

**IN THE COURT OF THE SPECIAL JUDGE, FAST TRACK
SPECIAL COURT, KANNUR.**

Present: Smt. Nishi P.S, Special Judge

The 28th day of December, 2023 /7th day of Pausha, 1945

SC No. 189/2023

Crime No.1341/2022 of Kannur Town Police Station

Complainant : State of Kerala. Represented by the
Station House Officer, Kannur Town
Police Station.

By Special Public Prosecutor **Smt.
Preetha Kumari K.P.**

Vs

Accused : 1. Yahiya P.P Meethalepeedikayil
Puthiyapurayil, S/o. Ibrahim
Thachankandy, age 57/23,
Yasibas, Balan Kinar,
Kattamballi PO, Kannur,
Kannur City.
2. Rakhi T, W/o. Jayachandran,
age 44/23, Thayath House,
Bhanu road, Chalad PO,
Kannur, Kannur City.

By Adv. M. Kishore Kumar.

Offence U/s. 363, 376(1), 376(3), 354 (A)(1)
(i), 354B of Indian Penal Code and
Sec. 67B(b) of Information
Technology Act, Sec. 75 of Juvenile
Justice (Care and Protection of
Children) Act and Sec.5(m) r/w 6, 7
r/w 8, 9(n) r/w 10 and 16 r/w 17 of

	Protection of Children from Sexual Offences Act, 2012.
Plea	Not guilty
Finding	Not guilty
Sentence or Order	The accused are not found guilty of the offences punishable U/Ss. 363, 376(1), 376(3), 354 (A)(1)(i), 354B of Indian Penal Code and Sec. 67B(b) of Information Technology Act, Sec. 75 of Juvenile Justice (Care and Protection of Children) Act and Sec.5(m) r/w 6, 7 r/w 8, 9(n) r/w 10 and 16 r/w 17 of Protection of Children from Sexual Offences Act, 2012 and they are acquitted U/s.235 (1) of Cr.P.C.

This Sessions case having been come up for final hearing before me on 26.12.2023 in the presence of the Special Public Prosecutor and counsel for accused and having stood over for consideration till this day, the court delivered the following:-

JUDGMENT

This is a case charge-sheeted by the Inspector of Police, Kannur Town Police Station, in Crime No.1341/2022, alleging offence U/Ss. 363, 376(1), 376(3), 354 (A)(1)(i), 354B of Indian Penal Code and Sec. 67B(b) of Information Technology Act, Sec. 75 of Juvenile Justice (Care and Protection of Children) Act and

Sec.5(m) r/w 6, 7 r/w 8, 9(n) r/w 10 and 16 r/w 17 of Protection of Children from Sexual Offences Act, 2012, against the accused.

2. The prosecution case in brief as follows :- The first accused, who is the friend of the mother of the victim girl, aged 11 years, on a day in the year 2018 had taken the victim girl in his car bearing No. KL 13 AH 4400 to Yogasala road, Kannur and parked the car in a place near Yogasala-Olacherikkavu road and forcefully removed her dresses and committed aggravated penetrative sexual assault on her by inserting his fingers into her vagina and kissing and pressing her breasts and accused No.2 who is her mother, had disrobed her and clicked her nude photos and taken her videos and sent to accused No.1. The further case of the prosecution is that on a day in the year 2020 accused No.1 taken the victim girl in his car to Payyambalam and attempted to disrobe her with sexual intent. The prosecution would also allege that on a day in the month of May, 2021 the accused had sexually assaulted the victim girl by catching hold of her thighs with sexual intent from his car near Kadambur School and accused No.2 after knowing that the first accused had repeatedly committed sexual assault on her daughter had purposefully concealed the same and abetted and given all help to accused No.1. Thus accused No.1 is alleged to have committed the offences punishable U/Ss. 363, 376(1), 376(3),

354 (A)(1)(i), 354B of Indian Penal Code and Sec. 67B(b) of Information Technology Act and Sec.5(m) r/w 6, 7 r/w 8, 9(n) r/w 10 and accused No.2 is alleged to have committed the offences punishable U/Ss. 67B(b) of Information Technology Act, Sec. 75 of Juvenile Justice (Care and Protection of Children) Act and Sec.16 r/w 17 of Protection of Children from Sexual Offences Act, 2012.

3. On the basis of the First Information Statement recorded from the victim girl, this Crime against the accused was registered by CW20, the Sub Inspector of Police, Chavakkad Police Station vide Crime No.853/2022. On receipt of the FIR from Chavakkad Police Station, CW26, Inspector of Police, Kannur Town Police Station registered FIR vide crime No.1341/2022. Thereafter, CW26 himself investigated this crime and laid down the final report before the Additional District and Sessions Court-I, Thalassery where it was taken on file as SC 189/2023. Subsequently, after constitution of this Court, the above file was made over to this Court for disposal in accordance with law.

4. Accused Nos. 1 and 2 were released on bail during crime stage. On appearance of the accused before this Court, copies of all relevant prosecution records were furnished to them.

On hearing both sides and perusing the prosecution records charge U/Ss.363, 376(1), 376(3), 354 (A)(1)(i), 354B of Indian Penal Code and Sec. 67B(b) of Information Technology Act and Sec.5(m) r/w 6, 7 r/w 8, 9(n) r/w 10 of Protection of Children from Sexual Offences Act, 2012 was framed, read over and explained to the accused No.1 and charge U/S. 67B(b) of Information Technology Act, Sec. 75 of Juvenile Justice (Care and Protection of Children) Act and Sec.16 r/w 17 of Protection of Children from Sexual Offences Act, 2012 was framed, read over and explained to the accused No.2, to which they pleaded not guilty and claimed to be tried.

5. To prove the case of the prosecution, prosecution examined PWs 1 to 5 and Exts.P1 to P19 were marked. As the survivor and the other material witnesses did not support the prosecution case, examination of the remaining witnesses was given up by the learned Special Public Prosecutor. After the prosecution evidence, the accused were questioned U/s.313 (1) (b) of Cr. PC and they denied all the incriminating evidence brought out against him. They pleaded innocence.

6. After hearing both sides and perusing the prosecution evidence, I did not find any reason to acquit the accused U/s. 232 of Cr. PC. Therefore the accused were called upon to adduce

defence evidence, if any. Exts D1 to D3 were marked on the side of defence. But no oral evidence was adduced.

7. Heard both sides.

8. The Points that arise for determination are :-

- (1) Whether the accused No.1 kidnapped the victim girl, aged 11 years, as alleged ?
- (2) Whether the accused No.1 committed rape on the victim girl, aged 11 years, as alleged ?
- (3) Whether the accused No.1 committed rape on the victim girl, aged below 16 years, as alleged ?
- (4) Whether the accused No.1 committed sexual harassment on the victim girl, aged 11 years as alleged ?
- (5) Whether the accused No.1 used criminal force towards the victim girl, aged 11 years with the intention of disrobing her, as alleged ?
- (6) Whether the accused No.1 committed aggravated penetrative sexual assault on the victim girl, aged below 12 years, as alleged ?
- (7) Whether the accused No.1 committed sexual assault on the victim girl, aged 11 years, as alleged ?
- (8) Whether the accused No.1 committed aggravated sexual assault on the victim girl, aged 11 years, as alleged ?
- (9) Whether the accused No.2 took nude photographs and videos of the victim girl, aged 11 years and transmitted the same to the accused No.1, as

alleged ?

- (10) Whether the accused No.2, being the mother of the victim girl, aged 11 years have exposed the nude photos and video of the victim girl to the accused No.1 and caused unnecessary mental and physical suffering to the victim girl, as alleged ?
- (11) Whether the accused No.2 instigated the accused No.1 to kidnap the victim girl, aged 11 years, for the purpose of exploitation, as alleged ?
- (12) What is the punishment to be awarded to the accused ?

9. **Point No. (1) to (11)** : For the sake of convenience, these points are being discussed together. This case was registered by Kannur Town Police on the basis of First Information Statement allegedly given by the victim girl, who was subsequently examined as PW1. The First Information Statement was marked as Ext.P1 and the statement of the victim girl recorded U/s. 164 of Cr. PC by the Judicial First Class Magistrate-I, Kannur was marked as Ext.P2. Ext.P3 is the scene mahazar prepared by PW5. The FIR was marked as Ext.P4. Ext.P5 is the Medical certificate of the victim girl. Exts.P6 and P7 are the additional scene mahazars. Ext.P8 is the report filed for incorporating the name and address of the accused. Ext.P9 is the arrest memo and Ext.P10 is the Inspection memo of the

accused. Ext.P11 is the of Birth Certificate of the victim girl showing her date of birth as 28.05.2008. Ext.P12 is the potency certificate of the accused. Exts.P13 and P14 are the site plans of the place of occurrence. Ext.P15 is the seizure mahazar by which the car bearing No. KL 13 AH 4400 was seized. Ext.P16 is the relationship certificate of the victim and accused No.2. Ext.P17 is the RC particulars of the car bearing Reg. No. KL 13 AH 4400. Ext.P18 is the seizure mahazar by which the phone of accused No.1 seized. Ext. P19 is the Property list.

10. PW1 is the victim girl, aged 11 years at the relevant time. Her date of birth is stated as 28.05.2008. It has been proved further by Ext.P11 Birth Certificate. Therefore, the prosecution has proved that PW1 is a child U/s.2 (d) of the Protection of Children from Sexual Offences Act, 2012.

11. PW1 would depose that her parents have lived separately since her childhood. She and her sister resided with their mother. Her sister had a love affair and when their mother did not support the same she left with that person. Her sister along with their father coerced her into filing a case against their mother. Upon reaching Nedumbassery Airport, her father and sister made false statement to the police, resulting in her being compelled to leave with her sister. After staying with her sister for

a short period she moved to her father's house, where she experienced verbal abuse. When her father, under the influence of alcohol, threatened her life and she was made to leave the house. She went to her mother's house, where she currently resides. Accused No.1 is her mother's friend and there wasn't any sexual abuse from him. Her mother never taken nude photographs of her. Although she admitted her signature in Ext.P1 First Information Statement and Ext.P2 statement recorded U/s.164 of Cr. PC she denied the entire allegations levelled against the accused. Her father and sister coerced her into filing Ext.P1 complaint and now she has no complaint against the accused. She denied the suggestion of the learned Special Public Prosecutor that she was sexually harassed by the accused. She would further depose that she do not want to proceed with the case. She was declared hostile to the prosecution.

12. PW2 is the father of PW1. He would depose that as informed by PW1 he came to know about the incident and he has no direct knowledge about the incident.

13. PW3 is the sister of PW1. She would depose that PW1 is her sister. While they were residing in her mother's house on 05.04.2022 without her mother's permission she went

with CW4. After a few months her mother and sister went to the Gulf. Later PW1 and her mother had a dispute. When they reached Nedumbassery Airport she, her husband and her father went to the Airport. From there she and her husband brought PW1 with them to Chavakkad. PW1 informed her that their mother used to scold her. After one week her father and mother entered into an agreement to the effect that her mother has to pay Rs. 5,00,000/- to her father for not filing a case against her mother. Thereafter, she, her husband and her father took PW1 to her father's house. On the same night her father asked PW1 to leave the house. On the next day her father lodged a complaint at Kannapuram Police Station alleging that she and her husband had kidnapped PW1. The next day they produced PW1 at Chavakkad Police Station. Accused No.1 is her mother's friend and accused No.2 is her mother. PW1 never told her that accused Nos. 1 and 2 sexually abused her in any manner and she has not given statement to the police that PW1 was sexually harassed by the accused.

14. PW4 is the husband of PW3. He would depose that he has no direct knowledge about the incident. As informed by PW3 he came to know about the incident. He would further depose that he has seen the police preparing Ext.P3 scene

mahazar and he subscribed his signature in Ext.P3. He had identified his signature in Ext.P3.

15. PW5 is the Investigating Officer in this matter. He would depose that on 02.11.2022 while he was working as Station House Officer, Kannur Town Police Station he registered Ext.P4 FIR in this matter. He would further depose that he had taken over the investigation of this case and seized Ext.P5 medical certificate of the victim. He had identified the Ext.P3 scene mahazar. He would further depose that he had prepared Exts.P6 and P7 additional scene mahazars, filed Ext.P8 report for incorporating the name and address of the accused, arrested the accused on 23.01.2023. The arrest memo and inspection memo stand marked as Exts. P9 and P10 respectively. He would also depose that he submitted the Ext.P11 Birth Certificate of the victim and Ext.P12 potency certificate of the accused and seized Exts. P13 and P14 site plans and seized the car bearing Reg. No. KL 13 AH 4400 as per Ext.P15 seizure mahazar. He would further depose that he had seized the Ext.P7 relationship certificate of the victim and accused No.2 and Ext.P17 RC particulars of the car. The mobile phone of accused No.1 was seized as per Ext.P18 seizure mahazar and sent to the Court as per Ext.P19 property list. He questioned the witnesses and

recorded their statement and laid down the charge sheet. He had identified accused Nos. 1 and 2 from the dock.

16. Even though prosecution had examined PWs 1 to 5, their evidence has no use of the prosecution. PW1, the victim has not supported the prosecution case. She gave evidence in the manner completely exonerating the accused. She raised no grievance against the accused. PWs 2 and 3, father and sister of the victim also not supported the prosecution case. PW4 have no direct knowledge about the alleged sexual assault committed by the accused and he has got only hearsay information. Hence their evidence is not of any use to prove the allegation against the accused.

17. Available evidence adduced before the court is totally insufficient to connect the accused with the offences alleged against them. Hence, I find that prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the accused are entitled to get an acquittal. Thus, **Point Nos.(1) to (11)** are answered against the prosecution.

18. **Point No. (12)** : In the result, accused are not found guilty of the offences punishable U/Ss. 363, 376(1), 376(3), 354B 354, 354 (A)(1)(i) of Indian Penal Code and Sec.8 r/w 7, 9(I) r/w 10 and 12 r/w 11 (i) of Protection of Children from Sexual

Offences Act, 2012 and they are acquitted U/s.235 (1) of Cr. PC.
His bail bonds stand cancelled and they are set at liberty.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open Court this the 28th day of December, 2023.

Sd/-

SPECIAL JUDGE, KANNUR

APPENDIX

A. PROSECUTION WITNESSES :

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical Witness, Other witness.	Date of deposition
PW1	--	Victim.	31.10.23
PW2	--	Father of victim	20.11.23
PW3	--	Sister of victim	06.12.23
PW4	--	Husband of PW3	06.12.23
PW5	Binumohan P.A	Inspector, Kannur Town P.S	22.12.23

B. DEFENCE WITNESSES : Nil.

C. COURT WITNESSES : Nil.

A. PROSECUTION EXHIBITS

:

<u>Sl. No.</u>	<u>Exhibit Number</u>	<u>Description</u>	<u>Date of document</u>
1.	Ext.P1/PW1	First Information Statement.	18.10.22
2.	Ext.P2/PW1	164 statement	19.10.22
3.	Ext.P3/PW3	Scene mahazar	21.10.22
4.	Ext.P4/PW3	FIR	02.11.22
5.	Ext.P5/PW3	Medical certificate of victim	19.10.22
6.	Ext.P6/PW3	Additional Scene mahazar	14.11.22
7.	Ext.P7/PW3	Additional scene mahazar.	14.11.22
8.	Ext.P8/PW3	Report filed for incorporating address of accused	23.01.23
9.	Ext.P9/PW3	Arrest memo.	23.01.23
10.	Ext.P10/PW3	Inspection memo.	23.01.23
11.	Ext.P11/PW3	Extract of birth register	20.02.23
12.	Ext.P12/PW3	Potency certificate	23.01.23
13.	Ext.P13/PW3	Site plan	15.11.22
14.	Ext.P14/PW3	Site plan	23.11.22
15.	Ext.P15/PW3	Seizure mahazar	17.11.22
16.	Ext.P16/PW5	Relationship certificate	29.11.22

17.	Ext.P17/PW5	RC particulars	12.12.22
18.	Ext.P18/PW5	Seizure mahazar	30.01.23
19.	Ext.P19/PW5	Property list	23.01.23

B. DEFENCE EXHIBITS

:

<u>Sl. No.</u>	<u>Exhibit Number</u>	<u>Description</u>	<u>Date of document</u>
1.	Ext.D1/PW1	CMP 6663/22	09.11.22
2.	Ext.D2/PW2	Affidavit	10.11.22
3.	Ext.D3/PW2	Order in CMP 6664/22	17.11.22

C. COURT EXHIBITS

: Nil.

MOs. MARKED

: Nil.

Sd/-

SPECIAL JUDGE, KANNUR

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SPECIAL JUDGE, KANNUR

IN THE COURT OF THE SPECIAL JUDGE, FAST TRACK SPECIAL
COURT, KANNUR.

TABULAR STATEMENT

1. Sl. No. : SC 189/2023
2. Name of Police Station : Station House Officer, Kannur Town
Police Station (Cr.No.1341/2022).

Description of the accused:

3. Name of Accused	4. Father's Name	5. Occupation	6. Residence	7. Age
1. Yahiya P.P Meethalepeedikayil Puthiyapurayil	Ibrahim Thachankandy	Business	Kattamballi	57/23
2. Rakhi T	Jayarajan T	-	Chalad	44/23

DATE OF:

8.	Occurrence	: From 2018.
9.	Complaint	: 18.10.22
10.	Commitment	: -
11.	Apprehension	: 23.01.23 (A1), 20.03.23 (A2).
12.	Release on bail	: 28.02.23 (1), 28.03.23 (A2).
13.	Commencement of trial	: 03.10.23
13A.	Commencement of Evidence	: 31.10.23
14.	Close of trial	: 26.12.23
15.	Judgment pronounced	: 28.12.23
16.	Sentence/Order	: Acquitted U/s. 235 (1) of Cr. PC.
17.	Service of copy of judgment or finding on the accused	: 28.12.23
18.	Period of detention undergone during investigation, inquiry or trial for the purpose of Sec. 428 Cr PC.	56 days (A1), 29 days (A2).
19.	Explanation for delay	: No delay.

SPECIAL JUDGE, KANNUR

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