



Crl.Appeal No.224/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 18TH DAY OF MAY 2026 / 28TH VAISAKHA, 1948

CRL.A NO. 224 OF 2025

CRIME NO.598/2017 OF Walayar Police Station, Palakkad

AGAINST THE JUDGMENT DATED 25.01.2024 IN SC NO.644 OF 2017 OF
I ADDITIONAL DISTRICT COURT & I ADDITIONAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, PALAKKAD

APPELLANT/ACCUSED:

RAHIMAN,
AGED 50 YEARS,
S/O THANKARAJ, AGED 50 YEARS,
CHULLIMADA, PALAKKAD, PIN - 678534.

BY ADVS.
SHRI.ROHIT BABEN
SHRI.SREERAJ R.

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

SENIOR PUBLIC PROSECUTOR SRI RENJITH GEORGE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.04.2026,
THE COURT ON 18.05.2026 DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.Appeal No.224 of 2025******Dated this the 18th day of May, 2026******J U D G M E N T***

The judgment dated 25.01.2024 in S.C.No.644/2017 on the files of the Special Court under the Protection of Children from Sexual Offences Act ('POCSO Act' for short) is under challenge in this appeal filed at the instance of the sole accused.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor. Perused the judgment and records available.

3. In this case, the Special Court framed charge against the appellant/accused for the offences punishable under Section 5(m) r/w 6 of the POCSO Act and also 376(2)(1) of the Indian Penal Code ('IPC' for short). The prosecution allegation is that during the month of April-May, 2017, ie. School summer vacation, the accused took the minor victim aged



11 years by offering toffy, to the hall of his house bearing No.6/99 at Padinjarekkad and laid her on the cot in the said hall; disrobed her and put his penis into the vagina of the victim and thus committed aggravated sexual assault on the victim.

4. The Special Court proceeded with trial. PW1 to PW19 were examined and Exts.P1 to P31 and M.O1 to M.O3 were marked on the side of the prosecution. No defense evidence was adduced. On appreciation of evidence the learned Special Judge found that the appellant/accused committed the offences punishable under Section 5(m) r/w 6 of POCSO Act as well as 376(2)(9) of IPC and accordingly he was sentenced to undergo rigorous imprisonment for 15 years with fine of Rs.25,000/- and in default of fine to undergo further rigorous imprisonment for six months. No separate sentence was imposed for the offences punishable under Section 376(2)(9) of IPC in view of Section 42 of POCSO Act.

5. Mufti-fold contentions were raised by the learned counsel appearing for the appellant, who put up an argument note also to unsustain the verdict. According to the learned counsel for the accused,



Ext.P8 FIS is not genuine one, neither PW13 victim or PW2 Jyothi, the mother of the victim did not sign Ext.P8 FIS. PW15 Prathapan, the then S.I of Valayar Police Station deposed that he had recorded the statement of the victim as per a letter issued by CW17 Devi. He also pointed out an anomaly that according to PW13, the victim, she had disclosed the occurrence to the Anganwadi teacher. But PW18 Cija George deposed that counselling was conducted to the victim as informed by Anganwadi worker and she got information through telephone and it was on the previous day of 10.07.2017.

6. It is also pointed out that in the instant case, absence of foundation of evidence and subsequent attempt to build up a case against the accused could be visible. Further the prosecution failed to prove the exact place of occurrence and according to PW13, the place of occurrence was the bed room of building No.6/99 but in the police charge the same is described as a tiled house having front portion roofed with sheet. Another contention is that no age determination was conducted to prove the age of the victim, PW10 and PW11 CPO did not mention the age of the victim. At the same time, it was deposed by the mother of the victim that her



daughter was born at the District Hospital in Coimbatore. The birth certificate was produced before the police. According to the mother, the date of birth of the victim is on 01.06.2006. PW17, the Investigating Officer stated that even though PW12 Jyothi disclosed the age of the victim, then her statement was recorded, he did not demand any document to prove the age of the victim. He also deposed that the birth certificate of the victim was given by PW12 but since the same was in Tamil the same was not produced before the court. It is argued that the reason for the delay in lodging the FIS is not at all explained. Further non-compliance to Section 19 of the POCSO Act and Section 209 of the Code of Criminal Procedure ('Cr.P.C' for short) also raised as reasons to canvass acquittal. According to the learned counsel for the appellant, the investigation is biased and material witnesses were not examined. Further evidence of PW13 is flooded with omissions and contradictions. On these grounds the learned counsel sought for interference of the verdict impugned.

7. Whereas the learned Public Prosecutor strongly supported the verdict impugned and argued that the evidence of PW13, the victim, is convincing as regards to the offences alleged and therefore, the challenge raised by the learned counsel for the accused would not sustain so as to interfere with



the finding of the Special Court, finding commission of the said offences.

8. Adverting to the rival submissions, the points arise for consideration are:

(i) Whether the learned Special Judge is right in holding that the accused committed the offence punishable under Section 5(m) r/w 6 of the POCSO Act?

(ii) Whether the learned Special Judge is right in holding that the accused committed the offence punishable under Section 376(2)(1) of the IPC?

(iii) Is it necessary to interfere with the impugned judgment in any manner?

(iv) The order to be passed?

Points (i) to (iv)

9. PW13 examined in this case is the victim whose age was recorded on the face sheet of her deposition. *Voir dire* examination was carried out by the learned Special Judge before her examination and satisfied that the victim (PW13) was competent to give evidence before the court. Her version is that her date of birth is on 01.06.2006 and PW12 is



her mother. Her father died and she had an elder brother. She studied upto 4th standard in Kanjikode school and joined St.Sebastian school thereafter and she stayed in a hostel while studying there. She used to go to her house during vacation period and she used to stay at a house in Chullimada. She identified the accused as a person familiar to her (after removing the curtain) and stated that the accused is her neighbour. According to her something bitter was done by the accused and it was done by the accused during 2017. PW13 deposed that the accused hugged her after seating her on a chair at the hall of the house and then kissed on her head. PW13 deposed further that the accused had taken her by stating that he would give toffy to her. Then he brought her to the bed room and caught hold on her breast. Later he removed his dress as well as her dress. Then he placed his penis on her vagina and thereby a white liquid was ejaculated. He insisted her not to disclose this occurrence. Later she disclosed the same to the Anganwadi teacher. Thereafter on 19.07.2017 she disclosed the same to "Devi police" in the presence of her mother, Reethamol and Aparna. She identified the statement so recorded as Ext.P8. She also deposed that she had given statement to the Magistrate also and she had signed the said



statement. She identified M.Os1 to 3 are the dress worn by her and the accused at the time of occurrence.

10. During cross examination she stated that she didn't remember how many persons were present at the time when her statement was recorded. She also stated that she didn't remember how many days after the occurrence she had given statement to the police. But according to her, on the date of occurrence itself she stated the same to the Anganwadi teacher and she didn't remember the name of the teacher and Anganwadi was few distance away from her home. She also stated that when she disclosed the same to the Anganwadi teacher, no others were present. She deposed further that after the occurrence, she returned to her house and then reached near the Anganwadi teacher. According to her, she went to the hospital on 19.07.2017 and she disclosed the details to the doctor. During further examination, PW13 stated that the accused brought her when he reached for tying his cattle. But an attempt was made to treat this as an omission on the premise that such statement was not found in her statement before the police. Thereafter witness was recalled and Ext.P11 statement given by her before the Magistrate was marked. When she was



cross examined with reference to Ext.P11, she stated that she didn't remember whether she had given the statement before the chamber of the Magistrate or court, though her mother accompanied her. She also stated that the Magistrate recorded the statement after enquiry regarding the occurrence.

11. PW12 examined in this case is the mother of the victim. Her evidence is that PW13 is her daughter and she studied upto 4th class in Kanjikode school and she studied in classes 5 to 7 in St.Sebastian School, Palakkad. Her husband died. They resided in a rented house at Chullivada and the accused was residing in a nearby house. According to her, the occurrence was known to her as disclosed by the Anganwadi teacher on the basis of the information given by her daughter. Later, a lady police came and recorded the statement of her daughter. She had testified during cross examination that the accused was her neighbour and she didn't know anything contradictory about this occurrence. She also stated that she didn't have any familiarity with the accused, but her daughter knew him.

12. The issuance of Ext.P2 certificate, after preparing Ext.P3 mahazar was deposed by PW4, another teacher of the same school.



13. According to the learned counsel for the accused, the age of the victim was not proved. But PW3, the teacher in St. Sebastian's School, who was in charge of Headmaster during 2017, produced Ext.P2 certificate before the Investigating Officer showing the date of birth of the victim as 01.06.2006 and PW3 given evidence supporting the same. Thus it appears that the challenge raised by the accused contending that the age of the victim was not proved is without any basis.

14. Ext.P4 is the scene mahazar prepared by the police and PW5, the witness to the mahazar fully supported the same. During cross examination PW5 had given the details regarding the nature of the building.

15. According to the learned counsel for the appellant/accused, there is no clarity regarding the place of occurrence and therefore the prosecution case is in the midst of doubt. In fact, as deposed by PW13, she was subjected to molestation by the accused at his residence and Ext.P4 mahazar also would show the place of occurrence, as deposed by PW13, by describing the nature of the building. M.O1 shirt, M.O2 lungi and M.O3 underwear worn by the accused were recovered by PW17,



as described in Ext.P5 mahazar, which would corroborate the prosecution case. PW6, who was examined to prove the recovery mahazar marked as Ext.P5, fully supported the prosecution case without any ambiguity regarding the place of occurrence (the house where the accused had resided at the time of occurrence). PW7, a co-owner of the house (along with his wife), deposed that the said house was given for rent to the accused. Ext.P6 is the scene plan prepared by PW8, the then Village Officer, Puthussery Central. As per Ext.P7 issued by the Secretary, Puthussery Grama Panchayat during 2017, it was certified that the house No.6/99 was in the name of Pushpalatha and Priju.K. Regarding Ext.P8 statement given by the victim, PW10 Devi, the CPO attached to Walayar Police Station during 2017, deposed that she recorded this statement of the victim on 19.07.2017. She submitted that in Ext.P8, the mother of the victim did not sign. As regards to the recorded statement she had given rational answers, though she admitted that she did not record the statement in mobile phone. She also deposed that in the FIS, PW13 stated that the statements given by herself were true and correct. In addition to Ext.P8, according to PW11, another CPO attached to the Police Station, she had



recorded the statements of the victim on 20.07.2017, 21.07.2017. One of the contentions raised by the accused is that there is no signature in Ext.P8 as that of PW13 or PW12. But FIR was registered based on the same. Adverting to this contention, it is worthwhile to mention that in Ext.P8 either PW13 (victim) or PW12 did not sign. Naturally in first information statements, the signatures of the informant would be obtained. However, omission to get signature of the informant in the FIS alone would make the FIS totally inadmissible in evidence, is the question, in fact, poses for consideration. In response to this query, it is held that the mere failure or omission on the part of the informant to put signature in the FIS is not a reason to disbelieve the FIS or the entire prosecution case, when the informant while giving evidence admits and supports the case of the prosecution in tune with the statement in the form of first information given by the informant. Here PW13, the victim had given candid evidence supporting the prosecution case after admitting lodging of FIS (Ext.P8), that too, in terms of the said statement inclusive of Ext.P11 statement given before the Magistrate. Therefore, the contention raised by the learned counsel for the appellant/accused that failure to put signature of the informant or her mother in Ext.P8 found to be of no serious consequences and Ext.P8 can



be acted upon.

16. Dr.Rajesh got examined as PW14 and according to him, he had examined the accused on 20.07.2017 while working as Assistant Surgeon, District Hospital, Palakkad, at 6.30 p.m and he had issued Ext.P9 certificate on examination stating that “there is nothing to suggest that the accused person is incapable of performing sexual act”. Thus the potency of the accused to involve in sexual act is proved through this evidence.

17. Ext.P8(a) FIR was registered by PW15, the then S.I of Police of Walayar Police Station and he supported the same. The age of the victim is proved through the evidence of PW16 and Ext.P10. According to PW16, Ext.P10 is the extract of the admission register of PW13 and Ext.P10(a) is the relevant page of the said register and as of which the date of birth of the victim is on 01.06.2006.

18. PW17 is the Investigating Officer, who carried out and completed the investigation.

19. In addition to this evidence, the evidence of PW18 and PW19 also was relied on by the prosecution in support of the prosecution case. PW18 was the Counselor in GVHSS, Kanjikkode since 2017, working under the Child Development Department. Her duty was to



conduct counselling in the Schools and also for the children in the Anganwadi. She also would give awareness and counselling classes. She testified that Sivaji Nagar would come under ICDS Malampuzha. According to her, direction would be received from ICDS Office for conducting counselling for children and she would also give counselling to the children proposed by Anganwadi teachers. She deposed regarding the procedure of counselling. Firstly she would interact with children. According to her, on 10.07.2017 she had talked with the survivor and her mother and gathered information that the survivor was not attending the School and even if she attended the School, she would be returning home. She had deposed further that the survivor was subsequently accommodated in the School hostel and even thereafter the survivor used to return to the house as she was not prepared to stay in the hostel. Her version further is that she had met the mother of the survivor for the first time on 10.07.2017 from the Anganwadi at Sivaji Nagar. According to her, the survivor informed her that four persons in the locality had abused her and the survivor had stated the names of the said four persons as Ravi, Hridayaswami, Kumar and Rahman (the accused herein). Her evidence



would show that mother of the survivor was not aware of the above fact till counselling. PW18 further testified that the survivor informed her that if the survivor would disclose the overt acts outside, the said persons threatened stating that she would be killed. She also deposed that the survivor informed her that the said persons were giving Rs.10/- to the survivor. PW18 came to know that there were ulcers on the private part of the survivor. According to PW18, the mother of the survivor was anxious that her daughter would be endangered by some one and accordingly PW18 prepared a report and handed over the same to ICDS Officer and the said report got marked as Ext.P20. In the said report, the Anganwadi teacher Sheela had also signed. The signature contained in Ext.P20 of Smt.Latha, the Project Officer of the above institution got marked as Ext.P20(a). PW18 also stated before the court that she had 13 years experience in giving counseling to the children and her qualification is MSW, MA (Psychology).

20. PW19 was the Child Development Officer in the ICDS, Malampuzha and she worked there since 01.11.2021. Ext.P20 is the report produced by her before the Court on the basis of summons received and



she identified Ext.P20. According to her, when the reports from counsellors would be received, the same would be forwarded to the Child Protection Officer and thereafter the matter would be intimated to the police. According to PW19, Ext.P21 is the copy of one such report submitted by a counsellor which was forwarded to the Child Protection Officer. Her evidence also would show that the supervision of Anganwadi and the counsellors appointed in the Government High Schools, their honorarium and other matters were being dealt with by ICDS.

21. On evaluation of evidence, the contention raised by the learned counsel for the appellant/accused is that the evidence of PW13 flooded with omissions and contradictions could not be justified as no material omissions or contradictions could be found in the evidence of PW13. Therefore, this contention would necessarily fail. Regarding non-compliance of Section 19 of POCSO Act and Section 209 of Cr.P.C, in fact, these contentions would not yield since compliance of the said provisions could be found from the records of the Special Court, where the accused/appellant did not raise any challenge regarding the non-compliance. Therefore, this contention is negated. Thus overall



evaluation of the evidence would suggest that the prosecution succeeded in proving commission of offences punishable under Section 5(m) r/w 6 of the POCSO Act and also 376(2)(1) of IPC by the accused and all the contentions raised by the learned counsel for the appellant/accused in contra found to be unsustainable. Therefore, conviction is liable to be sustained.

22. Coming to the sentence, going through the sentence imposed on par with the nature and seriousness of the offences committed by the appellant/accused, no interference in the sentence is found justifiable. Therefore, the sentence also is liable to be confirmed.

23. In the result, this appeal fails and is dismissed by confirming the conviction and sentence under challenge with direction to the Special Court to effectuate the sentence without fail, since the appellant/accused has been undergoing sentence.

Registry is directed to forward a copy of this judgment to the Special Court for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/