

IN THE FAST TRACK SPECIAL COURT(POCSO)
THIRUVANANTHAPURAM.

Present :- Smt. REKHA R, SPECIAL JUDGE.

Monday, 29th April, 2024 (9th Vaisakha, 1946)

SESSIONS CASE No.485/2020

(Crime No.2452/2019 of Peroorkada Police Station)

Complainant : State - represented by the Assistant
Commissioner of Police, Cantonment
Sub Division, Thiruvananthapuram.

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

Accused : Sajeev Kumar, aged 50/2019
S/o.Sukumaran Nair
Pichimangalathu Veedu, Koliyacode
Desom, Koliyacode Village, Nedumangad
Taluk.

(By Adv.Sri.S.S.Biju)

Charge : Under section 354A(1)(i) of Indian Penal Code,
section 10 read with section 9(a)(iv) of Protection
of Children from Sexual Offences Act and section
3(1)(w) (i) and section 3(1)(w) (ii) of SC/ST
(POA) Act.

Plea : Not guilty

Finding : Not guilty under section 3(1)(w) (i) and section 3(1)(w) (ii) of SC/ST (POA) Act.

Guilty under section 10 read with 9(a)(iv) of Protection of Children from Sexual Offences Act and section 354A(2) read with section 354A(1)(i) of Indian Penal Code.

Sentence/
order : Accused is acquitted under section 235(1) Cr.PC for the offences punishable under section 3(1)(w) (i) and section 3(1)(w) (ii) of SC/ST (POA) Act.

Accused is convicted under section 235(1) Cr.PC for the offences punishable under section 10 read with 9(a)(iv) of Protection of Children from Sexual Offences Act and sections 354A(2) read with 354A(1)(i) of Indian Penal Code. In view of section 71 of Indian Penal Code and section 42 of Protection of Children from Sexual Offences Act, punishment is imposed for the offence punishable under section 10 read with 9(a)(iv) and punishment is not imposed for the offence punishable under section 354A(2) read with section 354(1)(i) of Indian Penal Code.

Accused is sentenced to undergo **rigorous imprisonment** for a period of **6 years** and to pay fine of **Rs.25,000/-** (Rupees Twenty five 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(a)(iv) of Protection of Children from Sexual Offences Act.

The fine amount if remitted by the accused or if realized from the accused shall be paid to PW1 as compensation under section 357(1) (b) of Criminal Procedure Code.

Accused was in judicial custody for the period from **02/12/2019 till 21/12/2019**. Accused is entitled to get set off for **20** days against the substantive term of imprisonment.

Description of the accused

Sl. No.	Name of accused	Father's name	Religion/ Caste	Occupation	Age	Residence
1	Sajeev Kuamr	Sukumaran Nair	xxxx	Govt. Servant	53	Koliyakode

Date of

Occurrence	Complaint	Apprehension	released on bail	Committal	Commencement of trial	Close of trial	Sentence/order
26/11/19	02/03/20	02/12/19	21/12/19	Nil	26/05/23	27/04/24	29/04/24

This case having been finally heard on 27/04/2024 in presence of the above counsel and the court on 29/04/2024 delivered the following :

JUDGMENT

Accused faced trial for charges under section 354A(1)(i) of Indian Penal Code, section 10 read with section 9(a) (iv) of Protection of Children from Sexual Offences Act (POCSO), section 3(1)(w) (i) and section

3(1)(w)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC/ST (POA)).

2.Prosecution case in brief is as follows:-

On 26/11/2019 at about 5.00 pm accused who was known or identified as a police officer with sexual intent put his hand over the shoulder of child victim aged 16 years when she had visited his police quarters asking for the list of association members and forcefully made her sit on the lap of accused and when she attempted to go, accused again put his hand over her shoulder and asked her to give a kiss to her by him and told her that she was the most beloved daughter to him. Accused committed sexual assault on child victim. Accused who belongs to Hindu Nair community touched child victim with sexual intent and used words of sexual nature to child victim knowing that child victim belongs to Hindu Kurichiya Community. Accused had thus committed the above mentioned offences.

3.Sub Inspector of Police, Peroorkada Police Station registered first information report number 2452/2019 on the basis of first information statement given by child victim. Inspector of Police, Peroorkada Police Station conducted investigation. Assistant Commissioner of Police, Cantonment completed 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 against accused. Cognizance was

taken for the offence punishable under section 354 of Indian Penal Code, sections 7, 8, 9(b)(iv) read with 10 of Protection of Children from Sexual Offences Act and section 3(1)(w)(i)(ii) of SC & ST (POA) Act. Accused appeared. Accused was released on bail. Accused was served with the copy of the prosecution records. Thereafter case was transferred to this court for trial and disposal. After appearance of accused, the learned Special Public Prosecutor opened the case of the prosecution. Accused and prosecution were heard under section 227 of Criminal Procedure Code. After finding that there is no scope for discharge under section 227 Criminal Procedure Code, charges under section 354A(1)(i) of Indian Penal Code, section 10 read with section 9(a)(iv) of Protection of Children from Sexual Offences Act, section 3(1)(w) (i) and section 3(1)(w)(ii) of SC/ST (POA) Act were framed in English, read over and explained to accused in Malayalam to which he pleaded not guilty.

4. To proves its case, prosecution examined PW1 to PW19 and got marked Exts.P1 to P23 at the initial stage. CW16 was given up by the learned Special Public Prosecutor. Prosecution evidence was closed. Accused was questioned under section 313 of Criminal Procedure Code. The defence has seen from the 313 statement of accused was that he was innocent. Accused filed an additional statement during the questioning under section 313 Cr.PC. Accused admitted in that additional statement that on 26/11/2019 at about 5.15 pm PW1 came to his quarters and collected the list of children for inviting them to the committee of

Children's Club on the next day and at that time he told PW1 that she was the most beloved daughter and accused advised her to study well. Accused again met her on that day while he was on the way to attend his night duty. On 27/11/2019 at 6.00 pm Children's Committee was held at the office of residence association and 15 children, 6 mothers including wife of accused, secretary and treasurer participated in that meeting. On the next day ie on 28/11/20219 in the afternoon Kamaldev who was PSO of SAP Commandant K.S.Vimal IPS called accused and told to meet SAP Commandant at 4.00 pm on that day. Accordingly accused visited him at that time and he informed that a complaint was received in police station against accused and that complaint was lodged to DIG AP Battalion Prakash IPS. PW7 was an attender in the office of DIG AP Battalion. She was allotted USQ (Flat type) which was entitled to high ranking police officials. Police officers at the quarters had complaints against such an allotment to PW7. Accused intimated their complaints to the office of DIG. PW7 was told by some others in the quarters that accused was trying to expel her from that flat. Accordingly she was not in talking terms with accused. The intention of those who instigated PW7 to lodge the false complaint in this case was to expel accused from the presidentship of residence association. But DIG forwarded that complaint for police action. Majority of the residents in the quarters requested PW7 to withdraw that complaint. But she was threatened by

those who instigated her to file false complaint that she would loss his job and would have to pay heavy compensation.

5.Accused and prosecution were heard under section 232 of Cr.PC. Accused was found to be not entitled to be acquitted under section 232 of Cr.PC. Thereafter accused was called upon to enter on his defence and produce witnesses. DW1 to DW6 were examined and Exts.C1,C2 and C3(a) to C3(c) were marked through defence witnesses. Prosecution evidence was reopened and PW7 was recalled and additional witness was summoned as per the common order dated 23/02/2024 in CMP.55/20224 and CMP.64/2024. PW7 was re-examined and additional witness was examined as PW20 and Exts.C4(a) and (b) were marked through PW20. Prosecution evidence was closed again. After that accused was further questioned under section 313 Cr.PC. Accused maintained that this case was an utter lie. Accused was examined as DW7 as per the order in CMP.114/2024 and Exts.D1. D2, D3 series and D4 series were marked on the side of the accused. Both sides were heard.

6.The points which arise for consideration are :-

1. Did accused who was known or identified as a police officer put his hand around the shoulder of PW1 and forcefully make her sit on his lap with sexual intent at about 5.00 pm on 26/11/2019 in his quarters and thereby commit the offence punishable under section 10 read with 9(a) (iv) of Protection of Children from Sexual Offences Act?

2. Did accused put his hand around the shoulder of PW1 and forcefully make her sit on his lap at about 5.00 pm on 26/11/2019 in his quarters and thus make physical contact and advances involving unwelcome and explicit sexual overtures and thereby commit the offence punishable under section 354A(2) read with section 354A(1)(i) of Indian Penal Code?
3. Did accused belonging to Hindu Nair Community intentionally make a touch of sexual nature to PW1 knowing that she belongs to Hindu Kurichiya Community at 5.00 pm on 26/11/2019 in his quarters and thereby commit the offence punishable under section 3(1) (w)(i) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989?
4. Did accused belonging to Hindu Nair Community ask PW1 to give her a kiss by him and tell her that she was the most beloved daughter to him and thereby used words of sexual nature towards PW1 knowing that she belongs to Hindu Kurichiya Community and thereby commit the offence punishable under section 3(1)(w)(ii) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989?
5. In the event of conviction, what is the proper sentence to be imposed on the accused?

7. Points 1 and 2: Since points 1 and 2 are interconnected, these points are considered together. Prosecution allegation was that accused who was known and identified as a police officer at the time of incident committed sexual assault on PW1 at about 5.00 pm on 26/11/20219 in his quarters. PW1, PW7, PW8 and PW17 were examined by the prosecution to prove the incident. PW2 is an attestor to

Ext.P5 scene mahazer. PW3 is Deputy Tahsildar who issued Ext.P6 caste certificate of accused. PW4 issued Ext.P7 residential certificate in respect of the quarters of accused. PW5 was the Registrar of Birth and Death who issued Ext.P8 extract of the birth register of PW1. PW6 is the doctor who conducted potency examination of accused and issued Ext.P9 potency certificate. PW10 is Tahsildar who issued Ext.P12 community certificate of PW1. PW11 issued Ext.P13 duty certificate of accused. PW14 is the doctor who examined PW1 on 29/11/2019 and issued Ext.P15 medical certificate. PW16 signed as a witness in Ext.P16 mahazer. PW20 produced Ext.C4 series documents. PW12 was the SHO, Thiruvananthapuram Vanitha Police Station in whose presence PW1 gave Ext.P3 first information statement. PW15 took down Ext.P3 statement of PW1 in her handwriting. PW13 registered Ext.P14 first information report in this case. PW18 conducted investigation. PW19 completed investigation and laid final report.

8.The main foundational aspect to be proved by the prosecution is the minority of PW1 on the date of incident. As per the deposition of PW1 the incident occurred on 26/11/2019. Prosecution examined PW1 and PW5 and produced Ext.P1 verified copy of the Secondary School Leaving Certificate of PW1 and Ext.P8 extract of birth register to prove the age of PW1. On the date of examination of PW1, prosecution produced original Secondary School Leaving Certificate of PW1 and its

copy. Copy of Secondary School Leaving Certificate of PW1 was marked as Ext.P1 on satisfying its correctness after comparing with the original. As per Ext.P1 the date of birth of PW1 is 04/07/2003. PW7 who issued Ext.P8 extract of birth register of PW1 deposed that date of birth of PW1 was 04/07/2003. As per Ext.P8 also date of birth of PW1 is **04/07/2003.**

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.Prosecution relied upon Exts.P1 and P8 which are the documents mentioned in section 94 of the J.J Act to prove the age of PW1 in this case. As per the decision in *P. Yuvaprakash v State* represented by Inspector of Police mentioned supra and section 94 of the J.J Act, Ext.P1 copy of Secondary School Leaving Certificate of PW1 is to be given precedence over Ext.P8 extract of birth register even though there is no conflict between these two documents regarding the age of PW1. As per Ext.P1 the date of birth of PW1 is **04/07/2003**. From Ext.P1 it can be concluded that PW1 was aged 16 years on the date of incident ie. 26/11/2019. So it can be safely concluded that prosecution succeeded in proving that PW1 was a child on the date of incident.

11.PW1 deposed that her father was a police constable and passed away 13 years of ago and her mother was an attender in police headquarters and hence they were residing in police quarters and accused was also a police officer and residing in the very same police quarters.

According to PW1, she was president of the children's club of residence association in that police quarters and accused requested her to come to his flat to collect the list of children. Accordingly on 26/11/2019 at about 5 – 5.15 pm after school she visited the flat of accused. PW1 narrated the incident as follows : PW1 pressed the calling bell and accused opened the door and invited her to his flat. Accused was in a hurry to go out to pick his daughter. PW1 did not enter his flat initially as nobody was there. But she entered his flat as accused told her many times and kept her bag in his flat and came out and waited outside. According to PW1, accused might change his dress in the room and asked her something from there and she did not hear it. Thereafter accused came out from inside of the quarters and at that time PW1 demanded the list and entered the hall room of his quarters to collect list from accused. Accused touched her shoulder while they were talking and PW1 felt it as a bad touch. PW1 dodged and at that time accused held her and made her sit on his lap. PW1 stood up suddenly and demanded list at that time accused handed the list immediately. Thereafter accused again restrain her there by holding and checking the ID card worn on her neck. At that time hands of the accused were shivering and he was in a different state of emotion. Accused again held her close to him and put his hand around her shoulder when she had attempted to go. Accused uttered holding her close to him that “should I give a kiss to you and you are the most

beloved daughter to me”. PW1 felt intense fear and came out and ran to her house. Accused chased her and asked her whether she was at odds with him. PW1 deposed that her sister’s birthday fell on that date and children would come on that day. Moreover she could not know to whom the incident was to be disclosed due to fear. So she did not reveal the incident on that day. On the next day ie. on 27th she informed the matter to PW14 who was in-charge of Student Police Cadet in the school. PW14 told PW1 to lodge complaint on the next as Principal was on leave on that day. On the next day PW1 came to school with her mother and gave Ext.P2 complaint to PW8. Thereafter police came and recorded her statement. PW1 identified Ext.P3 as the first information statement given by her to the police and Ext.P4 as the statement given to Magistrate. PW1 wept and tried to calm down herself while giving deposition. Thereafter PW1 started giving statement before the court crying. PW1 was crying throughout while giving deposition. The above said conduct of PW1 was recorded in the deposition paper.

12. PW7 deposed that on 27/11/2019 at about 5.00 pm PW17 called her while she was in the office and requested to come to the school. PW7 reached the school and at that time PW17 told her the incident. Later PW1 also narrated the incident to her. According to PW7, PW1 was in Plus One that time and Principal of Plus One was on leave on that day and hence PW17 told to take some action on the next day. On

the next day at about 10.30 am she went to the school with PW1 and met Principal and Principal instructed to give a written complaint. Accordingly PW1 gave complaint to Principal. PW8 who was the Principal in the school of PW1 at that time deposed that on 27/11/2019 she was on leave and in the evening one teacher called her and informed the incident and one Sangeetha teacher came to her house after twilight and informed the incident and she told to lodge complaint on the next day. On the next day after 11 'O' clock and at about 12 PW1 and PW7 came and submitted the incident in writing. PW8 forwarded that complaint to police with her covering letter. PW8 identified Ext.P10 as the covering letter forwarded by her on that day and Ext.P2 as the complaint submitted to her by PW1 on that day. PW17 deposed that she was biology teacher in the school of PW1 at the time of incident and was in-charge of SPC in the school. According to PW17 on 27/11/2019 after the school PW1 met her and told to reveal something to her. As per the version of PW17, PW1 was in a depressed state at that time. PW17 took PW1 outside the staff room and talked to her in a comfortable place and at that time PW1 told the incident to her. PW17 intimated the matter to school headmaster and principal. On evaluating the deposition of PW1, PW7, PW8 and PW17 it is clear that PW1 alone had direct knowledge regarding the incident and disclosed the incident to PW17 first who in

turn intimated the matter to PW7 and PW8 and that intimation led to the setting of criminal law in motion in this case.

13. Before considering the reliability of the evidence adduced by PW1, it is highly necessary to address various grounds of challenge raised by defence side to the prosecution case and the evidence adduced by prosecution. The learned defence counsel vehemently argued that Ext.P3 first information statement was prepared well in advance on 26/11/2019 which is evident from Ext.P3 itself. The advance preparation of Ext.P3 is an indication of the falsity of the prosecution case was the main argument of the learned defence counsel. It is evident from the deposition of PW1, PW7, PW8 and PW17 that the incident came to light on a disclosure made by PW1 to PW17 and statement of PW1 was recorded at school by police after forwarding Ext.P10 covering letter by PW8 on 28/11/2019. PW12 who was present at the time of recording Ext.P3 categorically deposed that it was recorded on 28/11/2019. PW15 who took down Ext.P3 first information statement of PW1 also deposed that on 28/11/2019 Ext.P3 was recorded. PW12 and PW15 admitted that a mistake crept in writing the date as 26/11/2019 in the beginning of Ext.P3. According to PW12 she signed in Ext.P3 with date as 28/11/2019. The date mentioned in the beginning of Ext.P3 is 26/11/2019 and the date written below the signature of PW12 in Ext.P3 is 28/11/2019. It is evident from the deposition of PW8 that police came to

school after she had forwarded Ext.P10 covering letter with complaint of PW1 on 28/11/2019. It is crystal clear that Ext.P3 statement of PW1 was recorded on 28/11/2019 and the date mentioned in the beginning of Ext.P3 as 26/11/2019 is a clerical mistake as deposed by PW12 and PW15. So contention of the learned defence counsel that Ext.P3 was prepared in advance on 26/11/2019 on the basis of the clerical mistake with respect to the date in the beginning of Ext.P3 cannot be accepted as tenable.

14.The learned defence counsel argued that falsity of Ext.P3 can be further revealed from the absence of any GD entry authorizing PW12 to record statement of PW1 on 28/11/2019. PW12 was Station House Officer, Thiruvananthapuram Women Police station on 28/11/2019. According to PW12, PW19 directed her at about 3.45 pm on 28/11/2019 to record the statement of PW1 and thereafter PW18 also called her for that purpose. PW18 could not remember whether she had instructed PW12 to record statement on 28/11/2019. PW19 categorically deposed that Station House Officer requested for the assistance of Woman Sub Inspector to record the statement of PW1 in this case and accordingly he directed PW12. According to PW19 such an assistance was used to be given through his office in POCSO cases. DW6 is Station House Officer, Peroorkada Police Station. DW6 produced Ext.C2 GD entry on 28/11/2019 in Peroorkada Police Station. As per Ext.C2 GD

there was no mention of authorization of PW12 to record statement of PW1 on 28/11/2019. Absence of GD entry showing authorisation of PW12 to record Ext.P3 would make Ext.P3 doubtful is the pivotal question to be considered. PW1 identified Ext.P3 as the first information statement given by her to the police at her school. PW12 and PW15 also identified Ext.P3 as the first information statement of PW1 recorded at her school. Deposition of PW12 and PW19 made it clear that as per the direction of PW19, PW12 had gone to record Ext.P3. Nothing has been forthcoming from the deposition of PW1, PW12 and PW19 to doubt the recording of Ext.P3 at the school of PW1 in the evening of 28/11/2019 and the authorization of PW12 to record the same by PW19. Deposition of PW1 that the police recorded her statement at school was further corroborated by the evidence of PW7, PW8 and PW17. Since recording of Ext.P3 at school on 28/11/2019 was proved from the deposition of PW1, PW7, PW8, PW12, PW15 and PW17 and authorization of PW12 to record the same was proved from the deposition of PW12 and PW19, this court find any reason to doubt the genuineness of Ext.P3 merely on the ground of absence of GD entry in respect of the authorization of PW12 to record Ext.P3.

15. Another contention of the learned defence counsel was that non-examination of one Devika who alleged to have accompanied PW1 till half way to the quarters of accused is fatal to the prosecution case.

According to DW3 and DW4, a child by name Devika was not residing in police quarter at that time. It is true that PW1 deposed one Devika accompanied her till the ground floor . PW19 explained that he interrogated Devika but she was not cited as a witness as she was a child. The question whether non-examination of the above mentioned child is a serious flaw in the prosecution case is to be analysed in the light of the evidence adduced by PW1 and the statement of accused under section 313 Cr.PC. It is evident from the deposition of PW1 that she went to the quarters of PW1 alone although aforesaid Devika had accompanied till the ground floor and accused touched her when none was there. Accused admitted in the additional statement filed by him that on 26/11/2019 at about 5.15 pm PW1 came to his quarters and collected the list of the children. The evidence adduced by PW1 that on 26/11/2019 at 5- 5.15 pm she visited the quarters of accused and collected the list of children was corroborated by the admission of accused in this regard in his written statement to the questioning under section 313 Cr.PC. As already stated the offending act was alleged to have been committed by accused when accused and PW1 were in his quarters to the exclusion of all others. Prosecution could have proved through the examination of Devika only the fact that she had accompanied PW1 till half way to the quarters of accused. Deposition of PW1 that on 26/11/2019 at 5 – 5.15 pm she visited the quarters of accused was corroborated by the admission of

accused in his written statement to the questioning under section 313 Cr.PC. In these circumstances non-examination of Devika cannot be considered as a serious flaw affecting the prosecution case.

16. The learned defence counsel vehemently argued that accused was falsely implicated in this case following a dispute originating from the allotment of quarters to PW7. According to the learned defence counsel, PW7 was allotted with a flat type quarters to which she was not entitled due to her influence and residents of the quarters on having dissatisfied with such an allotment told complaint to accused who was the president of the residence association there and accused brought that matter to the notice of DIG. Due to that enmity this case was foisted falsely. DW5, DW3 and DW7 were examined to prove the above said defence version. DW3 deposed that he was a constable in the police department in 2019 and was residing in the police quarters where accused was residing and accused was the residence association president and he was the treasurer. According to DW3, he was allotted with the quarters occupied by PW7 when PW7 was allotted flat type quarters and residents there made oral complaint to the association regarding the allotment of flat type quarters to PW7 as she was not eligible to get that flat. According to DW3 there was difference of opinion between PW7 and accused in respect of the issues which had followed after allotment of flat type quarters to her. During cross examination DW3 stated that

there was no written complaint lodged by residents but oral complaint was made by one Siyad. DW5 deposed that she was residing with PW7 in the police quarters from 2013 to 2019. According to DW5, her husband is brother of PW7. DW5 deposed that there was altercation between PW7 and accused regarding allotment of quarters. DW5 stated that incident in this case did not happen and this case was lodged out of the dispute in respect of the quarters. DW7 deposed that PW7 who was a last grade staff was allotted with flat type quarters to which she was not eligible and that allotment led to resentment among police officials and he brought that to the notice of duty officer in the office of DIG in his position as the president of the residents association. PW7 became vengeful and lodged this complaint due to the influence of DIG and accused lodged Ext.C3(a) complaint and obtained Ext.C3(b) favourable order in that complaint.

17.DW1 produced Ext.C1 Government Order in regard to the allotment of quarters to police officers. According to DW1 the said order was revised in 2013 and five percentage of quarters were earmarked for ministerial staff in the police department. PW20 is the Special Armed Commandant. PW20 produced Ext.C4(a) order and Ext.C4(b) 65B certificate of Ext.C4(a). According to PW20 Ext.C4(a) pertains to allotment of quarters to PW7. It is evident from the deposition of PW20 and Ext.C4(a) that quarters is allotted to PW7 as per seniority list.

Deposition of PW20 and Ext.C4(a) clearly proved that occupancy of PW7 in police quarters is as per Ext.C4(a). This court is not supposed to inquire into the eligibility of PW7 to get allotment of quarters mentioned in Ext.C4(a). The only question to be considered is whether accused succeeded in proving enmity between PW1 and DW7 in respect of issues relating to allotment of quarters to PW7. As per the deposition of DW3 there was difference of opinion between PW7 and DW3 in respect of issues relating to allotment of quarters to PW7. DW3 did not state any specific incidents witnessed by him to enable him to depose that there were difference of opinion between W7 and DW7 in respect of issues relating to allotment of quarters. In the absence of any specific incidents suggesting difference of opinion between PW7 and DW7 in the deposition of DW3, a general statement made by DW3 cannot be acted upon to conclude that there was enmity between PW7 and DW7 in respect of quarters allotment issues. Moreover DW3 stated that association received oral complaints from many residents against allotment of quarters to PW7 and one Siyad was one such person who had made an oral complaint. The said person was not examined by the accused to prove that he had made oral complaint to residence association in the flat regarding the allotment of quarters to PW7. In the absence of examination of that person, it cannot be concluded from the deposition of DW3 that residence association intervened in the quarters issues of PW7

prior to the incident in this case following oral complaints. DW3 was also working in the same battalion ie. bomb squad of police department where accused was working and was the treasurer of the residence association in the police quarters during which accused was the president. From the deposition of DW3 it is evident that he is highly interested in deposing in favour of accused. From the above discussions it can be concluded that deposition of DW3 is not sufficient to prove the enmity between accused and PW7.

18. Interestingly DW5 deposed that her husband was brother of PW7 and DW7 deposed that DW5 was daughter of sister of father of PW1. It is important to note that after the examination of DW5, PW7 was recalled by the prosecution. At that time PW7 specifically deposed the name of her brothers and of their wives. DW5 did not find mention in the name of wives of brothers deposed by PW7. PW7 denied any relationship with DW5. DW7 was examined thereafter. At that time DW7 gave evidence regarding the relations of PW7 and DW5 which was contrary to the deposition of DW5 regarding their relationship. DW5 had no case that she is daughter of sister of mother of father of PW1. Instead the specific case of DW5 was that her husband was brother of PW7. PW7 had no sister-in-law in the name of DW5 as per her deposition. So it is crystal clear that DW5 and DW7 adduced false evidence regarding the relation of DW5 with PW7. Moreover DW5

categorically admitted in cross examination that she had only hearsay knowledge from PW7 regarding the altercation between PW7 and DW7 in respect of the quarters issues. So deposition of DW5 cannot be acted upon to conclude that there was enmity between DW7 and PW7 in respect of the quarters issue. It is interesting to note that DW5 went to the extent of deposing that she had come across the seniority list in the custody of residence association in respect of the seniority of the applicants of quarters. According to DW5 she happened to see such a list when it was brought by the association and position of PW7 was two or three in that seniority list. DW3 and DW7 who were the office bearers of the residence association had no case that a list showing the seniority of the applicants of quarters were in the custody of the residence association and seniority position of PW7 was two or three as stated by DW5. So it is crystal clear that DW5 was highly interested in giving some false evidence before this court in favour of accused. Considering the fact that DW5 is untruthful and interested, deposition of DW5 cannot be accepted by this court as proof of enmity between PW7 and DW7 as pleaded by the defence side.

19. DW7 also adduced evidence in such a way that PW7 was allotted a flat in-violation of the eligibility criteria and residents in the quarters got agitated and he brought that to the notice to the duty officer in DIG office and from there it was intimated to PW7 and thereafter and

PW7 was in inimical term with him. Accused did not examine the duty officer to whom he had appraised the complaints of residents in the quarters regarding the allotment of quarters to PW7. DW7 deposed that PW7 was allotted quarters due to the influence of DIG and false charge sheet was filed in this case due to the enmity of DIG to him. Ext.C3(a) was the complaint lodged by PW7 requesting the change of disciplinary authority. Ext.C3(a) was produced by DW2. DW2 produced Ext.C3(b) order also in Ext.C3(a). DW7 admitted that Ext.C3(a) complaint was lodged after he was released on bail in this case. On scrutinizing Exts.C3(a) and C3(b) it is evident that request of DW7 to change the disciplinary authority was not heeded to and instead enquiry officer was changed. There is nothing in Exts.C3(a) and C3(b) suggesting enmity between PW7 and DW7 in respect of the quarters issue. Accused could not produce any complaint which was filed by him in respect of the quarters issue of PW7 prior to this case. Accused did not examine the duty officer stated by him in his deposition in whose notice he had brought the resentment of residents of the association regarding the quarters allotment to PW7. In the absence of the above mentioned evidence, interested testimony of DW7 cannot be acted upon to conclude that there was enmity between PW7 and DW7 which led to the filing of Ext.P3 FIS. On evaluating the entire evidence adduced by accused and from the cross examination of prosecution witnesses it can be concluded

that accused failed to prove the enmity between PW7 and DW7 regarding the quarters issue. Hence it cannot be accepted that Ext.P3 was lodged due to that enmity as alleged by the accused.

20. The learned defence counsel vehemently argued that as per the evidence adduced in this case, PW1 participated in the meeting of Children Club on the next day and active participation of PW1 in that meeting clearly proved that no such incident alleged in this case had happened. DW3 and DW7 deposed that on 27/11/2019 PW1 participated in the meeting of Children's Club in the quarters. DW3 stated that no children stated any complaint in that meeting. DW7 also stated that PW1 participated actively in that meeting. As already mentioned PW1 and PW7 prepared to file complaint on 28/11/2019 as per the advise of PW17 as principal was on leave on that day even-though PW1 disclosed the incident to PW17 on 27/11/2019. No documentary evidence showing the conduct of the meeting of Children's Club with the participation of PW1 was produced in this case. Even then PW1 participated in the meeting of the Children's Club on 27/11/2019, that cannot be considered as a ground to suspect her evidence regarding the incident. The mere fact that PW1 participated in the meeting of Children's Club on 27/11/2019 is no ground to conclude that the incident stated by PW1 did not happen on 26/11/2019.

21. Another ground canvassed by the learned defence counsel was the delay in lodging Ext.P3. Ext.P3 was seen lodged on 28/11/2019. There is delay of two days in lodging Ext.P3. It is evident from the deposition of PW1 that she did not reveal the incident to anyone on 26/11/2019 due to fear and due to the fact that her sister's birthday was on that day and children would come. PW7 also corroborated that on 26/11/2019 there was birthday party of her younger child. Deposition of PW17 made it clear that PW4 revealed the incident to her on 27/11/2019 and she advised to lodge complaint on 28/11/2019 as PW8 who was the Principal was on leave. The deposition of PW4 that PW8 was on leave was corroborated by the evidence of PW8. Deposition of PW8 shows that she was on leave on 27/11/2019 and PW1 and PW7 gave her complaint on 28/11/2019 and police came to school and recorded statement of PW1 due to the intervention of PW8. Nothing has been forthcoming from the cross examination of PW1, PW7, PW8 and PW14 to discredit their version regarding the revelation of the incident and the reason for lodging Ext.P3 on 28/11/2019. Deposition of PW1 clearly proved the reason for not revealing the incident on the date of incident itself and deposition of PW1, PW7, PW8 and PW17 explained the reason for lodging complaint on 28/11/2019. The enmity between PW7 and DW7 which was canvassed by the accused as the reason for filing this case was not proved. Hence this court has no hesitation to accept the

explanation which has been forthcoming from the deposition of PW1, PW7, PW8 and PW17 for the delay in lodging Ext.P3. It can be summed up that prosecution succeeded in proving plausible explanation for the delay in lodging Ext.P3 on 28/11/2019. Hence delay in lodging Ext.P3 cannot be relied upon by the defence side to cast a doubt on the prosecution case.

22.The learned defence counsel argued upon some anomaly in the seizure of Ext.P2 complaint by PW18 to argue that investigation was not proper and was conducted to implicate accused in this case. PW8 deposed that she forwarded Ext.P10 covering letter along with Ext.P2 complaint to the police station. As per the deposition of PW8 he seized Ext.P2 complaint as per Ext.P16 mahazer. According to PW18 copy of Ext.P2 was actually forwarded to police station as per the letter of PW8 and original Ext.P2 was seized thereafter as per Ext.P16. On perusing Ext.P14 first information report it can be seen that forwarding letter of PW8 send with complaint was mentioned in the FIR as received and allotted with No.438 WPTN/B3/2019. Ext.P10 was seen written with that number. Copy of Ext.P2 was seen forwarded with Ext.P14 FIR to the court on 29/11/2019. Ext.P2 complaint was seen produced before the court on 30/11/2019. As per Ext.P16, Ext.P2 was seized on 29/11/2019. On scrutinizing the whole evidence adduced by the prosecution in respect of seizure of Ext.P2 it can be understood that there was nothing in

Ext.P14 to conclude that Ext.P2 or copy of Ext.P2 was forwarded with Ext.P10. But copy of Ext.P2 was seen filed along with Ext.P14 on 29/11/2019 and original Ext.P2 was produced before the court only on 30/11/2019. If original Ext.P2 was forwarded along with Ext.P10, PW18 need not take it into custody as per Ext.P16. Production of copy of Ext.P2 along with Ext.P14 on 29/11/2019 and production of Ext.P2 on 30/11/2019 strengthened the version of PW18 that copy of Ext.P2 was forwarded with Ext.P10 and Ext.P2 was actually seized thereafter as per Ext.P16 mahazer. This court could not find any anomaly of such a nature which affected the credibility of the prosecution case in the seizure of Ext.P2.

23.The learned defence counsel vehemently argued that Ext.P14 FIR was registered only at 18.55 hours eventhough Ext.P3 first information statement was recorded at 4.00 pm on that day. PW13 who registered Ext.P14 first information report deposed that information received 6.55 pm noted in Ext.P14 was actually the time at which Ext.P3 was produced in the police station. It is seen from GD No.20-28/11/2019 at date and time 28/11/2019 18:14 hours in Ext.C2 that Ext.P14 FIR was registered. It is further seen from GD No.22-28/11/2019 at date and time 28/11/2019 18:55 hours that statement of victim was recorded and Ext.P14 was registered. Such a discrepancy in Ext.C2 was not asked to DW2. It is crystal clear from the deposition of PW1, PW7, PW8, PW12,

PW15 and PW17 that Ext.P3 statement was recorded at about 4.00 pm on 28/11/2019 at the school of PW1. Since Ext.P14 was seen registered within hours of recording Ext.P3 and the difference in the time noted in the registration of Ext.P14 in the two entries in Ext.C2 mentioned above was less than an hour, such a discrepancy in Ext.C2 cannot be considered by this court to reject the unblemished testimony of PW1 regarding the incident.

24.Defence side relied upon the deposition of DW4 and DW5 to contend that PW1 disclosed the incident as not true to DW4 and DW5 after the incident. DW5 deposed that PW1 used to come to her house and stated that no such incident alleged in this case happened. It was already found that DW5 is an interested witness and not a truthful witness. Moreover DW5 was not present with PW1 at the time of incident. Hence deposition of DW5 on that score cannot be accepted. DW4 is daughter of DW7. Her deposition is that PW1 was her friend and on 28/11/2019 she came to know when she was in the school that accused was trapped in a case and on 29/11/2019 her mother and DW4 went to the house of PW1 and met her and at that time PW1 told her that DW7 did not touch her and PW1 informed them crying that her mother actually created this case. It is pertinent to note that DW4 was not present in her house at the time of incident. Nothing has been forthcoming from the deposition of PW1 and other evidence adduced in

this case to prove that PW7 lodged false complaint following the quarters issue. DW4 being the daughter of accused can only be considered as a witness highly interested in getting a judgment in favour of the accused. In the absence of any convincing and acceptable evidence, deposition of DW4 also cannot be accepted as true by this court to conclude that PW7 made a revelation to her regarding the false nature of this case.

25.The reliability and acceptability of the evidence adduced by PW 1 is to be considered at this juncture. The grounds of challenge raised by accused to the deposition of PW 1 and the prosecution evidence fell to the ground. PW1 was very consistent in deposing the incident. Defence side was not able to break the evidence of PW1 eventhough she was put to rigorous and the lengthy cross examination. Nothing has been forthcoming from the cross examination of PW1 to conclude that accused was implicated in this case. On evaluating the entire deposition of PW 1 in the light of other evidence by the prosecution and defence, I conclude that PW 1 is a truthful witness. Hence deposition of PW1 is reliable and acceptable .

26.The learned defence counsel argued that accused is a man of good character as evident from Exts.D1, D2, D3 series and D4 series. DW7 deposed that he got golden medal from Chief Minister in the year 2018 as per Exts.D1 and D2. DW7 got 43 good service entry and he produced 26 of such good service entry as Ext. D3 series. According to

DW7 he got 6 cash award as per Ext.D4 series. Exts.D1 and D2 are the Government order pertaining to the award of police medal to police officers including accused. Ext. D3 series are the good service entry for the excellent performance of the police officers including accused. Ext.D4 series are the orders awarding cash reward for the excellent performance of police officers including accused. It is necessary to consider whether deposition of DW7 and Exts.D1 to D4 can be considered as evidence of good character within the meaning of section 53 of Evidence Act. In **Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra** (1965 KHC 552) – the Hon’ble Supreme Court held that “The question is what is the evidentiary value of good character of an accused in a criminal case. The relevant provisions are S.53 and the explanation to S.55 of the Evidence Act. They read : “S.53. In criminal proceedings the fact that the person accused is of a good character is relevant. Explanation to S.55. In S.52, 53, 54 and 55, the word “character” includes both reputation and disposition: but except as provided in S.54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown”. It is clear from the said provisions that the evidence of general reputation and general disposition is relevant in a criminal proceeding. Under the Indian Evidence Act, unlike in England, evidence can be given both of general character and general disposition.

Disposition means the inherent qualities of a person; reputation means the general credit of the person amongst the public. There is a real distinction between reputation and disposition. A man may be reputed to be a good man, but in reality he may have a bad disposition. The value of evidence as regards disposition of a person depends not only upon the witnesses' perspicacity but also on their opportunities to observe a person as well as the person's cleverness to hide his real traits. But a disposition of a man may be made up of many traits, some good and some bad, and only evidence in regard to a particular trait with which the witness is familiar would be of some use. Wigmore puts the proposition in the following manner.

“Whether, when admitted, it should be given weight except in a doubtful case, or whether it may suffice of itself to create a doubt, is a mere question of the weight of evidence, with which the result of admissibility have no concern.” But, in any case, the character evidence is very weak evidence; it cannot outweigh the positive evidence in regard to the guilt of a person. It may be useful in doubtful cases to tilt the balance in favour of the accused or it may also afford a back ground for appreciating his reactions in a given situation. It must give place to acceptable positive evidence. The opinion expressed by the witnesses does credit to the accused, but, in our view, in the face of the positive evidence we have already considered, it cannot turn the scale in his favour”. It is evident

from the above cited decisions that what is admissible under section 53 of Indian Evidence Act is evidence of general reputation and general disposition. Excellent track records of a person in his career cannot be considered as an evidence of general reputation and general disposition. Moreover evidence of DW7 is not sufficient to conclude that he is a man of good character. Hence deposition of DW7 and Exts.D1 to D4 do not help accused to prove that he is a man of good character. Moreover there is positive evidence from the deposition of PW1 to prove the offending act of the accused. Hence the good character of accused pleaded by the learned defence counsel would not help the accused to escape from the clutches of law in this case.

27.The next aspect to be considered is whether accused was known and identified as a police officer . It is evident from the deposition of PW1 and PW7 that they were residing in the police quarters in which accused was also residing. PW1 categorically deposed that accused was a police official and he was known as Assistant Sub inspector of police. PW7 also deposed that accused was known as Sub inspector of Police and was residing in police quarters in that capacity. Deposition of PW1 and PW7 that accused was known as Sub Inspector of police and was residing in the police quarters were further corroborated by the evidence of DW3 and DW7. DW7 also admitted in his evidence that he was Sub inspector, Bomb Detection and Disposal

Squad of Kerala Police and was residing in the police quarters where PW1 and PW7 were residing. It is well evident from from the deposition of PW1, PW7 and DW1 and DW7 that accused was known and identified as a police officer in the police quarters where PW1 and PW7 were residing. So it can be safely concluded that accused was known and identified as police officer in the police quarters where PW1 and PW17 were residing at the time of incident.

28. The learned defence counsel relying upon the deposition of PW1 argued that the conduct of accused to PW1 on 26/11/2019 even if accepted for the sake of argument can only be considered as a caretaking behaviour and not an act with sexual intent. The learned defence counsel drew the attention of this court to some part of the deposition of PW1 to buttress his contention. The said part of deposition of PW1 can be discussed in detail for a better evaluation. PW1 admitted during cross examination that on 14/11/2019 she was the president in the cultural programmes in connection with children's day in quarters and her speech on that day was prepared by accused and was well appreciated. PW1 admitted that accused told on that day that PW1 would become an IAS or IPS officer. PW1 maintained with respect to the incident in this case that accused touched her badly. According to PW1, she was not aware of the seriousness of such a conduct of accused and PW17 made her aware of its seriousness. The above said evidence of PW1 were interpreted by

the defence counsel to contend that accused was a person truly interested in the educational prospects of PW1 and PW1 misunderstood the conduct of accused as a bad one due to the influence of PW17. The factors that accused prepared the speech of PW1 on children's day and praised her in public and PW1 understood the seriousness of the bad conduct of accused on having enlightened by PW17 as evident from the deposition of PW1 cannot be interpreted to assume that PW1 had no sexual intent in touching PW1 and his conduct was only a care-taking behaviour.

29.The learned defence counsel relied upon the decisions in **Ramlal N.R. v. State of Kerala and Another** (2020 (1) KHC 249) and **Sushobhit Jain and Another v. State of Madhya Pradesh** (2021 KHC 3651) to argue that act of the accused explained by PW1 cannot be considered as an act with sexual intent. In **Ramlal N.R v. State of Kerala and Another** (2020 (1) KHC 249) the allegation was that accused who was the operator of the school van of victim took a nearby to the victim and hit her hands with his shoulders. That case was quashed by the Hon'ble High Court on ground that there was drastic improvisation and embellishment from her initial version. The facts of the case in **Ramlal** and the present case were entirely different. Moreover no drastic improvisation and embellishment from the initial version of PW1 in the evidence adduced before the court could be pointed out by the learned defence counsel. PW1 was very consistent in her version regarding the

conduct of the accused throughout. Hence the decision in Ramlal mentioned supra cannot come to the rescue of the accused in this case.

30. In Sushobhit Jain and Another v. State of Madhya Pradesh the allegation was that accused entered the house of the victim and caught her hand with an evil intent and abused her. In that case the Hon'ble Madhya Pradesh High Court held that there is a question that the second part of S.7 raises and the same is with regard to "any other act with sexual intent which involves physical contact without penetration". Would the mere holding of the hand of a child, which is "Physical Contact without Penetration", result in the commission of an offence defined under S.7 of the POCSO? If it is so interpreted, it would imperil many a young person with loss of liberty in times where courtships may involve at the least, the holding of hands. With increasing inermingling of genders and diminishing prudishness in society, many in their later teens are having physical contact with the opposite gender. In such a situation, sending to prison u/s. 8 of the POCSO, a young adult, barely out of his or her teens, merely for holding the hands of the child, with or without his or her consent, is a dilemma that courts encounter. It was further held that in this case, undoubtedly, there has been no contact with the vagina, anus or breast of the prosecutrix as per the 164 statement of the prosecutrix. Though, holding of the hand of the prosecutrix can be termed as physical contact without penetration, it will not constitute an

offence u/s.7 of the POCSO in view of the discussion herein above and therefore, prima – facie the applicants cannot be held punishable U/s.8 of the POCSO Act. **The** facts of the case and conduct of the accused in Sushobhit Jain case was entirely different from the facts and conduct of the accused in this case. Hence the decision in Sushobhit Jain case is not applicable to the present case.

31. It is proved from the deposition of PW1 that on 26/11/2019 at about 5 to 5:15 p.m. accused touched the shoulder of PW1 and made her sit on his lap and when she attempted to go accused put his hand around her shoulder and held her close to his body. What is punishable as sexual assault is doing any act involving physical contact with sexual intent. So it is highly necessary to consider whether prosecution succeeded in proving that accused did the above act involving physical contact with sexual intent. Since sexual intent is something within the minds of the offender, such intention of the offender can be inferred from the nature of the act committed by him. The very nature of the act committed by accused is to be considered to infer whether it was done with sexual intent. Defence counsel vehemently argued that the act of the accused even if admitted can be considered only as care taking behaviour. As already found PW 1 was aged 16 years at the time of incident. If the act of the accused is mere covering up of his hand around the shoulder of child victim and touching her shoulder, the

contention of the learned defence counsel assume significance. But the act of the accused as proved from the deposition of PW1 was not mere putting of his hand around the shoulder of PW1. As per the deposition of PW 1, accused touched the shoulder of child victim and then made her sit on his lap and when she attempted to go, put her hand around the shoulder of PW1 and held her close to his body. The act of the accused i.e. touching the shoulder of the PW1 aged 16 years and making her sit on his lap and putting his hand around the shoulder of PW1 and held her close to his body when nobody was in his house cannot be accepted as care taking behaviours as contended by the learned defence counsel.

32. 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 act. Prosecution succeeded in proving the foundation and facts in this case. Hence it can be presumed from the nature of the acts committed by accused and with the aid of Section 30 of POCSO Act that accused touched the shoulder of PW1 and made her sit on his lap and put his

hand around her shoulder and held her close to his body about 5 to 5.15 p.m. on 26/9/2019 at his quarters and committed acts involving physical contact with PW 1 with sexual intent. The plea of false implication raised by the accused was found to be not proved. Accused failed to rebut the presumption drawn by this court in favour of the sexual intent of accused while touching PW1 at about 5 to 5.15 p.m. on 26/11/ 2019 at his quarters.

33. On evaluating the entire evidence adduced by the prosecution, it can be concluded that prosecution succeeded in proving that accused who was known and identified as a police officer committed sexual assault on PW 1 at 5 to 5.15 pm at his quarters . Prosecution succeeded in proving that accused committed the offence under sections 10 read with 9(a) (iv) of POCSO Act.

34. Charge under section 354A(1)(i) of Indian Penal Code was also framed in respect of the offending act of the accused. As already found accused committed sexual assault on PW1. The acts of accused constituting sexual assault as proved from the statement of PW1 can no doubt be considered act involving physical contact and advances involving unwelcome and explicit sexual overtures within the ambit of sexual harassment in section 354A(1) (i) of Indian Penal Code which is punishable under section 354A(2) of Indian Penal Code. My predecessor in office omitted to include the correct penal provision in that head of

charge. Instead accused was stated as having committed the offence under section 354 A(1)(1) of Indian penal code in the first head of charge. Section 354A(1) (i) is actually definition clause which define the acts which can be considered as sexual harassment. Its punishment is provided under section 354(2)of Indian penal code. No failure of justice was occasioned to accused due to the omission to include correct penal provision since the acts constituting the offence under section 354A (2) was correctly included in that head. Since the acts of the accused constituting the offence under section 354 A(2) was correctly stated and section 354A(1) (i) of Indian Penal Code was in the head of charge, the error in stating the correct penal provision can only be considered as a mere irregularity which is curable under section 464(1) of Criminal Procedure Code as no failure of justice was occasioned thereby. It can be held that accused committed the offence under section 354 A(2) of the Indian Penal Code. Points number 1 and 2 found in favour of the prosecution.

35. Points 3 and 4 : Since points no.3 and 4 are inter connected, these points are considered together. Prosecution alleged that accused made touch of sexual nature and used words of section nature to PW1 knowing that she belongs to scheduled tribe. It was already found under the discussion on point No.2 that accused touched PW1 with sexual intent. The next expect to be considered is whether accused used

words of sexual nature towards PW 1. As per the deposition of PW1, on the date of incident ie. 26-11-2019 accused asked her to give a kiss to her by him and told her that she was the most beloved daughter to him. It is evident from the deposition of PW1 that above words were used by accused in the course of committing sexual assault on her. According to PW1 in her first statement to the police, she omitted to state that accused asked her to give a kiss to her by him. Instead she stated in Ext.P3 that accused asked her to give a kiss to him. PW1 explained that such an omission happened due to the anxiety at the time of giving Exhibit P3. Nothing has been forthcoming from the cross examination of PW1 to doubt the explanation given by her in respect of the omission in stating the exact towards of accused to her while committing sexual assault on her in Ext.P3. Explanation given by PW1 regarding that omission is plausible . The omission in stating the exact towards of accused in Ext.P3 cannot be considered as a material contradiction affecting the credibility of the evidence by PW1 before the court in view of the explanation given by her. The words of the accused ie. to ask her to give a kiss to her by him while committing sexual assault on her can only be considered as words of sexual nature. So it can be considered as proved from the deposition of PW1 that accused used the words of sexual nature also to PW1 on that day while committing sexual assault to her.

36.The crucial aspect to be considered is whether prosecution succeeded in proving that accused who belongs to Hindu Nair community made touch of sexual nature and used words of sexual nature to PW1 knowing that she belongs to Hindu community which is a schedule tribe. As per the deposition of PW1 and PW7, PW1 belongs to Hindu Kurichiya community. The said versions of PW1 and PW7 were corroborated by the evidence of PW10. PW10 is Tahsildar, Thiruvananthapuram, who issued Ext.P12 community certificate of PW1. According to PW 10, PW1 belongs to Hindu Kurichiya Community which is a scheduled tribe. PW 10 stated the same in Ext.P12 community certificate. PW 3 who was the deputy Tahsildar, Nedumangad Taluk office deposed that accused belongs to Hindu Nair community and he issued Exhibit P6 to that effect. No cross of PW 3 was recorded on the submission of defence side. It can be concluded from the deposition of PW 3 that accused belongs to Hindu Nair community. On evaluating the deposition of PW1, PW7, PW3 and PW10 and Exts.P6 and P10, it can be summed up that prosecution established that accused belongs to Hindu Nair community and PW1 belongs to Hindu Kurichiya community which is a scheduled tribe.

37.Knowledge of the accused regarding the caste of PW 1 is very decisive in determining whether accused had submitted the offences

punishable under section 3 (1) (w) (i) and 3(1)(w)(ii) of SC/ST Act. There is nothing in the evidence of PW1 and PW7 to prove that accused knows the caste of PW1. Evidence of PW1 and the PW7 only proved that PW1 and PW7 were residing in the very same quarters where accused was residing. DW7 also stated the same. Deposition of PW1 and PW7 established that they had come to reside in the quarters where the incident had happened in connection with their job. As per the deposition of PW7 her native place is in Kannur and her husband was native of Kozhikode. In order to attract the presumption under section 8(c) of SC/ST Act regarding the knowledge of the accused in respect of the caste of PW1, prosecution has to prove the foundational facts that accused was having personal knowledge of PW1 and her family. The knowledge of accused about PW1 and PW7 who had come to reside in the police quarters in Thiruvananthapuram from Kannur cannot be interpreted to assume that accused was having personal knowledge of PW1 and her family. Prosecution failed to prove that accused knew the caste of PW1 and was having personal knowledge of PW1 and her family to draw the presumption regarding his knowledge in respect of the caste of PW1 as provided under Section 8(c) of SC/ST Act. As already mentioned prosecution cannot succeed in proving that accused committed the offences under section 3(1) (w) (i) and 3(1) (w) (ii) of SC/ST Act without proving the knowledge of the accused regarding the caste of

PW1. Prosecution failed in proving that accused knows that PW1 belongs to scheduled tribe. So this could has no hesitation to conclude that prosecution failed to prove that accused who belongs to Hindu Nair community made touch of sexual nature and used words of sexual nature to PW1 on 26/11/2019 knowing that PW1 belongs to scheduled tribe. Points 3 and 4 found against prosecution.

38. Point No.5 : In view of the finding on points 3 and 4 accused is found not guilty of the offences punishable under section 3(1)(w) (i) and section 3(1)(w) (ii) of SC/ST (POA) Act. Hence accused is acquitted under section 235(1) Cr.PC for the offences punishable under section 3(1)(w) (i) and section 3(1)(w) (ii) of SC/ST (POA) Act

39.In view of the finding on points 1 and 2 accused is found guilty of the offences punishable under section 10 read with 9(a)(iv) of Protection of Children from Sexual Offences Act and sections 354A(2) read with 354A(1)(i) of Indian Penal Code. Hence accused is convicted under section 235(1) Cr.PC for the offences punishable under section 10 read with 9(a)(iv) of Protection of Children from Sexual Offences Act and sections 354A(2) read with 354A(1)(i) of Indian Penal Code.

40.Considering the gravity of the offences committed by accused who was a police officer on PW1, this court is satisfied that it is not expedient in the interest of justice to invoke the benevolent provision of Probation of Offenders Act.

41.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 **29th day of April, 2024.**

REKHA.R
SPECIAL JUDGE.

42. Accused was heard on the question of sentence under section 235(2) Cr.PC. Accused submitted that he was aged 54 years. As per the submission of the accused, his mother is aged 84 years and he has wife and two daughters and wife has no job. Elder daughter of the accused is a house surgeon and younger daughter is preparing for entrance examination. Accused was removed from service. Accused is now running a petty shop for his livelihood. The learned Special Prosecutor prayed for imposing maximum sentence. The learned counsel for accused prayed for imposing the minimum sentence provided under the statute in view of the excellent service records of accused. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his

life but also a concavity in social fabric. The punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. (**Shyam Narain v. State of NCT, Delhi, 2013 KHC 4425**). Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. (**Sevaka Perumal v. State of T.N, 1991 (3) SCC 471, State of M.P. v. Bablu, 2014 KHC 3838, State of Punjab v. Bawa Singh, 2015 KHC 4036**). Submissions of the accused during the hearing on sentence cannot be considered as mitigating factors in view of the gravity of offence committed by accused. Considering the gravity of the offence committed by accused who was a police officer whose duty was to avert crimes and to ensure safety of fellow citizens, this court is of the definite view that term of punishment in between the minimum and maximum punishment provided by the statute should be imposed on accused to prevent recurrence of similar offences and to deter potential offenders from committing similar offences.

43.Accused is convicted for the offence under section 354A(2) read with section 354A(1)(i) Indian Penal Code for part of the acts when combined constituted the offence under section 10 read with 9(a)(iv) of Protection of Children from Sexual Offences Act. In view of section 71 of Indian Penal Code and section 42 of Protection of Children from

Sexual Offences Act, punishment is imposed for the offence punishable under section 10 read with 9a)(iv) and punishment is not imposed for the offence punishable under section 354A(2) read with section 354(1)(i) of Indian Penal Code.

44.In the result,

Accused is sentenced to undergo rigorous imprisonment for a period of 6 years and to pay fine of Rs.25,000/- (Rupees Twenty five 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(a)(iv) of Protection of Children from Sexual Offences Act.

45.The fine amount if remitted by the accused or if realized from the accused shall be paid to PW1 as compensation under section 357(1) (b) of Criminal Procedure Code.

46.Accused was in judicial custody for the period from **02/12/2019 till 21/12/2019**. Accused is entitled to get set off for **20** days against the substantive term of imprisonment.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the Open Court on this the **29th day of April, 2024**.)

REKHA.R
SPECIAL JUDGE.

Appendix

Prosecution witnesses

PW1. 11/10/2023	Child victim
PW2. 12/10/2023	Balakrishnan.C.T, Mahazer witness
PW3. 12/10/2023	Suresh Kumar.S, Village Officer Koliyacode.
PW4. 12/10/2023	Deepa.O, Official witness
PW5. 12/10/2023	Jayachandran V.R, Registrar of Birth and Death, Thalassery Corporation.
PW6. 12/10/2023	Dr.Aisha.S.Govind, Medical witness
PW7. 13/10/2023	Mother of child victim
PW8. 13/10/2023	Biju.L.P, Principal of Peroorkada G.G.H.S.S.
PW9. 13/10/2023	Sobhana.R, Official witness
PW10.13/10/2023	G.K.Suresh Kumar, Tahsildar of Thiruvananthapuram.
PW11. 13/10/2023	Ratheesh.M, Police witness
PW12. 13/10/2023	Remani.K.K, Police witness
PW13. 13/10/2023	Sanju Joseph, Police witness
PW14. 17/10/2023	Dr.Anupama.V.T, Medical witness
PW15. 17/10/2023	Niranya Ramesh.R.S, Police witness
PW16. 27/10/2023	Bitter.C, Teacher, Govt. Higher Secondary School, Peroorkada.
PW17. 17/11/2023	Suja Thomas.L.Y, Teacher, Govt. Higher Secondary School, Peroorkada.
PW18. 17/11/2023	V.Saijunath, Police witness
PW19. 22/11/2023	Suneesh Babu.D.S, Assistant Commissioner of Police, Cantonment, Thiruvananthapuram.
PW20. 14/03/2024	L.Saloman, Special Armed Police Commandant Thiruvananthapuram.

Prosecution Exhibits :-

- P1.11/10/2023 Copy of Secondary School Leaving Certificate of victim proved by PW1 on 11/10/2023.
- P2. 28/11/2019 Complaint of victim proved by PW1 on 11/10/2023.
- P3. 26/11/2019 First Information Statement proved by PW1 on 11/10/2023.
- P4. 29/11/2019 164 statement of victim proved by PW1 on 11/10/2023.
- P5. 06/12/2019 Scene mahazar proved by PW2 on 12/10/2023.
- P6. 23/12/2019 Community certificate of accused proved by PW3 on 12/10/2023.
- P7. 18/12/2019 Residential certificate proved by PW4 on 12/10/2023.
- P8. 25/01/2020 Extract of Birth Register of victim proved by PW5 on 12/10/2023.
- P9. 06/12/2019 Potency certificate of accused proved by PW6 on 12/10/2023.
- P10. 28/11/2019 Covering letter issued to Circle Inspector of Police, Peroorkada proved by PW8 on 13/10/2023.
- P11.21/01/2020 Scene plan proved by PW9 on 13/10/2023.
- P12. 23/01/2020 Community certificate of victim proved by PW10 on 13/10/2023.
- P13. 29/01/2020 Duty certificate of accused proved by PW11 on 13/10/2023.
- P14.28/11/2019 First Information Report proved by PW13 on 13/10/2023.
- P15. 29/11/2019 Medical examination report of victim proved by PW14 on 17/10/2023.

- P16. 29/11/2019 Mahazer (inventory) proved by PW16 on 27/10/2023.
- P17. 02/12/2019 Report (section added) proved by PW18 on 17/11/2023.
- P18. 04/12/2019 Address report of accused proved by PW19 on 22/11/2023.
- P19. 04/12/2019 Report (charge taken) proved by PW19 on 22/11/2023.
- P20. 05/12/2019 Report (formal arrest) proved by PW19 on 22/11/2023.
- P21. 05/12/2019 Arrest memo of accused proved by PW19 on 22/11/2023.
- P22. 13/12/2019 Correction report (FIS of victim) proved by PW19 on 22/11/2023.
- P23. 31/01/2020 Section added report proved by PW19 on 22/11/2023.

Defence witnesses:-

- DW1. 01/02/2024 Jalajakumari.M.S., Sxetion Officer
Home Department
- DW2. 01/02/2024 Rajesh.H, Junior Superintendent
Police Headquarters, G-Branch.
- DW3. 01/02/2024 Praveen.E.B, Havildar, Police Department
- DW4. 01/02/2024 Nidhila Sajeev.A
- DW5. 01/02/2024 Rageena.P
- DW6. 02/02/2024 Arun.G, SHO, Peroorkada Police Station
- DW7. 02/04/2024 Sajeev Kumar.S.L

Defence Exhibits:-

- D1. 25/01/2008 Order in G.O.(Rt)No.274/2008/Home proved by DW7 on 02/04/2024.
- D2. 25/08/2008 Proceedings of the Inspector General of Police, State Crime Records Bureau, Thiruvananthapuram proved by DW1 on 02/04/2024.

D3 series

- (a) 31/05/1998 Proceedings of the Commandant, SAP Thiruvananthapuram-5 proved by DW7 on 02/04/2024.
- (b) 14/02/2004 Proceedings of the Inspector General of Police, State Crime Records Bureau Thiruvananthapuram proved by DW7 on 02/04/2024.
- (c) 19/01/2005 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (d) 02/02/2005 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (e) 29/04/2005 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (f) 31/08/2005 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (g) 22/09/2005 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (h) 29/09/2005 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.

- (i) 25/01/2006 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (j) 23/08/2006 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (k) 06/10/2006 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (l) 07/02/2007 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (m) 09/02/2007 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (n) 13/02/2007 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (o) 21/02/2007 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (p) 17/10/2007 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.

- (q) 17/10/2007 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (r) 26/12/2007 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (s) 01/02/2008 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (t) 03/2008 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (u) 28/05/2008 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (v) 28/05/2008 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (w) 09/10/2009 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.
- (x) 21/01/2017 Proceedings of the Inspector General of Police (Internal Security), Special Branch CID Headquarters, Thiruvananthapuram proved by DW7 on 02/04/2024.

- (y) 06/03/2017 Proceedings of the Superintendent of Police (Security), Special Branch CID Headquarters Thiruvananthapuram proved by DW7 on 02/04/2024.
- (z) 17/08/2017 Proceedings of the Superintendent of Police (Security), Special Branch CID Headquarters Thiruvananthapuram proved by DW7 on 02/04/2024.
- D4 series:
- D4(a) 16/04/2021 Proceedings of the Commandant, SAP Thiruvananthapuram-5 proved by DW7 on 02/04/2024.
- D4(b) 09/06/2005 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- D4(c) 31/08/2005 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- D4(d) 19/08/2006 Proceedings of the Inspector General of Police, State Crime Records Bureau Thiruvananthapuram proved by DW7 on 02/04/2024.
- D4(e) 17/10/2007 Proceedings of the Superintendent of Police Police Computer Centre, Thiruvananthapuram proved by DW7 on 02/04/2024.
- D4(f) 27/06/2008 Proceedings of the Superintendent of Police State Crime Records Bureau, Thiruvananthapuram proved by DW7 on 02/04/2024.

Court Exhibits :

- C1. 28/09/1976 Copy or Government order proved by DW1 on 01/02/2024.
- C2. 28/11/2019 General Diary Register proved by DW6 on 02/02/2024.
- C3(a) 10/03/2020 Complaint of accused proved by DW2 on 02/02/2024.
- C3(a) 16/06/2020 Proceedings of the State Police Chief Police Headquarters, Thiruvananthapuram proved by DW2 on 02/02/2024.
- C3(c) 02/02/2024 Certificate Under Section 65B of Evidence Act) proved by DW2 on 02/02/2024.
- C4(a) 10/06/2018 Proceedings of the Commandant, Special Armed Police, Thiruvananthapuram proved by PW20 on 14/03/2024.
- C4(b) 14/03/2024 Certificate Under Section 65B of Evidence Act) proved by PW20 on 14/03/2024.

Material Objects :- Nil

REKHA.R
SPECIAL JUDGE.

Judgment in SC.485/2020

Dated: 29/04/2024