

IN THE FAST TRACK SPECIAL COURT (POCSO)  
THIRUVANANTHAPURAM.

Present :- Smt. REKHA R, SPECIAL JUDGE.

Friday, 31<sup>st</sup> May, 2024 (10<sup>th</sup> Jyaishta, 1946)

**SESSIONS CASE No.782/2023**

(Crime No.246/2023 of Peroorkada Police Station)

Complainant : State - represented by the Sub Inspector  
of Police, Peroorkada Police Station  
Thiruvananthapuram City.

(By Special Public Prosecutor,  
Sri.Vijay Mohan.R.S)

Accused : xxxxxxxx

(By Adv.Smt.Anuji.M.S Deputy Chief  
Legal Aid Defence Counsel)

Charge : Under sections 10 read with 9(l), 10 read with  
9(n) of Protection of Children from Sexual  
Offences Act and section 75 of Juvenile Justice  
(Care and Protection of Children) Act, 2015.

Plea : Not guilty

Finding : Guilty Under sections 10 read with 9(l), 10 read  
with 9(n) of Protection of Children from Sexual  
Offences Act and section 75 of Juvenile Justice  
(Care and Protection of Children) Act, 2015.

Sentence/

Order : Accused is convicted under 235(1) of Cr.PC for the offences punishable under section 10 read with 9(l), section 10 read with 9(n) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015.

In view of section 71 of Indian Penal Code, no separate punishment is imposed for the offence punishable under section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 and punishment is imposed only for the offences punishable under section 10 read with 9(l) of Protection of Children from Sexual Offences Act.

Accused is sentenced to undergo **rigorous imprisonment** for a period of **7 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand) and in default of payment of fine to undergo **rigorous imprisonment** for a further period of **3 months** for the offence punishable under section 10 read with section 9(l) of Protection of Children from Sexual Offences Act and to undergo **rigorous imprisonment** for **7 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand) and in default of payment of fine to undergo rigorous imprisonment for a further period of **3 months** for the offence punishable under section 10 read with 9(n) of Protection of Children from Sexual Offences Act. Substantive sentences shall run concurrently.

**Accused** has been in judicial custody for the period from **18/02/2023 to 31/05/2024**. Accused is entitled to get set off for 15 months and 11 days against the substantive term of imprisonment.

**Invoking** the power under section 357- A of the Code of Criminal Procedure Code, 1973 and section 33(8) of Protection of Children from sexual Offences Act, this court hereby makes recommendation to the District Legal Services Authority, Thiruvananthapuram for adequate compensation to PW1.

### **Description of the accused**

Sl. No.	Name of accused	Father's name	Religion/ Caste	Occupation	Age	Residence
1	xx	xx	xx	xx	xx	xx

### **Date of**

Occurrence	Complaint	Apprehension	released on bail	Committal	Commencement of trial	Close of trial	Sentence/order
2020 & 15/02/23	03/04/23	18/02/23	Custody	Nil	09/01/24	28/05/24	31/05/24

This case having been finally heard on 28/05/2024 in presence of the above counsel and the court on 31/05/2024 delivered the following :

### **JUDGMENT**

**Accused** faced trial for charges under sections 10 read with 9(l), 10 read with 9(n) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015.

**2.Prosecution** case in brief is as follows:-

Accused is the father of child victim. During Covid time in the year 2020, accused with sexual intent caressed the breast and body of child victim and touched her breast and private parts by putting his hands through her dress and touched the body of child victim on many days. On 15/02/2023 during night accused touched the body of child victim and private parts by putting his hands through her dress and panties with sexual intent. The place of incident is the rented house of the child victim. Accused committed aggravated sexual assault on child victim more than once. Accused had thus committed the above mentioned offences.

**3.Sub** Inspector of Police, Peroorkada Police Station registered first information report number 246/2023 on the basis of first information statement given by child victim, conducted investigation and laid final report before the Additional District and Sessions Court (For the trial of cases relating to Atrocities and Sexual Violence against Women and Children), Thiruvananthapuram. Cognizance was taken for the offences punishable under sections 294(b), 354 of Indian Penal Code and sections 8 read with 7, 10 read with 9 (l), 10 read with 9 (n) of Protection of Children from Sexual Offences Act and section 75 of J.J. Act. The case was thereafter made over to this court for trial and disposal. Accused has been in judicial custody since 18/02/2023. Accused was served with the copy of the prosecution records. After producing the

accused, the learned Special Public Prosecutor opened the case of the prosecution. Accused and prosecution were heard under section 227 of Criminal Procedure Code. Accused and counsel for accused submitted on 09/01/2024 that accused knows Malayalam. After finding that there is no scope for discharge under section 227 Criminal Procedure Code, charges under sections 10 read with 9(l), 10 read with 9(n) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice (Care and Protection of Children) Act were framed in English, read over and explained to accused in Malayalam to which he pleaded not guilty. Since accused is a native of Tamil Nadu, charge was explained to accused in Tamil also with the assistance of an interpreter who is a Tamil teacher in Tamil HSS, Chala.

**4. To** proves its case, prosecution examined PW1 to PW19 and got marked Exts.P1 to P24 and MO1 and MO2. Ext.C1 was also marked. CW4, CW5, CW8, CW9, CW12 to CW15, CW17, CW20, CW23, CW26, CW29 and CW31 were given up by the learned Special Public Prosecutor. Prosecution evidence was closed. Since accused knows Malayalam, accused was questioned under section 313 of Criminal Procedure Code. The defence version as seen from the 313 statement of accused was that child victim would not study well and would spent 24 hours chatting in mobile phone. Child victim called a boy in Calcutta and accused scolded her. Thereafter child victim sent 'hi' message to a boy in Ernakulam and that boy called when child

victim was taking bath and accused attended that call and scolded child victim. Child victim has been in a love affair with a boy in Kasargod for one year and the said boy brought a dress for child victim to her house and accused took that dress to the house of his mother-in-law. Accused told that boy to marry of child victim to him after she attains majority. Accused met that boy in Ganapathy Temple, Pazhavangadi in the presence of PW2. Child victim has been sending messages in phone and accused quarrelled with her. Due to that enmity she filed this false case against accused. Accused did not subject child victim to sexual assault.

**5.Accused** and prosecution were heard under section 232 of Cr.PC. Accused was found not entitled to be acquitted under section 232 of Criminal Procedure Code. Thereafter accused was called upon to enter on his defence and to produce witnesses. On 24/05/2024 counsel for accused submitted that accused had no defence evidence. Defence evidence was closed. Both sides were heard.

**6.The** points which arise for consideration are :-

1. Did accused with sexual intent touch the breast and vagina of PW1 on many days during Covid time in 2020 and touch the breast and vagina of PW1 by putting his hands through the dress and panties of PW1 at about 12.00 am on 15/02/2023 in the rented house of PW1 and accused and commit aggravated sexual assault on PW1 more than once and thereby commit the offence punishable under section 10 read with 9(l) of Protection of Children from Sexual Offences Act?

2. Did accused being the father of PW1 with sexual intent touch the breast and vagina of PW1 on many days during Covid time in 2020 and touch the breast and vagina of PW1 by putting his hands through the dress and panties of PW1 at about 12.00 am on 15/02/2023 in the rented house of PW1 and accused and commit aggravated sexual assault on PW1 and thereby commit the offence punishable under section 10 read with 9(n) of Protection of Children from Sexual Offences Act?
3. Did accused being the father and in the position of trust and authority of PW1 abuse PW1 many times during Covid time in 2020 and during night on 15/02/2023 in the rented house of PW1 and accused and thereby commit the offence punishable under section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015?
4. In the event of conviction, what is the proper sentence to be imposed on accused?

**7.Points 1 to 3 :** Since the evidence to be discussed in points 1 to 3 are interconnected, these points are considered together. Prosecution allegation was that accused being the father of PW1 committed aggravated sexual assault on PW1 more than once. PW1 to PW4 and PW16 were examined by the prosecution to prove the incident. PW7 is examined by the prosecution to prove the residence of accused and PW1 in the rented house involved in this case. PW9 is examined to prove that PW1 was brought before her on 17/02/2023 for medical examination. PW18 conducted potency examination of accused and issued Ext.P10 potency certificate. PW6 is the registrar of Birth and Death who was examined by the prosecution to prove the date of birth of

PW1. PW5 was examined to prove the ownership of the rented house involved in this case in favour of PW7. PW8 is an attester to Ext.P5 scene mahazer. PW10 prepared scene plan in this case. PW11 recorded the statement of witnesses. PW12 is an attester to Ext.P8 inventory mahazer. PW13 is an attester to Ext.P9 mahazer. PW14 who was the Sub Inspector, City Women Police Station, Thiruvananthapuram recorded Ext.P2 first information statement of PW1. PW15 intimated the police regarding the incident on getting information from PW3. PW17 produced Ext.C1 extract of the assessment register. PW19 registered Ext.P11 first information report conducted investigation and laid final report.

**8. One** of the main foundational facts to be proved by the prosecution in cases involving the offences under the POCSO Act is the age of child victim. As per the deposition of PW1, accused committed sexual assault on her many times during Covid time in 2020 and on 15/02/2023. Prosecution produced Ext.P1 verified copy of SSLC book of PW1 and examined PW6 to prove the age of PW1. As per Ext.P1 Secondary School Leaving certificate of PW1 the date of birth of PW1 is 25/08/2006. PW6 is the Registrar of Birth and Death, Dindigal Municipal Corporation. Since the birth certificate issued by PW6 was an electronic record not appended with the mandatory certificate under section 65B of Evidence Act the said certificate was rejected in evidence at the time of examination of PW6. According to PW6 as per records



the date of birth of PW1 is 25/08/2006. Since the testimony of PW6 regarding date of birth of the child is hearsay based on official records, the evidence adduced by PW6 regarding the date of birth of PW1 cannot be relied upon.

**9. In Jarnail Singh v State of Haryana reported in 2013 KHC 4455** the Hon'ble Supreme Court held that even though the Rules framed under the Juvenile Justice (Care and Protection of Children) Act 2000 apply strictly only for determination of the age of a child in conflict with law, the statutory provisions therein can certainly be the basis for determining the age of even a child who is a victim of crime. In **Rajan K.C v State of Kerala reported in 2021 KHC 375** the Hon'ble High Court held that since the Hon'ble Supreme Court has specifically referred to Rules of 2007 and imported the same procedure in case of minor victim the said rigor has to be applied in cases where determination of age of a minor victim arises. Recently the Hon'ble Supreme Court in **P. Yuvaprakash v State represented by Inspector of Police (2023 KHC 6709)** held that it is evident from the conjoint reading of the above provisions (section 34(1) of Protection of Children from Sexual Offences Act and section 94 of the Juvenile Justice Act 2015) that whenever the dispute with respect to the age of a person arises in the context of her or him being a victim under the Protection of Children from Sexual Offences Act, the courts have to take recourse to the steps indicated in section 94 of the Juvenile Justice Act. **In Biju v.**

**State of Kerala reported in 2024 (2) KHC 297(DB)** the Hon'ble High Court held that the manner of establishing the age of the child for the Protection of Children from Sexual Offences Act can be in anyone of the ways permitted under the Indian Evidence Act.

**10.Ext.P1** is the acceptable document produced by the prosecution to prove the age of PW1 as per the decision in **P. Yuvaprakash v State represented by Inspector of Police** mentioned supra and section 94 of the J.J Act. As per Ext.P1 the date of birth of PW1 is 25/08/2006. Hence PW1 is aged 14 years in 2020 and 16 years on 15/02/2023. It can be concluded that prosecution succeeded in proving that PW1 was a minor at the time of incident in 2020 and on 15/02/2023.

**11.PW1** stated that she knew Malayalam. PW1 stated that her mother died 9 years ago and she came to reside in the rented house involved in this case in Thiruvananthapuram with her father. As per the deposition of PW1, her elder sister was staying in Dindigal and younger sister was with her father's sister in Thrichy and she was residing with her father in the rented house and was studying in Thiruvananthapuram. PW1 deposed that on 15-02-2023 at about 12:00 a.m accused grabbed her breast while she was sleeping with accused in the hall room of the rented house and she woke up and told accused not to touch him but accused touched her breast and vagina again. According to PW1 accused touched her breast by putting his hand through his dress and touched

her vagina by putting his hand through his panties. As per the version of PW1, accused touched her breast and private part several times when nobody was in the house during Corona time in 2010. According to PW1, during Corona time her sister was in the rented house and accused committed assault on her when her sister had gone to attend tuition and exam. PW1 stated that she had nobody to be looked after as her mother died and father was the only person who was maintaining her and hence she did not file any complaint when accused had committed sexual assault on her initially. On the next day of the last incident on 15-02-2023 she revealed the incident to the class teacher ie PW4 as she apprehended further assault on the part of the accused as nobody was there in the house and her brother and sister were not there. According to PW1, PW4 took her to the counselling teacher ie. PW3 and PW3 asked her to write the complaint and she gave Ext.P7 complaint to her in writing. PW1 stated that she wrote Exhibit P7 complaint in Malayalam in English letters as she did not know how to write in Malayalam. PW1 identified Exhibit P2 as the first information statement given by her to the police and Exhibit P4 as the statement given by her to the Magistrate. PW1 identified MO1 as the bed sheet used by her at the time of the last incident on 15/02/2023.

**12. PW2** who is sister of PW1 deposed that PW1 was residing with her father in Thiruvananthapuram and she and their brother were not in that house. PW3 is the counsellor in the school in which PW1

was studying. According to PW3, on 16-02-2023 PW1 attended counselling given by her and revealed that on the previous day that is on 15<sup>th</sup>, father touched her private parts and subjected her to sexual assault. According to PW3, PW 1 revealed the previous assault on the part of accused also in that counselling. PW3 directed PW12 to write the complaint in writing. Accordingly she wrote the statement in Malayalam in English letters as she did not know to write in Malayalam. PW3 identified Exhibit P7 as the complaint given by PW1 to her. According to PW 3 PW1 requested her to report the incident on 17<sup>th</sup> only as she wanted to go home to take her books and the phone to contact her sister. Accordingly PW3 intimated District Child Protection Officer only on 17<sup>th</sup> as requested by PW1. According to PW3, PW1 was produced before CWC on the next day of the disclosure. PW4 who was the class teacher of the PW1 deposed that on 16-02-2023 PW1 shared the incident with her friends and then to her. According to PW4, PW1 revealed her that on 15-02-2023 accused touched her private parts and assaulted her. PW 4 stated that PW1 mentioned about the previous incident also to her. PW4 informed the Principal and Principal called the counsellor and counsellor talked to PW1. PW16 deposed that she accompanied PW1 to CWC. PW14 deposed that on 17-02-2023, she was informed by counsellor of the school in which PW1 was studying that she was subjected to abuse. Accordingly PW14 intimated the police through e-mail. PW9 deposed that PW1 was brought before her for examination with

history of sexual assault by father. As per the deposition of PW9, consent was not given for examination. PW18 who conducted potency examination of accused deposed that there was nothing to conclude that accused was incapable of performing sexual act. PW19 deposed that on 18/02/2023 he arrested accused and seized MO2 mobile phone from the possession of accused at the time of arrest.

**13.**On evaluating the deposition of PW1 to PW4, PW14 and PW16 it can be understood that PW1 alone has direct knowledge regarding the incident. For considering the reliability and truthfulness of the evidence adduced by PW1, various grounds of challenge raised by defence side to the testimony of PW1 and to the prosecution case are to be considered in detail.

**14.**As per the deposition of PW1, the place of occurrence in Covid time in 2020 is the rented house which was in the first floor of a building and place of occurrence in respect of the incident on 15/02/2023 is the hall room of that house. The learned defence counsel vehemently argued that place of incident was stated differently by PW1 in Ext.P2 first information statement, Ext.P3 statement and in court. On scrutinizing the deposition of PW1, no contradictions and omissions were brought about in her deposition in respect of the place of incident stated by her. In the absence of proof of contradictions and omissions in the previous statement of PW1 in respect of the place of incident stated by PW1 in court it cannot be accepted from the argument of the learned

defence counsel that place of incidents were stated differently by PW1. The contention raised by the learned defence counsel regarding the variance in the place of incident stated by PW1 is liable to be rejected.

**15. PW1** stated in chief examination itself that she omitted to state in Ext.P2 that accused touched her vagina. But she stated in Ext.P3 stated accused touched her vagina also. The explanation given by PW1 for the said omission was that she forgot to state in Ext.P2 that accused touched her vagina. Nothing has been forthcoming from the cross examination of PW1 to doubt the reason stated by PW1 for the above said omission in Ext.P2. More over the deposition of PW1 that accused touched her vagina also was corroborated by her statement in Ext.P3. Hence the mere fact that there was omission in stating the touch of accused on the vagina of PW1 in Ext.P2 is no ground to discredit her evidence on that score before the court.

**16.The** learned defence counsel argued that there was omission in Ext.P7 complaint lodged by PW1 regarding the entire acts of the accused stated by PW1 before the court. Undoubtedly Ext.P2 is the first information statement given to the police by PW1 in respect of the incident. It can be understood from the deposition of PW1 and PW3 that PW1 gave Ext.P7 complaint in writing to PW3 during counselling and statements in Ext.P7 in Malayalam were written in English letters as PW1 did not know to write in Malayalam. PW3 deposed during examination that the complaint lodged by PW1 was kept in the school

file by her. PW3 expressed her readiness to produce the same. PW3 produced Ext.P7 complaint on a subsequent date. Translated copy of Ext.P7 in Malayalam letters was also produced by the prosecution. During examination of PW1 the learned defence counsel drew her attention to the omission in stating the sexual assault in Ext.P7. PW1 stated that she made mention of the abuse in Ext.P7 even though it was not stated clearly. PW7 stated that she mentioned the bad touch of accused in Ext.P7. According to PW1, she wrote Ext.P7 when PW3 had asked her to give the complaint in writing hurriedly. It is evident from the deposition of PW1 and PW3 that Ext.P7 complaint was given by PW1 in writing to PW3 on her request when PW3 had disclosed the sexual assault of accused during counselling. It is true that there is mention of bad touch of accused in Ext.P7. It is well evident from the deposition of PW1 that she prepared Ext.P7 hurriedly on the request of PW3 when she had asked to give the complaint in writing. Considering the circumstances under which Ext.P7 complaint was prepared and lodged by PW1 and the fact that there was mention of bad touch of accused in it, the mere fact that PW1 did not describe in detail each and every act of accused in Ext.P7 is no ground to reject the evidence adduced by PW1 regarding the offending acts of accused.

**17. The** learned defence counsel attacked the genuineness of Ext.P7 on ground that it was undated. As already found PW1 prepared Ext.P7 hurriedly on the request of PW3. The circumstances under which

Ext.P7 was prepared was also well explained from the deposition of PW1 and PW3. Hence the mere fact that Ext.P7 was not dated is no ground to doubt its genuineness as contended by the learned defence counsel.

**18.The** learned defence counsel argued that it was so improbable that PW1 who was aged 16 years was sleeping with accused in the hall room of the house. The contention of the learned defence counsel was that a girl of that age would not normally sleep with father. PW1 adduced evidence that the incident on 15/02/2023 occurred while she was sleeping with accused in the hall room of their rented house. Nothing has been forthcoming from the cross examination of PW1 to discredit that version. So it cannot be accepted that a girl who attained the age of PW1 would not normally sleep with father as contended by the learned defence counsel.

**19.The** learned defence counsel contended that residence of PW1 in the rented house involved in the case was not proved by the prosecution. PW1 categorically stated that she was residing in the rented house involved in this case. PW7 is the owner of that house. PW7 deposed that accused and three children came to reside in the house involved in this case on rent in the year 2019. Ext.P4 was identified by PW7 as the copy of rent deed executed for that purpose. The learned defence counsel contended that Ext.P4 could not be relied upon as it was a photocopy and PW7 is not a signatory in Ext.P4. There



is sufficient explanation from the deposition of PW7 regarding the non production of Ext.P4. As per the evidence adduced by PW7, accused took original of Ext.P4 for taking ration card and did not return the original. Ext.P4 was seen signed and executed by accused in favour of PW7. It is true that PW7 did not sign in it. Ext.P4 was marked in evidence as the foundation for laying down secondary evidence was established from the deposition of PW7. Since Ext.P4 was signed and executed by accused in favour of PW7 for taking the house involved in this case on rent, the fact that PW7 did not sign in it is no ground to reject the same in evidence. Evidence adduced by PW1 and PW7 that PW1 was residing with accused in the rented house involved in this case was corroborated by the recitals in Ext.P4 also. It is evident from the deposition of PW1 and PW7 that PW2 and son of accused were not residing in the rented house at the time of incident on 15/02/2023. PW2 who is elder daughter of accused also deposed that she and her younger brother were not residing in the rented house in Thiruvananthapuram. It is evident from the deposition of PW1 and PW7 that accused was residing with PW1 alone in that rented house at the time of incident on 15/02/2023. Deposition of PW1 and PW7 that accused was residing with PW1 alone in the rented house at the time of incident was corroborated by the admission of accused during the questioning under section 313 Cr.PC. So accused cannot be heard to say that prosecution failed to prove that accused was residing with PW1 in the rented house

involved in this case. Prosecution succeeded in proving that accused was residing with PW1 in the rented house involved in this case at the time of incident.

**20.**PW1 deposed that at the time of incident during Covid time PW2 was in the house but accused had subjected PW1 to sexual assault when PW2 had gone to attend exam and tuition. The above said version PW1 regarding the absence of PW2 in the house at the time of commission of offence during Covid time in 2020 remained unchallenged during cross examination of PW2. So it can be safely concluded that accused committed sexual assault during Covid time in 2020 when nobody was in the house.

**21.**The defence side challenged the proof of ownership of PW7 over the rented house involved in this case. PW5 who is the Superintendent of Zonal Office, Kudappanakunnu of Thiruvananthapuram Corporation deposed that the house involved in this case was in the ownership of PW7. PW17 who is the Assistant Secretary and officer in charge of Kudappanakunnu Zonal Officer produced Ext.C1 old assessment register of the Corporation. It is evident from the deposition of PW17 that rented house involved in this case was in the ownership of PW7 as per Ext.C1. Cross examination of PW17 was recorded 'nil' on the request of defence side. At the time of argument the learned defence counsel contended that as per Ext.C1 the building in it was single storied and ownership was also changed. It is

evident from the deposition of PW17 that she inspected the house after receipt of the summons in this case and found that a double storied building was existing there at present and no permission was taken from the Corporation for constructing the second floor. It is proved from the deposition of PW17 that a double storied building was in existence in the actual place at present. It is proved from the deposition of PW1 and PW7 that accused was residing in the second floor of the house involved in this case which was admitted by accused also. Prosecution succeeded in proving the residence of PW1 and accused in the rented house involved in this case. Hence there is no need for to this court to conduct a full fledged probe into the ownership of PW7 over that house.

**22.The learned** defence counsel vehemently argued that if the story of disclosure of PW1 to PW3 and PW4 on 15/02/2023 was true, they would have reported the incident on that day itself to the police in view of the mandate of section 19 of Protection of Children from Sexual Offences Act. Similarly whereabouts of PW1 from 15/02/2023 to 17/02/2023 was not explained by the prosecution. Hence the contention of the learned defence counsel that PW1 was ill-advised by somebody else to file a false case against father. Nothing has been forthcoming from the cross examination of PW3 and PW4 to discredit their version regarding the disclosure of incident to them by PW1 on 15/02/2023. PW3 sufficiently explained that matter was not reported to the police on 15/02/2023 on the request of PW1 to enable her to take her books and

phone from the house. The said version of PW3 could not be shaken during cross examination. It is evident from the deposition of PW3 that PW1 was produced before Child Welfare Committee on the next day of the incident. It is further evident from the deposition of PW16 also that she accompanied PW1 to admit her in CWC. Since PW3 sufficiently explained the reason for reporting the matter in the morning on 17/02/2023 to Child Protection Officer and also stated the production of PW1 before CWC on 16/02/2023, it could not be assumed that there was no disclosure to PW3 and PW4 on 15/02/2023 and whereabouts of PW1 was not known from 15/02/2023. There is no evidence forthcoming to believe that PW1 was ill-advised to file a false complaint against accused as contended by the learned defence counsel.

**23.**The learned defence counsel argued that the deposition of PW14 that PW4 signed in Ext.P2 first information statement was not supported by the evidence of PW4. Hence recording of Ext.P2 first information statement is suspicious. PW4 did not state anything regarding her presence at the time of recording Ext.P2 in her evidence. PW13 stated that Ext.P2 bore the signature of PW13, PW1 and PW4. Ext.P2 was seen signed by PW4. Signature of PW4 in Ext.P2 resembles the signature put by PW4 in the deposition paper. Nothing was asked to PW4 regarding her presence and signature in Ext.P4. Hence it cannot be concluded that PW4 was not present and did not put her signature in Ext.P4. PW1 identified her signature in Ext.P1. The mere fact that PW4

omitted to state her presence at the time of recording Ext.P2 is no ground to doubt its genuineness as argued by the learned defence counsel.

**24. Defence** side pointed out three reason for filing this false complaint by PW1 against accused. According to the defence side PW1 would not study well and accused would scold her and accordingly PW1 filed this case. According to PW1 she could not complete Plus 1 due to this case and she was not bad at studies. PW4 who was the class teacher of PW1 deposed that PW1 was studious. There was no evidence to prove that PW1 filed this case falsely against accused as accused had scolded her for her poor academic performance. Second reason pointed out by defence side was that PW1 also wanted to go like PW2 and her younger son. PW1 deposed that she could not go like PW2 as she was studying in Thiruvananthapuram even though she felt sad after PW2 had gone from there. No circumstances has been forthcoming from the deposition of PW1 to assume that PW1 created this false case to join PW2 and her younger brother. Third reason urged by the defence side was that PW1 had an affair with a guy in Kasargod and he sent a dress as gift on 14/02/2023 ie. on Valentine's day and there was quarrel between accused and PW1 in connection with that dress on that day and on the next day PW1 made a false disclosure. PW1 admitted that she acquainted with a guy in Kasargod in a place outside her school and declined his proposal. According to PW1, he sent a dress as gift and she

didn't touch that dress. PW1 denied quarrel with accused on the Valentine's day over that gift. There is no evidence to prove that there was quarrel between accused and PW1 regarding the gift sent by a guy in Kasargod on the previous day of her disclosure. The learned defence counsel argued that the disclosure on 15/02/2023 was a pointer to the possibility of an incident stated by accused on 14/02/2023 ie. Valentine's day. In the absence of any evidence regarding the quarrel argued upon by the defence side this court cannot make a guess work that an incident argued upon by defence would have happened on 14/02/2023 since the disclosure was on 15/02/2023. On evaluating the entire contentions of the accused it can be concluded that accused failed to adduce any evidence or to prove or to bring any circumstances through the prosecution witnesses to probabalise his defence. Hence it cannot be concluded that PW1 cooked up a false story as contended by the accused.

**25. The** learned defence counsel vehemently argued that PW1 did not consent for medical examination to withhold evidence regarding her sexual relationship with her lover. As per the deposition of PW9 consent was not given for medical examination, PW1 stated that she did not consent for medical examination as it did not seem to be necessary. As per the deposition of PW1, accused touched her breast and vagina. The purpose of medical examination is to collect evidence regarding the commission of the offences alleged. In view of the nature of offending

acts committed by accused, medical examination of PW1 would not afford any evidence regarding the commission of such an acts. Hence on the basis of the consent withheld by PW1 for medical examination, it cannot be concluded that PW1 did so to withheld evidence regarding her relationship with her lover on the basis of bald allegation of the defence side.

**26.As already** mentioned the reason for lodging Ext.P2 first information statement on 17/02/2023 even though PW1 disclosed the incident on 16/02/2023 was well explained from the deposition of PW1, PW3, PW4, PW14, PW15 and PW18. PW1 sufficiently explained that she did not reveal the previous incidents as her mother had passed away and accused was the only person to look after her. More over PW1 explained that she was constrained to reveal the incident on 15/02/2023 under the apprehension of repeating the same by accused as nobody was in the house. This court found no reason to discredit the evidence adduced by PW1 regarding the delay in lodging Ext.P2 first information statement. It can be safely concluded that prosecution sufficiently explained the delay in lodging Ext.P2 first information statement.

**27.The** learned defence counsel relied upon the decision in **Surendran.M v. State (2021 (3) KLT 205)** to contend that deposition of PW1 cannot be acted upon in view of the embellishments or omissions. In **Surendran.M. v. State**, the Hon'ble High Court held that “ in the present case we have noticed the embellishments, contradictions and

omission in the evidence of prosecutrix who is alleged to have been subjected to the offence of rape, which makes the case set up very improbable. No contradictions, omissions and embellishments affecting the credibility of the evidence adduced by PW1 were brought about in the cross examination of PW1. Hence the above cited decision cannot be relied upon by the accused to contend that the case set up by PW1 is false.

**28.On evaluating** the deposition of PW1, it can be concluded that PW1 was very consistent in deposing the sexual assault suffered by her at the hands of accused. Defence side was not able to shake the evidence adduced by PW1 even though she was subjected to lengthy cross examination. On evaluating the entire evidence it can be concluded that PW1 is a truthful and reliable witness and the evidence adduced by PW1 is of sterling quality. It can be concluded from the deposition of PW1 that accused touched the vagina and breast of PW1 many times during Covid time in 2020 and on 15/02/2023 at her rented house.

**29.It is evident** from the decisions in **Justin @ Renjith and Another v. Union of India and Others reported in 2020(6) KHC 546** and **David v. State of Kerala reported in 2020(4) KHC 717**, that if the foundational facts that victim is a child, that the alleged incident had taken place and that accused has committed the offence are proved by the prosecution, the presumption under section 30 of the Protection of



Children from Sexual Offences Act, 2012 will come into play and the court can presume culpable mental state of the accused in doing the said acts. Prosecution succeeded in proving that PW1 was a minor in 2020 and on 15/02/2023 and accused touched the vagina and breast of PW1 more than once. Since intent of the accused is a mental element, it can be inferred from the act of the accused also. Touching the breast and vagina of PW1 cannot be considered as having done with a good intention. Since the prosecution succeeded in proving the foundational facts as laid down in the above cited decisions, it can be presumed by virtue of section 30 of the Protection of Children from Sexual Offences Act that accused touched the breast and vagina of PW1 with sexual intent more than once during Covid time in 2020 and on 15/02/2023. The learned defence counsel relied upon the decision in **XXXXXXX v. State of Kerala (2022 (2) KLT 450)** to contend that since foundational facts were not proved by the prosecution, presumption under section 30 of the Protection of Children from Sexual Offences Act cannot be drawn by this court. In **XXXXXXX v. State of Kerala** referred above, the Hon'ble High Court held that the statutory presumption under section 29 cannot be understood to mean that in every case when a person is prosecuted for the specified offences, the prosecution version should be taken as gospel truth. The presumption will not mitigate the primary duty of the prosecution to establish the foundational facts constituting the offence, which duty is static on the shoulders of the prosecution.

Prosecution discharged the primary burden of proving the foundational facts in this case and hence this court presumed the culpable mental state of accused in touching the breast and vagina of PW1. The contention of the defence side that prosecution did not prove the foundational facts so as to enable this court to draw the presumption under section 30 of the Protection of Children Sexual Offences Act is liable to be discarded.

**30. It shall** be a defence for the accused to prove that he did not have the culpable mental state while touching the breast and vagina of PW1. The learned defence counsel relied upon the decision in **Sasi v. State of Kerala (ILR 2022 (1) Ker.794** to contend that benefit of doubt should be given to accused. In **Sasi v. State of Kerala**, it was held that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withhold from the accused. The court would not be justified in withholding that benefit on the ground that the acquittal might create adverse reaction in the society or among those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the defence brought on record. It is established from the evidence of PW1 that accused touched the breast and vagina of PW1 with sexual intent many times in 2020 and on 15/02/2023. Accused did not succeed in proving that he was falsely implicated in this case. Accused failed to

rebut the presumption drawn by this court in respect of the culpable mental state of accused while touching the breast and vagina of PW1. Accused did not succeed in bringing forth any benefit of doubt in his favour. Hence accused is not entitled to claim benefit of doubt by relying upon the decision in **Sasi v. State of Kerala** referred above.

**31.It can** be concluded from the deposition of PW1 that accused with sexual intent touched the breast and vagina of PW1 more than once. Deposition of PW1 further proved that accused being in the position of trust and authority of PW1 abused her by subjecting her to sexual assault. On evaluating the entire evidence it can be concluded that prosecution succeeded in proving through the deposition of PW1 that accused being the father of PW1 subjected her to aggravated sexual assault more than once and thereby committed the offences punishable under section 10 read with 9(l), section 10 read with 9(n) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015. Points 1 to 3 are found in favour of the prosecution.

**32.Point No.4 :** In view of the finding on points 1 to 3 accused is found guilty of the offences punishable under section 10 read with 9(l), section 10 read with 9(n) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015. Hence accused is convicted under 235(1) of Cr.PC for the offences punishable under section 10 read with 9(l), section 10

read with 9(n) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015.

**33.Considering** the gravity of the offence committed by accused on PW1 who is his daughter, this court is satisfied that it is not expedient in the interest of justice to invoke the benevolent provision of Probation of Offenders Act.

**34.Accused** will be heard on the question of sentence.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in the Open Court on the **31<sup>st</sup> day of May, 2024.**

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**35. Accused** was heard on the question of sentence under section 235(2) of Cr.PC. Accused submitted that he did not commit the offences. According to accused he has three children of which two children are girls and one child is boy and his wife passed away. Children of accused are aged 20, 18 and 16 years and are residing with his mother-in-law. The plea of innocence raised by accused is not a relevant consideration. Submissions of accused are not mitigating factors. The learned Special Public Prosecutor prayed for imposing

maximum sentence on accused. The sentence should deter the criminal from achieving the avowed object to break the law and the endeavour should be to impose an appropriate sentence. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order and that sentencing includes adequate punishment.

**36.Accused** who is the protector of PW1 is proved to have committed aggravated sexual assault on PW1 exploiting her helplessness and destituteness. Accused committed the loathsome crime when PW1 had nobody to support her except accused. Accused who committed the despicable crime and was responsible for discontinuing the studies of PW1 is to be dealt with maximum punishment provided under the statute to prevent the potential offenders from committing similar offences and to give a strong messages to the society.

**37.Accused** is convicted for the offence punishable under section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 for part of the offending acts when combined constituted the offences punishable under section 10 read with 9(l) and 10 read with 9(n) of Protection of Children from Sexual Offences Act In view of section 71 of Indian Penal Code no separate punishment is imposed for the offence punishable under section 75 Juvenile Justice (Care and Protection of Children) Act, 2015 and punishment is imposed only for

the offences punishable under section 10 read with 9(l) of Protection of Children from Sexual Offences Act.

**38. In the result,**

Accused is sentenced to undergo **rigorous imprisonment** for a period of **7 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand) and in default of payment of fine to undergo **rigorous imprisonment** for a further period of **3 months** for the offence punishable under section 10 read with section 9(l) of Protection of Children from Sexual Offences Act and to undergo **rigorous imprisonment** for **7 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand) and in default of payment of fine to undergo **rigorous imprisonment** for a further period of **3 months** for the offence punishable under section 10 read with 9(n) of Protection of Children from Sexual Offences Act. Substantive sentences shall run concurrently.

**39. Accused** has been in judicial custody for the period from **18/02/2023 till 31/05/2024**. Accused is entitled to get set off for **15 months and 11 days** against the substantive term of imprisonment.

**40. Invoking** the power under section 357- A of the Code of Criminal Procedure Code, 1973 and section 33(8) of Protection of Children from sexual Offences Act, this court hereby makes recommendation to the District Legal Services Authority, Thiruvananthapuram for adequate compensation to PW1.

**41. MO1** being valueless is ordered to be destroyed and MO2 is ordered to be returned to accused after the appeal period or after the disposal of appeal if appeal is filed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the Open Court on this the **31<sup>st</sup> day of May, 2024.**

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### Appendix

#### Prosecution witnesses :

PW1.	11/03/2024	Child Victim
PW2.	11/03/2024	Sister of child victim
PW3.	12/03/2024	Counsellor in the School of PW1
PW4.	12/03/2024	Class Teacher of PW1
PW5.	13/03/2024	A.B.Sulal, Superintendent, Kudappanakunnu Zonal Office, Thiruvananthapuram Corporation.
PW6.	13/03/2024	Kesavan.M, registrar of Birth and Death Dindigal Municipal Corporation.
PW7.	13/03/2024	Sreedevi.K
PW8.	13/03/2024	K. Muraleedharan
PW9.	14/03/2024	Dr.Radhika.R, Medical witness
PW10.	14/03/2024	K.V. Sajeev, Village Officer, Kudappanakkunnu Village.
PW11.	14/03/2024	Meena.S.Nair, Police witness
PW12.	15/03/2024	Sreejith.J.J, Police witness
PW13.	18/03/2024	Vinod.A.S, Police witness
PW14.	18/03/2024	Asha Chandran.N, Police witness
PW15.	19/03/2024	Chithralekha.S, Child Protection Officer
PW16.	04/04/2024	Poornendhu.K

- PW17. 17/04/2024 Jayakumari.R, Assistant Secretary  
Thiruvananthapuram Corporation &  
Charge Officer of Kudappanakkunnu  
Zonal Office.
- PW18. 08/05/2024 Dr.Varun, Medical witness
- PW19. 16/05/2024 Vaisakh Krishnan.V, Sub Inspector  
of Police, Peroorkada Police Station.

**Exhibits for Prosecution:-**

- P1. 15/06/2022 Secondary School Leaving certificate  
of PW1 proved by PW1 on 11/03/2024.
- P2. 17/02/2023 First Information statement proved  
by PW1 on 11/03/2024.
- P3. 18/02/2023 164 statement proved by PW1 on 11/03/2024.
- P4. 13/06/2019 Copy of Rent Deed proved by PW7 on 13/03/2024.
- P5. 18/02/2023 Scene mahazer proved by PW8 on 13/03/2024.
- P6. 17/02/2023 Medical examination report of child victim  
proved by PW9 on 14/03/2024.
- P7. Nil Complaint proved by PW3 on 14/03/2024.
- P8. 08/03/2023 Inventory mahazer (Admission register of child  
victim) proved by PW12 on 15/03/2024.
- P9. 18/02/2023 Seizure mahazer (blood sample of accused)  
proved by PW13 on 18/03/2024.
- P10. 18/02/2023 Potency certificate of accused proved by  
PW18 on 08/05/2024.
- P11. 17/02/2023 First Information Report proved by PW19  
on 16/05/2024.
- P12. 18/02/2023 Arrest memo of accused proved by PW19  
on 16/05/2024.
- P13. 18/02/2023 Inspection memo proved by PW19 on 16/05/2024.
- P14. 18/02/2023 Arrest intimation proved by PW19 on 16/05/2024.
- P15. 18/02/2023 Address report of accused proved by PW19 on  
16/05/2024.



- P16. 18/02/2023 Form 15 (Aadhar card of accused, copy of rent deed and copy of Aadhar card of child victim) proved by PW19 on 16/05/2024.
- P17. 18/02/2023 Property list (Bed sheet) proved by PW19 on 16/05/2024.
- P18. 18/02/2024 Seizure mahazer (Mobile phone of accused) proved by PW19 on 16/05/2024.
- P19. 18/02/2024 Property list (Mobile phone of accused) proved by PW19 on 16/05/2024.
- P20. 18/02/2023 Form 15 (Potency certificate of accused) proved by PW19 on 16/05/2024.
- P21. 18/02/2023 Property list (blood sample of accused) proved by PW19 on 16/05/2024.
- P22. 24/02/2023 Form No.15 (Ownership certificate) proved by PW19 on 16/05/2024.
- P23. 10/03/2023 Form No.15 (Birth certificate of child victim) proved by PW19 on 16/05/2024.
- P24. 10/03/2023 Form No.15 (Scene plan) proved by PW19 on 16/05/2024.

Defence witness: Nil

Defence Exhibit:- Nil

Court Exhibit

- C1. Copy of Assessment Register, Thiruvananthapuram Corporation proved by PW17 on 17/04/2024.

Material Objects :-

- MO1 - Bed sheet proved by PW1 on 11/03/2024.
- MO2 - Mobile phone of accused proved by PW19 on 16/05/2024.

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Judgment in SC.782/2023  
Dated: 31/05/2024.