Painavu

Copy of Judgment in
S.C. 49/2023
Dated:30/12/2024