IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024/9TH PHALGUNA, 1945

CRL.A NO.673 OF 2017

CRIME NO.336/2015 OF ADIMALY POLICE STATION, IDUKKI
AGAINST THE JUDGMENT DATED 07.02.2017 IN S.C.NO.220/2016 OF SPECIAL COURT UNDER POCSO ACT, THODUPUZHA

APPELLANT/ACCUSED:

BY ADV.SMT.SAIPOOJA

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY DGP,
HIGH COURT OF KERALA.

BY SMT.AMBIKA DEVI.S, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 14.02.2024, THE COURT ON 28.2.2024 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The appellant before us was convicted and sentenced to undergo rigorous imprisonment for life, rigorous imprisonment for fixed terms and fine in S.C.No.220/2016 on the file of the Special Court under the POCSO Act, Thodupuzha (for short 'trial court') for the offences under Section 6 of the Protection of Children from Sexual Offence Act, 2012 (for short 'POCSO Act'), and Section 506 (1), Section 326B and Section 323 of the Indian Penal Code (for short 'IPC').

2. The brief facts necessary for the disposal of this appeal are as follows:

The prosecution case was that the appellant, who is the stepfather of PW1, a minor girl aged 15 years, who was studying at the Government High School, Adimali and staying at the Mannamkala Tribal hostel, took her away from the hostel on 28.03.2015 at 12 noon after telling her and the hostel authorities that her uncle had been bitten by a snake and that her grandfather was not well; that after travelling some distance in an

autorickshaw, they got off at a jungle pathway near the girl's house and while walking through that pathway, the appellant committed rape on the minor girl on multiple occasions thereby committing the offences under Section 6 read with Section 5 of the POCSO Act. It was the further case of the prosecution that as the girl tried to resist the commission of the rape, the appellant twisted her hand, slapped her on the face, intimidated her and attempted to pour acid in her mouth, thereby committing the offences under Sections 323, 326B and 506 (1) of the IPC.

3. The appellant pleaded not guilty to the charges against him. In the trial that followed, the prosecution examined 16 witnesses as PW1 to PW16 and marked Exts.P1, P1(a), P2 to P7, P7(a), P8 to P17 and P17(a) documents. The witnesses also identified MOs.1 to 6. After questioning the appellant under Section 313 Cr.P.C, the learned Prosecutor and the learned counsel for the accused were heard under Section 232 Cr.PC. Not finding him entitled to an acquittal at that stage, the appellant was called upon to adduce evidence in his defence. However, no evidence was adduced. The trial court, therefore, proceeded to hear the learned counsel on either side and convict the appellant as charged. He was sentenced to undergo life imprisonment and to pay a fine of Rs.20,000/-, in default, to suffer rigorous imprisonment for six months under Section 6 of the POCSO Act, to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in

default, to suffer rigorous imprisonment for one month under Section 326B of IPC, to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month under Section 323 of IPC, and to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month under Section 506(1) of IPC. Substantive sentences of imprisonment were ordered to be run concurrently.

4. In the appeal before us, we have heard Adv. Smt.Saipooja, on behalf of the appellant and Adv. Smt.Ambika Devi, learned Public Prosecutor on behalf of the respondent State. We have also gone through the records of the trial court that were made available before us and through which we were meticulously taken by the learned counsel.

5. The submissions of Smt.Saipooja, the learned counsel for the appellant, briefly stated are as follows:

- The conviction of the appellant based solely on the testimony of the victim PW1 cannot be legally sustained since the said testimony cannot be seen as of 'sterling quality'. It is, in particular, pointed out that owing to the delay in registration of the FIR, the lack of reliable medical evidence, and the material inconsistencies in the statement of PW1 when compared to the statement of the other witnesses, the testimony of PW1 did not satisfy the test laid down by the Supreme Court in **Santosh**

Prasad @ Santosh Kumar v. State of Bihar – [2020 KHC 6155] for qualifying as a testimony of sterling quality.

- The conviction under the POCSO Act cannot be legally sustained because the age of the victim was not proved beyond reasonable doubt. It is argued that the age of the victim is a foundational fact that has to be proved beyond a reasonable doubt before the presumptions under the POCSO Act can be raised against the appellant and that in the instant case, the Prosecution did not discharge their initial burden of proving that the victim was below 18 years of age. Reliance is placed on **Justin @ Renjith & Anr. v. UOI & Ors. – [2020 (6) KHC 546]; Shaju @ Shaju v. State of Kerala & Anr. – [2022 (5) KHC 663]** and **Yuvaprakash P. v. State, Rep. by Inspector of Police – [2023 KHC Online 6709 (SC)]** to substantiate the said contention.

- The charges against the accused have not been proved beyond reasonable doubt. In particular, while the date of the incident in the court charge is stated to be 28.03.2015, the oral testimony adduced in the instant case clearly shows that the incident took place on 29.03.2015. Further, even the victim does not have a consistent case regarding the manner in which the appellant allegedly attempted to make her drink acid. Reliance is placed on **Sivan @ Siva v. State of Kerala – [2012 KHC 629].**

- That Exts.P17 and P17(a) Chemical reports are not reliable since the clothes were not properly packed, sealed, etc., and further, the specimen seal of the investigation officer concerned was not seen affixed on the packages; that there was an inordinate delay in producing the seized clothes before the jurisdictional court thereby raising the possibility of tampering with the seized clothes to the prejudice of the appellant. There

was also a similar delay in producing Ext.P9 Movement Register before the jurisdictional court. Reliance is placed on **Alavi v. State of Kerala - [1982 KHC 72]** and **Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra – [2023 KHC Online 6605 (SC)]**.

- That the above inconsistencies in the prosecution case would establish that the appellant's case, that the entire Prosecution was falsely set up based on the animosity of the victim's mother towards the appellant, merited acceptance. In the alternative and considering the fact that the appellant had already undergone a major part of the sentence during the pendency of the appeal, this was a fit case for modifying the sentence to one for a lesser term.

6. Per Contra, the submissions of Smt.Ambika Devi, the learned Public Prosecutor, briefly stated, are as follows;

- The instant was a case of aggravated penetrative sexual assault committed by the appellant, who was none other than the stepfather of the victim. Apart from the offence committed being brutal in nature, the appellant also breached and abused the trust reposed on him by a minor child, and hence, there was no justification whatsoever for interfering with the conviction and sentence imposed by the trial court.

- There was no infirmity in the trial court relying solely on the testimony of PW1 to base its conviction of the appellant. So long as the testimony of the minor victim inspired confidence in the trial court, withstood cross-examination and stood corroborated in material particulars by other evidence on record, the minor and irrelevant inconsistencies brought out in relation to the testimonies of other witnesses cannot be a reason to

discard the evidence of the commission of rape on her. Reliance is placed on **Rai Sandeep @ Deepu & Anr. v. State of NCT of Delhi – [(2012) 8 SCC 21]** and **The State of Punjab v. Gurmit Singh & Ors – [(1996) 2 SCC 384]** to substantiate the said contention.

- As regards the age of the victim, the testimony of the victim's mother PW2 clearly reveals that the victim was less than 18 years of age. The said oral testimony has not been discredited in cross-examination or demolished through any other evidence produced on behalf of the appellant during the trial to suggest that the victim was above 18 years of age. Under the said circumstances, the foundational fact stood proved under Section 6 read with Section 5 of the POCSO Act and the trial court was justified in drawing the statutory presumptions against the appellant while convicting him of the offence under the said Act.

7. On a consideration of the rival submissions, we are of the view that the impugned judgment of the trial court does not call for any interference, either on the aspect of conviction of the appellant for the offences charged against him or on the aspect of the sentence imposed on him.

8. The appellant is a person who, as a stepfather of the minor victim, occupied a position of trust in relation to her. It was based on the trust that she reposed in him that she willingly went with him when he came calling at her hostel on that fateful day. It has come out through the evidence of the victim (PW1) and the hostel warden/watchman (PW4) that the appellant had stated that the victim's uncle had been bitten by a snake and that her

grandfather was not well so as to persuade the victim to go with him willingly, and for the warden to permit her to do so. It was also established through the deposition of the victim's mother (PW2) and the victim herself that those statements were false. It is clear, therefore, that the appellant had a plan in place for the commission of the offence that day.

9. The evidence of PW3 Arogyaswamy, the driver of the autorickshaw in which the appellant and the victim travelled, proves that the appellant had stopped *en route* to buy some articles, and during that time, PW3 had asked the victim who the appellant was, and she had replied that he was her father. Thereafter, the appellant and the victim were dropped off at a point on the highway near a jungle pathway, and they proceeded down that pathway. PW5 Radhamony, a tribal lady who is a neighbour of the victim in the Padikkappu settlement, deposed to having seen the victim as she emerged from the jungle later that evening and described her as covered in grass and dust, having marks on her face as if scratched by a cat, and contusions on her left hand that were suggestive of a fracture. She went on to state that while she was consoling the victim, the victim's mother, PW2, came there, and the victim narrated the whole incident to her.

10. As for the physical assaults on the victim herself, there is her oral testimony as PW1, which has not been demolished either in cross-examination or through a challenge of the medical and scientific evidence

that supports her testimony as regards the injuries sustained. She gave evidence in detail regarding the sexual assault committed on her by the appellant. She stated that on the date of the incident at 12 noon, the appellant took her away from the hostel after telling her and the hostel authorities that her uncle had been bitten by a snake and that her grandfather was not well; that after travelling some distance in an autorickshaw driven by PW3, they got off at a jungle where she was brutally raped twice, first at 5 pm, and the second between 6.30 and 7 pm. She gave a reliable, consistent, and credible version of the crime, and her evidence inspires confidence. In the chief examination, she specifically deposed that while they were proceeding through the jungle, the appellant, after consuming alcohol, intimidated her, removed her clothes, laid on her and forcefully thrust his genital organ into her genital organ. She has also deposed explicitly that she somehow escaped from his clutches and ran away. Still, the appellant followed her, caught her, twisted the middle finger of her right hand, kissed her cheek, and again repeated the very same sexual act, thrusting his genital organ into her genital organ. It is pertinent to note that the above evidence specifically given by PW1 was not even referred to in cross-examination. Thus, her evidence on this aspect remains unchallenged. Her oral testimony would qualify to be of sterling character so as to form the sole basis for a conviction of the appellant. The quality of the evidence that would qualify as “sterling” has been expatiated in **Rai**

Sandeep @ Deepu & Anr. v. State (NCT of Delhi) – [(2012) 8 SCC 21]

as follows:

> "The sterling witness should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statements made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and how so ever strenuous it may be and under no circumstances should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied can it be held that such a witness can be called a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

11. Even though, in rape cases, the finding of guilt can be based generally on the uncorroborated solitary testimony of the victim, in the instant case, the evidence of PW1 gets corroboration from the evidence of PW2 Usha, the mother of the victim and PW5 Radhamony, the neighbour. The evidence of PW2 would show that when she reached home by 8-9 pm, PW1 was found crying, and when asked, she disclosed to her about the sexual assault made by the appellant. This statement made by the victim shortly after the gruesome incident complaining to her mother, narrating the circumstances and the manner in which she had been subjected to rape by the appellant having a direct bearing on the fact in issue is admissible as evidence under Section 8 of the Indian Evidence Act, since it constitutes subsequent conduct of the victim. The bare language of Section 8 makes it abundantly clear that the subsequent conduct of any party to a proceeding is relevant if it is in reference to such proceeding or is in reference to any fact in issue therein or relevant therein. The Illustration (j) to Section 8 of the Indian Evidence Act reads thus:

> "**8. Motive, preparation and previous or subsequent conduct.**
> xxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxx
>
> (j) The question is, whether A was ravished.
>
> The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.
>
> The fact that, without making a complaint, she said that she had

> been ravished is not relevant as conduct under this section, though it may be relevant, as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157."

12. The above Illustration squarely applies to the facts of this case. As stated already, the evidence of PW2 discussed above would show that PW1 stated about the sexual assault committed by the appellant to PW2 immediately after the incident. This would undoubtedly constitute a complaint relating to the crime, narrating the circumstances and the way PW1 was subjected to sexual assault by the appellant. Being the victim herself, she is a party to the proceedings within the ambit of Section 8, and her complaint to her mother being her subsequent conduct having a direct bearing on the fact in issue, falls under Section 8 of the Indian Evidence Act. The Supreme Court in **Rameshwar v. State of Rajasthan - [AIR 1952 SC 54]**, relying on Illustration (j) to Section 8 of the Indian Evidence Act, has held that the previous statement of the raped girl to her mother, immediately after the occurrence, is not only admissible and relevant as to her conduct, but also constitutes corroboration of her statement under the provisions of Section 157 of the Evidence Act. The said statement given by PW1 to PW2 is a fact so connected with the fact in issue so as to form part of the same transaction and hence admissible under Section 6 of the Indian Evidence Act as well. The evidence given by PW5 that while she was preparing dinner, she heard the cry of a child; when she came outside her

house, she found PW1, who grabbed her and narrated the incident also supports the version of PW1 regarding the incident.

13. While it may be a fact that PW1 did not consent to a detailed examination by Dr.Sumi (PW18), the Assistant Surgeon, Adimali, it is trite that merely because she did not consent to a medical examination, an adverse inference as regards the commission of the offence cannot be drawn against her. This legal position flows from a conjoint reading of Section 27 of the POCSO Act and Section 164A of the Cr.PC. That apart, the oral testimony of PW18 that she could find there was a blood stain from the vagina of PW1 and that was indicative of recent penetrative sexual contact, was not challenged in cross examination. It is also significant that there is other evidence in the form of Exts.P17 & P17(a) chemical reports that show the presence of semen and spermatozoa in the undergarments of the victim, and Ext.P6 potency certificate in relation to the appellant, that connects the appellant with the crime. We are not impressed with the arguments of the learned counsel for the appellant as regards the alleged delay in producing the seized undergarments before the jurisdictional court and forwarding it to the scientific laboratory for examination. Exts.P17 and P17(a) reports were not challenged, and the alleged delay was never proved, before the trial court.

14. As regards the argument of the learned counsel for the appellant

that the conviction of the appellant cannot be sustained since the Prosecution failed to prove beyond reasonable doubt that the victim was below 18 years of age at the time of the incident, we are afraid we cannot accept the same. While the oral testimony of the victim PW1 is of sterling quality and speaks to the commission of the offence, the fact that the victim was only 16 years old at the time of the commission of the offence is proved through her own testimony and the testimony of her mother PW2. The contention of the learned counsel for the appellant that Ext.P8 certificate, proved through PW13 Sainaba Beebi, and showing the date of birth of the victim as 28.05.2001, cannot be relied upon since it is not a document mentioned under the Juvenile Justice (Care and Protection of Children) Act for proving the age of a juvenile, is also one that we find ourselves unable to accept. Firstly, there is nothing under the POCSO Act that indicates that the unchallenged oral testimony of the mother of the victim cannot be taken as proof of the date of birth of the victim. Secondly, we are of the view that the provisions of the Juvenile Justice (Care and Protection of Children) Act that deal with the documents that can be relied upon to prove the age of a juvenile for the purposes of that Act do not, and indeed cannot, preclude a court considering a question regarding the age of a victim under the POCSO Act from placing reliance on other evidence admissible as per the Indian Evidence Act. We are of the view that the objects of both legislation being different, with the former being concerned with issues regarding the

competence of a juvenile in conflict with the law to stand trial before a court and the latter being concerned with issues regarding the physical and mental effects on a child, of an offence committed against her, the manner of establishing the age of a child for the latter legislation can be in any one of the ways permitted under the Indian Evidence Act. In the instant case, we find the testimony of PW2 to be the most reliable evidence as regards the age of the victim for the purposes of Section 5 of the POCSO Act, and consequently for the purpose of attracting the presumption under Section 29 thereof to the appellant. The decisions in **Justin @ Renjith & Anr. v. UOI & Ors. – [2020 (6) KHC 546]; Shaju @ Shaju v. State of Kerala & Anr. – [2022 (5) KHC 663]** and **Yuvaprakash P v. State – [2023 KHC Online 6709 (SC)]** relied upon by the learned counsel for the appellant, are thus clearly distinguishable on facts.

15. The appellant has also raised a contention that he was falsely implicated by PW2 on account of the animosity she had with him. There is absolutely no evidence or circumstances to substantiate the said plea. It seems ludicrous to assume that on account of some animosity between PW2 and the appellant, even if it is true, she would make a false allegation of rape on her own daughter. That apart, it is also difficult to believe that the victim would speak falsehood against her own stepfather. Lastly, as regards the arguments of the learned counsel for the appellant that there was a delay in lodging the FIR in the instant case and that there are several

inconsistencies in the oral testimony of the victim, especially with regard to the date of the incident and the manner in which the various offence was committed, we might only refer to the oft-quoted judgments of the Supreme Court in **State of Punjab v. Gurmit Singh & Ors. – [(1996) 2 SCC 384]** and **State of Maharashtra v. Chandraprakash Kewalchand Jain – [(1990) 1 SCC 550]**, where it was observed that:

> " In sexual offences, delay in lodging the FIR can be due to a variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. A girl in a tradition bound non-permissive society in India would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. In the normal course of human conduct an unmarried minor girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to any one, lest the family name and honour is brought into controversy. The courts must while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such as are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of

> her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

16. On a close scrutiny of the evidence and materials on record, we are satisfied that the prosecution evidence establishes that the appellant has committed aggravated penetrative sexual assault on the victim as defined under Section 5 of the POCSO Act. In a prosecution under Sections 3,5,7 or 9 of the POCSO Act, once the foundation of the prosecution case is laid by legally admissible evidence, statutory presumption under Section 29 gets triggered, and the reverse burden is on the accused to prove the contrary. The appellant miserably failed to discharge the said burden. So far as the charges under Sections 323, 326B and 506 (1) of IPC are concerned, the unimpeached testimony of PW1 proves that during the act of sexual assault, the appellant slapped her face, twisted her finger, threatened her and also attempted to pour acid into her mouth which when resisted fell on her clothes. Sulphuric acid was also detected on a forensic examination of her clothes. We are, therefore, of the firm view that the conviction and sentence imposed on the appellant by the impugned judgment of the trial court warrants no interference.

17. The learned counsel for the appellant pleaded for modifying the life sentence imposed for the offence punishable under Section 6 of the POCSO Act to one for a lesser term. The Court must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering the imposition of appropriate punishment. In **State of M.P. v. Babulal [(2008) 1 SCC 234]**, the Supreme Court held that once a person is convicted for the offence of rape, he should be treated with heavy hands and an undeserved indulgence or liberal attitude in not awarding adequate sentence would encourage potential criminals. Here, an innocent minor girl was brutally raped repeatedly by her own stepfather betraying the trust reposed in him. We find no mitigating or extenuating circumstances to justify the imposition of a lesser punishment.

18. Before parting with this matter, we might only add that we are of the view that the instant is a fit case where we ought to direct the State to pay a reasonable amount by way of compensation to the victim in terms of Section 357A of the Cr.PC read with Section 33(8) of the POCSO Act and Rule 9 of the POCSO Rules.

19. Section 357A of Cr.P.C. and the Kerala Victim Compensation Scheme, 2017, framed as per the said provision, is a laudable legislative initiative to compensate and rehabilitate victims of crime or their

dependents in addition to compensation payable by a convict under Section 357. Similar is Section 33(8) of the POCSO Act read with Rule 9 of the POCSO Rules, which empowers the Special Courts to direct payment of compensation, in addition to punishment, for physical or mental trauma caused to the child victim or for immediate rehabilitation. Both these provisions (Section 357A of Cr.P.C and Section 33(8) of the POCSO Act read with Rule 9 of the POCSO Rules) confer a power coupled with a duty on the Courts to compensate and rehabilitate the victim in every criminal trial, particularly in trials relating to sexual offences, whether the case ends in conviction, acquittal, or discharge of the accused. In **Hari Singh v. Sukhbir Singh - [(1988) 4 SCC 551]**, the Supreme Court lamented the failure of the Courts to award compensation to the victims in terms of Section 357(1) Cr.P.C. The Court recommended that all Courts liberally exercise the power available under Section 357 Cr.P.C. to meet the ends of justice. In **Ankush Shivaji Gaikwad v. State of Maharashtra - [(2013) 6 SCC 770]**, after reviewing the entire case law relating to the payment of compensation, it was held that consideration of the grant of compensation to the victim of a crime under Sections 357 and 357A of Cr.P.C. is mandatory. The obligation cast upon the Criminal Courts under Section 357A of Cr.P.C. and upon the Special Courts under Section 33(8) of the POCSO Act read with Rule 9 of the POCSO Rules is a statutory obligation, and its objects and meaning can be achieved only when the Criminal Courts/Special Courts

award requisite compensation to the victims in deserving cases as per the Kerala Victim Compensation Scheme, 2017 (As amended in 2021) without fail. The statutory duty is cast on District Legal Services Authority/State Legal Services Authority as well to ensure payment of compensation and to disburse it.

20. The trial court, unfortunately, failed to award any compensation at all. The victim hails from a socially and economically backward tribal community. The mental trauma and agony she underwent when her own stepfather sexually abused her cannot be lost sight of. The learned Public Prosecutor, Smt. Ambika Devi, on instruction, submits that though the victim has already married and is leading a married life, her financial status is still poor. Considering all these facts, we are of the view that victim must be adequately compensated.

21. As per Section 357A of Cr.P.C and Section 33(8) of the POCSO Act and Rule 9 (1), (2) of the POCSO Rules 2020, the Special Court, on conclusion of the trial, has to recommend the award of compensation and on receipt of such recommendation or on the application, the State or the District Legal Services Authority shall after due enquiry determine and award adequate compensation. The said compensation shall be payable by the State Government through Schemes or Funds established for such purpose [Rule 9(4) of the POCSO Rules]. Considering the fact that almost

nine years have elapsed since the injury suffered by the victim, we deem it just and proper to quantify the quantum of compensation ourselves instead of delegating the said task to Kerala State Legal Services Authority/District Legal Services Authority. Though loss and injury suffered by the victim cannot be measured in terms of money, taking into account all the attending circumstances, we are of the view that a sum of Rs.5,00,000/- [Rupees Five lakhs only] as compensation would be reasonable and adequate. We, therefore, direct the Kerala Legal Services Authority [KeLSA] to take steps to disburse the said amount to the victim from the Kerala Victim Compensation Scheme forthwith.

The Criminal Appeal is disposed of as above. We direct the Registry to forward a copy of this judgment to the Member Secretary, KeLSA, for compliance.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

prp/