



2026:KER:38285

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 25TH DAY OF MAY 2026 / 4TH JYAISHTA, 1948

CRL.A NO. 1166 OF 2017

CRIME NO.357/2016 OF PUTHENVELIKKARA POLICE STATION, ERNAKULAM

AGAINST THE JUDGMENT DATED 14.11.2017 IN SC NO.756 OF 2016 OF ADDITIONAL

DISTRICT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

APPELLANT/ACCUSED:

EBIN A.V. ,
AGED 21 YEARS ,
S/O.VARGHESE ,
AMALATH HOUSE ,
KAVILKADAVU ,
KODUNGALLOOR ,
THRISSUR DISTRICT.

BY ADV SRI.P.V.JEEVESH

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR (CBI) ,
HIGH COURT OF KERALA ,
ERNAKULAM-682031.

BY ADV. SMT.AMBIKA DEVI S, SPECIAL GOVERNMENT PLEADER
(ATROCITIES AGAINST WOMEN AND CHILDREN AND WELFARE OF WOMEN AND
CHILDREN)

BY SRI. VIPIN NARAYAN.A, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08.04.2026,
THE COURT ON 25.05.2026 DELIVERED THE FOLLOWING:

**'C.R.'****JUDGMENT****Dated this the 25th day of May, 2026**

The sole accused in S.C. No.756/2016 on the files of the Special Court (for the trial of cases relating to atrocities and sexual violence against women and children), Ernakulam, has filed this appeal, under Section 374(2) of the Criminal Procedure Code [hereinafter referred as 'Cr.P.C' for short] challenging the conviction and sentence imposed by the Special Judge, against him as per the judgment dated 14.11.2017. The State of Kerala, represented by the Public Prosecutor is arrayed as the respondent herein.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor, and also gone through the argument notes filed by the learned counsel for the appellant in writing. Perused the verdict under challenge and the records of the Special Court.

3. Parties in this appeal shall be referred as 'accused' and 'prosecution', hereafter.



4. The prosecution alleges commission of offences punishable under Section 376(2)(n) of the Indian Penal Code [hereinafter referred as 'IPC' for short] and Section 3(a) read with 5(I) and Section 6, Section 7 read with 8 of the Protection of Children from Sexual Offences Act [hereinafter referred as 'POCSO Act' for short], by the accused. The allegation of the prosecution is that, the accused had committed sexual assault against the victim, who was aged only 17 years, on a day in the month of April, 2016 and also in the month of May, 2016. The learned Special Judge after framing charge for the above said offences, recorded evidence and completed trial. During trial, PWs 1 to 15 were examined and Exts.P1 to P11 were marked on the side of the prosecution. Even though, the accused was given opportunity to adduce defence evidence after questioning him under Section 313(1)(b) of the Cr.P.C., he did not opt to adduce any defence evidence.

5. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Section 7 read with 8 of the POCSO Act. Accordingly, the accused was convicted for the said offences and sentenced to



undergo vigorous imprisonment for 3 (three) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) for the said offences and in default of payment of fine amount, rigorous imprisonment for another one month was also ordered.

6. The points urged by the learned counsel appearing for the appellant are as under:-

"1. Failure to Prove the Substratum of the Prosecution Case.

The prosecution alleged an offence involving sexual intercourse, but the victim herself made no such allegation in her testimony. This omission demolishes the foundational basis ("substratum") of the case. The prosecution must prove the essential ingredients of the offence beyond reasonable doubt; mere speculation cannot sustain a conviction. Without the victim's corroboration of the core allegation. the entire case collapses.

2. Victim's Testimony Riddled with Contradictions and Improvements.

The victim's examination-in-chief and cross-examination reveal material contradictions, embellishments, and improvements not present in her initial statements. A witness's testimony must be cogent and consistent; contradictions going to the root of the matter warrant acquittal.

3. Prosecution's Failure to Prove the Victim's Minority.

The prosecution adduced no cogent evidence to establish that the victim was below 18 years of age, a prerequisite under the POCSO Act. The ossification test or medical evidence, if any, lacks reliability, and the victim's self-serving statement alone



cannot suffice. Absent this, the applicability of POCSO provisions fails, warranting acquittal.

4. Constitutional Invalidity of POCSO Age Threshold vis-à-vis Article 14.

A girl aged 17 years possesses the mental maturity and rational capacity to consent, akin to an adult. Criminalizing consensual elopement or relations with a peer violates Article 14 (equality) and Article 21 (right to life and liberty) of the Constitution. The POCSO Act's rigid age limit of 18 years, without considering maturity, is arbitrary and discriminatory against young adults, rendering it ultra vires. The provision merits being struck down or read down.

5. Invalidity of the Medical Certificatee.

The medical certificate issued by the doctor was not in the prescribed form under medico-legal protocols. This procedural lapse deprives it of evidentiary value.

6. Potency Test Conducted Without Consent - Violation of Fundamental Rights.

The potency test on the Appellant was performed sans informed consent, infringing Article 21 (right to privacy and bodily integrity). This vitiates the test results, rendering them inadmissible.

7. Ineffective Assistance by Trial Counsel The defence lawyer's inadequate cross-examination.

Failing to confront the victim with key contradictions or challenge prosecution evidence-amounted to ineffective assistance, prejudicing the Appellant's fair trial rights under Article 21.



8. Sole Reliance on Uncorroborated Testimony - Violation of Criminal Jurisprudence.

The prosecution case hinges exclusively on the victim's uncorroborated testimony, ignoring the safeguard that convictions in sexual offences require corroboration. No independent witnesses, recovery evidence, or forensic corroboration exists, mandating acquittal."

7. The learned Public Prosecutor submitted that with regard to the offence found to be committed by the accused, the evidence of PW1, categorically established the ingredients of the offence under Sections 7 read with 8 of the POCSO Act. The learned Public Prosecutor also submitted that the conviction and sentence imposed on the accused are liable to be sustained and that none of the contentions raised by the accused would sustain so as to interfere with the verdict impugned.

8. In view of the rival submissions, the points arise for consideration are:

1. Whether the Special Court is justified in finding that the accused committed the offence under Section 7 read with 8 of the POCSO Act?

2. Whether the verdict of the Special Court would require interference?



3. Order to be passed?

9. Point Nos.1 to 3:- In this case, in order to find commission of the offence under Section 7 read with 8 of the POCSO Act, the learned Special Judge mainly relied on the direct evidence of the victim, who was got examined as PW1. On perusal of the evidence of PW1, it is discernible that she deposed about the occurrence disclosing some overt acts and not disclosing some overt acts as alleged by the prosecution. According to her, her father was working in Andaman Nicobar Island and her mother was working in Saudi Arabia and she had two elder sisters and all of them studied by staying at a hostel. She deposed further that, when she was called by the Chairperson of the Child Welfare Committee, she disclosed the details of the case before the Child Welfare Committee and they recorded the same. She admitted that Ext.P1 statement was so given by her and she identified the accused at the dock, who was introduced to her by her friend, Anupama. According to her, she used to call the accused through mobile phone. She further deposed that during school vacation, on a day, at about 11.00 p.m., the accused reached her house and he entered



inside the house through the door of the kitchen. Then she took the accused to her room and then he kissed her, hugged her and touched on her private parts with her consent. According to her, the accused arrived there on a two-wheeler and parked it on the road. Subsequent to thereafter, also on two occasions, the accused reached her house and committed the same overt acts. But she was declared hostile when she deposed that there was no sexual intercourse in between her and the accused. Even though PW1 turned hostile to the prosecution, as regards to sexual intercourse in between PW1 and the accused, as far as the evidence given by her disclosing sexual overtures excluding sexual intercourse, nothing asked during her cross examination and evidence of PW1 in this regard remains unchallenged even without a suggestion that the said versions are false.

10. PW3 examined in this case is the father of the victim. He also supported the occurrence as telephoned by PW2. PW4, the sister of PW1 supported the occurrence deposed by PW1 in tune with the prosecution allegations. Apart from that, PW2, a member of Rural Juvenile Police admitted



that she had recorded the statement of PW1 on 01.07.2016 as directed by CWC and a report also was forwarded as seen in Ext.P3. Ext.P5 is the ownership certificate of the house where the occurrence took place, owned by the father of the victim proved through PW6. Ext.P6 is the site plan relating the place of occurrence proved through PW7. Ext.P7, the scene mahazar is proved through the presence of PW8, who is none other than the brother of PW3.

11. In this case, the first point argued by the learned counsel for the appellant/accused is that the substratum i.e., fundamental basic ingredients failed to be proved beyond reasonable doubt by the prosecution and mere speculations would not be sufficient to sustain a conviction. The second point argued is that the evidence of PW1 would show contradictions and improvements, where PW1 turned hostile to the prosecution as regards to sexual intercourse while deposing before the court regarding the sexual overtures in terms of the prosecution case and no attempt made by the counsel for the accused, to cross examine PW1 to get contradictions or omissions in her statement as regards to the



facts disclosed which would show the elements to prove the offence under Section 7 of the POCSO Act. It is well settled that merely because a witness is declared hostile, or the witness does not support the prosecution case exactly in terms of prosecution version, the evidence tendered by such witness should not be eschewed in toto or, not at all reliable, particularly when such evidence failed to be challenged by the defence during cross-examination of the witness. Therefore, the challenge on the part of the counsel for the accused that, under the circumstances, the substratum of the prosecution case stands demolished and that the testimony of PW1 is vitiated by contradictions and improvements could not be found.

12. The third point raised in the argument note is that no cogent evidence produced to prove the age of the victim below 18 years. In this case, Ext.P4, the birth certificate issued by the Secretary of Puthenvelikkara Panchayat had been tendered in evidence through the Secretary, who got examined as PW5 showing the date of birth of the victim as 24.12.1998. In fact, the birth certificate issued by the local authorities is a



reliable document to prove the age of the victim. Therefore, this contention would definitely fail.

13. The fourth point raised in the argument note as indicated above cannot be considered by this Court as a person below 18 years is stated as a minor for the purpose of the POCSO Act. Regarding points raised as 5 and 6, in this case Ext.P8 is the certificate issued by PW9, while he was working as CMO, Taluk Hospital, North Paravur to prove the potency of the accused. In fact, a challenge raised regarding the potency test on the ground that it was conducted without the consent of the accused in a criminal case is not tenable with the aid of Article 21 of the Constitution of India, since such a test is legally permissible, without the consent of the accused and is not prohibited under Article 21 of the Constitution. Point No. 7 argued by the learned counsel for the appellant is ineffective assistance of counsel during the trial and failure to conduct effective cross-examination, resulted in conviction. In fact, the accused has no case that he was not defended by a lawyer of competence, since this case was defended by a lawyer of his own choice. Therefore, this challenge also cannot be sustained.



14. The last ground, viz., ground No. 8 in the argument note is that the conviction is based on the sole uncorroborated testimony of PW1, ignoring the safeguard of conviction in sexual offences which would require corroboration through independent witnesses, in the matter of evidence of recovery, forensic corroboration etc. In fact, the evidence of PW1 narrated above is found to be reliable to the extent which disclosed the ingredients for the offence under Section 7 of the POCSO Act. Section 7 of the POCSO Act provides that whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. So touching the vagina, penis, anus or breast of the child or makes the child touch, itself would attract the offence under Section 7 of the POCSO Act. In the instant case, the evidence of PW1 is wholly reliable to be



acted upon. Therefore, the contention raised by the learned counsel for the accused that the sole testimony of PW1 alone would not suffice to enter in conviction is found to be untenable.

15. Apart from the above, her sister and parents and also PW2 corroborated the prosecution case. Therefore, none of the contentions raised by the appellant to unsettle the verdict found to be sustained. Consequently, the conviction is liable to be confirmed.

16. Coming to the sentence, three years is the maximum sentence imposed upon the accused for the offence under Section 7 read with 8 of the POCSO Act and the same is the statutory minimum sentence provided for the offence under Section 7 read with Section 8 of the POCSO Act. Therefore, no reduction in sentence is legally permissible.

17. Therefore, reduction in sentence also is not possible. Accordingly, the verdict impugned does not require any interference and in such view of the matter, this appeal



must fail.

In the result, this criminal appeal stands dismissed. Registry is directed to forward a copy of this judgment to the Special Court concerned forthwith, for information and compliance.

**Sd/-
A. BADHARUDEEN
JUDGE**

DCS



APPENDIX OF CRL.A NO. 1166 OF 2017

PETITIONER ANNEXURES

Annexure A

THE CERTIFIED COPY OF THE ORDER IN S.C.NO.
756/2016 OF ADDITIONAL DISTRICT AND SESSION'S
JUDGE, ERNAKULAM, DATED 14.11.2017