2025:KER:14285

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 20TH DAY OF FEBRUARY 2025/1ST PHALGUNA, 1946

CRL.A NO. 1469 OF 2019

CRIME NO.293/2018 OF Bedakom Police Station, Kasargod

AGAINST THE ORDER/JUDGMENT DATED 04.12.2019 IN SC NO.747 OF 2018 OF SPECIAL COURT UNDER POCSO ACT, KASARAGOD

APPELLANT/ACCUSED:

[redacted]

BY ADVS.
T.G.RAJENDRAN
T.R.TARIN

RESPONDENTS/COMPLAINANT & STATE:

1 THE DEPUTY SUPERINTENDENT OF POLICE,
SMS, KASARAGOD-671121.

2 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY ADVS.
SMT. BINDU O.V., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 06.02.2025, THE COURT ON 20.02.2025 DELIVERED THE FOLLOWING:

"C.R."

JUDGMENT

Jobin Sebastian, J.

The sole accused in S.C. No.747/2018 on the file of the Additional Sessions Court-I (Special Court for the trial of cases on Atrocities Against Women and Children), Kasaragode has preferred this appeal challenging the judgment of conviction and order of sentence passed against him for offences punishable under Section 376 AB of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The prosecution allegation is that the accused who belongs to Nair community committed rape as well as penetrative sexual assault on a minor girl, aged 4½ years, who belongs to Maratti community, a scheduled tribe, by inserting his finger and penis into her vagina on many occasions including on 31.08.2018 and on 07.09.2018 at about 10.00 a.m., and on 09.09.2018 in between 3.00 p.m. and 4.00 p.m., at the quarters of the accused bearing Door No. V/55(E) of Kutikkol Grama Panchayat and thereby, committed offences punishable under Sections 376, 376AB of the IPC, Sections 3(a) and 3(b) r/w Section 4, Sections 5(i), 5(l), 5(m) read with Section 6 of the POCSO Act and Sections

3(2)(v), 3(1)(w)(i), 3(2)(va) of the SC/ST (POA) Amendment Act, 2015.

3. On completion of the investigation, the final report was submitted before the Additional Sessions Court-I, Kasaragode (Special Court for the trial of cases related to Atrocities against Women and Children). The learned Special Judge took cognizance of the offences and the case was taken on file as S.C. 747/2018 and process was issued to the accused. On appearance of the accused, procedure under section 207 of the Code of Criminal Procedure was complied with.

4. After hearing both sides under Section 227 of the Cr.P.C., and perusal of records, the learned Additional Sessions Judge, framed a written charge against the accused for offence punishable under Section 376 AB of the IPC, Section 6 r/w 5(m) of the POCSO Act and Sections 3(2)(v), 3(1)(w)(i), 3(2)(va) of the SC/ST (POA) Amendment Act, 2015. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried. The prosecution thereupon examined the witnesses on their side as PW1 to PW22 and proved through them Exts.P1 to P22 documents. One document produced by a prosecution witness was marked from the side of the defence as Ext. D1. MO1 series are the material objects identified by the prosecution

witnesses and marked in evidence. After completion of prosecution evidence, when the accused was questioned under Section 313 of the Cr.P.C., he denied all the incriminating materials brought out against him in evidence. Since it was not a fit case to acquit the accused under Section 232 of the Cr.P.C., the accused was directed to enter on his defence and adduce any evidence, he may have in support thereof. But no evidence, whatsoever, was adduced from the side of the accused.

5. After trial, the accused was found guilty of offence punishable under Section 376 AB of the IPC and Section 6 r/w 5 of the POCSO Act and convicted. The accused was sentenced to undergo imprisonment for life, that is imprisonment for the remainder of his natural life, and to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand only) with a default clause to undergo rigorous imprisonment for a period of two years under Section 376 AB of the IPC. By virtue of the provision under Section 42 of the POCSO Act, no separate sentence was awarded for the offence punishable under Section 6 r/w 5 of the POCSO Act.

6. This is a case in which a minor girl aged 4½ years was allegedly raped and subjected to penetrative sexual assault by her

neighbour, the accused. The matter came to light when the minor girl complained of pain in her genitals to her mother, who immediately took her child to the Community Health Centre, Bedakam. The Medical Officer attached to the Community Health Centre in turn intimated the matter to Childline which ultimately resulted in the registration of the present case against the accused at the Bedakam Police Station. The law was set in motion in this case on the strength of the FIR lodged based on the statement given by the victim's mother to the Woman Civil Police Officer, attached to Bedakam Police Station.

7. The mother of the victim girl, who lodged the FIS in this case was examined as PW17. According to PW17, she has two children, and the victim in this case is her younger daughter who was only four years old at the time of the incident. The date of birth of her daughter is 29.04.2014. During the period of occurrence, her daughter was an LKG student at Government Lower Primary School, Thevanath, and her son was a 4th standard student in a Government School at Sankarampadi. She is a widow and during the period of occurrence she along with her children were residing in a quarters near 'Ayyappa Bajana Mandiram' at Paduppu. The accused Ravi was residing with his wife and three children in another quarters situated upstairs of her quarters. The incident in this

case occurred inside the quarters of the accused. The accused used to give sweets to her daughter and take her to his quarters. Moreover, her daughter also used to visit the accused's quarters to play. On one Sunday, in the night, her child wept and complained of pain in her genitals. On inspection, redness was noticed on her daughter's urinary area, and on enquiry, her daughter told that the accused thrust his fingers and 'chunni' (the local word for penis) into her urinal opening, at his quarters. Thereupon, she took her daughter to a hospital in Bedakam. Upon enquiry by the doctor, her daughter narrated the incident to the doctor as well. The doctor then referred her daughter to the Government Hospital, Kasaragode for detailed examination. But she did not take her child to the hospital on the same day, rather she returned to her quarters. On the next day, one scheduled tribe promoter named Sumithra (PW3) and one Sujina (JDHN)(CW7) came to the quarters and enquired about the incident. Following the same, the Childline members also came to the quarters to whom her daughter narrated the entire incident. Thereafter one woman police constable from Bedakam Police Station came and she gave a statement to her. The FIS given by PW17 is marked as Ext.P13. According to PW17, she took her daughter thereafter to the Government Hospital, Kasaragod.

The doctor at the said hospital asked about the incident and her daughter disclosed the matter to the doctor. Thereafter, her daughter's statement was recorded by a Magistrate. According to PW17, she also had signed the 164 statement recorded by the Magistrate. Ext.P12 is the statement given by her daughter to the Magistrate. Moreover, she produced two frocks and two undergarments of her daughter to the police. On one Sunday, while her daughter was in the quarters of the accused, she sent her son to bring her daughter. However, after coming back, her son told her that her daughter and Ravi Maaman (accused) were inside the bedroom and Ravi Maaman said that he would send her daughter after a short while. Further, her son said that, he heard the sound of water from the bathroom attached to the bedroom of the accused. According to PW17, the said incident occurred on 09.09.2018 and at that time her daughter and the accused were alone at his quarters as his wife went to attend the Kudumbasree meeting and his children went outside.

8. When the minor girl, the victim of the offence was examined as PW1, she deposed that, she and her mother are now residing at 'Mahila Mandiram' (shelter home) and she is an LKG student. Before becoming inmates of the Mahila Mandiram, they were residing in

a rented quarters at the place called Paduppu. It is the version of PW1 that while they were residing at Paduppu, the accused named Ravi Maaman was residing in a quartes situated on the upstairs of their quarters. PW1 further deposed that, 'രവി മാമൻ ചൂണ്ണി കൊണ്ട് എന്റെ മൂത്രമൊഴിക്കുന്നിടത്തു കുത്തി'. PW1 identified the accused in the dock. According to PW1, she felt pain at the time of washing her genitals and hence, she unfolded the incident to her mother. Thereafter, her mother took her to the hospital. Thereafter, she disclosed the incident to one nurse (CW7) and Sumithra Maami (PW3) who came to her quarters. Thereafter, the police came. Her mother then took her to a big hospital at Kasargod and she narrated the incident to the doctor also.

9. PW3 named Sumithra, the then ST Promotor when examined deposed that, she has acquaintance with PW17, Indira, and her children. PW17 and her children belong to a Scheduled Tribe. PW17 was a widow and during the period of occurrence in this case PW17 was residing in a quarters at Padappu. On 11.09.2018, Dr. Rekha (PW9) attached to Community Health Center, Bedakam intimated the incident in this case to her over the phone. Upon knowing the same, she along with one Sujina,(CW7) a Junior Public Health Nurse, went to the quarters of the victim and enquired about the incident. The victim was

then aged only 4½ years and she told that one Ravi Maaman, who is residing upstairs of their quarters thrust his finger into her urinal opening.

10. The evidence that the prosecution is relying on to prove the occurrence is the solitary evidence of PW1, the minor victim girl. From the evidence it is established that PW1 was aged only 4 ½ years at the time of occurrence. PW17, the mother of PW1 categorically deposed that the date of birth of her minor daughter is on 29.04.2014. Undisputedly, the most competent person to depose about the age of a child is the child's mother. In the case at hand, the evidence of PW17 regarding the date of birth of her daughter remains unchallenged. Moreover, Ext.P7, the extract of the birth certificate marked in evidence also reveals that the date of birth of the victim girl is on 29.04.2014. Therefore, the age of the victim girl which is a foundational fact to be proved by the prosecution in a case arising under the POCSO Act stands fully established in this case.

11. PW1's evidence reveals that she was raped inside the quarters of the accused while she went there. The quarters of the accused is established to be located upstairs of the quarters where PW1

is residing with her mother and brother. One of the main contentions raised by the learned counsel for the appellant is that it is not safe to rely upon the solitary evidence of PW1 to enter into a conclusion of guilt against the accused. While considering the said contention, it is worthwhile to refer to Section 134 of the Indian Evidence Act which states that in order to prove a fact no particular number of witnesses is required. That is why, it is generally said that evidence has to be valued and not weighed. Moreover, in sexual offence cases, it is not prudent to look for corroboration by evidence of other independent witnesses to act upon the victim's evidence, especially when offences of this nature are generally committed in secrecy. However, we are not unmindful of the fact that it is not safe to consider invariably the evidence of victims in all sexual offence cases as gospel truth. The reliability of the evidence of victims of sexual offences depends upon the facts and circumstances of each case. When a court is called upon to rely on the solitary evidence of a victim of a sexual offence, the court must act with much care and circumspection. Moreover, the court can also verify whether there is medical evidence to corroborate the evidence of the victim, though the same is not a must.

12. Anyhow, there is no proposition of law that the evidence of

a prosecutrix must always be corroborated by other independent evidence in order to act upon it. On the other hand, uncorroborated testimony of a prosecutrix can be the sole basis for conviction in a rape case, if the same inspires the confidence of the court. By a series of pronouncements, it is well settled that a prosecutrix complaining of having been a victim of offence of rape is not an accomplice to a crime. There is no law that her testimony can be acted upon only if the same is corroborated by other evidence. On the other hand, the victim in a rape case stands on a higher pedestal than an injured witness.

13. Keeping in mind the above, while coming to the evidence adduced in this case, it can be seen that, PW1, the victim, was aged only 4½ years at the time of the commission of the offence. As already stated, the evidence of PW17, the mother of PW1, shows that she came to know about the incident when her daughter (PW1) complained about pain in her genitals. The evidence of PW1 reveals that the accused sexually abused her and thrust on her genitals with his finger as well as penis. The evidence of PW17, the mother, shows that on knowing about the incident, she went to the Community Health Centre and consulted a doctor.

14. The doctor, at the Community Health Centre, Bedakam, who initially examined the child, when examined before the court as PW9, categorically deposed that, on 11.09.2018, she examined the victim of this offence. Her evidence further shows that on enquiry made by her, the child stated that one uncle residing near her house disrobed her. Moreover, PW9 asserted that the child came to the Community Health Center along with her mother with the alleged history of pain in her genitals while urinating. According to PW9, on examination of the genitals of the child redness was noticed on the Labia Majora. , the said evidence of PW9 will lend support to the case of the prosecution. Moreover, the evidence of PW9 shows that, after preliminary examination, she had referred the minor child for detailed examination to General Hospital, Kasaragode and she duly intimated the matter to one ST Promoter named Sumithra (PW3).

15. When the doctor, who conducted the detailed medical examination of PW1, examined as PW10, she deposed that it was on 12.09.2018, while working as General Surgeon at General Hospital, Kasaragode, she examined PW1, aged only 4 years. According to PW10, the alleged history was sexual assault by a neighbour named Ravi. According to PW10, on examination, an abrasion 0.5 x 0.1 cm, reddish,

on both sides of the outer margin of the vaginal orifice upper part was noted. Moreover, the doctor opined that the findings of the examination are consistent with the alleged history and time of occurrence. Further, she deposed that there was no evidence of vaginal penetration as the hymen was found to be intact. The medical examination report issued by PW10 is marked as Ext.P4. A conjoint reading of the evidence of PW10 and the report issued by her, reveals that the injuries corresponding to the overt act attributed to the accused are seen noticed in the genitals of PW1 on medical examination. Moreover, the attempt of penetration is evident from the fact that there was reddish abrasion on both sides of the outer margin of the vaginal orifice. Therefore, the evidence of PW1 regarding the overt acts of the accused is well corroborated by the evidence adduced in this case. Therefore, we have no hesitation in holding that evidence of PW1 is well corroborated by the medical evidence adduced in this case.

16. However, the learned counsel for the appellant strenuously contended that PW1 being a child witness, it is not safe to act upon her evidence. However, we cannot agree with the said contention of the learned counsel. Section 118 of the Indian Evidence Act makes it clear that a child witness is competent to depose, if she is capable of

understanding the question put to her and to give rational answers. In the case at hand, the evidence of PW1 reveals that she had given intelligent answers after understanding the questions put to her. We are not oblivious that children are generally susceptible to tutoring and they will depose in a parrot-like manner or rehearsed manner regarding the matters about which they were tutored. However, there is no proposition of law that the evidence of a child witness must be eschewed from consideration merely because of the reason that they are more prone to tutoring. But as already stated child witnesses are competent witnesses. Moreover, the weapon to test the credibility or reliability of a witness is cross-examination. In the case at hand, though PW1 was subjected to roving cross-examination, she withstood the same successfully. Her evidence is free from contradictions and omissions of even minor nature.

17. More pertinently, there is nothing to show that PW1 or her mother is having any sort of animosity or grudge towards the accused which would motivate them to falsely implicate the accused in a case of this nature. Moreover, while lodging a complaint of this nature, several factors like the future of the victim, the dignity of their family, the emotional well-being of the victim, etc., would have weighed in the mind of the mother of PW1. The inherent bashfulness of the females and the

tendency to conceal outrage of sexual aggression are factors which the court should not overlook. Therefore, normally, it could not be expected that the mother of a minor child will come forward with a false complaint that her child was subjected to sexual assault or rape. However, if the child or her parents had any previous animosity or grudge towards the accused that would motivate them to falsely implicate the accused, then the court must be very cautious. In the case at hand, there is no material to show that the victim or her mother had an axe to grind against the accused.

18. We are not unmindful that when the accused was questioned under Section 313 Cr.P.C., he stated that there was a job-related dispute between him and a relative of the victim named Balan, while both of them were working in a beverages outlet. Hence, in order to oust him from the said outlet, the present case is foisted by Balan with the help of PW17**,** who is his relative. Though a statement as stated above was made by the accused at the time when he was questioned under Section 313 of the Cr.P.C., no materials, whatsoever, are seen produced to substantiate the same. When PW17, the victim's mother, was in the witness box, not even a suggestion was put to her in that line. More pertinently, she was not even asked whether she had a

relative named Balan. Therefore, the statement given by the accused when he was questioned under Section 313 of the Cr.P.C., lacks credulity and the same is not sufficient to doubt the convincing and reliable evidence given by PW1 and her mother.

19. One of the main contentions taken by the learned counsel for the appellant is that an offence of rape or penetrative sexual assault is not made out in this case. According to the counsel, in order to make out a case of rape or penetrative sexual assault there shall be evidence of penetration. The counsel strenuously urged that even if the evidence of PW1 is believed, the maximum offences that would attract is offence under Section 354 IPC and an offence of sexual assault under Section 7 of the POCSO Act. In order to buttress the said contention, the learned counsel relied on the medical evidence adduced in this case to the effect that there is no rupture of the hymen.

20. We are unable to accept the aforesaid contention of the learned counsel. What PW1, the minor child deposed is that "മാമൻ ചുണ്ണി (penis) കൊണ്ട് എന്റെ മൂത്രമൊഴിക്കുന്നിടത്തു കുത്തി". It is obvious that penile vaginal entry namely the actual passing of the penis into the vagina, is not essential to constitute rape, and even penile access towards the vagina,

without there being any entry of the penis into the vagina would constitute rape, if the penis gets physical contact in that process of access with any of the external portions of the female genital organ, such as vulva, labia majora, etc. In the above regard, we are fortified by the decision in **Chenthamara v. State of Kerala** [2008 (4) KLT 290]. Later in **Kunjumon v. State of Kerala** [2011 (4) KHC 72] it was clarified that an attempt at penetration into the vagina would amount to accessing the vagina and even a slightest penetration into vulva or labia majora would constitute "rape", although there would be no vaginal penetration in such cases. Similar view has been expressed by the Apex Court earlier in **Tarkeshwar Sahu v. State of Bihar (Now Jharkhand)**, [(2006) 8 SCC 560], wherein also, it was explained that penetration of the male genital organ within the labia majora or the vulva, with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would make out the offence under Section 376 IPC. The aforesaid are decisions rendered prior to Act 13 of 2013, in terms of which Section 375 of the IPC was amended to its present form. As per the unamended provision, sexual intercourse by a man with a woman under any of the circumstances described in the section would have

constituted rape, and the question whether there is sexual intercourse or not had to be determined in the light of the clarification contained in the Explanation to the provision that penetration is sufficient to constitute sexual intercourse. All the decisions referred to above are therefore decisions dealing with the scope of the word 'penetration' contained in the Explanation to the definition of 'rape' as it stood prior to Act 13 of 2013.

21. Now it is to be noted that in the year 2013 drastic changes were brought in the definition of rape and its penal provisions by the Criminal Law Amendment Act, 2013, which came into force on 03.01.2013. The definition of rape after the amendment is as follows:

> **"375. Rape**.—A man is said to commit "rape" if he—
>
> (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
>
> (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
>
> (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
>
> (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent. Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

22. Although the scope of the offence of rape has been substantially enlarged in terms of Act 13 of 2013, penile penetration, to any extent, into the vagina is still retained within the scope of the offence of rape. Explanation to the amended definition, in addition,

clarifies that for the purpose of the Section, 'vagina' shall also include labia majora, indicating clearly that even the slightest penetration into the vulva or labia majora would constitute rape and penile vaginal entry is not essential to constitute rape.

23. Coming to the POCSO Act, 'penetrative sexual assault' is defined therein, almost in identical terms as 'rape' is defined in the IPC. In fact, it is the definition of 'penetrative sexual assault' contained in the POCSO Act that was substantively introduced as the definition of 'rape' in the IPC in terms of Act 13 of 2013. Be that as it may. The definition of 'penetrative sexual assault' in the POCSO Act reads thus:

> **"Section 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."

Although the definition of 'penetrative sexual assault' does not have an explanation for the word 'vagina' as contained in Explanation 1 to Section 375 of the IPC, as amended in terms of Act 13 of 2013, according to us, the said explanation can be read into the POCSO Act in the light of Section 2(2) therein which reads thus:

> "2(2) The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts."

Even in the absence of a provision in the POCSO Act as extracted above, according to us, the word 'vagina' contained in Section 3 of POCSO Act defining 'penetrative sexual assault' has to be understood in the manner in which the word is understood in the context of the offence of 'rape' under the IPC, or otherwise, it would appear that penile vaginal entry is required for making out a case of penetrative sexual assault, while the same is not required for making out a case of rape. Such an interpretation would certainly go against the object of the POCSO Act, viz, to secure tender-aged children from sexual abuses of all kinds. In other words, penetration of the male genital organ within the labia majora or the vulva, with or without any emission of semen or even an attempt at penetration into the private part of the victim completely,

partially, or slightly would make out the offence of penetrative sexual assault under the POCSO Act as well.

24. Reverting to the facts, the evidence let in by the victim girl as extracted would certainly reveal that the accused has placed his male genital organ at the external genitalia of the victim girl. The evidence of PW9, the Doctor who initially examined the victim girl reveals that she had noted redness on the labia majora of the victim girl. Moreover, the evidence of PW10, the Doctor who conducted the detailed examination and issued Ext.P4 medical examination report shows that a reddish abrasion 0.5 x 0.1 cm was noticed on both sides on the outer margin of the vaginal orifice upper part. Therefore, merely because the rupture of the hymen was not noticed in the medical examination of the victim, the same will not help the accused to show that an offence of rape was not made out. On the other hand, even if the case of the accused that there is no evidence of penetration of the male genital organ into the vagina of the victim girl is accepted, the materials on record would clearly indicate that the accused has attempted to penetrate his genital organ into the vagina of the victim girl. The evidence of PW1 as well as the medical evidence clearly reveals that the male genital organ of the accused came in contact with the labia majora of the victim. In view of

the Explanation 1 of Section 375 of the IPC vagina shall also include labia majora. Therefore, the slightest penetration into the labia majora would constitute rape, and penile vaginal entry namely the actual passing of the penis into the vagina is not essential to constitute rape. In short, we have no hesitation in holding that the offence of rape, as well as penetrative sexual assault, is clearly made out in this case.

25. The act of the accused is punishable under Section 376AB of IPC as well as under Section 6 of the POCSO Act. Anyhow, in view of the provision contained under Section 42 of the POCSO Act, the learned Special Judge sentenced the accused only under Section 376 AB of IPC and no separate sentence is imposed for offence punishable under Section 6 of the POCSO Act. However, the sentence imposed on the appellant for offence punishable under Section 376AB of IPC that he shall undergo imprisonment for life, that is till the reminder of the accused's natural life appears to be exorbitant. We are of the view that a sentence of rigorous imprisonment for a term of 25 years will meet the purpose of justice.

26. In the result, the finding of guilt and the judgment of conviction passed by the trial court in this case against the accused

stands confirmed. However, the sentence imposed on the accused is modified and he is ordered to undergo rigorous imprisonment for 25 years and to pay a fine of Rs.25,000/-. In default of payment of fine, the appellant/accused shall undergo rigorous imprisonment for two years.

With this affirmation and modification, the appeal is allowed in part.

Sd/-

P.B. SURESH KUMAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

ncd/DCS