



Crl.Appeal No.2231/2024

- 1 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23RD DAY OF JUNE 2026 / 2ND ASHADHA, 1948

CRL.A NO. 2231 OF 2024

CRIME NO.593/2019 OF Thodupuzha Police Station, Idukki

AGAINST THE JUDGMENT DATED 07.11.2024 IN SC NO.9 OF 2020 OF
SPECIAL COURT UNDER THE POCSO ACT, THODUPUZHA

APPELLANT/ACCUSED:

ASHIN CHACKO,
AGED 26 YEARS,
S/O CHACKO, V.M VAZHINADAYIL HOUSE,
NAGAPPUZHA KARA, KALLOORKADU VILLAGE,
NAGAPPUZHA, PIN - 686668.

BY ADVS.
SRI.K.S.ARUNDAS
SMT.AMBILY JOSHY
SMT.ANAMIKA
SMT.MANJUSHA.M.S.
SMT.SALINI K.

RESPONDENT/STATE:

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

SENIOR PUBLIC PROSECUTOR SRI VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03.06.2026,
THE COURT ON 23.06.2026 DELIVERED THE FOLLOWING:

**“C.R”****A. BADHARUDEEN, J.**-----
Crl.A. No.2231 of 2024
-----Dated this the 23rd day of June, 2026**JUDGMENT**

The judgment dated 07.11.2024 in S.C.No.09 of 2020 on the files of the Special Court under the Protection of Children from Sexual Offences Act, 2012 (for short ‘the POCSO Act’), Thodupuzha, is under challenge in this appeal at the instance of the appellant, who is the sole accused therein. Initially, Adv. Thomas J. Anakkallunkal filed vakalath for the appellant/accused and later he had relinquished his engagement. Thereafter, Adv. K.S. Arun Das filed vakalath for the appellant/accused. Last time, in the absence of the learned counsel for the appellant Adv.Benson Ambrose was appointed as State Brief to argue the matter. Today, the learned counsel who filed fresh vakalath for the appellant/accused appeared and argued the matter in detail.

2. Heard the learned Public Prosecutor and also heard the additional points rendered by Adv.Benson Ambrose, who also studied the case. Perused the verdict impugned and the records of the special court.

3. Here, the prosecution alleges the commission of offences punishable under Sections 450, 506(i), 376 of the Indian Penal Code (for short ‘IPC’) and under Section 3(a)(b) r/w Section 4, Section 7



r/w Section 8, Section 11 r/w Section 12 of the POCSO Act, by the appellant/accused. The prosecution allegation is that at about 10.15 p.m. on 27.04.2019, the appellant/accused had trespassed upon the residence of the victim who was a juvenile, forcefully closed her mouth with his hands, and dragged her to the bed room on the north-western side of the house, locked the door and when she attempted to make noise, the appellant/accused threatened and intimidated her. Thereafter, the accused committed rape and penetrative sexual assault on her.

4. On completing pre-trial formalities, the learned Special Judge framed charge for the said offences and tried the matter. During trial, PWs 1 to 20 were examined, Exts.P1 to P36 and MOs 1 to 6 were marked on the side of the prosecution. During cross examination of PW2, one contradiction got marked as Ext. D1 on the side of the defence. On evaluation of the evidence, the learned Special Judge found that the appellant/accused committed offences punishable under Sections 450, 506(i), 376 of IPC as well as Section 3(a)(b) r/w Section 4, Section 7 r/w Section 8, Section 11 r/w Section 12 of the POCSO Act and he was convicted and sentenced as under:-

“The convict is sentenced to undergo rigorous imprisonment for a period of 7 (seven) years for committing offence punishable u/s.450 of IPC. He shall also pay a fine of ₹50,000/- (Rupees fifty thousand only). In default, the convict shall undergo rigorous imprisonment for one (1) year.

The convict is sentenced to undergo rigorous imprisonment for a period of 2 (two) years for committing offence punishable u/s.506(i) of IPC.



The convict is sentenced to undergo rigorous imprisonment for a period of 10 (ten) years for committing offence punishable u/s.3(a) r/w 4 of PoCSO Act. He shall also pay a fine of ₹1,00,000/- (Rupees one lakh only). In default, the convict shall undergo rigorous imprisonment for 18 (eighteen) months.

The convict is sentenced to undergo rigorous imprisonment for a period of 10 (ten) years for committing offence punishable u/s/ 3(b) r/w 4 of PoSCO Act. He shall also pay a fine of ₹1,00,000/- (Rupees one lakh only). In default, the convict shall undergo rigorous imprisonment for 18 (eighteen) months.

The convict is sentenced to undergo rigorous imprisonment for a period of 3 (three) years for committing offence punishable u/s. 7 r/w 8 of PoCSO Act. He shall also pay a fine of Rs.30,000/- (Rupees thirty thousand only). In default, the convict shall undergo rigorous imprisonment for six (6) months.

Since accused is sentenced for penetrative sexual assault u/s. 3(a)(b) r/w 4 of PoCSO Act I am not imposing separate sentence for offences u/s.376 of IPC as per S.42 of PoCSO Act."

5. According to the learned counsel for the appellant/accused, there occurred a delay in lodging the FIR. It is submitted that the alleged occurrence took place on 27.04.2019, where the FIR was registered only on 30.04.2019 on the basis of the statement given by the victim, who was examined as PW1. Therefore, the prosecution case is in the midst of doubts on the ground of delay. It is also submitted by the learned counsel for the appellant/accused that, in fact, a cordial relationship had developed between PW1 and the accused, and they intended to marry each other. However, since the appellant/accused belonged to Christianity and the victim followed Hinduism, their parents opposed the marriage. At this juncture, this complaint was lodged without any basis. According to the learned counsel for the appellant/accused, considering all these facts when the evidence is evaluated, the prosecution has not succeeded in proving the



guilt of the accused beyond the reasonable doubt, and in such a case, the verdict impugned would require interference to record acquittal of the accused enlarging benefit of doubt.

6. The learned State Brief submitted that the mobile phone allegedly used by the appellant/accused to contact the victim was recovered only on 06.05.2019 and that the medical report recorded that the hymen was absent and not ruptured. Therefore, these aspects are doubtful circumstances to render benefit of doubt to the appellant/accused and to unsettle the impugned verdict.

7. The learned Public Prosecutor zealously supported the verdict and contended that the evidence of PW1, the victim, and the other witnesses categorically established the guilt of the appellant/accused, beyond any iota of doubts. In such circumstances, there is no ground to interfere with the impugned verdict and that the conviction and sentence are liable to be confirmed.

8. Having addressed the rival contentions, the points arise for consideration are:-

(1) Whether the sentence recorded by the Special Court against the accused for the offence punishable under Section 450 of IPC is justifiable ?

(2) Whether the sentence recorded by the Special Court against the accused for the offence punishable under



Section 506(i) of IPC is justifiable ?

(3) Whether the conviction and sentence recorded by the Special Court against the accused for the offence punishable under Section 3(a) r/w 4 of POCSO Act are justifiable ?

(4) Whether the conviction and sentence recorded by the Special Court against the accused for the offence punishable under Section u/s 3(b) r/w Section 4 of POCSO Act are justifiable ?

(5) Whether the conviction and sentence recorded by the Special Court against the accused for the offence punishable under Section 7 r/w Section 8 of POCSO Act are justifiable ?

(6) Whether the conviction recorded by the Special Court against the accused for the offence punishable under Section 376 of IPC is justifiable?

(7) Is it necessary to interfere in the verdict impugned?

(8) The order to be passed.

Point Nos. 1 to 8

9. The prosecution case is that at about 10:15 p.m. on 27.04.2019, the appellant/accused had trespassed upon the residence of



the victim with an intention to commit rape and penetrative sexual assault on the victim, who is a minor, and thereafter committed the same.

10. In this case, the FIR was registered on 30.04.2019 and the victim was examined as PW1. According to her, her date of birth is 18.02.2003, and as on 11.01.2024, the date of recording her evidence, she was a final year degree student. She further stated that the incident took place after she had completed her 10th standard.

11. The prosecution produced Exts. P16 FIR, P18 birth certificate and P19 admission register to prove the date of birth of the PW1. The defence did not dispute the juvenility of the victim on the date of occurrence, where in fact, the prosecution succeeded in proving that the age of the victim was 16 years and 2 months at the time of occurrence.

12. Adverting to the evidence relied on by the Special Judge to find commission of the aforesaid offences, the crucial witness is none other than PW1, the victim. PW1 testified that on 27.04.2019 her father was not available at the house and he was out of station in connection with a pooja. As usual her mother went to bed at about 10 p.m. Accused already informed PW1 that he would come to return her bangle. While PW1 was watching TV at the hall room, the appellant/accused came.



When she opened the main door of the house accused returned one bangle and while she was verifying the same, the accused pushed open the door and entered inside the hall. He suddenly closed her mouth by one of his hands and caught around the body with the other hand. He took PW1 to her room and pushed her to the bed. He locked the door and switched off the light. When she attempted to make sound the accused threatened and intimidated her. Thereafter he pulled down her three forth pant and kissed on her neck, face and caught hold on her breast. He pulled down his pants and thereafter inserted his finger to the vagina and thereafter penetrated his penis to her vagina. Her attempt to push him went in vain. Thereafter she made noise and called her mother. On hearing the sound, her mother came and knocked the door. Then the accused tried to conceal himself at the corner of the room. She opened the door and shown the accused to her mother and soon the appellant/accused left the room. On the next day the mother informed the matter to the father when he returned in the morning. Later police came to her house and recorded her statement. PW1 had identified her signature in the FIS and it was marked as Ext.P1. Despite searching cross examination nothing was elicited to disbelieve her.

13. The mother of the victim (PW1) was examined by the prosecution as PW2. She deposed the date of birth of PW1 was on 18.02.2003 and that she gave birth to PW1 at Marian centre Hospital at



Pala. PW2, in fact, deposed in tune with the testimony of PW1 and according to her during the relevant period she was running a beauty parlour and stitching center in Kumaramangalam, Her husband was a priest in a temple. The accused was known to her and used to see him near to her beauty parlour. The incident was on 27.04.2019, she and PW1 were alone at the house as her husband was out of station in connection with a pooja. At about 10 pm, she went to bed, while PW1 was watching TV at the hall room. After about 10 minutes she heard the sound of PW1 calling her. When she came to the hall she noticed that the sound was from the room of PW1. When she knocked the door PW1 opened it. She had pointed out the accused who was there inside the room. PW2 rushed towards him and when she questioned the accused, he left the house. She closed the door and enquired the matter with PW1, then she had narrated the entire overt acts. She deposed further that she was not aware of the acquaintance of PW1 with the accused through mobile phone till that date. Then only PW1 had revealed that she had handed over her bangles to the accused for pledging and that he came on that night to return one among the bangles. PW2 had given the details of occurrence as revealed by PW1. On the next day, she had revealed the incident to her husband. They were in a dilemma as to what to be done next. Her husband contacted his friends and after consulting with them they gave complaint to the police on 29.04.2019. In the



evening police came and recorded the statement of the victim. Thereafter when police came for preparing scene mahazar she had handed over the dress worn by the victim at the time of occurrence to the police. She had disclosed her mobile phone number and testified that PW1 was having two gold bangles and one among which was allegedly returned by the accused on the date of occurrence. According to PW2, both bangles were of the same pattern and she identified MO1 bangle which was allegedly produced by the father of the accused, which was obtained by the accused for pledging and refund on the date of occurrence, after closing the loan, which was seized by the police. PW2 had identified the accused before court and she also identified her signature in Ext.P4 seizure mahazar prepared while seizing the dress of the victim. The top, pants and undergarments of PW1 were identified as MOs 2 to 4. She further stated that she had accompanied the victim when she was taken to the hospital for medical examination and also for recording her statement by the Magistrate.

14. A friend of the father of the victim was examined by the prosecution as PW3. According to her, she came to know about the occurrence on 28.04.2019 as informed by the father of the victim. Accordingly, she along with her husband went to the house of the victim and he narrated the incident occurred on the previous night. When PW3 had talked with the child she had divulged the sexual assault committed by the



appellant/accused. Subsequently on 01.05.2019, when police came the place of occurrence she was present there and affixed her signature in Ext.P5 scene mahazar prepared by the police.

15. The manager and staff of Muthoot Fincorp at Vengalloor branch got examined by the prosecution as PWs 4 and 5 to prove the pledging of bangles of the victim by the accused and also the recovery of the documents pertaining to the pledge from their branch. PW4 had deposed that during the period 2019 she was working as manager of the Vengalloor branch of Muthoot Fincorp. Main transactions were gold loan, gold deposits etc. She had deposed the procedure for availing gold loan. The gold pledging form dated 26.11.2018 submitted by the accused herein was identified by PW4, and according to her two bangles total weighing 15.8 grams were pledged by the accused and an amount of ₹33,002/- was released. She identified her signature and the seal affixed while sanctioning the loan and the loan application was tendered in evidence as Ext.P6. Her version further is that the photograph of the applicant/accused was taken in webcam could be seen in the printed application form. The photograph of the pledged items were also imprinted in the loan application form. The form issued on closing the loan with the signature of the customer/accused was identified by PW4 and it was marked as Ext P7. According to her, the loan was closed on 01.04.2019 and on the very same day the customer/accused had



pledged one bangle again and obtained ₹18,002/-. The application for the said transaction bearing the signature of PW4 who sanctioned the same was marked as Ext.P8. She further stated that the said loan was closed on 12.08.2019. The loan closer form bearing her signature was marked as Ext.P9. PW4 had further deposed that all the documents relating to the transaction were handed over to the police when they came to the bank. PW5 deposed about the attestation of the seizure mahazar prepared by the police while effecting the seizure of documents from the office in 2019. He had identified his signature in the mahazar prepared for the seizure of loan application form and it was marked as Ext. P10.

16. PW6, the Village officer, Kumaramangalam was examined to prove the scene plan showing the place of occurrence and the scene plan prepared by him got marked as Ext.P11. The potency examination of the accused was done by PW11 after his arrest and the potency examination report was marked as Ext.P15 and PW11 deposed that the appellant/accused as a person capable of performing sexual acts. PW12 deposed that Ext.P1 statement of the victim was recorded by her in the presence of the mother of the victim and obtained the signature of the victim. She had identified the signature in Ext.P1. On the basis of the Ext. P1 FIS so recorded, PW 13 had registered the FIR and it was marked as Ext.P16.



17. PW14 had conducted the investigation of the case, he had deposed about the investigation conducted in detail. According to him, he took charge of investigation on 01.05.2019 and thereafter prepared Ext.P5 scene mahazer. Later the dress of victim seized as Ext.P4 mahazar was produced before Court by including the same in the property list marked as Ext.P17. MO2 to 4 were identified by PW14. Thereafter he had recorded the additional statement of the victim and subsequently PW15 taken over the investigation.

18. Coming to the contentions raised to unsettle the verdict impugned, one of the contentions of the learned counsel for the appellant/accused is that there is delay in lodging the FIR, as the occurrence took place on 27.04.2019 and the FIR was registered on 30.04.2019 on the basis of the statement given by the victim. In this regard it could be gathered from the evidence of PW2 that on knowing the occurrence she had contacted her husband and the relatives as she was in a state of dilemma and after consultation on 30.04.2019, FIS of PW1 was recorded when the occurrence was informed to the police. Inasmuch as the delay of three days in lodging the FIS is concerned, in a case of sexual molestation, a victim in such a case normally would show hesitation to disclose the same. Similar is the position as far as the parents and relatives of the victim are concerned. The rational is disclosure of sexual assault or rape would necessarily have a detrimental



and deleterious effect on the life of the victim, since her integrity and reputation would be damaged on such disclosure so a thinking time to get the law in motion against the offender could not be taken as significant and the same to be ignored as trivial in nature to be read as inconsequential. Be it so, the evidence of PW2 to be relied on to justify the delay and in view of the same, there is no material delay in lodging the FIR and the contention in this regard is liable to be rejected.

19. It is discernible from the evidence that there had been a relationship between the victim and the accused, and the occurrence is the outcome of the same. According to PW1, the intercourse and sexual assault were opposed by her. In fact, the victim is a juvenile aged 16 years and in such a case consensual relationship vanishes, when overt acts are proved, to find commission of the offences by the appellant/accused.

20. Regarding the argument tendered by the learned state brief assisted by the counsel for the appellant/accused that the medical examination report of the victim would suggest 'hymen absent' instead of that 'hymen ruptured', in fact, the same is of no serious consequence. In paragraph 15 of the judgment impugned, the learned Special Judge addressed the evidence of PW17 the Doctor supported Ext.P3. The relevant observations in paragraph No.15 read as under:-



“15. ... But here in this case the testimony of PW17 and the Ext.P3 medical examination report alone are sufficient to substantiate the case of prosecution. In Ext.P3 doctor has clearly narrated the history of sexual assault committed by the accused and the resistance offered by the victim child as stated by the victim. The doctor after examination has clearly noted that hymen was absent and vagina admitted two fingers and also noted an abrasion of 1 X 1 cm on thigh of victim child which according to the doctor is suggestive of resistance offered by the victim. When Ext.P3 alone is sufficient to substantiate the case of prosecution the failure on the

part of investigating agency for sending the victim for examination by the expert has not much relevance. Merely based on the same the corroborated and acceptable testimony of PW1 can not be discarded as such.”

21. In fact rupturing of hymen or hymen absent would lead to penetration and this aspect has no significance when rape and penetrative sexual assault are the offences alleged. It is the well settled law that even slight penetration would suffice the requirement of penetrative sexual assault and rape. To put it otherwise, penetration could be found even without rupture of hymen and penetration to labia majora or on the orifice of the vagina or vulva would satisfy the requirement of penetration. When hymen absent is the observation, penetrative sexual intercourse to be found. Therefore, this contention also would not yield. Regarding delayed seizure of the mobile phone of the appellant/accused is concerned, the same has no importance in the instant case, where sufficient evidence otherwise forthcoming.

22. Coming to the crucial evidence discussed, it is proved by the prosecution that PW1 was a minor at the time of occurrence and the accused, who maintained a relationship with PW1, had obtained the bangles for pledging and on the date of occurrence he came to the



residence of PW1 for giving one out of the same and according to PW1 despite her resistance he committed rape and aggravated sexual assault on her. The evidence of PW1 in this regard appears to be wholly reliable, supported by the other evidence already discussed. In such a case, the learned Special Judge is right in holding that the accused committed the offences punishable under Sections 450, 506(i), 376 of IPC and under Section 3(a)(b) r/w Section 4, Section 7 r/w Section 8, Section 11 r/w Section 12 of the POCSO Act and, therefore, the conviction doesn't require any interference. Coming to the sentence, the sentence imposed is the minimum possible and in such a case, reduction in sentence not legally permissible. Therefore, the sentence also is confirmed.

23. In the result, this Appeal fails and is accordingly dismissed. The conviction and sentence imposed by the Special Court are confirmed. As a sequel thereof, the order suspending sentence and granting bail to the appellant/accused stands cancelled and the bail bond also stands cancelled.

24. The appellant/accused is directed to surrender before the Special Court to undergo the sentence forthwith, failing which the Special Court shall execute the sentence without fail.



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

Sd/-

A. BADHARUDEEN
JUDGE

VPK/rtr