

CNR : KLHC010903652023



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CRL.A NO. 1843 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2026/10TH BHADRA, 1948

CRL.A NO. 1843 OF 2023

CRIME NO.41/2022 OF ELAVUMTHITTA POLICE STATION,

PATHANAMTHITTA

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.260 OF
2020 OF FAST TRACK SPECIAL COURT, PATHANAMTHITTA

APPELLANT/ACCUSED:

THOMAS THOMAS
AGED 61 YEARS
S/O ABRAHAM THOMAS, SOORAJ BHAVAN,
KALLANMODY, ELAVUMTHITTA P.O., MEZHUVELI
VILLAGE FROM JOY SADANAM VEETIL,
PENNUKKARA P.O., ALA VILLAGE, CHENGANNUR,
PIN - 689520

BY ADV SRI.M.R.SASITH

RESPONDENT/COMPLAINANT:

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

SRI.M A SHIHAB, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
13.08.2026, THE COURT ON THE 01.09.2026 DELIVERED THE
FOLLOWING:



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JUDGMENT

Dated this the 1st day of September, 2026

The sole accused in SC No.260/2020 on the files of the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act' for short), Pathanamthitta, assails judgment dated 02.11.2023 in the above case, whereby he was found guilty for the offences punishable under Sections 10 r/w.9(l) and 6 r/w. 5(l) of the POCSO Act as well as under Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act' for short) and sentenced as under:

“In the result, the accused is sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only), in default of payment of fine, he shall undergo Rigorous Imprisonment for another 6 months for the offence U/s.10 r/w. 9(l) of the



Protection of Children from Sexual Offences Act, he is sentenced to undergo Rigorous Imprisonment for 20 years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only), in default of payment of fine he shall undergo Rigorous Imprisonment for another 12 months for the offence U/s.6 r/w. 5(l) of the Protection of Children from Sexual Offences Act and he is sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only), in default of payment of fine he shall undergo Rigorous Imprisonment for another 6 months for the offence U/s.77 of the Juvenile Justice (Care and Protection of Children) Act. The accused is not found guilty of the offence Under sec.377 of the Indian Penal Code and he is acquitted U/s.235(1) of the Cr.P.C. for the said offence. Set off is allowed to the accused from 13.02.2020 to 26.05.2020, U/s. 428 of the Cr.P.C., as against the substantive sentences, which shall run concurrently.”

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor in



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detail. Perused the verdict under challenge and the records of the trial court.

3. The prosecution case is that at about 7 pm on 26.01.2020, the accused had given liquor and ganja beedi to smoke to the victim, who was examined as PW1, a boy aged 14 ½ years, at the shop room owned by the accused at Kallanmodi in Mezhuveli Panchayat. Thereafter, he was subjected to aggravated sexual assault twice on that day. On this premise, the prosecution alleges commission of offences punishable under Sections 4 r/w. 3(d), 7 r/w. 8 and 6 r/w. 5(l) of the POCSO Act, Section 377 of the Indian Penal Code (hereinafter referred to as 'IPC' for short) and Section 77 of the JJ Act by the accused.

4. The learned Special Judge recorded evidence after framing charge for the said offences. During trial, PW1 to PW9 were examined and Exts.P1 to P15 were marked on



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the side of the prosecution. No defence evidence was adduced. Thereafter, he was convicted and sentenced, as extracted above.

5. While assailing the judgment, the learned counsel for the accused argued that, in this case, the victim is a boy having bad habits and the people in the locality had given complaint at the police station and on this premise, the accused was implicated in this case without any reason. According to her, the prosecution evidence is quite insufficient to find commission of offences found by the Special Court. That apart, the accused is a person aged 61 years and therefore, leniency is to be shown to him.

6. Whereas the learned Public Prosecutor strongly supported the prosecution allegations, relying on the evidence of victim (PW1), supported by other evidence, on the submission that, apart from raising a defence that the



case has been foisted, no specific defence was suggested during cross-examination of PW1. It is also submitted that regarding the filing of complaint as argued by the learned counsel for the accused that no evidence forthcoming. In such view of the matter, the prosecution case is well proved and the verdict impugned would not require any interference.

7. Having considered the rival submissions, points arise for consideration are,

1. Whether the Special Judge is right in holding that accused committed the offence punishable under Section 10 r/w. 9(l) of the POCSO Act?
2. Whether the Special Judge is right in holding that accused committed the offence punishable under Section 6 r/w. 5(l) of the POCSO Act?
3. Whether the Special Judge is right in holding that accused committed the offence punishable under Section 77 of the JJ Act?
4. Whether the impugned verdict would require any interference by this Court?



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5. The order to be passed.
8. Point Nos.1 to 5

Here, the status of the victim as a child as defined under Section 2(1)(d) of the POCSO Act is not disputed, or else, the same has been proved by the prosecution through PW8, the Headmistress, who had issued Ext.P15 copy of school admission register, showing the date of birth of the victim as 03.05.2005.

9. Regarding the occurrence, the crucial evidence available is that of PW1, the victim. He deposed that he went to the tea shop of one Somarajan in January 2020 to buy sweets and biscuits. The accused was running the shop at that time. The accused took him inside the shop room, removed his shirt and pants and kissed his penis. Then the accused gave him ganja covered with paper and forced him to smoke. After that, the accused had forcefully given beer to him in a bottle and compelled him to drink. He drank the beer



to some extent, and after that, the accused advised him to drink the remaining after taking it to home. The accused also advised him to quarrel with his parents at home. After smoking ganja, he lost his consciousness and then the accused provided him meat and cooked tapioca. While he was smoking cigarette at the terrace of the house, on hearing an unusual sound at the back of the house, he pelted a stone towards the place under the impression that it might be a dog. But the stone landed on the back of his father. Then he rushed to the shop of the accused again. The accused again removed the shirt and pants of the victim, kissed his penis and done him like earlier. After coming from the shop, he walked along the road. At that time, the Police party arrived there in a vehicle, questioned him, and advised him to go

home. On the next day morning, he again went to the shop



and the accused provided him cigarette. He smoked the same. One Mohanan, who runs a fruit shop there, found the same, and he took him home and informed the matter to his father. Hence, the victim was taken to hostel by his father and thereafter taken to an office. He narrated there all the incidents suffered by him at the hands of the accused. Later, he was taken to the Police Station and before the learned Magistrate. He described the incidents there also. He admitted that he had given Ext.P1 FI Statement to the Police. He also stated that he had given Exts.P2 and P3 statements before the learned Magistrate. According to him, he had created issues at home, stating that he was an adopted child, as per the advice of the accused. He had quarrelled with his parents on the ill advice of the accused that he was taken to mental hospital and not before the Psychologist. He further deposed that he had pelted the stone towards his father as



per the advice of the accused. According to him, he had been staying in a hostel for his studies.

10. Apart from the evidence of PW1 – the victim, PW2, the then counsellor of Childline, Pathanamthitta, during 2020, also was examined to prove that the victim was brought by his parents for counselling due to his bad behaviour, and she deposed that she had informed the same to David Raji Mathew, the District Co-ordinator, Childline. Though her educational qualification to work as a counsellor was questioned, she answered that she had passed MSW. Ext.P4 is the scene mahazar tendered in evidence through PW3. Ext.P5 is the scene plan, tendered in evidence through PW4, the then Village Officer, Mezuveli during 2020.

11. Sri.David Raji Mathew, referred by PW2, got

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examined as PW5. He deposed that on 28.01.2020, PW1 was brought for counselling at the Childline office and he had directed PW2-Smt.Shiny to give him counselling. It was PW6, the women Sub Inspector of police attached to DCRB, Pathanamthitta during 2020, who recorded Ext.P1 statement given by PW1 as on 30.01.2020 and she identified her signature therein. It was PW7, the Sub-Inspector of Police, Elavumthitta Police Station during 2020, registered Ext.P6 FIR based on Ext.P1 FI Statement given by the victim. She deposed about the same as well as the preparation of Ext.P4 and Exts.7 to P9, including the arrest of the accused based on Exts.P7 to Ext.P9, arrest memo, inspection memo and custody memo respectively. PW9, the then Inspector of Police, Elavumthitta, also conducted the later stage of investigation. According to him, he had filed report incorporating offence under Section 5(I) of the POCSO Act.



12. Here, the question to be considered is, whether the offences under Section 5(l) r/w. 6 as well as Section 9(l) r/w. 10 of the POCSO Act, are made out from the evidence of PW1. Section 5(l) provides that whoever commits penetrative sexual assault on a child more than once or repeatedly shall be punished under Section 6 and the sentence of imprisonment provided is not less than twenty years, which may extended to imprisonment for life, and shall also be liable to pay fine. The term '*penetrative sexual assault*' is defined under Section 3(a) to (d), which provide as under:

“3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to



- cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

13. Here, the contention raised by the learned Public Prosecutor is that the evidence of PW1 would show the overt acts described under Section 3(d) to find commission of offence under section 5(l) of the POCSO Act. But the learned counsel for the appellant is in the negative. Going through the evidence of PW1, that the accused kissed on his penis on two occasions, along with the statutory wordings in Section 3(d) of the POCSO Act, it could be seen that applying the mouth of the accused to the penis, vagina, anus or urethra of the child is sufficient to find an offence as stated in Section 3(d) of the POCSO Act. That is to say, the law does not mandate oral sex or deeper penetration for this



specific clause and any intentional physical contact where the mouth is applied to the specified private parts satisfies the mandate. Similarly, when the mouth touches the penis with sexual intent, the said act to be categorized as penetrative sexual assault under Section 3(d), punishable under Section 4 of the POCSO Act. Thus the learned special judge is right in finding that the accused committed offence punishable under Sections 5(l) r/w. 6 of the POCSO Act.

14. Coming to Section 9(l) of the POCSO Act, it has been provided that whoever commits sexual assault on the child more than once or repeatedly shall be punished under Section 10 with imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine. In the instant case, the evidence of PW1 would show that the accused repeatedly kissed on the penis of the victim, be it so, the learned Special Judge is right in holding that the appellant/accused



committed offence under Section 9(l) r/w.10 of the POCSO Act. Hence, the conviction is liable to be sustained.

15. Coming to the sentence, the sentence is very reasonable. Hence, the sentence imposed by the learned Special Judge is also confirmed.

16. In the result, this appeal fails and is dismissed accordingly, confirming the conviction and sentence.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith.

Sd/-
A. BADHARUDEEN
JUDGE