



2026:KER:22344

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 11<sup>TH</sup> DAY OF MARCH 2026 / 20TH PHALGUNA, 1947

CRL.A NO. 1656 OF 2025

CRIME NO.602/2023 OF THAMARASSERY POLICE STATION, KOZHIKODE

AGAINST THE JUDGMENT DATED 07.04.2025 IN S.C. NO.1131 OF 2023 OF

FAST TRACK SPECIAL COURT, KOYILANDY

APPELLANT/ACCUSED:

MUSTHAFA  
AGED 52 YEARS  
KUNNUMMAL HOUSE, PUTHUPADI P.O, ELOKKARA, PIN - 686673

BY ADV SHRI.ATHUL TOM

RESPONDENT/STATE:

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

SR PP - RENJITH GEORGE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11.03.2026,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 11<sup>th</sup> day of March, 2026**

The sole accused in S.C. No.1131/2023 on the files of the Fast Track Special Court, Koyilandy, has filed this appeal, under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the conviction and sentence imposed by the Special Judge, against him as per the judgment dated 07.04.2025. The State of Kerala, represented by the Public Prosecutor is arrayed as the respondent herein.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor, in detail. Perused the verdict under challenge and the records of the Special Court.

3. Parties in this appeal shall be referred as ‘accused’ and ‘prosecution’, hereafter.

4. The prosecution alleges commission of offences punishable under Section 363 of the Indian Penal Code [hereinafter referred as ‘IPC’ for short] and under Section 7 read with 8 of the Protection of Children from Sexual



Offences Act [hereinafter referred as 'POCSO Act' for short], by the accused. The allegation of the prosecution is that, at about 04.30 p.m. on 21.07.2023, while the victim (PW1) was returning from school on foot, the accused who came on a scooter from Elokkara side offered a lift and made the victim board on his scooter and on the way ahead, the accused grabbed penis of the victim over his pants.

5. After framing charge for the offences punishable under Section 363 of IPC as well as under Section 7 read with 8 of the POCSO Act, the Special Court recorded evidence and completed trial. During trial, PWs 1 to 11 were examined and Exts.P1 to P14 were marked on the side of the prosecution. Even though, the accused was given opportunity to adduce defence evidence after questioning him under Section 313(1)(b) of the Code of Criminal Procedure [hereinafter referred as 'Cr.P.C' for short], he did not opt to adduce any defence evidence.

6. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Section 363 of IPC as well as under Section 7 read with 8 of the POCSO Act. Accordingly, the accused



was convicted for the said offences and sentenced as under:

*“1. The convict is sentenced to undergo Rigorous Imprisonment for a period of 2 years (Two years) and to pay a fine of Rs.5,000/- (Five Thousand only) u/s 363 of the Indian Penal Code and in default of payment of fine to undergo Rigorous Imprisonment for a further period of 1 month;*

*2. The convict is further sentenced to undergo Rigorous Imprisonment for a period of 3 years (Three years) and to pay a fine of Rs.10,000/- (Ten Thousand only) u/s 7 r/w 8 of the Protection of Children from Sexual Offences Act and in default of payment of fine to undergo Rigorous Imprisonment for a further period of 2 months;*

*3. The substantive sentences of imprisonment shall run concurrently;*

*4. The convict is allowed set off under section 428 CrPC from 12-09-2023 to 06-04-2025 (573 days). The period already undergone by him as an undertrial prisoner, from the substantive sentence of imprisonment;*

*5. Fine if paid shall be given to PW1, as compensation u/s 357(1)(b) of the Code of Criminal Procedure;*

*6. Issue committal warrant.”*

7. While assailing the verdict impugned, the learned counsel for the accused submitted that, either in the FIS or in the statement under Section 164 of Cr.P.C. recorded as that



of the victim, who got examined as PW1, the actual date of occurrence was not disclosed and as per Ext.P1 statement, PW1 given statement to the Police that the incident happened on a day in between 21<sup>st</sup> and 25<sup>th</sup> of July, 2023. Then, when the statement of PW1 under Section 164 of Cr.P.C. was recorded, the date was stated as in July, 2023. Thereafter, during examination of PW1, he stated that the incident was on 21.07.2023. Therefore, this anomaly would create doubt on the prosecution case. Thus, the benefit of doubt is to be adjudged in favour of the accused. The second contention raised by the learned counsel for the accused is that, the accused was not properly identified. Thirdly, it is argued that, CW3, the father of the victim, though cited as a witness to prove the prosecution case, he was not examined and the said non-examination of CW3 is fatal to the prosecution. Accordingly, the learned counsel for the accused pressed for interference in the impugned verdict.

8. Whereas, it is submitted by the learned Public Prosecutor that, in this case, the evidence of PW1, supported by the evidence of PW2 and other witnesses, categorically established the ingredients for the offences under Sections



363 of IPC and under Section 7 read with 8 of the POCSO Act. Therefore, the learned Special Judge is right in entering into conviction and sentence for the said offences. The learned Public Prosecutor also submitted that since the sentence imposed for the offence punishable under Section 7 read with 8 of the POCSO Act is the statutory minimum, no reduction in the sentence is possible. Therefore, the learned Public Prosecutor opposed interference in the impugned verdict.

9. In view of the rival submissions, the points arise for consideration are:

*1. Whether the Special Court is justified in finding that the accused committed the offence under Section 363 of IPC?*

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

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

*4. Order to be passed?*

10. Point Nos.1 and 2:- In this matter, the learned Special Judge mainly relied on the evidence of PW1 supported by the evidence of PW2 and other witnesses to



find commission of the above said offences by the accused. PW1 deposed that, he was aged 15 years and his date of birth was on 20.04.2009. This aspect has been proved by the production of Ext.P9 birth certificate and Ext.P6 School admission register, brought in evidence through PW2. PW1 testified further that, he was familiar with the accused by name Musthafa and he identified the accused at the dock. PW1 also deposed that, the house of the accused is nearby his house. According to PW1, the occurrence was at about 04.30 p.m. on 21.07.2023, after school time. PW1 deposed further that, after the school time, while he was walking towards his house, the accused reached there in a bike from Elokara side and PW1 described the nature of the bike as Access scooter. Then, the accused stopped the vehicle nearby him and offered a lift and stated that he would be dropped nearby his house. Accordingly, PW1 got seated in the scooter as a pillion rider. While traveling so, the accused put his left hand on the pants of PW1 and caught hold on his penis. Soon, he resisted the same. When the vehicle reached near a hump and the speed was



lowered, he ran away and the occurrence according to him was near Elokara - Pottenkunnu Road. According to PW1, after the incident, when he met the accused in the town, the said to him not to divulge the occurrence to anybody. However, after few days, there was an awareness class in the school regarding POCSO laws and thereafter he disclosed the same to his mother, who was examined as PW2. PW1 identified his signature in the FIS and he also given evidence that the statement was given by him. Even though, PW1 was subjected to searching cross-examination, nothing extracted to disbelieve his version.

11. PW2 is the mother of PW1. She deposed that the accused is her neighbour and the occurrence was divulged to her by PW1. She deposed about the occurrence as deposed by PW1. According to her, she shared the incident with her husband and informed the police. The police came to her house and recorded PW1's statement.

12. PW3 is one of the attesting witnesses in Ext.P2 scene mahazar. He vouched his signature in Ext.P2 mahazar. PW4 is the MVI holding the Joint RTO's additional



charge at SRTO Koduvally. He proved Ext.P3 registration particulars of the scooter bearing registration No. KL-57S/8115 issued to certify that the accused herein as the registered owner of the said scooter. PW5 is the Village Assistant attached to Eangapuzha Village Office who prepared Ext.P4 site plan. She testified that she inspected the scene occurrence of this case and prepared Ext.P4.

13. PW6 is the Village Officer attached to Eangapuzha Village Office. He testified that, as per the requisition of the Investigating Officer, he authorised PW5 to prepare the site plan. Accordingly, PW5 prepared Ext.P4 plan and he produced the same to the Investigating Officer.

14. PW7 is the ASI at Thamarasseri Police Station who attested Ext.P5 seizure mahazar (certified copy) whereby the SHO Thamarassery seized the scooter bearing No. KL-57S/8115 produced in the police station by one Mr. Siraj. He vouched his signature in Ext.P5.

15. PW8 is the then SHO at Thamarsseri Police Station who investigated Crime No.597/2023 (Another case pending against the present accused). He deposed that



during the investigation of Crime No. 597/2023, he seized the Scooter bearing No. KL-57S/8115 as per the original of Ext.P5 seizure mahazar.

16. PW9 is the WSCPO attached to Thamarasseri Police Station, who recorded Ext.P1 FIS of PW1. She also recorded his statements under section 161(3) of the Cr.P.C. PW10 is the additional witness who proved Ext.P6 extract of admission register.

17. PW11 is the Sub Inspector at Thamarasseri Police Station, who registered Ext.P7 FIR, investigated the case and laid the charge sheet. He had visited the scene of occurrence and prepared Ext.P2 scene mahazar. He had sent PW1 for the medical examination and obtained Ext.P8 report. He also obtained Ext.P9 birth certificate of PW1 from Thamarasseri Grama Panchayat. He had recorded the formal arrest of the accused who was languishing in jail in connection with some other cases. Ext.P10 is the arrest memo he prepared while arresting the accused. He had sent the accused for potency examination and obtained Ext.P11 potency certificate. He submitted Ext.P12 report to



the Court to incorporate the correct name and address of the accused in case records. Ext. P13 is the report he submitted to the court to incorporate the correct date of the occurrence. Ext.P14 is another report he submitted to include the Scooter seized by police in Crime No. 597/2023, since the same Scooter was allegedly used by the accused for committing the offences in both cases. He interrogated the witnesses. After concluding the investigation, he filed the final report.

18. As regards the non-disclosure of the actual date of occurrence in Ext.P1 (wherein the occurrence was stated in between 21<sup>st</sup> and 25<sup>th</sup> July, 2023) and in the statement under Section 164 of Cr.P.C. (wherein the occurrence was stated as on July, 2023) is concerned, during the examination of the victim, he stated that, he did not disclose the actual date of occurrence in Ext.P1 as well as 164 statement as he did not remember the date at the relevant time and thereafter, as he remembered that there was four days holidays after the occurrence. Accordingly, he got the actual date of occurrence and he had disclosed



the actual date during his chief examination. This explanation offered by a minor witness is acceptable. Therefore, the challenge raised by the learned counsel for the accused as to non disclosure of actual date of occurrence in Ext.P1 or in the statement given under Section 164 of Cr.P.C. is found to be not having much significance to disbelieve the version of PW1 in the instant case. On totally weighing the evidence of PW1, the same is found to be wholly reliable.

19. Coming to the question of proper identification of the accused, in fact, in this case the question of identity does not arise as the evidence of PW1 would suggest that the accused is familiar to PW1 and he is a nearby resident of his house. Further, he had given statement disclosing the name of the accused to mark the identity of the accused. Therefore, the said challenge also found to be untenable.

20. Regarding non-examination of CW3, the father of the PW1 is concerned, in fact, initially PW1 disclosed about the occurrence to his mother and she got examined as PW2 and she supported the evidence of PW1. The knowledge of



PW2 itself is hearsay. The knowledge of CW3, the father is the version given by the mother. Therefore, the same also is nothing but hearsay evidence. Thus, non-examination of CW3 is not at all fatal to the prosecution case.

21. Point Nos.3 and 4:- On re-appreciation of evidence, none of the contentions raised by the learned counsel for the accused to unsustain the verdict of the Special Court found to be sustainable. Therefore, it is held that the Special Court is right in finding that the accused committed the offences punishable under Section 363 of IPC and under Section 7 read with 8 of the POCSO Act. Therefore, the conviction imposed by the Special Court does not require any interference.

22. Coming to the sentence, three years is the maximum sentence imposed upon the accused for the offence under Section 7 read with 8 of the POCSO Act and the same is the statutory minimum sentence provided for the offence under Section 7 read with 8 of the POCSO Act. Therefore, no reduction in sentence is legally permissible.

23. It is important to note that the accused is a



habitual offender having involvement in four more cases, where he was convicted for twenty years, ten years etc. for the offences under the POCSO Act and for other offences. The details of other cases against the accused are reported by the Superintendent, Central Prison and Correctional Home, Thavanur are extracted as under:

*“1. SC.No. 1067/2023 on the file of the Hon'ble Fast Track Special Court, Koyilandy. He was convicted and sentenced as follows:*

*Rigorous Imprisonment for a period of 10 years and a fine of Rs.10,000/- In default to undergo RI for 03 months under Section 377 IPC.*

*Rigorous Imprisonment for a period of 20 years and a fine of Rs.20,000/- In default to undergo RI for 06 months under Section 3(c) r/w 4(2) of the Protection of the Children from Sexual Offenses Act, 2012.*

*Rigorous Imprisonment for a period of 1 year and a fine of Rs.2,000/- In default to undergo RI for 01 month under Section 11(iii) r/w 12 of the Protection of the Children from Sexual Offenses Act, 2012.*

*2. SC.No. 1069/2023 on the file of the Hon'ble Fast Track Special Court, Koyilandy. He was convicted and sentenced as follows:*

*Rigorous Imprisonment for a period of 2 years and a fine of Rs.5,000/- In default to undergo RI for*



*02 months under Section 363 IPC.*

*Rigorous Imprisonment for a period of 5 years and a fine of Rs.10,000/- In default to undergo RI for 03 months under Section 9(m) r/w 10 of the Protection of the Children from Sexual Offences Act, 2012.*

*Rigorous Imprisonment for a period of 1 year and a fine of Rs.2,000/- In default to undergo RI for 01 month under Section 11(i) r/w 12 of the Protection of the Children from Sexual Offences Act, 2012.*

*3. SC.No. 1198/2023 on the file of the Hon'ble Fast Track Special Court, Koyilandy. He was convicted and sentenced as follows:*

*Rigorous Imprisonment for a period of 3 years and a fine of Rs.10,000/- In default to undergo RI for 03 months under Section 7 r/w 8 of the Protection of the Children from Sexual Offences Act, 2012.*

*4. SC.No. 1199/2023 on the file of the Hon'ble Fast Track Special Court, Koyilandy. He was convicted and sentenced as follows:*

*Rigorous Imprisonment for a period of 10 years and a fine of Rs.10,000/- In default to undergo RI for 01 month under Section 377 IPC.*

*Rigorous Imprisonment for a period of 20 years and a fine of Rs.20,000/-. In default to undergo RI for 02 months under Section 3(c) r/w 4(2) of the Protection of the Children from Sexual Offences Act, 2012."*

24. Therefore, reduction in sentence also is not



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

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

Since the accused is in jail, the Registry is directed to forward a copy of this judgment to the Superintendent, Central Prison and Correctional Home, Thavanur, forthwith, for information and compliance.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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