



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 26<sup>TH</sup> DAY OF MARCH 2026 / 5TH CHAITHRA, 1948

CRL.A NO. 2268 OF 2024

CRIME NO.1062/2022 OF KADAKKAL POLICE STATION, KOLLAM

AGAINST THE JUDGMENT DATED 29.07.2024 IN S.C. NO.1634 OF 2022 OF

FAST TRACK SPECIAL COURT, KOTTARAKKARA

APPELLANT/CONVICT:

VISHNU @ UNNI  
AGED 31 YEARS  
S/O VENU, VISHNU BHAVAN, MANIKANDANCHIRA, PULIPPARA P.O.,  
KADAKKAL VILLAGE, KOLLAM DISTRICT, PIN - 691536

BY ADV SRI.S.DHEERENDRAKUMAR

RESPONDENT/COMPLAINANT:

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

SR PP - VIPIN NARAYAN.A

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.03.2026,  
THE COURT ON 26.03.2026 DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 26<sup>th</sup> day of March, 2026**

The sole accused in S.C. No.1634/2022 on the files of the Fast Track Special Court, Kottarakkara, has filed this appeal, under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the conviction and sentence imposed by the Special Judge, against him as per the judgment dated 29.07.2024. The State of Kerala, represented by the Public Prosecutor is arrayed as the respondent herein.

2. Heard the learned counsel 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 offences punishable under Sections 376, 376(3) and 506(i) of the Indian Penal Code [hereinafter referred as ‘IPC’ for short] as well as under Sections 4 read with 3(a) and 3(c), 6 read with



5(l), 5(m) and 5(n), 8 read with 7 and 12 read with 11(iii) 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, the accused with intention of sexually assaulting the 9 year old victim, who was his neighbor, done sexual acts against her on two occasions. Firstly, when the mother of the victim was hospitalized for her second delivery between 5.4.2021 and 18.4.2021 and while the victim was playing with friends in her courtyard, the accused took her to his room in his house by name Vishnu Bhavan at Alukunnam bearing house No.11/417 of Kadakkal Village, disrobed her and showed her obscene videos. He made the victim hold his penis with her hands, lay on her and held the chest and body of the naked victim. He licked on her vagina and raped her. He showed her his white discharge and said that child would be born if the same went inside the vagina. He threatened to kill her mother, her brother and her sister if she would divulge the occurrence, when the victim, who felt pain cried. Again, the accused repeated the overt acts and thus committed the above said offences.



5. After framing charge for the offences punishable under Sections 4 read with 3(a), 4 read with 3(c), 6 read with 5(l), 6 read with 5(m), 8 read with 7 and 12 read with 11(iii) of the POCSO Act, the Special Court recorded evidence and completed trial. During trial, PWs 1 to 17 were examined and Exts.P1 to P16 were marked on the side of the prosecution. One contradiction as that of PW6 got marked as Ext.D1 on the side of the defense.

6. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Sections 4 read with 3(a) and 3(c), 6 read with 5(l) and 5(m), 8 read with 7 and 12 read with 11(iii) of the POCSO Act. Accordingly, the accused was convicted for the said offences and sentenced as under:

*“(i) Rigorous imprisonment for a term of 20 years and fine of Rs.10,000/- (Ten thousand only) for offence U/S.6 r/w 5(l) of POCSO Act. In default of payment of fine, he shall undergo simple imprisonment for one year. Fine amount, if paid, shall be given as compensation to PW1, the victim U/S.357(1)(b) Cr.P.C.*

*(ii) Rigorous imprisonment for a term of 20 years and fine of Rs.10,000/- (Ten thousand only) for offence U/S.6 r/w 5(m) of POCSO Act. In default of*



*payment of fine, he shall undergo simple imprisonment for one year. Fine amount, if paid, shall be given as compensation to PW1, the victim U/S.357(1)(b) Cr.P.C.*

*(iii) Simple imprisonment for a period of 3 years and fine of Rs.5,000/- (Five thousand only) for offence U/S.8 r/w 7 of POCSO Act. In default of payment of fine, he shall undergo simple imprisonment for 3 months.*

*(iv) Simple imprisonment for a period of 1 year and fine of Rs.5,000/- (Five thousand only) for offence U/S.12 r/w 11(iii) of POCSO Act. In default of payment of fine, he shall undergo simple imprisonment for 3 months.*

*(v) Sentences of imprisonment shall run concurrently.*

*(vi) Set off allowed U/S.428 Cr.P.C. from 29.06.2022 to 27.09.2022."*

7. While assailing the verdict impugned, the learned counsel for the accused zealously argued that, the Special Court went wrong in finding commission of offences punishable under Sections 4 read with 3(a) and 3(c), 6 read with 5(l) and 5(m), 8 read with 7 and 12 read with 11(iii) of the POCSO Act, by the accused, without the support of convincing evidence. According to him, the evidence given by PW1 (the victim) has given much emphasis by the Special



Court to prove the prosecution allegations. However, during cross-examination of PW1, she candidly stated that, there was property dispute between the family of the accused and her family and also a person named Silvi residing nearby. It is also submitted that, during cross-examination of PW1, she stated that a complaint was lodged against the said Silvi and her husband for assaulting her and the said complaint had been still pending. But, according to the learned counsel for the accused, no such complaint had been lodged. Therefore, the evidence of PW1 is not reliable and PW1 is not a sterling witness to act upon her evidence to find commission of the offences by the accused. It is also pointed out that, CW18 cited by the prosecution, the Psychiatrist, who attended PW1 at the first instance was spared from examination and the same also is a matter to disbelieve the prosecution case. Thus, the learned counsel for the accused pressed for interference in the verdict impugned. He also submitted that, even otherwise, the offence under Section 11(iii) of the POCSO Act would not attract in the facts of this case, as the prosecution not properly investigated the said aspect and not adduced sufficient evidence to prove the said offence.



8. The learned Public Prosecutor fully supported the prosecution case and according to him PW1 had given candid evidence supporting the occurrence and mere evidence given by her stating that there was property dispute between her family and the father of the accused and the person now residing in the property would not take away the quality of her evidence as not reliable to disbelieve the prosecution case. Thus, according to the learned Public Prosecutor no interference in the verdict impugned is required.

9. 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 4 read with 3(a) and 3(c) of the POCSO Act?*

*2. Whether the Special Court is justified in finding that the accused committed the offence under Section 6 read with 5(l) and 5(m) of the POCSO Act?*

*3. Whether the Special Court is justified in finding that the accused committed the offence under Section 8 read with 7 of the POCSO Act?*

*4. Whether the Special Court is justified in*



*finding that the accused committed the offence under Section 12 read with 11(iii) of the POCSO Act?*

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

*6. Order to be passed?*

10. Point Nos.1 to 4:- In this case, PW1 is the victim, who was subjected to voire dire test by the Special Court before tendering her evidence and thereafter, on recording the fact that the victim was capable of giving rational answers to the questions presented to her, she was examined. Her evidence is that, while she was studying in the 3<sup>rd</sup> standard, her mother had gone for delivery and she was born on 06.02.2013. She resided along with her grandmother during the relevant period and she had some friends nearby her house and Unnikochachan (the accused) sent away them. According to her, the accused is a resident of nearby house and she referred him as Kochachan (father's brother). Her version further is that, Kochachan used to lock her at a room in his house and when she would attempt to open the same, he would lock the door and place the key on the top of the almirah. He used to show



porn videos to her in his mobile and then he would remove his dhoti and he also would remove her skirt, knicker etc. and place his penis on her vagina. He also used to suck on her vagina. Further, he would move his penis by using her hands up and down. She felt pain when the accused would place his penis on her vagina and she would cry. Then, the accused would threaten to kill her. When she would be called by her grandmother, she would return after dressing up. She also deposed that, a white substance would cling on her dress and body and the accused told her that children would be born if the same went inside her. According to her, the accused done these overt acts repeatedly at his room. She identified Ext.P1 statement given by her to the Police and according to her the occurrence was during the year 2021 and she had given statement before the Police in the year 2022.

11. During cross-examination of PW1, a property dispute pending between the father of the accused and the family of the victim was pointed out and PW1 answered in the affirmative. She also deposed that, Silvi, who had been residing in the house nearby her house also assaulted her,



for which a complaint was filed and the same had been pending. She deposed further that, during the occurrence, the parents of the accused were also present at the house. These are the points argued by the learned counsel for the accused to disbelieve the evidence of PW1. The learned counsel for the accused also argued that, the mother of PW1, who got examined as PW3 in this case, had maintained an illicit relationship with another man and the accused told PW3 that he would divulge the same to the husband of PW3, who got examined as PW4. Thus, PW3 was enimical towards the accused and accordingly this case has been foisted against him. Such a version was given by the accused during his examination under Section 313(1)(b) of Code of Criminal Procedure also.

12. In this case, as deposed by PW15, as on 28.06.2022, while he was working as the Inspector of Police in Kadakkal Police Station, CW8, the doctor informed about the occurrence and accordingly he had recorded the statement of PW1 in the presence of PW3 and this crime was registered. He identified Ext.P10 as the FIR. In the



evidence given by PW15, recovery of the dress worn by the accused with the aid of Section 27 of the Evidence Act was also testified. Apart from the evidence of PW1, PWs 3 and 4, the parents of PW1 also were examined and they supported the prosecution case. Apart from PWs 3 and 4, PW5, the maternal grandmother of PW1, PW6, the paternal grandfather of PW1 and PW7, the paternal grandmother of PW1 were examined and they also supported the statement of PW1. PW8 given evidence that, the accused had tremendous freedom in the house of PW1 and the said aspect was not cross-examined.

13. PW9 examined was the Doctor, who examined PW1. She stated the history as told to her by PW1. She deposed to have issued Ext.P3 medical certificate. She stated that on examination the hymen was intact. She stated that the child had revealed the incident to the psychiatrist doctor Kiran Kumar in Kottarakara hospital to whom the child's mother had taken her on account of her behaviour. She stated that the child had at first been reluctant to reveal the incident to her. CW18, the doctor to



whom the child stated to have revealed the incident had been given up by the prosecution. Hence, PW9 seen to have deposed supporting Exhibit P3. She deposed that the history could be seen to be consistent with that of sexual assault. It was stated in Exhibit P3 that only one vaginal swab was taken as the victim was not allowing for further examination. PW9 had explained that the child was a little bit reluctant. She hastened to add that the victim was normal at that point of time i.e. at the time of her examination. She further stated that she had come to the conclusion that sexual assault had been committed on the basis of what had been told by the child and the mother.

14. The question now arise for consideration is whether the evidence of PW1 is not fully reliable to act upon the same, in view of the points argued by the learned counsel for the accused?

15. On reading the evidence given by PW1 during chief-examination, she had narrated all the occurrence in detail and during cross-examination she reiterated the overt acts done by the accused on her on various dates



during 2021 and the same is not at all shaken. But, the quality of her evidence was challenged on the ground that she is not a sterling witness, as she deposed about the property dispute between her family and the father of the accused and the person now resides at the house of the accused. In fact, the same is absolutely insufficient to disbelieve the version of PW1 relied on by the Special Court to found commission of the offences by the accused. The statement of the accused is that, he had been implicated in this crime due to rivalry on account of his intention to divulge the illicit relationship of PW3 to PW4, also found to be not appreciable in the facts of this case.

16. Coming to the evidence to see commission of the offence under Section 11(iii) of the POCSO Act, Section 11(iii) of the POCSO Act provides as under:

***“11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—***

*xxx            xxx            xxx*

*(iii) shows any object to a child in any form or media for pornographic purposes;”*



17. In this case, as rightly pointed out by the learned counsel for the accused and the learned Public Prosecutor, the evidence of PW1 alone is available to prove the prosecution allegations and no attempt made by the prosecution to go for further evidence by taking custody of the mobile phone etc. However, no challenge raised during cross-examination of PW1 on this point. Therefore, this contention also is liable to fail.

18. Point Nos.5 and 6:- On re-appreciation of evidence, none of the contentions raised by the learned counsel for the accused to unsustain the verdict of the Special Court found to be sustainable. Therefore, it is held that the Special Court is right in finding that the accused committed the offences punishable under Sections 4 read with 3(a) and 3(c), 6 read with 5(l) and 5(m), 8 read with 7 and 12 read with 11(iii) of the POCSO Act. Therefore, the conviction imposed by the Special Court does not require any interference.

19. Coming to the sentence, twenty years is the maximum sentence imposed upon the accused for the offence under Section 6 read with 5(l) and 5(m) of the



POCSO Act and the same is the statutory minimum sentence provided for the said offence. Therefore, no reduction in sentence is legally permissible.

20. Accordingly, the verdict impugned does not require any interference and in such view of the matter, this appeal must fail.

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

Since the accused is in jail, the Registry is directed to forward a copy of this judgment to the Jail Superintendent concerned, forthwith, for information and further steps.

**Sd/-**  
**A. BADHARUDEEN**  
**JUDGE**

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