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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 10TH DAY OF JULY 2026 / 19TH ASHADHA, 1948CRL.A NO. 1853 OF 2025AGAINST THE JUDGMENT DATED 15.01.2024 IN SC NO.841 OF 2022
OF SPECIAL COURT UNDER POCSO ACT, MANJERIAPPELLANT/ACCUSED:ABOBACKER
AGED 58 YEARS
S/O. MOHAMMED, NJANDUKANNI HOUSE, IRUMBANATTUPARA,
ARIMBRA, MALAPPURAM DISTRICT, NOW LODGED IN
CENTRAL PRISON, CONVICT NO. 16/24, THAVANOOR,
MALAPPURAM DISTRICT, PIN - 679573

BY ADVS.

SHRI.T.U.SUJITH KUMAR, HCLSC PANEL ADVOCATE
SHRI.WINSTON K.VRESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM DISTRICT, PIN - 682031
- 2 THE SUB INSPECTOR OF POLICE
KONDOTTY POLICE STATION, KONDOTTY P.O, MALAPPURAM
DISTRICT, PIN - 673638

M A SHIHAB PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
10.07.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



'C.R'

JUDGMENT

Dated this the 10th day of July, 2026

The sole accused in SC No. 841/2022 on the files of the Special Court for the trial of offences under the Protection of Children from Sexual Offences, Act ('POCSO Act' for short), Manjeri is the appellant herein. He assails the judgment in the said case dated 15.01.2024.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor representing the State of Kerala. Gone through the judgment under challenge and the evidence available.

3. The prosecution case is that at about 4.45 p.m on 15.05.2022, the accused committed aggravated sexual assault on the victim, a boy aged 12 years by pressing on the chest and by caught hold on his abdomen from behind. Accordingly the prosecution alleges commission of offences under Sections 7 r/w 8 and 9(l) r/w 10 of the POCSO Act.

4. The Special Judge recorded evidence after framing charge. During trial, PW1 to PW10 were examined and Exts.P1 to P11 were marked on the side of the prosecution. No defence evidence adduced.



5. On appreciation of evidence, the learned Special Judge found that the accused committed offence punishable under Section 9(l) r/w 10 of the POCSO Act while acquitting him for other offences. Accordingly, he was sentenced as under:

"Accused Is convicted and sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs. 50,000/- (Rupees Protection of Children from fifty thousand only) U/S 9(1) r/w 10 of the Sexual Offences Act. In default of payment of fine, the accused is sentenced to undergo Simple Imprisonment for two months.

Accused is entitled to get set off for the period from 19.5.2022 to 17.3.2023 and 28.7.2023 to 15.1.2024 against the imprisonment imposed on the accused."

6. The learned legal aid counsel appearing for the appellant/accused vehemently argued that the solitary evidence of the victim has been relied on by the learned Special Judge to find commission of offence under Section 9(l) r/w 10 of the POCSO Act. According to him, going through the evidence of PW1, the allegation is that the accused pressed on the chest and also caught hold on his abdomen from behind further he caught hold on his hand and offered Rs.50/- to go with him to a vacant house nearby. Then, PW1 ran away from the place. According to



him, the above evidence of PW1 is insufficient to find sexual assault as defined under Section 7 or even repeated assaults dealt under Section 9(l) r/w 10 of the POCSO Act. Therefore, the conviction and sentences are liable to be set aside.

7. The learned Public Prosecutor opposed these contentions and supported the impugned verdict.

8. Now the points arise for consideration are:

1. Whether the Special Court is in right in holding that the accused/appellant committed offence punishable under Section 9(l) r/w 10 of the POCSO Act?

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

3. The order to be passed?

Point Nos.1 to 3

9. The contention advanced by the learned counsel for the appellant/accused is that the overt acts spoken by PW1, which were relied on by the Special Judge to hold that the appellant/accused committed offence punishable under Section 9(l) r/w 10 of the POCSO Act do not constitute the ingredients for the said offence. Thus it is necessary to evaluate the evidence of PW1. PW1 deposed that his date of birth was on 20.11.2009 and



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the date of incident was at 6.30 p.m on 14.5.2022. PWI testified that on that day, he had went to the shop at Arimbra Junction for buying "good night" (mosquito repellent). But the shop owner was not there. Thus PWI waited there for the shop owner to come, while so the accused came from behind and caught hold on his stomach and grabbed his chest. When PWI tried to shake his hand, the accused grabbed PW1's hand and pulled him. Further, the accused told him that there was a vacant residence a little further away, *"you will come there and I will give Rs.50/-"*. PW1 deposed further that immediately after the incident he ran to home and divulged the occurrence to his parents. It was through him, Ext. P1 the FIS lodged by PW1 on 17.5.2022. Ext. P2, the 164 statement given by him to Magistrate were tendered in evidence. According to PW1, after recording the FIS, he was taken to the hospital for medical examination. His father was present at the time of medical examination. During his examination, PW1 identified the accused at the dock. Thus, PW1 deposed in tune with the prosecution case.

10. Here, the prosecution case is that PW1 (victim boy) was studying at 8th standard in Arimbra Higher Secondary School and his date of birth was 20.11.2009. In order to prove the status of PW1 as a child as defined u/s 2(d) of the POCSO Act,



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Ext.P11 attested copy of relevant page of admission register was tendered in evidence through PW10. In fact no dispute raised by the denfense side in this regard.

11. Now, the question arises for consideration is whether the overt acts spoken by PW1 as extracted and discussed above would make the ingredients for the offence under Section 9(l) of the POCSO Act. Section 9(l) provides that whoever commits sexual assault to the child more than once or repeatedly would be punished and the punishment for the said offence providedd under Section 10, treating the same as aggravated sexual assault, is for a term which shall not be less than 5 years, but which may extent to 7 years and shall also liable to fine. In order to find an aggravated sexual assault dealt under Section 9, sexual assault defined under Section 7 to be found first. Section 7 of POCSO Act provides as under:

“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.

Thus, whoever, with the sexual intent touches the breast of the child or do any other acts with sexual intent which involves



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physical contact without penetration is said to commit sexual assault.

12. PW2 is the father of the victim boy. He deposed that on 14.5.2022 evening the victim boy (PW1) was sent to the shop for buying mosquito repellent and after a while, he had returned to the home without buying mosquito repellent. Seeing the scared face, when the victim boy was asked why he did not buy the mosquito repellent and suddenly returned, the victim disclosed to him that the accused had grabbed his chest and stomach. PW2 further deposed that immediately he informed this matter before child line authorities and on the next following day the police had came to his residence and recorded the statement of PW1. During the examination of PW2, Ext. P3 the scene mahazer was tendered in evidence. According to PW2 he had pointed out the place of incident to the police and had witnessed preparation of Ext. P3.

13. The Casualty Medical Officer, Government Hospital, Malappuram got examined as PW3. According to him, at 8.00 pm on 19.05.2022, she had conducted potency test of the accused and issued potency certificate, which was marked as Ext. P4. After the examination, PW3 opined that the "*accused is not incapable performing sexual act*". PW4 the Village Officer,



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Morayur. According to him, as per the direction from the Kondotty police station he had prepared Ext.P4 sketch of the place of incident and handed over to the investigating officer. PW5 is the Village Assistant attached to Morayur Village. According to him as per the direction from PW4, he had prepared the sketch of the place of incident. During the examination when Ext. P5 was shown to him, he did affirm the same.

14. The Assistant Surgeon attached to Taluk Head Quarters Hospital, Kondotty got examined as PW6. According to him, at 1.50 pm on 18.05.2022 she had examined the victim boy aged 12 years and issued Medical Certificate and the medical certificate of the victim got marked as Ext. P6. In Ext. P6, PW6 has recorded the entire details as narrated by the victim boy. After examination of the victim boy. PW6 opined that the findings in Ext. P6 are consistent with the alleged history. PW7 is the Senior Civil Police Officer attached to Kondotty police station, who recorded Ext. P1 statement of the victim boy. During the examination, when Ext. P1 was shown to her, she could identify her own signature in Ext. P1. PW8 is the another Senior Civil Police Officer attached to Kondotty Police station, who recorded the 161 Cr.P.C statement of the victim boy.



15. The Sub Inspector of police attached to Kondotty police station got examined as PW9. According to him, on the basis of Ext. P1 statement given by PW1 produced by PW7 he had registered Ext.P1(a) FIR against the accused No.337/2022 U/Ss 7 r/w 8. 9(l) r/w 10 and 11(iv) r/w 12 of the POCSO Act. It is marked as Ext. P1(a). During investigation, he had made necessary arrangement for recording 164 Cr.P.C. statement of the victim boy and accordingly his 164 Cr.P.C statement was recorded. He deposed about preparation of Ext. P3 scene mahazer with the help of PWs 1 and 2. Thereafter, on 19.5.2022 ie., within three days, the accused was arrested. Exts. P7 and P8 identified as the arrest memo and arrest intimation prepared in this regard. PW9 identified the accused at the dock. He, in fact fully supported the investigation led to filing of final report in this case.

16. On reading of evidence given by PW1 as to the overt acts, it could be found that the accused touched on the breast of PW1 and also he offered him Rs.50/- to accompany him to a vacant house. Then PW1 pushed his hand and ran towards his house. Though he had stated that the accused/appellant done the overt acts two months before, he did not mention the details of the same and he also did not disclose this to the Magistrate as per Ext.P2 statement. The prime contention raised by the



learned Legal aid counsel for the appellant is that the mere touch or catch on the chest of a child would not constitute as offence defined u/s 7 of the POCSO Act. According to him, though touching on the breast of a child with sexual intent would be sufficient to find sexual assault as deaslt in S. 7. The word 'chest' and 'breast' are different organs. In this context, it is relevant to refer the meaning of the word 'chest'. As per Oxford dictionary chest means 'the top part of the body between the neck and stomach'. Webster's dictionary defines the word chest as 'the upper front part of the body of humans and some animals, between the stomach and the neck, containing the heart and the lungs. Oxford dictionary defines the breast as either of the two soft protruding organs on the front of a woman's body that produce milk or the similar smaller and underdeveloped organs on a man's body. Going by the definition a distinct medical and anatomical difference to be noticeable in between the two terms, though in sexual molestation case 'chest' is commonly used as a synonym for the word 'breast'. When considering the ingredients of the offence of sexual assault as defined u/s 7 of the POCSO Act, spoken by a victim stating that the accused grabbed on his chest with sexual intent the only inference to be drawn is that the accused grabbed on the Breast, which, in fact covers a larger



area of the chest in between the neck and the abdomen. Therefore, the contention raised by the learned counsel for the appellant merely relying on the medical and anatomical difference between "chest" and "breast" has no significant and is set at rest. Therefore, the evidence available would show that the appellant/accused had committed the offence defined under Section 7, sexual assault punishable under Section 8. Therefore, the learned Special Judge went wrong in finding that the accused/appellant committed offence under Section 9(l) punishable under Section 10. Therefore the conviction and sentence required to be set aside and modified.

17. In view of the above findings, the judgment impugned is interfered and modified by setting aside the conviction and sentence imposed for the offence punishable under Section 9(l) r/w 10 of the POCSO Act and holding that the accused/appellant committed offence under Section 7 of the POCSO Act.

In the result, the appeal is allowed in part. The conviction and sentence imposed by the Special Judge for the offence punishable under Section 9(l) r/w 10 of the POCSO Act are set aside, instead the accused is convicted for the offence punishable under Section 7 r/w 8 of the POCSO Act.



The minimum sentence provided under Section 8 is less than 3 years and this Court is inclined to impose only minimum sentence in the facts of this case for the offence punishable under Section 7 r/w 8 of the POCSO Act. Therefore, the accused/appellant is sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo default imprisonment for a period of two weeks.

Registry is directed to forward the copy of the judgment to the Special Court as well as the Superintendent of Jail where the appellant/accused has been undergoing sentence for information and compliance.

Sd/-A. BADHARUDEEN
JUDGE