



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 23<sup>RD</sup> DAY OF FEBRUARY 2026 / 4TH PHALGUNA, 1947

CRL.A NO. 319 OF 2020

CRIME NO.883/2014 OF FEROKE POLICE STATION, KOZHIKODE

AGAINST THE JUDGMENT DATED 11.02.2019 IN S.C. NO.190 OF 2017 OF

SPECIAL COURT UNDER POCSO ACT, KOZHIKODE

APPELLANT/ACCUSED:

NOUFAL  
AGED 32 YEARS  
S/O.KUNHIMON, KALLIPARAMBIL HOUSE, THIRUVATHRA P.O.,  
CHAVAKKAD, THRISSUR DISTRICT.

BY ADV SRI.M.R.SASITH  
ADV.ANNA LINDA EADEN - STATE BRIEF

RESPONDENT/STATE:

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERANKULAM.

PP- ADV VIPIN NARAYANAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23.02.2026,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 23<sup>rd</sup> day of February, 2026**

The accused in S.C. No.190/2017 on the files of the Special Court for the trial of cases relating to atrocities and sexual violence towards women and children, Kozhikode, has filed this appeal, under Section 374 of the Code of Criminal Procedure, 1973 [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 11.02.2019. The State of Kerala, represented by the Public Prosecutor is arrayed as the respondent herein.

2. Since the advocate who filed this appeal has relinquished the vakalath, Adv. Anna Linda Eaden, was appointed as the State Brief to argue the matter. Heard the learned State Brief for the appellant and the learned Public Prosecutor, in detail. 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 offence punishable under Section 3(a) read with 4 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, when the victim, a minor girl aged 11 years, has been staying at the house of her mother's sister, during 2014 Onam holidays, she was subjected to penetrative sexual assault by the accused.

5. After framing charge for the offence punishable under Section 3(a) read with 4 of the POCSO Act, the Special Court recorded evidence and completed trial. During trial, PWs 1 to 15 were examined and Exts.P1 to P12 were marked on the side of the prosecution. DWs 1 and 2 were examined on the side of the accused.

6. On appreciation of evidence, the Special Court found that the accused was guilty for the offence under Section 3(a) punishable under Section 4 of the POCSO Act. Accordingly, the accused was convicted for the said offence and sentenced as under:

*"The accused is sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay fine of Rs.50,000/- (Rupees fifty thousand only) and in*



*default of payment of fine to undergo rigorous imprisonment for 2(two) years for the offence u/s 3(a) r/w 4 Protection of Children from Sexual Offences Act. The fine amount of Rs.50,000/- if realised, shall be given to PW1, the victim girl as compensation u/s 357(1)(b) of Cr.P.C. Set off is allowed for the period he had undergone in jail.”*

7. While assailing the verdict impugned, the learned State Brief would urge that, in this case, the learned Special Judge found commission of offence punishable under Section 3(a) of the POCSO Act by the accused, even though the evidence of PW1, the victim, in nowhere would suggest anything as to penetrative sexual assault as her evidence is confined to feeling of pain on her vagina and the presence of the accused nearby her. It is also pointed out by the learned State Brief that, even though PW5, the Pediatrician, who examined the victim on 17.11.2014, Government General Hospital (Beach Hospital), Kozhikode, opined that as per the detailed examination with the help of gynecologist, the victim was found to have torn hymen and congested labia minora.

8. It is submitted by the learned State Brief further that, as per Ext.P4 certificate got marked through PW6, it



was stated as 'hymen intact'. But the Special Court failed to consider this aspect. Therefore, the conviction and sentence imposed upon the accused are liable to be interfered and set aside, for want of evidence to prove the ingredients for the offence alleged to be committed by the accused.

9. Whereas the learned Public Prosecutor justified the conviction and sentence and given much reliance on the evidence of PW1 and PW5 supported by Ext.P3 certificate based on the examination of the victim on 17.11.2014 in this regard. According to the learned Public Prosecutor, the Special Court rightly relied on the evidence of PW1 and PW5 supported by Ext.P3 to find commission of offence under Section 3(a) of the POCSO Act, by the accused. Thus, the conviction and sentence are only to be justified.

10. 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 3(a) punishable under Section 4 of the POCSO Act?*

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

*3. Order to be passed?*



11. The case emanated when PW1 spent Onam holidays during September, 2014, at the house of her mother's sister. After Onam holidays, PW1 returned back to home and after return, the victim, who was examined as PW1 was gloomy and she had no enthusiasm. Then the victim told PW3, her mother, that she had severe pain on her legs and body. PW3 deposed that the victim was not able to sleep and she was in a petrified mood. According to PW3, the victim started to depend on PW3 for the day to day needs. Thereafter, the victim had shivering and fever and accordingly she was taken to a hospital at Keezhssery and then to Beach Hospital, Kozhikode. Therefrom, the victim was referred to counseling and during counseling, PW1 divulged sexual harassment done by the accused and on this basis Ext.P1 First Information Statement (FIS) of PW1 was recorded, which led to registration of this crime. PW3, the mother of PW1 deposed the above aspects before the Court.

12. The victim got examined as PW1 as already observed. PW1 gave evidence that, she had been residing in Feroke and in 2014 she was studying in 5<sup>th</sup> standard at Keezhsseri. During Onam vacation she went to the house of



Ummayi and she used to call Shereefa, her mother's elder sister as Ummayi. She was accompanied by Molly, daughter of her mother's younger sister, to the house of Ummayi. After they reached there, she had entrusted her dress to Kunhumolthatha, daughter of Ummayi, for washing. Since she had no other dress to wear, she obtained the churidar top of Kunhumolthatha for wearing. Then, she went to the bed room of Zakkirikakka for sleeping. While sleeping, she felt pain on her vagina and noticed the presence of Noufal (accused herein) at the room, then he gagged her mouth and threatened to kill her if she would divulge about the incident to anybody. She did not know what was done at her vagina by Noufal at the room. Her further version is that, she did not divulge the occurrence to anybody since she was afraid. She as well as Molly were taken from there to the house of her mother's mother. On the next day she was taken to her house. After the incident she could not able to sleep and hence she was taken to a hospital at Keezhsseri and was treated there. Since she could not recover, she was admitted at the Beach Hospital, Kozhikode. She told the incident to the counsellor and also to the doctor. Thereafter police came



there and her statement was recorded. In the statement her mother had put signature on behalf of her. She identified the accused before court. Though she was subjected to cross examination by the defence counsel in detail, nothing elicited to disbelieve her evidence. She also denied the suggestion put by the learned counsel that there was dispute regarding the family property and in pursuance of that her family members were in enmical terms with Ummayi and Noufal and that a false case was foisted against Noufal (the accused herein).

13. Apart from that, PW2, the cousin sister of the victim also was examined to support the evidence of PW1. Ext.P2 is the scene mahazar prepared in this case, which was proved through PW4.

14. On analyzing the evidence of PW1, the vital part of her evidence is that, when she was at the house of her mother's sister, she went to sleep at the room of Zakkirikakka and while sleeping so, she felt pain on her vagina and when she looked up, she found the accused at the room, then the accused closed her mouth and threatened that the occurrence should not be disclosed to



anybody, if so, she would be killed. According to her, she did not know what was done by the accused on her vagina. So, there is no direct evidence to see what was done by the accused on the vagina of PW1, which resulted in pain and consequential gloominess to her.

15. Section 3 of the POCSO Act deals with penetrative sexual assault and Section 3(a) to (d) are the instances to find penetrative sexual assault. Section 3 of the POCSO Act reads as under:

***“3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—***

*(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*

*(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or*

*(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or*

*(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so*



*to such person or any other person.”*

16. Going by the statutory wordings in Section 3(a) to (d), Section 3(c) provides that, manipulating any part of the body of the child so as to cause penetration to the vagina, urethra, anus or any part of body of the child is an act of penetrative sexual assault.

17. In this case, PW5, the doctor who examined PW1 and issued Ext.P3 certificate, deposed that when he had examined the victim (PW1), he could not find any cause for abdominal pain and functional cause was suspected. Therefore, she was sent for counseling, where she revealed that she was abused and sexually assaulted by a known person. Thereafter, PW1 was examined with the help of a Gynecologist and the Gynecologist clinically found that her hymen was torn and her labia minora also was congested. Ext.P3 certificate in this regard was issued on 22.11.2014 and the same was issued from Government General Hospital, Kozhikode. Thus, the Gynecologist, who examined PW1, as deposed by PW5, who is the gynecologist of the Government General Hospital opined that, the victim had torn hymen and congested labia minora at the time of her examination on



17.11.2014. But, on perusal of Ext.P4 certificate issued on 04.12.2014, by the Assistant Professor in the Department of Gynecology, Government Medical College Hospital, Kozhikode, examined as PW6 had opined that, the victim's hymen intact and her opinion further was that, when she had examined the victim on 04.12.2014, no signs of violation was found on the body of the victim and no injuries also could be found. She had also opined that the victim not co-operated with the examination.

18. Thus, two divergent opinion evidence forthcoming insofar as examination of PW1 regarding sexual assault. In this connection, it is relevant to note that PW1 deposed about pain on her vagina and she found the accused nearby her. Noticing this fact, the accused threatened PW1 with dare consequence in the event of disclosure of the same to anybody. This subsequent conduct of the accused would show that he had done some sexual act and the same is nothing but penetration on the vagina of PW1. Thereafter, PW1 failed to disclose the event for considerable period about three months, though her mood was changed, as deposed by PW3, her mother and she became gloomy and



sought assistance of her mother to do her day to day affairs. If so, the evidence of PW1 itself would indicate that, though she did not know what is the specific overt act done by the accused on her vagina, there was penetration on her vagina, which resulted in tearing of hymen as deposed by PW5 in terms of Ext.P3. Thus, the overt act of the accused is nothing but an act manipulating part of the body of PW1, so as to cause penetration into the vagina of PW1, which resulted in tearing of vagina and congested labia minora; and the said overt act would squarely fall within the sweep of Section 3(a) of the POCSO Act.

19. If at all the evidence of PW6 based on Ext.P4 suggesting that hymen intact is taken into consideration, it is the well settled law that, hymen rupture or vaginal injury is not an essential ingredient to prove the offence of penetrative sexual assault, since penetration would occur even without rupture/breakage of hymen. To put it otherwise, absence of injuries on vagina does not negate penetration and hymen may remain intact even after penetration. Otherwise, any act of manipulation on any part of the body of the child so as to cause penetration to the vagina itself



would attract the offence under Section 3(a) of the POCSO Act. Here, the evidence of PW6 lack credence since she made such an opinion on the premise of examining PW1, through PW1 did not co-operate with the examination as certified by PW6 herself.

20. In the instant case, the Special Court mainly relied on the evidence of PW1, PW3 as well as PW5 and Exts.P3 to find that the accused committed the offence punishable under Section 3(a) of the POCSO Act. Apart from that, PW14, the Investigating Officer also supported the prosecution case.

21. Even though DW1 and DW2 were examined to prove some dispute between Shereefa on the one side and her sisters, namely, Khadeeja, Ramla and Haseena on the other side, in fact, the Special Court found that their evidence found to be insufficient and the said finding is only to be upheld, as nothing argued by the learned State Brief relying on the evidence of DW1 and DW2.

22. In view of the above discussion, this Court is of the view that the Special Court is right in finding that the accused committed the offence under Section 3(a)



punishable under Section 4 of the POCSO Act. Therefore, the conviction does not require any interference.

23. Earlier, there was submission that the accused had already undergone substantive portion of the sentence imposed in this case. As on 31.01.2025 a report of the Superintendent of Central Prison and Correctional Home, Thavanur was obtained and as per which it was reported as under:

*"I may submit that C.No. 558/23 Noufal s/o Kunhimon, Kalliparambu (H), Thiruvathara P.O, Manathala (V), Chavakkad P.S, Thaluk, Thrissur District, was transferred from Kannur Central Prison & Correctional Home to Thavanur Central Prison & Correctional Home on 02.12.2023. He was convicted and sentence in SC.406/2015 on the file of Hon'ble Additional District & Sessions (POCSO) Court, Kozhikode, to undergo RI for 07 years and to pay fine of Rs.50,000/-, i/d RI for 02 years u/s 377 IPC, RI for 07 years and to pay fine of Rs.50,000/-, i/d RI for 02 years u/s 3(a) r/w 4 POCSO Act, the above sentence was completed on 09.09.2024.*

*Now he is undergoing imprisonment in SC. 177/2017 on the file of Hon'ble Additional District & Sessions (POCSO) Court, Kozhikode, being convicted and sentenced to undergo RI for 10 years and to pay fine of Rs.50,000/-, i/d RI for 02*



*years each u/s 5(m) and (n) r/w 6 of POCSO Act, in view of section 42 of POCSO Act, No separate punishment for offence u/s 376 IPC.*

*He has completed total period of actual sentence of eight years nine months and eighteen days till 29.01.2025 including set off.*

*In addition to the above cases he has another conviction warrant in SC. 190/2017 on the file of the Hon'ble Additional District & Sessions (POCSO) Court, Kozhikode dated 11.02.2019, to undergo RI for 07 years and to pay fine of Rs.50,000/-, i/d RI for 02 years u/s 3(a) r/w 4 POCSO Act. C.No. 558/23 Noufal s/o Kunhimon has also two other pending cases in CC. 2039/2020 of Hon'ble Judicial First Class Magistrate Court No-1, Kannur and Kannur Town P.S Crime. No. 1164/2022 of Hon'ble Special Additional District & Sessions Court NDPS Cases, Vadakara. "*

24. Going through the report, it could be gathered that, the accused had involvement in three POCSO Act offences and he is yet to start the sentence imposed in this case.

25. Coming to the sentence imposed in this case, the Special Court imposed rigorous imprisonment for seven years for the offence under Section 3(a) punishable under Section 4 of the POCSO Act and the same is least minimum



possible, prior to the amendment of Section 4 of the POCSO Act, by enhancing minimum sentence to ten years, with effect from 16.08.2019. Therefore, reduction in sentence also is not possible. Therefore, the verdict impugned does not require any interference and in such view of the matter, this appeal must fail.

26. In the result, this criminal appeal stands dismissed. All interlocutory applications pending in this appeal stand dismissed.

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

**Sd/-  
A. BADHARUDEEN  
JUDGE**