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CRL.A NO. 421 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 12TH DAY OF JUNE 2026/22ND JYAISHTA, 1948

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CRIME NO.822/2020 OF PAVARATTY POLICE STATION, THRISSUR

AGAINST THE JUDGMENT DATED 28.02.2023 IN SC NO.262 OF

2021 OF FAST TRACK SPECIAL COURT, (POCSO) KUNNAMKULAM

APPELLANT/ACCUSED:

RASHEED
AGED 48 YEARS
SON OF UNNENKUTTY, CHANDAMKUZHI HOUSE,
ELIYAPETTA DESOM, CHERPULLASSERY, PALAKKAD
DISTRICT., PIN - 679503

BY ADVS.
SRI.C.P.UDAYABHANU
SRI.NAVANEETH.N.NATH
SHRI.RASSAL JANARDHANAN A.
SHRI.ABHISHEK M. KUNNATHU
SRI.BOBAN PALAT
SRI.P.U.PRATHEESH KUMAR
SRI.P.R.AJAY
SHRI.K.U.SWAPNIL
SHRI.PRANAV USHAKAR
SMT.SWETHA BIJUMON

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
SRI.VIPIN NARAYAN.A, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03.06.2026, THE COURT ON 12.06.2026 DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 12th day of June 2026

Judgment in S.C.No.262/2021 on the files of the Special Court under the Protection of Children from Sexual Offences (POCSO) Act, 2012 (hereinafter referred to as 'POCSO Act' for short), Kunnamkulam, is under challenge, at the instance of the sole accused in the above case. The State of Kerala, represented by the Public Prosecutor is the respondent.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor in detail. Perused the verdict under challenge and the records placed by the learned Public Prosecutor.

3. The prosecution case in brief is that the accused was the Usthad (Teacher) of Noorul Hidayya



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Madrassa, Mullassery and was residing in building No.XV/288 of Mullassery Grama Panchayat, owned by Sidhiquel Akbar Juma Masjid, which is adjacent to the aforesaid Madrassa. On 25.08.2020 at 4.00 pm, when the survivor, a boy aged 9 years, a student of the Madrassa, reached the room of the accused to clear doubts for the online examination, the accused with sexual intention seated him on his lap, kissed him on his face, touched on his body, held on his penis by putting his hand through the Bermuda and inserted the penis of PW1 into the mouth of the accused and sucked the same. The accused thereby alleged to have committed offences punishable under Section 377 of the Indian Penal Code (hereinafter referred to as 'IPC' for short) and Sections 4(2) r/w. 3(d), 6(1) r/w 5(f), 5(m), 8 r/w. 7, 10 r/w. 9(o) and 9(m) of the POCSO Act and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act' for short).



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4. After framing charge for the said offences, the learned Special Judge proceeded with trial and recorded evidence confined to that of PW1 to PW20, Exts.P1 to P27 and MO1 to MO3 on the side of the prosecution. The accused himself got examined as DW1 and Ext.D1 was marked on the side of the defence. Court Exts. C1 and C2 were also marked.

5. On analysis of the evidence, the Special Court found that the accused/appellant committed offences punishable under Section 377 of IPC, Sections 4(2) r/w. 3(d), 6(1) r/w. 5(f), 5(m), 8 r/w. 7, 10 r/w. 9(o) and 9 (m) of the POCSO Act and under Section 75 of the JJ Act. Accordingly, he was convicted and sentenced as under:

"1. The accused is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 20,000/- (Rupees Twenty thousand only) u/s. 377 of the Indian Penal Code. In default of payment of fine, he shall undergo rigorous imprisonment for a further period of 6 months.

2. The accused is sentenced to undergo rigorous imprisonment for 20 years and to



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pay a fine of Rs.20,000/- (Rupees Twenty thousand only) under section 5(f) r/w. 6 of the POCSO Act. In default of payment of fine, he shall undergo rigorous imprisonment for a further period of 6 months.

3. The accused is sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.20,000/- (Rupees Twenty thousand only) under section 5(m) r/w. 6 of the POCSO Act. In default of payment of fine, he shall undergo rigorous imprisonment for a further period of 6 months.

4. The accused is sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- (Rupees Ten thousand only) under section 9(m) r/w. 10 of the POCSO Act. In default of payment of fine, he shall undergo rigorous imprisonment for a further period of three months.

5. The accused is sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- (Rupees Ten thousand only) under section 9(o) r/w. 10 of the POCSO Act. In default of payment of fine, he shall undergo rigorous imprisonment for a further period of three months.

6. The accused is sentenced to undergo rigorous imprisonment for 3 years under Section 75 Juvenile Justice (Care and Protection of Children) Act, 2015.

7. The accused is allowed to set off u/s. 428 of Cr.P.C., the period of detention already undergone in judicial custody from 26.08.2020 to 15.09.2020 (19 days) against the substantive sentence of imprisonment.



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8. *If the fine amount is realized, Rs.40,000/- (Rupees forty thousand only) shall be given to PW1, the survivor as compensation u/s. 357 (1) (b) Cr.P.C.*

9. *Substantive sentences shall run concurrently."*

6. According to the learned counsel for the appellant/accused, the entire allegations are false. It is contended that the accused, who belongs to the Sunni sect of Muslim community in the State of Kerala, was falsely implicated in this case, at the instance of members of another sect of the Muslim community, because of sectarianism within the Muslim community. It is argued by the learned counsel for the appellant further that the special court went wrong in placing reliance on the solitary testimony of PW1, though his evidence is neither reliable, nor trustworthy and insufficient to prove the guilt of the accused. He had also attempted to point out contradictions with



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reference to the FI Statement and deposition of PW1, without getting any contradictions recorded during the examination of PW1. It is also pointed out that the evidence of a child witness must be evaluated more carefully and with greater circumspection, as laid down by the Apex Court in **Pancchi Vs. State of UP**, reported in **AIR 1998 SC 2726**. It is also pointed out that PW1 is not a sterling witness as held by the Apex Court in **Rai Sandeep @ Deepu Vs. State of NCT of Delhi**, reported in **2012(8) SCC 21**.

7. The learned Public Prosecutor supported the verdict and zealously argued that the victim was a minor and his age was proved through the evidence of PW1, PW2, PW13, and PW16, as well as Ext.P22 and Ext.P18. That apart, the evidence of PW1 appears to be wholly reliable and no material contradictions were extracted during his cross-examination to disbelieve his evidence. Thus the verdict is



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liable to be confirmed.

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

1. Whether the Special Court went wrong in finding that the accused committed the offence punishable under Section 377 of the IPC?
2. Whether the Special Court went wrong in finding that the accused committed the offence punishable under Section 5(f) r/w.6(1) of the POCSO Act?
3. Whether the Special Court went wrong in finding that the accused committed the offence punishable under Section 5(m) r/w.6(1) of the POCSO Act?
4. Whether the Special Court went wrong in finding that the accused committed the offence punishable under Section 9(m) r/w.10 of the POCSO Act?
5. Whether the Special Court went wrong in finding that the accused committed the offence punishable under Section 9(o) r/w.10



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of the POCSO Act?

6. Whether the Special Court went wrong in finding that the accused committed the offence punishable under Section 75 of the JJ Act?
7. Whether the judgment impugned would require any interference?
8. Order to be passed.

9. Point Nos. 1 to 8

In this case, PW1 is the survivor and PW2 is his mother. According to PW1, during 2020 he was studying in Vth standard at Vanivilasam School, Padoor. His father was working aboard and he was residing with his mother and siblings. He was also studying in Noorul Hidayah Madrasa which was under the Sidhiqueel Akbar Juma Masjid. The accused was the Usthad in the Madrasa. During 2020, the classes were online due to Corona. In the month of August 2020, there was exam in the Madrasa and the Usthad



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agreed to clear the doubts and asked him to reach the Masjid. He went to the Masjid to meet Usthad four or five times. At about 4.30 pm on 25.08.2020, PW1 reached the room of Usthad at the Masjid. Then the accused seated him on the lap of the accused and kissed him. Then he pressed his stomach and held on his penis by putting his hands through the Bermuda. Thereafter, the accused turned towards him and inserted his penis into his mouth and sucked the same, then the accused asked PW1 whether he was feeling good. He felt pain and hence pushing the accused he ran away. The accused followed him and asked him not to reveal the same to any one. He was afraid and hence did not inform it to any one. Thereafter, after the Magrib prayer he had informed the same to his mother. His mother informed the same to his uncle and on the next day he along with PW2 went to the house of the relative which was on the back side of the



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Masjid. Thereafter, his mother informed the police and police recorded his statement. The statement got marked as Ext.P1. He was taken to the doctor and also before the Magistrate to record his statement. According to him, MOs.1 and 2 are the Bermuda and T-shirt worn by him at the time of the incident. He also identified MO3 as the dhoti worn by accused at the time of incident. According to him, he had shown the place of occurrence to the police.

10. During cross-examination, PW1 specifically deposed that the accused caused him to stand and thereafter, the accused sat down and committed the offence of penetration of his penis into the mouth of PW1. According to him, he had informed the doctor that he felt pain in his penis. PW1 further deposed that his father belonged to Sunni sect and his uncle Azeez did not belong to Sunni sect. The brother of his mother also belonged to Sunni sect. A contention was raised during cross-examination of PW1 that



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on that day the accused had not met PW1 and PW1 denied the same.

11. PW2 is the mother of PW1. According to her, the accused was the Usthad, the teacher of PW1, at the Madrassa. During those days there was only online class due to corona and the accused informed that he was ready to clear the doubts if any of PW1. On 22.08.2020, as requested by the accused, a calendar was sent to him through PW1. On 24.08.2020, PW1 and his elder brother went to meet the accused to learn how to record the tick mark in the mobile phone. Then the accused asked PW1 to meet him on the next day to clear doubts for the exam. Accordingly, PW1 met the accused and returned at about 5.00 pm. At about 7.00 pm, PW1 asked PW2 whether it was necessary to go to meet the Usthad on the next day. As PW2 sensed something unpleasant on the version of PW1, she asked him and then



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PW1 informed her that the accused as a bad person and thereafter, PW1 disclosed the incident. PW2 informed the same to her husband and as instructed by the husband, she went to the house of the relative and informed occurrence to the police. The police recorded the statement of PW1. The accused was arrested and was identified by PW1 and herself. PW1 was taken to the Magistrate for recording his statement under section 164 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C' for short) and also for medical examination. She identified MOs.1 to 3. When PW2 was cross-examined, it was contended by the accused that, due to the COVID-19 restrictions, PW1 never met the accused. PW2 denied the same. Another suggestion put up during cross-examination was that Mustafa, a relative of PW1, belonged to Mujahid sect and the accused belonged to Sunni sect, but PW2 denied the said suggestion also.



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12. The Secretary of Sidhiquel Akbar Juma Masjid at Mullassery got examined as PW3. He testified that Mustafa (CW8) was the President and he had passed away. The accused was appointed as the Usthad in 2020 in the Noorul Hidayah Madrassa adjacent to the Masjid. During that period, there were only online classes. In connection with the offence committed against PW1, the accused was arrested by the police. PW1 was a student at the Madrassa and Ext.P21, the extract of the admission register, was tendered in evidence through PW3 to substantiate the same. He deposed further that police came there and prepared Ext.P3 scene mahazar. According to him, the police had taken Ext.P16, copy of the minutes book dated 29.12.2018, and Ext. P17, the application form of PW1 for the admission to the Madrassa. ExP16(a), the decision of the committee dated 27.08.2020 by which the accused was terminated. PW3



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identified the accused who was present at the dock as the Usthad. When he was cross-examined, PW3 admitted that the accused used to make speech on Fridays at the Masjid. He also admitted that the accused belonged to Sunni Sect and CW8 Mustafa belonged to Mujahid sect. PW3 also deposed that Abdul Azeez Manpyil house, a relative of PW1 belonged to Jama-Athe Islami sect. It was suggested by the learned counsel for the accused that as the accused used to preach against the other sects, Mustafa and Abdul Azeez fabricated a false case and the same was denied by PW3.

13. PW4 examined in this case is the relative of PW2 and he supported the prosecution case. According to him, when the police seized MO1 and MO2, he was present and he signed as a witness in Ext.P4 seizure mahazar pertaining to its recovery. PW5 was the WCPO, Paravatty Police Station. According to her, she had recorded Ext.P1 FI



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statement and produced PW1 for medical examination and also for recording the statement under Section 164 Cr.PC. by the Magistrate. Subsequently, she attested Ext.P5 seizure mahazar, prepared by the Investigating Officer, prepared for seizing the application form for admission, attendance register and minutes book.

14. PW6 was the Grade CPO who accompanied PW5. He deposed that he had received the swab collected by the doctor and the covering letter and produced the same before SHO. He signed as an attesor to Ext.P6 seizure mahazar, PW7 is an attesor to Ext.P7 seizure mahazar prepared for seizing the swab of the accused and the covering letter.

15. PW8 was the doctor who examined PW1 on 26.08.2020 and issued Ext.P8 medical certificate. According to him, there was no external injury and the history was that



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PW1 was sexually assaulted by the Usthad Rasheed when PW1 went to his room to clear the doubts. The accused also was examined by PW8 and issued Ext.P9 potency certificate certifying that the accused is capable of doing sexual acts. According to him, he had issued Ext.P10 certificate for the collection of the materials for DNA profiling. PW9 was the CMO who had taken the blood sample of the accused for DNA profiling. Ext. P11 was the certificate issued by him.

16. PW10 was the CPO who had taken the accused to the hospital for collecting the blood sample and swab. PW11 was the senior Civil Police Office who attested Ext.P26 seizure mahazar prepared for seizing the vouchers for the salary of the accused and his certificate of qualification.

17. The State Nodal Officer Reliance GO Info com Limited was examined as PW12. According to him,



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Ext.P13 is the customer application for mobile No.8835816790 as per Ext.P13 the connection was taken with the bio-metric of one Thirumurugan. Ext.P14 is the tower location and the call details on 25.08.2020 and 26.08.2020, Ext.P15 is the certificate issued by him under section 65B of the Information Technology Act. He further deposed that as per Ext.P14, the tower location was at Mullassery.

18. The Village Officer, who issued Ext.P19 sketch showing the place of occurrence, was examined as PW14. PW15 was the Secretary, Mullassery Grama Panchayat, who issued Ext.P20 ownership certificate of the Masjid building. PW17 was the Sub Inspector of police, Pavaratty Police Station, who registered Ext.P22 FIR on the basis of Ext.P1. All of them supported the prosecution case.

19. The teacher of a Madrassa who translated the records seized from the Masjid and the Madrassa, which



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were in Arabic was examined as PW18. He identified the signature in Exts.P5 and P12 seizure mahazars and also deposed that the accused was having the qualification to teach upto the 7th standard in the Madrassa.

20. PW19 was the Inspector of Police Pavaratty Police who conducted the investigation. According to him, on 26.08.2020 the accused was arrested after preparing Ext.P23 arrest memo and Ext.P24 inspection memo. He collected Ext.P9 potency certificate of the accused and Ext.P8 medical certificate of PW1. Ext.P25 report was filed for adding the name and address of the accused. He prepared the scene mahazar and also seized MOs 1 to 3. Ext.P26 series vouchers and the certificate of qualification of the accused were seized. The documents from the Madrassa and the Masjid were also seized. He also deposed that he had prepared the forwarding note for sending the materials



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collected for DNA and swab for chemical analysis. During cross-examination, Ext.D1 a Government order in connection with the Covid-19 restriction was marked through PW19.

21. PW20 deposed that he had acquaintance with the accused as the accused used to visit Earvadi. PW20 was working as a carpenter in Earvadi and according to him, the accused was working as an Usthad. He testified that the accused requested his ID to obtain a mobile connection. He had taken a mobile connection and had given the sim-card to the accused. Later, he understood that a case was registered against the accused.

22. The alleged incident occurred on 25.08.2020 and the prosecution proved that PW1 was aged 9 years, 11 months and 12 days on the date of occurrence and the juvenility of the victim not disputed by the defence.



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23. To sum up, on reappreciation of the evidence discussed hereinabove, no contradiction to be found to disbelieve the version of PW1, or other witnesses. The evidence of PW1 as to the sexual overtures at the instance of the accused found to be wholly reliable, supported by other evidence discussed in detail. Therefore, the contention raised by the learned counsel for the appellant that PW1 is not a sterling witness is found to be unacceptable and is negated. Similarly, sectarianism in the Muslim community led to registration of this crime also could not be found even remotely, as no convincing evidence forthcoming in this regard. Thus the contentions raised by the learned counsel for the appellant to upset the verdict impugned are found to be bereft of merit. Thus, it could be held that the evidence available would suggest that the appellant/accused committed the offences under Section 377



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IPC, Sections 5(f) and 5(m) r/w. 6(1) as well as under Sections 9(m) and 9(o) r/w 10 of the POCSO Act and under Section 75 of the JJ Act and the learned Special Judge rightly found so. Therefore, the conviction entered by the learned Special Judge does not require any interference.

24. Coming to the sentence, since the minimum punishment for the offences punishable under Sections 5(f) and 5(m) as provided under Section 6(1) of the POCSO Act is imprisonment for a term not less than 20 years, which may extend upto imprisonment for life, no reduction in the sentence is possible, as the Special Court imposed only the minimum sentence. Therefore, the sentence also is confirmed.

In the result, this appeal fails and is dismissed accordingly.



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

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.A NO. 421 OF 2023

PETITIONER ANNEXURES

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| Annexure-1 | TRUE PHOTOCOPY OF THE MEDICAL RECORDS OF THE MOTHER OF THE PETITIONER ISSUED FROM MES MEDICAL COLLEGE AND HOSPITAL, PERINTHALMANNA |
| Annexure 2 | TRUE PHOTOCOPY OF THE MEDICAL CERTIFICATE ISSUED FROM MOTHER CARE HOSPITAL, MANNARKKAD, PALAKKAD DATED 20.01.2024 |
| Annexure 3 | TRUE PHOTOCOPY OF THE MEDICAL CERTIFICATE DATED 02.04.2024 ISSUED BY THE INTERVENTIONAL CARDIOLOGIST OF MOTHER CARE HOSPITAL, MANNARKKAD |
| Annexure 1 | THE MEDICAL CERTIFICATE DATED 07.06.2024 ISSUED BY DR. GEORGE JACOB, INTERVENTIONAL CARDIOLOGIST, MOTHER CARE HOSPITAL, PALAKKAD. |