



2026:KER:78263

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 8TH DAY OF OCTOBER 2026 / 16TH ASWINA, 1948

CRL.A NO. 662 OF 2023

SC NO.480 OF 2022 OF SPECIAL COURT UNDER POCSO ACT,
THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

SHILPI
S/O.SASI,
AGED 28 YEARS
AKASH BHAVAN, PURUTHIPPARA HARIJAN COLONY, ARYANADU VILLAGE,
NEDUMANGADU TALUK, THIRUVANANTHAPURAM, PIN - 695121
BY ADVS.
SRI.S.RAJEEV
SRI.H.NUJUMUDEEN
SRI.V.VINAY
SRI.M.S.ANEER
SHRI.SARATH K.P.
SMT.DIPA V.
SHRI.ANILKUMAR C.R.
SHRI.K.S.KIRAN KRISHNAN
SHRI.AKASH CHERIAN THOMAS
SHRI.AZAD SUNIL
SHRI.T.P.ARAVIND
SHRI.MAHESWAR PADICKAL
SMT.AKSHARA S.
SMT.NIVEDITA RAJEEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI, PIN - 682031
BY PUBLIC PROSECUTOR SRI.SAJEEV P K

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.09.2026, THE
COURT ON 08.10.2026 DELIVERED THE FOLLOWING:

2026:KER:78263**CR****JUDGMENT**

Dated this the 08th day of October, 2026

This appeal is at the instance of the sole accused in S.C.No.480/2022 on the files of the Special Court under the Protection of Children from Sexual Offences Act, 2012 (for short, 'the PoCSO Act' hereinafter) Thiruvananthapuram, challenging the conviction and sentence imposed against him in the above case dated 29.03.2023.

2. Heard the learned counsel for the appellant/accused as well as the learned Public Prosecutor. Perused the judgment under challenge along with the records of the Special Court.

3. Here, the prosecution alleges commission of offences punishable under Sections 450, 342, 376(2)(n), 506(i) and 506(ii) of the Indian Penal Code (for short, 'the IPC' hereinafter) and Sections 3(a) r/w 4, 5(j)(ii), 5(l) r/w 6, 11(iv) r/w 12 and 11(v) r/w 12 of the PoCSO Act, by the appellant/accused. The specific allegation is that at about 10.00 a.m. on 03.08.2021 and at 12.30 p.m. on 24.09.2021,

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the accused subjected the victim, aged 17 years to rape and penetrative sexual assault and the same resulted in her pregnancy.

4. When final report was filed before the Special Court, the Special Court framed charge for the aforesaid offences and proceeded with trial. During trial, PW1 to PW21 were examined, Exts.P1 to P33 and MO1 to MO7 were marked on the side of prosecution. No defence evidence was adduced. Thereafter, on evaluation of evidence, the Special Court found that the appellant/accused committed offences punishable under Sections 450, 342, 376(2)(n) and 506(ii) of the IPC and under Sections 3(a) r/w 4, 5(j)(ii) and 5(l) r/w 6 of the PoCSO Act, while acquitting the appellant/accused for the other offences. Accordingly, he was convicted and sentenced as under:

“In the result,

*(1) The accused is sentenced to undergo **rigorous imprisonment** for a period of **5 years and to pay a fine of Rs.5,000/-** (Rupees Five thousand only) for the offence punishable under Section 450 IPC. In default of payment of the fine amount, the accused shall undergo **rigorous imprisonment for a term of 3 months.***

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(2) The accused is sentenced to undergo **rigorous imprisonment for a period of 1 year and to pay a fine of Rs.1,000/-** (Rupees One thousand only) for the offence punishable under Section 342 IPC. In default of payment of the fine amount, the accused shall undergo **rigorous imprisonment for a term of 15 days.**

(3) The accused is sentenced to undergo **rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/-** (Rupees Five thousand only) for the offence punishable under Section 506(ii) IPC. In default of payment of the fine amount, the accused shall undergo **rigorous imprisonment for a term of 3 months.**

(4) The accused is sentenced to undergo **rigorous imprisonment for a period of 20 years and to pay a fine of Rs.50,000/-** (Rupees Fifty thousand only) for the offence punishable under Section 5(j)(ii) r/w 6 of the POCSO Act, 2012. In default of payment of the fine amount, the accused shall undergo **rigorous imprisonment for a term of 1 year.**

(5) The accused is sentenced to undergo **rigorous imprisonment for a period of 20 years and to pay a fine of Rs.25,000/-** (Rupees Twenty Five Thousand only) for the offence punishable under Section 5(l) r/w 6 of the POCSO Act, 2012. In default of payment of the fine

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*amount, the accused shall undergo **rigorous imprisonment for a term of 1 year.***

*(6) In case of realization of the fine amount of **Rs.86,000/** (Rupees Eighty Six Thousand only) the entire amount shall be given to **PW1 as compensation under Section 337(1)(b) Cr.PC***

*(7) The accused is allowed to get set off on the substantive sentence for the period from **14/12/2021 till 20/06/2022** the period he had undergone detention as an under trial prisoner.*

*(8) **All sentences shall run concurrently.***"

5. The learned counsel for the appellant/accused submitted that the prosecution case is confined to commission of rape and penetrative sexual assault on the victim (PW1). According to him, the specific allegation is that the accused subjected PW1 to assault on 03.08.2021 and 24.09.2021, for which, FIR was registered only on 02.12.2021. Prior to the registration of the FIR, PW10, Dr.Sheeba examined the victim (PW1) at 1.15 p.m. on 01.12.2021 and recorded the history narrated by PW1. The learned counsel pointed out that PW1 given statement before PW10 that, though she did not

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remember the date, the appellant/accused tied her hands with a shawl and subjected her to penetrative sexual assault, by inserting his penis into her vagina. However, according to the learned counsel, the history narrated by PW1 before PW10 did not disclose two separate occurrences, though the same is suggestive of penetrative sexual assault. It is further submitted that, though the FIS as that of PW1 was recorded at 18.20 hours on 02.12.2021 and she was examined before the court on 11.10.2022, she deposed about two instances of penetrative sexual assault. According to the learned counsel, the non-disclosure of the two instances before PW10, the Doctor, and PW11, the Radiologist, who issued Ext.P11 recording the narration given by PW1, constitutes a material omission, particularly in the context of the allegation of repeated sexual assault punishable under Sections 5(l) r/w 6 of the PoCSO Act and Section 376(2)(n) of the IPC. According to the learned counsel, the offence under Sections 5(l) r/w 6 of the PoCSO Act could not be found for want of disclosure by PW1 of the two occurrences before PW10. Therefore, the sentence imposed upon him for the offence punishable under

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Sections 5(l) r/w 6 of the PoCSO Act may be reduced from 20 years to 10 years. According to the learned counsel, it is true that the offence punishable under Sections 5(j)(ii) r/w 6 of the PoCSO Act is also punishable with a minimum sentence of 20 years, where the minor victim became pregnant, as a consequence of penetrative sexual assault. In the instant case, the evidence relied upon by the prosecution is the DNA report dated 07.03.2022, which, according to the prosecution, establishes a match between the blood sample collected from the appellant/accused and the sample obtained from the foetus, thereby suggesting that the appellant/accused is the biological father of the foetus. The learned counsel further submitted that the prescribed guidelines for the collection, preservation, storage and transportation of the blood and DNA samples and the foetal sample had not been complied with. Therefore, according to the learned counsel, for non-compliance of the prescribed guidelines, Ext.P19, supported by the evidence of PW17, could not be relied upon to conclusively prove the appellant/accused as the biological father of the child born to PW1.

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Consequently, the offence under Sections 5(j)(ii) r/w Section 6 of the PoCSO Act also could not be held to be established by the prosecution. The learned counsel produced the guidelines relating to the collection, storage and transportation of DNA samples, as well as two decisions of the Hon'ble Apex Court dealing with the subject. According to the learned counsel for the appellant/accused, if the samples were not collected, preserved and transported in a tamper-proof manner and in accordance with the prescribed procedure, the results of the DNA analysis could not safely be relied upon. In support of his submissions, the learned counsel for the appellant/accused placed reliance on the decisions of the Hon'ble Apex Court in **Mehtab v. State of Uttarakhand**, reported in **[2026 KHC OnLine 6424]**, and **Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra**, reported in **[2023 (2) KLD 18 (SC)]**.

6. Whereas, the learned Public Prosecutor submitted that, as regards the DNA analysis, PW18, the Doctor attached to SAT, Government Medical College, Thiruvananthapuram, deposed that

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MTP was conducted and the specimen was collected for DNA analysis. PW19, the Doctor, who conducted the potency examination of the appellant/accused deposed that he had collected the blood sample of the appellant/accused for DNA analysis and he had given a direction to send the sample for DNA analysis and identified Ext.P19. Apart from the same, PW21, the Investigating Officer relied on Ext.P15 mahazar prepared for the collection of the blood sample of the appellant/accused and deposed regarding the collection of the said sample in a tamper-proof manner for the purpose of DNA analysis. Hence, according to the learned Public Prosecutor, there is no reason to doubt the authenticity or reliability of Ext.P19 to hold that no offence under Section 5(j)(ii) r/w Section 6 of the PoCSO Act on the ground of non-compliance with the guidelines relating to the collection, preservation and transportation of the DNA samples, as those guidelines were statutorily complied with. The learned Public Prosecutor further submitted that, though PW1 had disclosed the summary of occurrence before the Doctor and in the FIS itself, and was examined before the court thereafter, she deposed regarding the

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two incidents of penetrative sexual assault which resulted in her pregnancy. Therefore, according to the learned Public Prosecutor, commission of offences under Sections 5(j)(ii) and 5(l) r/w Section 6 of the PoCSO Act, by the appellant proved beyond reasonable doubts and in such circumstances, there is no justification for interfering with the conviction and sentence imposed by the Special Court.

7. Adverting to the rival arguments, the points arise for consideration are;

(i) Whether the Special Court is right in holding that the appellant/accused committed offence punishable under Section 450 of the IPC?

(ii) Whether the Special Court is justified in holding that the appellant/accused committed offence punishable under Section 342 of the IPC?

(iii) Whether the Special Court is erred in holding that the appellant/accused committed offence punishable under Section 376(2)(n) of the IPC?

(iv) Whether the Special Court is justified in

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holding that the appellant/accused committed offence punishable under Section 506(ii) of the IPC?

(v) Whether the Special Court is right in holding that the appellant/accused committed offence punishable under Sections 3(a) r/w 4 of the PoCSO Act?

(vi) Whether the Special Court is justified in holding that the appellant/accused committed offence punishable under Sections 5(j)(ii) r/w 6 of the PoCSO Act?

(vii) Whether the Special Court is erred in holding that the appellant/accused committed offence punishable under Section 5(l) r/w 6 of the PoCSO Act?

(viii) Whether the verdict would require interference?

(ix) The order to be passed?

Point Nos.(i) to (ix)

8. In this case, as regards the status of the victim as a child as defined under Section 2(1)(d) of the PoCSO Act, no dispute was

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raised before this Court. The extract of the Birth Certificate of PW1, tendered in evidence through PW4, the Registrar of Births and Deaths, Thiruvananthapuram Corporation, would show that the date of birth of the victim is 07.09.2004 and, therefore, on the dates of occurrence, she was aged below 18 years, and was a child as defined under Section 2(1)(d) of the PoCSO Act. That apart, the evidence of PW1 and PW2, coupled with Ext.P17, the copy of the matriculation certificate of the victim, also relied on by the prosecution established this aspect.

9. The chain of events had been revealed as deposed by PW1. According to PW1, at about 10.00 a.m. on 03.08.2021 while she was watching TV at her house, the accused committed criminal trespass upon her house, viz., House No.XVIII/154, Aleena Bhavan, Ambedkar Park Junction, Harijan Colony, Paruthipara, Aryanad Village. Then he had wrongfully confined her by tying her hands with a white shawl that was present on the clothesline inside her house, and when she made noise, he had masked her mouth with his hands and forcibly removed her clothes, which resulted in tearing of her

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churidar top, and made her lay on a bed. After removing his dhothi, he penetrated his penis inside her vagina. According to PW1, the second incident took place at about 12.30 p.m. on 24.09.2021. She testified that when she had gone to the bathroom, situated outside her house, to take a bath, the accused barged into the bathroom by pushing the bathroom door open and committed rape and penetrative sexual assault on her by pushing her against the wall of the bathroom. The accused had criminally intimidated her with dire consequences in case of disclosure of the overt acts to anyone. PW1 given evidence further that she had fever much before these occurrences, which in turn decreased her blood count and by which, her menstrual cycle became irregular for some months. There was no mensuration for 2 months after the 2nd incident. She was taken to District Hospital, Nedumangad by her mother (PW2) in the last week of November, 2021. Unfortunately, the Doctor was on leave that day. So, PW1 visited the Doctor again. On 01.12.2021, she was examined by PW10, the Doctor who referred her for thyroid test and abdominal scan. The evidence of PW1 in this regard is corroborated

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by the evidence of PW10, the Doctor who examined her on 01.12.2021.

10. PW10 had given evidence that at about 1.15 p.m. on 01.12.2021 while she was working as a Consultant Gynecologist in the District Hospital, Nedumangad, she had examined PW1 who had come to her with the complaint of amenorrhea. Thereafter, she had advised for certain tests and abdominal scan.

11. During examination of PW1, the history was stated by her before PW10, and the same was recorded in Ext.P11 medical examination report, issued by PW10. But the same did not disclose anything regarding the two incidents of penetrative sexual assault spoken to by PW1 and alleged by the prosecution. According to the learned counsel for the appellant/accused, this constitutes a material omission so as to hold that there was only one occurrence. In the instant case, what is recorded by PW10 in Ext.P11, as stated by her, is the history stated by PW1. It is to be noticed that when a Doctor examines a patient, the history is usually recorded for the purpose of arriving at clinical as well as scientific diagnosis and for providing

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appropriate medical advice or treatment and in medico-legal cases to find the cause of injuries or other information. However, there is no mandate in law that a victim of sexual assault should disclose each and every detail including minute details before the Doctor in the same manner similar to a statement given to the police or before a Magistrate. Say for example, if a person was subjected to assault with intention to commit his murder, on medical examination by the Doctor, it is not expected to recite what all stated in the FIS in detail. What is required to be disclosed is a terse or outcome regarding the cause and the same shall not be an exhaustive history with all minute intricacies. In this context, it is relevant to note that subjecting a child to sexual assault is an act which would assimilate and anchor physical, mental and psychological trauma, emotional distress and upheaval to the victim. A victim of such trauma is not expected to speak everything before the Doctor also in the exact words she had spoken to the police and the Magistrate. Another aspect of the matter is, when the police or the Magistrate records previous statement of the victim of sexual assault or the victim of

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any other crime, the statement would be read over by the police and the Magistrate to the maker to admit the same as true or false to avoid omission or addition in the statement. Such a procedure would not be and need not be adopted by a Doctor. Therefore, a victim of sexual assault is not expected to give a full fledged history to the Doctor and the Doctor who records the history only for the purpose of medical opinion or medical advise need not record everything in detail and thus, the statement can only be a very short one, which led to medical consultation. If a rigid and hyper technical view is taken to hold that the disclosure of the victim must contain every overt acts similar to that of a statement given to the police or to the Magistrate, the same is nothing, but putting the victim of sexual assault to further trauma to do the job of taking the risk of repeating the acts of trauma before the Doctor also. Further, the victim had no occasion to verify as to whether everything she had spoken to was fully recorded by the Doctor to add or deny the same. Therefore, omissions in the history recorded by the Doctor on the basis of disclosure made by the victim cannot be held as material omissions

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to have any legal consequences. If such a proposition is laid down, the same would lead to an irreparable and irretrievable consequence. Therefore, though omissions and contradictions in previous statements may have a bearing on the appreciation of the evidence of a witness, merely because the victim of sexual assault did not disclose each and every details of the occurrence in minute niceties before the Doctor and she had given previous statements before the police and Magistrate without omissions and contradictions, it cannot be said that such non-disclosure constitutes a material omission or contradiction so as to discard the evidence of the victim. Therefore, the contention raised by the learned counsel for the appellant/accused that the evidence would establish only one incident of penetrative sexual assault, and consequently that the offence under Sections 5(l) r/w 6 of the PoCSO Act is not made out, cannot be countenanced, eschewing the cardinal evidence given by the victim which would find in her statements before the police and the Magistrate.

12. Here, according to the learned counsel for the

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appellant/accused, PW19 did not depose in detail regarding the collection of the blood sample of the appellant/accused for the purpose of DNA profiling. However, his evidence would suggest that the blood sample was collected for the purpose of DNA profiling and that he had given a direction to forward the blood sample for DNA analysis. PW19 is the Doctor, who examined the appellant/accused and issued Ext.P21 potency certificate, which would show that he was capable of performing the sexual act. No cross-examination was made with regard to the evidence given by PW19 on these aspects. At this juncture, as pointed out by the learned Public Prosecutor, Ext.P15 mahazar, showing the collection of the blood sample of the appellant/accused for the purpose of DNA profiling, assumes significance, as deposed by PW21, the Investigating Officer. Here, as per Ext.P19 report, PW17, who issued Ext.P19, opined that the appellant/accused was the biological father of the foetus sent for DNA analysis, as the DNA profile obtained from the blood sample of the appellant/accused tallied with that of the foetal sample. The deficiencies pointed out in the procedure adopted for collection and forwarding of the samples could not be found in the facts and

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circumstances of the case so as to reject the DNA evidence. Therefore, this contention also cannot be countenanced.

13. Here, the DNA profiling was done in a tamper-proof manner and the same resulted in finding that the appellant/accused is the biological father of the foetus. Thus, none of the contentions raised by the learned counsel for the appellant/accused to unsustain the verdict is found to be acceptable and accordingly, the same are repelled.

14. On re-appreciation of evidence, this Court is of the considered view that the prosecution succeeded in proving that the appellant/accused committed offences punishable under Sections 450, 342, 376(2)(n) and 506(ii) of the IPC and under Sections 3(a) r/w 4, 5(j)(ii) and 5(l) r/w 6 of the PoCSO Act, as rightly found by the Special Court and therefore, the conviction does not require any interference.

15. Coming to the sentence, since 20 years is the minimum sentence prescribed for the offences punishable under Sections 5(j)(ii) and 5(l) r/w 6 of the PoCSO Act, and the sentence imposed is the



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statutory minimum, no reduction in the sentence is possible. Accordingly, the sentence is also confirmed.

Hence, this appeal fails and is dismissed by confirming the conviction and sentence imposed by the Special Court.

Since the appellant/accused is in Jail, no other orders are required.

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

Sd/-
A. BADHARUDEEN
JUDGE

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