

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE,
ERNAKULAM**

(For the trial of cases relating to Atrocities & Sexual Violence against
Women and Children)

PRESENT:

Sri. K.Soman, Addl. District & Sessions Judge

Monday, the 1st day of January 2024 /11th Pousha, 1945.

Sessions Case No. 595 of 2021

Crime No. 159/2021 of Elamakkara Police Station

Complainant:-

State of Kerala represented by
the Inspector of Police
Elamakkara police station

By Special Public Prosecutor Smt. P.A. Bindhu

Accused:-

Abdul Salam, aged 40/2021,
S/o Abdul Rahman,
Kunduvelil House, Olikkuzhi,
Vazhakkala, Vazhakkala Village

By Adv: Shaheer A.J.

Offences	:	U/s. 11(i), (iii) r/w.12, 9 (l), (n) r/w.10, 5 (l), (n) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.354A (1) (i), 354A (1)(iii) r/w.354A (2), 376 (2) (n), 376 (2) (f), 376 (3), 201 of Indian Penal Code
Plea of the accused	:	Not guilty
Finding	:	Not guilty
Sentence or Order	:	The accused is not found guilty of the offences u/s. 11(i), (iii) r/w.12, 9 (l), (n) r/w.10, 5 (l), (n) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and

Sec.354A (1)(i), 354A (1)(iii) r/w.354A (2), 376 (2) (n), 376 (2) (f), 376 (3), 201 of Indian Penal Code and he is acquitted u/s.232 Cr.P.C. His bail bond stands cancelled and he is set at liberty.

The order of the interim custody of the autorickshaw bearing registration No.KL-07-CN-8432 is made absolute..

Description of the accused

Name of the Police Station and Crime No.of the offence	Name/s	Father's Name	Occupation
Elamakkara Police Station Crime No. 159/2021	Abdul Salam	Abdul Rahman	-

Residence	Age	Occurrence	Date of Complaint	Apprehension
Kunduvellil House, Olikkuzhi, Vazhakkala, Vazhakkala Village	40/2021	On a day in August 2018, On a day in May 2019, On a day in March 2020, In May 2020.	30.03.2021	02.04.2021

Release on Bail	Committal	Commencement of Trial	Close of trial	Sentence or Order
29.04.2021	-	28.10.2023.	01.01.2024	01.01.2024

Service of copy of Judgment or
finding on accused

01.01.2024

Explanation for delay

No delay

The Sessions case coming on for hearing before me, upon perusing the records of evidence and proceeding and upon duly considering the same after hearing the Public Prosecutor and Counsel for the accused on 01.01.2024, I do adjudge and deliver the following.

ORDER

This is a case charge sheeted by the Inspector of Police, Elamakkara police station in crime No.159/2021 alleging offence u/s. 6 r/w.5(l), (n), 10 r/w.9 (l) (n), 12 r/w.11 (i) (iii) of the Protection of Children from Sexual Offences Act, 2012 and Sec.354A (1) (l),(ii),(iii), 354A (2), 376 (2) (f), (n), 376 (3), 201 of Indian Penal Code.

2. The prosecution case is that, on a day in August 2018 in the bathroom attached to the bed room of the house in the ground floor of the house No.25/45 and 25/46 of Trikkakara Municipality in Vazhakkala Village, Kakkanad Kara the accused has exhibited his penis to the victim girl aged below 16 years. The victim girl is the daughter of the sister of the wife of the accused. On a day in May 2019 in the autorickshaw bearing registration No.KL-07-CN-8432 the accused has pressed the chest and vaginal part of the victim girl in the public road in front of the Amazon Book Mart in Edappally North Village, Chuttupadukara. After few days in the house of the victim girl at Edappally North Village, Chuttupadukara the accused has committed rape on the victim girl by penetrating his penis into her vagina and he has licked her vagina. On a

day in March 2020 in the house No.4/370D of Cheranelloor Panchayat and thereafter in May 2020 in the same apartment the accused has inserted his finger into her vagina. Moreover the accused has shown obscene videos and photos to the victim girl at the above place. Thereafter he has abandoned the mobile phone to make the above evidence disappear. Therefore the accused is alleged to have committed the above mentioned offences.

3. The accused was granted bail during crime stage. After the appearance of the accused before this Court he was furnished with copies of prosecution records. On perusing prosecution records and hearing the parties a charge u/s. 11(i), (iii) r/w.12, 9 (l), (n) r/w.10, 5 (l), (n) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.354A (1)(i), 354A (1)(iii) r/w.354A (2), 376 (2) (n), 376 (2) (f), 376 (3), 201 of Indian Penal Code was framed read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. PWs.1 and 2 were examined on the side of the prosecution and marked Exts.P1 to P34.

6. The points that arise for determination are:-

1. Whether the accused is guilty of sexual harassment by exhibiting his penis to PW.1 the victim girl aged 16 years as alleged ?
2. Whether the accused is guilty of repeated sexual assault on PW.1 the victim girl aged 16 years as alleged ?
3. Whether the accused who is the uncle of PW.1 the victim girl aged 16 years is guilty of sexual assault on her as alleged ?
4. Whether the accused is guilty of sexual harassment by

showing porn videos to PW.1 the victim girl aged 16 years as alleged ?

5. Whether the accused is guilty of repeated penetrative sexual assault on PW.1 the victim girl aged 16 years as alleged ?
6. Whether the accused who is the uncle of PW.1 the victim girl aged 16 years is guilty of repeated penetrative sexual assault on her as alleged ?
7. Whether the accused is guilty of sexual harassment by touching the private parts of PW.1 the victim girl aged 16 years as alleged ?
8. Whether the accused is guilty of showing porn videos and photos to PW.1 the victim girl aged 16 years as alleged ?
9. Whether the accused is guilty of repeated commission of rape on PW.1 the victim girl aged 16 years as alleged ?
10. Whether the accused who is the relative of PW.1 aged 16 years is guilty of committing rape on her as alleged ?
11. Whether the accused is guilty of rape on PW.1 the victim girl aged below 16 years as alleged ?
12. Whether the accused is guilty of causing disappearance of evidence of commission of the offence in this case as alleged ?
13. If so, what is the punishment to be awarded to the accused ?

7. **Point Nos.1 to 13** :- For the sake of convenience all these points are being discussed together. PW.1 is aged 17 years now and she is the victim girl according to the prosecution. Her date of birth is stated as 01.08.2006. PW.2 the mother of PW.1 also deposed in the same manner. Therefore it is clear that PW.1 was aged below 16 years at the time of the alleged incident happened during 2018 – 2020. PW.1 admitted that the accused is her relative and he is the husband of her mother's sister. However she denied the prosecution

allegations that the accused has sexually abused her. Ext.P1 is the F.I.Statement given by her to the police. However she denied the prosecution allegations that since 2018- 2019 onwards the accused has committed sexual assault and sexual harassment on her by exhibiting his penis, showing porn videos, inserting finger into her vagina and penetrating his penis into her vagina. According to PW.1 she has not given any such statement to the police. Ext.P2 is the statement given by her to the learned Magistrate u/s.164 Cr.P.C. Even though there are allegations against the accused in Ext.P2 PW.1 stated that it was given on a misunderstanding and she has no grievance against the accused. PW.2 the mother also has no grievance against the accused. In the circumstance the examination of the remaining witnesses given up by the learned Special Public Prosecutor. Questioning u/s.313 (1) (b) Cr.P.C dispensed with for want of incriminating evidence against the accused. Heard both sides and perused the prosecution evidence. The prosecution has failed to connect the accused with the alleged offences and therefore I find him not guilty of the said offences.

8. In the result, the accused is not found guilty of the offences u/s. 11(i), (iii) r/w.12, 9 (l), (n) r/w.10, 5 (l), (n) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.354A (1)(i), 354A (1)(iii) r/w.354A (2), 376 (2) (n), 376 (2) (f), 376 (3), 201 of Indian Penal Code and he is acquitted u/s.232 Cr.P.C. His bail bond stands cancelled and he is set at liberty.

The order of the interim custody of the autorickshaw bearing registration No.KL-07-CN-8432 is made absolute.

Dictated to the Confidential Assistant, corrected by me and pronounced in open court on this the 01st day of January, 2024.

K.Soman,
Additional District & Sessions Judge.

APPENDIX

Prosecution Witnesses :-

PW1	28.10.2023	Victim
PW2	28.10.2023	Naseema

Defence Witnesses :- Nil

Court Witnesses :- Nil

Prosecution Exhibits:-

P1	30.03.2021	FI Statement
P2	31.03.2021	164 statement
P3	01.04.2021	FIR No.159/2021 of Elamakkara
P4	02.04.2021	Arrest Memo
P4(a)	02.04.2021	Inspection Memo
P4(b)	02.04.2021	Custody Memo
P5	02.04.2021	Potency certificate
P6		Address report
P7	26.05.2021	Search memorandum
P8	26.05.2021	Search list
P9	26.05.2021	Scene Mahazar (vazhakkala)

P10	22.04.2021	Scene Mahazar (Edppally)
P11	22.04.2021	Scene Mahazar (Cheranellur)
P12	31.03.2021	Scene Mahazar (Thrikkakara)
P13	31.03.2021	Medical Certificate of Victim.
P14	02.04.2021	Recovery Mahazar
P15	28.05.2021	Kychit of Auto Rickshaw
P16	27.04.2021	Seizure Mahazar of rent agreement.
P17	16.06.2019	Rent agreement
P18	04.05.2021	Vehicle particulars of KL- 07-CN-8432 Auto Rickshaw
P19	23.06.2021	Extract of Driving license of accused.
P20	28.06.2021	Site plan issued by VO Vazhakkala
P21	04.06.2021	Site plan in VO Cheranellur
P22	21.06.2021	Site plan issued by VO Edappally North.
P23	21.06.2021	Site plan issued by VO Edappally North.
P24	21.06.2021	Ownership certificate issued from Superintendent Trikkakara Municipality in respect of building No 45 in ward 25.
P25	21.06.2021	Ownership certificate issued from Superintendent Trikkakara Municipality in respect of building No 46 in ward 25
P26	18.06.2021	Owner ship certificate issue from cheranellur Gramma punchayath.
P27	27.04.2021	Ownership certificate issue from Kochi Corporation.
P28	06.05.2021	Birth Certificate of Victim.
P29	17.05.2021	Treatment details from MOSC medical mission hospital

P30	27.04.2021	Certificate issued from Pius Girls High School Edapally .
P31		Section alternation report.
P32	17.07.2021	Section deletion report.
P33	30.03.2021	FIR No. 270/2021 of Thrikkakara Police Station.
P34	19.07.2021	Kaychit of Mobile Phone.

Defence Exhibits: Nil

Court Exhibits:- Nil

Material Objects:- Nil

Additional District & Sessions Judge

Typed by : Shreeja

Compd by: Shabna

Sessions Case No. 595/2021

Order Dated : 01.01.2024