



2024/KER/19062

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA,

1945

CRL.A NO. 138 OF 2017

CRIME NO.710/2013 OF Venjaramoodu Police Station,

Thiruvananthapuram

AGAINST THE JUDGMENT DATED 26.07.2016 IN SC NO.1359 OF

2013 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT

(ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN &

CHILDREN) , THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

STEPHEN, C.NO.1196 CENTRAL PRISON,
TRIVANDRUM-12

BY ADV SRI.K.JAGADEESH

RESPONDENT/COMPLAINANT:

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

BY SMT.AMBIKA DEVI S, SPL.PUBLIC PROSECUTOR
ATROCITIES AGAINST WOMEN & CHILDREN

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 13.03.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



P.B.SURESH KUMAR & JOHNSON JOHN, JJ.

Crl.Appeal No.138 of 2017

Dated this the 13th day of March, 2024

JUDGMENT

P.B.Suresh Kumar, J.

The sole accused in S.C.No.1359 of 2013 on the files of the Court of the Additional Sessions Judge for the Trial of Cases Relating to Atrocities and Sexual Violence Against Women and Children, Thiruvananthapuram is the appellant in the appeal. He stands convicted and sentenced for the offences punishable under Section 5(n) read with Section 6 and Section 9(n) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) and Section 506 Part 2 of the Indian Penal Code (IPC).

2. The victim in the case is none other than the daughter of the accused. The accusation as in the final report is that on 09.08.2013, the accused penetrated his penis into the mouth of the victim who was aged 9 years then and threatened her that he would cause her death, if she discloses the same to anyone.



3. The Special Court took cognizance of the offences alleged in the final report and issued summons to the accused. On the appearance of the accused, after complying with the procedural formalities, charges were framed against the accused, to which he pleaded not guilty. Thereupon, the prosecution examined 9 witnesses as PWs 1 to 9 and proved through them 12 documents as Exts.P1 to P12. On the closure of the evidence of the prosecution, when the accused was questioned on the incriminating evidence let in by the prosecution under Section 313 of the Code of Criminal Procedure (the Code), he denied the same and maintained that he has been falsely implicated in the case, with a view to avoid him at the instance of his wife, who maintains an illicit relationship with another. Inasmuch as the Special Court did not find the case to be one fit for acquittal under Section 232 of the Code, the accused was called upon to enter on his defence and he chose not to adduce any evidence.

4. Thereupon, on a consideration of the evidence on record, the Special Court, having found the accused guilty of the offences referred to above, convicted and sentenced him to undergo imprisonment for life and to pay fine for the offence



punishable under Section 5(n) read with Section 6 of the POCSO Act, to undergo rigorous imprisonment for five years and to pay a fine for the offence punishable under Section 9(n) read with Section 10 of the said Act and to undergo rigorous imprisonment for one year for the offence punishable under Section 506 Part 2 of IPC.

5. Heard the learned counsel for the accused as also the learned Public Prosecutor.

6. The learned counsel for the accused submitted that there is no evidence in the case to prove the alleged act of penetrative sexual assault except the evidence tendered by PW2, the victim and that the evidence of PW2 cannot be said to be of sterling quality so as to base the conviction solely on the said evidence. It was also argued by the learned counsel in the alternative that at any rate, the sentence imposed on the accused on his conviction is grossly disproportionate to the gravity of the offence alleged and therefore, even if the court finds that the conviction of the accused is in order, the sentence imposed on him is liable to be interfered with. The learned counsel has relied on the decision of this court in **Narayanan v. State of Kerala**, 2021 KHC 564, in support of



the argument that the sentence imposed on the accused is excessive. *Per contra*, the learned Public Prosecutor supported the impugned judgment pointing out that the evidence tendered by the victim cannot be said to be not trustworthy.

7. We have considered the argument advanced by the learned counsel for the parties on either side. The point that arises for consideration is whether the conviction of the accused and the sentence imposed on him are sustainable in law.

8. In order to consider the point formulated for decision, it is necessary to refer to the evidence in the case. PW1 is the mother of the victim. PW1 was employed at the relevant time in a private medical college. PW1 deposed that the victim is her elder daughter and she was born on 13.10.2004. PW1 also deposed that while the victim was studying in the fourth standard, on 09.08.2013, when she came back from work, the victim was looking upset, and when she enquired with her as to the reason, the victim informed her that the accused penetrated his penis into her mouth. PW1 also deposed that the victim also told her that the accused thereupon threatened the victim that she will be done away



with, if she discloses that fact to anyone. PW1 deposed that on the next day, after informing the relatives, she lodged Ext.P1 First Information Statement. The suggestion made to PW1 by the learned counsel for the accused during cross-examination was that it is a false case instituted at her instance to sever her relationship with the accused as she has illicit relationships. PW1 denied the said suggestion and maintained the stand that even after the occurrence, she intended to live with the accused and she could not do so as the accused assaulted the victim again. We have examined the evidence tendered by PW1 meticulously and we do not find any reason to disbelieve the same. Even otherwise, the evidence tendered by PW1 was only that the victim informed PW1 that the accused subjected her to sexual assault.

9. PW2 is the victim herself. PW2 deposed in categorical terms that while she was studying in fourth standard in Anakudy Government L.P. School, one day in 2013, the accused penetrated his penis into her mouth. PW2 also deposed that the accused thereupon threatened her that she will be done away with, if she discloses the same to anyone. PW2 deposed that she informed the matter to PW1 on the



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same day itself, when PW1 returned home after work and on the succeeding day, they went to the police station and lodged the complaint. Even though PW2 was cross-examined, nothing was brought out to doubt the veracity of the evidence tendered by her. The remaining witnesses in the case are mostly official witnesses examined for compliance of the legal formalities.

10. No doubt, there is only the evidence of the victim to prove the occurrence. It is now settled that the evidence of the victim of a sexual assault can be the sole basis of a conviction. But, it is also settled that in order to base a conviction solely on the evidence of the rape victim, such evidence shall be of a sterling quality. In **Rai Sandeep v. State (NCT of Delhi)**, (2012) 8 SCC 21, the Apex Court had occasion to consider the question as to who can be said to be a sterling witness. Paragraph 22 of the judgment of the Apex Court in the said case reads thus:

“In our considered opinion, 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 statement 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 howsoever strenuous it may be and under no circumstance 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 as 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.”

It is evident from the aforesaid decision that the evidence of a



sterling witness is one that appears natural and consistent with the case of the prosecution *qua* the accused; that such witnesses, under no circumstances, shall give room for any doubt as to the factum of the occurrence and that the evidence shall have co-relation with each and every supporting materials. To put it differently, the version of such witnesses on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary, and the material objects should match the said version in material particulars. On an evaluation of the materials on record, we are of the view that the evidence tendered by the victim in the case satisfies the requirement of a sterling witness and therefore, the finding rendered by the Special Court that the evidence tendered by the victim is reliable and trustworthy, is only to be affirmed.

11. The question that remains to be considered is as to the sustainability of the sentence imposed on the accused for the offence punishable under Section 5(n) read with Section 6 of the POCSO Act. Having regard to the fact that the accused is none other than the biological father of the victim girl who was only aged 9 years at the relevant time, we



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do not think that the punishment imposed on the accused is disproportionate to the gravity of the offence.

12. It is seen that for the aggravated penetrative sexual assault committed by the accused, he was convicted not only under Section 5(n) read with Section 6 of the POCSO Act, but also under Section 9(n) read with Section 10 of the said Act. Since the accused has already undergone the sentence for the offence punishable under Section 9(n) read with Section 10, we are not examining whether the conviction of the accused under the said provision is sustainable.

In the circumstances, we do not find any merit in the appeal and the same is accordingly dismissed.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
JOHNSON JOHN, JUDGE.

ds 05.03.2024