

IN THE FAST TRACK SPECIAL COURT(POCSO)
THIRUVANANTHAPURAM.

Present :- Smt. REKHA R, SPECIAL JUDGE.

Monday, 27th November, 2023 (6th Agrahayana, 1945)

SESSIONS CASE No.455/2022

(Crime No.285/2021 of Pallikkal Police Station)

Complainant : State - represented by the Inspector
of Police, Pallikkal of Police Station
Thiruvananthapuram Rural.

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

Accused 1 : Sisupalan, aged 58/21,

2. xxxxxxxxxxxxxxxxxxxxxxxx
Mother of child victim.

(By Adv.Sri.Rajeekanth. R.S)

Charge : Under section 17 read with section 16(3) of
section 6 read with section 5(l) and section 17
read with section 16(3) of section 6 read with
section 5(m) and section 21 of Protection of
Children from Sexual Offences Act.

Plea : Not guilty

Finding : Guilty

Sentence/
order : Accused No.2 is sentenced to undergo **rigorous imprisonment** for a period of **20 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand) and in default of payment of fine to undergo **rigorous imprisonment** for a further period of **2 months** for the offence punishable under section 17 read with section 16(3) of section 6 read with section 5(l) of Protection of Children from Sexual Offences Act and to undergo rigorous imprisonment for **20 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand only) and in default of payment of fine to undergo rigorous imprisonment for a further period of **2 months** for the offence punishable under section 17 read with section 16(3) of section 6 read with section 5(m) of Protection of Children from Sexual Offences Act and to undergo **rigorous imprisonment for 6 months** for the offence punishable under section 21 of Protection of Children from Sexual Offences Act. Substantive sentences shall run concurrently.

Accused No.2 was in judicial custody for the period from **19/04/2021** to **06/09/2021**. Accused No.2 is entitled to get set off for 4 months and 21 days against the substantive term of imprisonment.

Invoking the power under section 357- A of the Code of Criminal Procedure Code, 1973 and section 33(8) of Protection of Children from sexual Offences Act, this court hereby makes recommendation to the

District Legal Services Authority, Thiruvananthapuram for adequate compensation to PW12.

Description of the accused

Sl.No.	Name of accused	Father's name	Religion/Caste	Occupation	Age	Residence
1	Mother of child victim	xxxxxx	Hindu	Nil	41	xxxxxx

Date of

Occurrence	Complaint	Apprehension	released on bail	Committal	Commencement of trial	Close of trial	Sentence/order
03/2018 to 9/2019	14/02/22	19/04/21	07/09/21	Nil	12/05/23	22/11/23	27/11/23

This case having been finally heard on 22/11/2023 in presence of the above counsel and the court on 27/11/2023 delivered the following :

JUDGMENT

Accused No.2 faced trial for charges under section 17 read with section 16(3) of section 6 read with section 5(l) and section 17 read with section 16(3) of section 6 read with section 5(m) and section 21 of Protection of Children from Sexual Offences Act,2012.

2.Prosecution case in brief is as follows:-

Accused No.1 inserted his finger into the vagina of child victim, penetrated his penis into the vagina and mouth of the child victim several

days during the period in between March 2018 to September 2019 while child victim was studying in first and second standard. Accused No.1 committed aggravated penetrative sexual assault on child victim who was only 7 years of old at Kavil house in which accused No.1 was residing and at the house of child victim. Accused No.2 who is mother of child victim abetted the commission of aggravated penetrative sexual assault on child victim several days by accused No.1 by intentionally aiding accused No.1 in penetrating his penis into the vagina and mouth of child victim and in inserting his finger into the vagina of child victim in front of her at the house of the child victim and at the house of accused No.1. Accused No.2 intentionally aided accused No.1 in committing aggravated penetrative sexual assault on child victim by transporting child victim to the house of accused No.1. Accused No.2 who had knowledge failed to report the commission of aggravated penetrative sexual assault on child victim by accused No.1 to police. Accused No.2 had thus committed the above mentioned offences.

3.Sub Inspector of Police, Poojappura Police Station registered first information report number 74/202 against accused 1 and 2 and another accused on the basis of first information statement given by child victim. Thereafter case records were sent to Pallikkal Police Station within which limits the offences had committed. Accordingly Sub Inspector of Police, Pallikkal Police Station re-registered the case as

crime No.281/2021 against accused No1 and 2 in this case and another person. Inspector of Police, Pallikkal Police Station again registered crime No.285/2021 against accused No.1 on the basis of the statement of child victim recorded subsequently. After conducting investigation, Inspector of Police, Pallikkal Police Station 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 No.1 and 2 in this case. Cognizance was taken for the offences punishable under sections 376(2)(n)(f), 376(3), 376AB, 109, 506(i) of Indian Penal Code, section 4(2) read with section 3(a), 3(b), 6 read with section 5(l), 5(m), 5(n), 5(p), 8 read with section 7, 10 read with section 9(l), 9(m), 9(p), 17 read with section 16, 21 read with section 19(1) of Protection of Children from Sexual Offences Act and section 75 of Juvenile Justice Act and summons was issued Accused No.1 and 2. Meanwhile accused No.1 expired. Copy of death certificate of accused No.1 was produced. Thereafter case was transferred to this court for trial and disposal. Accused No.2 appeared. Accused No.2 was on bail. Accused No.2 was served with the copy of the prosecution records. After appearance of accused No.2, 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, charge under section 21 of Protection of Children from Sexual Offences Act

was framed in English, read over and explained to accused No.2 in Malayalam to which she pleaded not guilty.

4. To proves its case, prosecution examined PW1 to PW20 and got marked Exts.P1 to P27. CW2, CW8 and CW2 were given up by the learned Special Public Prosecutor. Prosecution evidence was closed. Accused No.2 was questioned under section 313 of Criminal Procedure Code. Accused No.2 filed additional statement during the questioning under section 313 of Criminal Procedure Code. Accused No.2 stated in the additional statement that she was maintaining her two daughters out of meagre income she received from her job as domestic help. On 17/09/2019 accused No.2 filed a complaint against accused No.1 before Pallickal Police Station for assaulting her elder daughter. Accordingly accused No.1 was arrested and he did not come to the premises of her house thereafter. Accused No.1 died. Accused No.2 did not come to know that accused No.1 had assaulted her younger daughter. Her elder daughter who was under the protection of Child Welfare Committee expressed her desire to live with her younger daughter and accordingly she and one Bhasidharan Nair admitted the child in this case also to the institutional home under Child Welfare Committee. Child in this case was not subjected to any sexual assault. Accused No.2 would have informed the police if such an incident happened. Accused No.2 is totally innocent in this case. Both sides were heard under section 232 of

Criminal Procedure Code. Accused No.2 was found to be not entitled to be acquitted under section 232 of the Criminal Procedure Code. Thereafter accused was called upon to enter on her defence and to adduce evidence. Exts.D1 and D2 were marked on the side of accused. Thereafter the case stood posted for hearing. At that stage CMP.192/2023 was filed by the prosecution to alter the charge. That application was allowed. Altered charges under sections 17 read with 16(3) of section 6 read with 5(l) and section 6 read with 5(m) of Protection of Children from Sexual Offences Act and 21 of Protection of Children from Sexual Offences Act were framed in English, read over and explained to accused No.2 in Malayalam to which she pleaded not guilty. The case was proceeded with as the altered charge was not likely to affect the prosecution in the conduct of the case and to prejudice accused No.2 in her defence. Both sides were given opportunity to examine or recall any witnesses. On 15/05/2023 prosecution submitted as having no further evidence. Thereafter DW1 and DW2 were examined and Exts.D3 to D6 were marked on the side of accused No.2. As per the order in CMP.330/2023 evidence of the prosecution was reopened and PW12 was recalled and examined again. Thereafter prosecution evidence was closed and accused No.2 was further questioned under section 313 of Criminal Procedure Code. Accused No.2 denied the incriminating circumstances during the further questioning under section 313 Criminal

Procedure Code. Thereafter no further defence evidence was adduced. Both sides were heard.

5.The points which arise for consideration are :-

1. Did accused No.2 intentionally aid accused No.1 in penetrating his penis into the vagina and mouth of PW12 and in inserting his finger into the vagina of PW12 several times in front of her at the house of accused No.2 and at the house of accused No.1 and by transporting PW12 to the house of accused No.1 for the purpose of committing aggravated penetrative sexual assault on PW12 by accused No.1 while PW12 was studying in first and second standard and thereby commit the offence punishable under section 17 read with 16(3) of section 6 read with 5(1) of Protection of Children from Sexual Offences Act?

2. Did accused No.2 intentionally aid accused No.1 in penetrating his penis into the vagina and mouth of PW12 who was aged 7 years and in inserting his finger into the vagina of PW12 several times in front of her at the house accused No.2 and at the house of accused No.1 and by transporting PW12 to the house of accused No.1 for the purpose of committing aggravated penetrative sexual assault on PW12 by accused No.1 while PW12 was studying in first and second standard and thereby commit the offence punishable under section 17 read with 16(3) of section 6 read with 5(m) of Protection of Children from Sexual Offences Act?

3. Did accused No.2 who had knowledge of the commission of penetrative sexual assault on PW12 fail to report the commission of aggravated penetrative sexual assault on PW12 to police and thereby commit the offence punishable under section 21 of Protection of Children from Sexual Offences Act?

4. In the event of conviction, what is the proper sentence to be imposed on the accused?

6.Points 1 to 3: Since the evidence to be discussed in point Nos.1 to 3 are interconnected, these points are considered together.

7. Prosecution allegation was that accused No.2 abetted the commission of aggravated penetrative sexual assault on PW12 several times by accused No.1 when PW12 was 7 years of old. PW1, PW2, PW3, and PW12 were examined by the prosecution to prove the incident. PW4 accompanied PW12 when scene plan was prepared. PW5 issued Exts.P1 and P2 scene plans and Exts.P3 and P4 possession certificates in respect of the houses where the incident alleged to have happened. PW6 issued Ext.P5 ownership certificate in respect of the house of accused No.1. PW7 is an attester to Ext.P6 scene mahazar. PW8 is the doctor before whom PW12 was brought after examination by PW9 and issued Ext.P7 certificate. PW9 is the doctor who examined PW12 on 24/01/2021 and issued Ext.P8 medical certificate. PW10 is the doctor who examined accused on 24/02/2021 and issued Ext.P9 potency certificate. PW11 recorded additional statement of PW12. PW11 is also an attester to Ext.P7 scene mahazar. PW13 recorded Ext.P11 statement of PW12. PW14 registered Ext.P13 First Information Report on the basis of Ext.P11 statement and conducted investigation in this case. PW15 re-registered Ext.P21 First Information Report on the basis of Ext.P25 first information report. PW16 issued Ext.P22 birth certificate of PW12.

PW18 issued Ext.P24 extract of admission register of PW12. PW17 recorded Ext.P23 statement of PW12. PW19 registered Ext.P25 first information report on the basis of Ext.P23 statement of PW12. PW20 completed investigation and laid final report.

8.The fundamental aspect to be proved by the prosecution in a case involving aggravated penetrative sexual assault on PW12 is age of PW12 at the commission of the offences alleged. Prosecution examined PW16 and PW18 and produced Exts.P22 and P24 to prove the age of PW12. PW16 is the Grama Panchayat Secretary who issued Ext.P22 birth certificate of PW12. As per the deposition of PW16 and Ext.P22, the date of birth of PW12 is 25/06/2012. PW18 is the Headmistress of the school where PW12 was admitted in first standard. PW18 issued Ext.P24 extract of the admission register of PW12. As per the deposition of Ext.P18 and Ext.P24 also, the date of birth of PW12 is 25/06/2012.

9.The date of incident is the next aspect to be considered to determine whether PW12 was a minor at the time of incident. As per the prosecution case the incident of aggravated penetrative sexual assault was alleged to have been committed on PW12 in between March 2018 to September 2019 while PW12 was studying in second standard. PW12 deposed that accused No.1 committed aggravated penetrative sexual assault on her several times while she was studying in second standard and accused No.2 being her mother abetted the commission of the said

offences. During chief examination of PW12, the learned Special Public Prosecutor put a question to PW12 as to whether such incident happened while she was studying in first standard. PW12 answered in the affirmative. It is important to consider whether the affirmative answer given by PW12 that the incident occurred while she was studying in first standard also to the question posed by learned Special Public Prosecutor can be accepted. It is a well settled principle that answers elicited in chief examination and re-examination by putting leading questions are liable to be eschewed. In Sarkar's Law of evidence, 16th edition in page No.2370 and 2371, some exceptions to the leading questions were given. One of the exceptions stated in page No.2371 of Sarkar's Law of Evidence, 16th edition is that the court will, too, some times allow a pointed or leading question to be put to a witness of tender years whose attention cannot otherwise to be called to the matter under investigation. It is pertinent to note that as per the deposition of PW12, accused No.1 committed aggravated penetrative sexual assault on her several times. PW12 was able to depose without any prodding that the incident occurred while she was studying in first standard. At that juncture the learned Special Public Prosecutor put a question to PW12 as to whether such incident had happened while she was studying in first standard. Then PW12 answered the same in the affirmative. On evaluating the deposition of PW12 it is evident that the learned Special Public

Prosecutor was not able to bring the attention of PW12 regarding the other period during which the incident was alleged to have happened without putting such a question to PW12. PW12 was only 10 years old at the time of examination. Some amount of prodding on the part of Special Public Prosecutor was necessitated to enable PW12 to remember the other period of incident. It is imperative to note that PW12 who was a child of tender years at the time of examination before the court cannot be attributed with the precise knowledge regarding the concept of time like an adult. It is evident from the deposition of PW12 that she could depose one period of incident voluntarily and thereafter she was able to depose the other period of incident when the learned Special Public Prosecutor had put a question regarding that period to her. Since PW12 was only 10 years of old at the time of examination before the court, this court cannot find any fault in the attempt of the learned Special Public Prosecutor to bring out the other period of incident also in evidence by putting a pointed and leading question to PW12. By putting such a question PW12 was able to remember the other period of incident also. In view of the exception recognized to the leading question in respect of witness of tender years, evidence adduced by PW12 that the incident occurred while she was studying in the first standard also to the pointed and leading question of learned Special Public Prosecutor can be accepted.

10.The next important aspect to be considered is whether the deposition of PW12 that the incident of aggravated penetrative sexual assault committed by accused No.1 occurred while she was studying in the first and second standard is believable. The learned defence counsel vehemently argued that PW12 is not a reliable witness on that point in view of the omission to state the same in Ext.P23 first information statement of PW12. PW12 deposed that she stated the period of commission of the offences in Ext.P23 when her attention was drawn to such an omission and her explanation was called for by the learned defence counsel. PW17 is the Women Police Officer who recorded Ext.P23 first information statement of PW12. PW17 was examined on 20-1-2023 and was recalled and again examined on 17-10-2023. On 20-1-2023 PW17 deposed that PW12 did not state the period of commission of offences by accused No.1 to her. On 17-10-2023 PW17 stated that PW12 gave a statement to her in Ext.P23 that incident had occurred while she was studying in second standard. According to PW17, PW12 told the period of incident as the period during which she was studying in second standard with respect to the commission of offences by both accused mentioned in Ext.P23. The learned defence counsel vehemently argued that in Ext.P23 the period of commission of aggravated penetrative sexual assault by accused No.1 was not stated by PW12. Considering the specific contention of learned defence counsel in

this regard I perused Ext.P23 first information statement in detail. On perusal of Ext.P23 it is evident that the period of commission of aggravated sexual assault on PW12 by accused No.1 was not specifically stated by PW12 in Ext.P23 and the period of offence committed by other accused mentioned in Ext.P23 was not made with respect to accused No.1 also in this case. Interestingly PW17 stated that PW12 stated the period of commission of aggravated sexual assault by accused No.1 to her. So it is not discernible as to whether PW17 omitted to write specifically the period of the commission of aggravated sexual assault by accused No.1 stated by PW12 in Ext.P23 or PW12 omitted to state the period of commission of aggravated sexual assault by accused No.1 to PW17. In this context this court consider if at all PW12 omitted to state the period of commission of aggravated sexual assault by accused No.1 to PW17, the said omission can be considered to disbelieve the version of PW12 on that point in the court. Age of PW12 at the time of giving Ext.P23 is very relevant. Ext.P23 was recorded on 24/01/2021. PW12 was only 8 years of old at that time. PW12 who was in her tender age might not be expected to give minute details regarding the time and place of incident and to understand the importance of furnishing such details in her first statement. The pivotal question to be considered is whether the incident occurred while PW12 was a minor. PW12 was still a minor at the time of examination before the court on 20/01/2023 and on 18-9-

2023. Hence if at all PW12 omitted to state the actual period of commission of aggravated penetrative sexual assault by accused No.1 in her first statement to the police, that is not a ground to reject the evidence of PW12 before the court regarding the period of incident.

11.It has come out in evidence from the deposition of PW2 that the incident occurred while she was studying in first and second standard. PW2 categorically stated that she could not remember the year of the incident. Evidence of PW2 and PW18 are very much relevant to decide the year in which the incident had happened. PW2 is the house mother of the Institutional Home where PW12 has been staying. According to PW2, PW12 came to Home in November, 2019. As per the deposition of PW2 the incident came to her notice in 2021 while she had gone through the counselling report of PW12. PW18 is the Headmistress of the School where PW12 was admitted in the first standard. According to PW18, PW12 was admitted in the school in the year 2018. No cross of PW18 was recorded. PW18 produced Ext.P24 extract of admission register of PW12. As per Ext.P24 also PW12 was admitted in first standard in that school on 01/06/2018. Hence it can be concluded from the deposition of PW18 and Ext.P24 that PW12 was studying in first standard in the year 2018. It is pertinent to note that Ext.D1 case was registered against accused No.1 on 17/09/2019 for committing aggravated sexual assault on sister of PW12. As per the deposition of

DW2, accused No.1 was arrested in that case on 17/09/2019 itself. Since PW12 was in the first standard in the year 2018, it can be assumed that she was in the second standard in the year 2019. Since accused No.1 was arrested on 17/09/2019 in connection with Ext.D1 case, the incident of aggravated sexual assault on PW12 must have happened prior to 17/09/2019. On proper analysis of the deposition of PW2, PW12, PW18 and DW2 and Exts.P24 and Ext.D1, it can be concluded that the incident of aggravated penetrative sexual assault on PW12 by accused No.1 and the abetment of the same by accused No.2 occurred in the year 2018 and 2019 while PW12 was studying in first and second standard.

12.As per Ext.P22 birth certificate and Ext.P24 extract of the admission register, the date of birth of PW1 is 25/06/2012. 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 in Criminal Appeal No. (S).1898 of 2023** 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.

13.As per the decision in **P. Yuvaprakash v State represented by Inspector of Police** mentioned supra and section 94 of the JJ Act, Ext.P24 extract of the admission register is to be given precedence over Ext.P22 birth certificate even though there is no conflict between these two documents regarding the age of PW12. As per Ext.P24 the date of birth of PW12 is 25/06/2012. The incident in this case was proved to have happened in the year 2018 and 2019 while PW12 was studying in first and second standard. PW12 is aged 6 - 7 years in the year 2018 and 2019 as per Ext.P24. So it can be safely concluded that prosecution succeeded in proving that PW12 was a minor aged 6 – 7 years at the time of incident.

14.In order to decide whether accused No.2 abetted the commission of aggravated penetrative sexual assault on PW12, the first

and foremost aspect to be considered is whether prosecution succeeded in proving that accused No.1 committed aggravated penetrative sexual assault on PW12 even though accused No.1 is no more. PW12 stated that accused No.1 penetrated his penis into her mouth and into her vagina and placed his finger into her vagina. According to PW12 accused No.1 penetrated his penis into her vagina after applying oil. PW12 further deposed that she felt nauseated when accused No.1 had done so. As per the deposition of PW12, accused No.1 committed penetrative sexual assault at her residence and at his residence while she was studying in first and second standard. According to PW12, accused No.1 repeated the same several times. PW12 stated that she gave Ext.P23 first information statement to the police and Ext.P12 statement under section 164 of Criminal Procedure Code to the Magistrate.

15.The learned defence counsel vehemently argued on the basis of the deposition of DW1 and Ext.D3 to contend that such an incident stated by PW12 did not happen. As already stated Ext.D1 first information report was registered against accused No.1 on 17/09/2019 on the allegation of having committed penetrative sexual assault on elder sister of PW12. DW2 is the Inspector/Station House Officer of Pallikkal Police Station who arrested accused No.1 in that case. DW2 identified his signature in Ext.D4 remand report in Ext.D1 case. According to DW2, accused was arrested in that case on 1709/2019. DW1 is the

doctor who examined the child in Ext.D1 case. DW1 identified her signature in Ext.D3 certified copy of medical examination report in that case. DW1 stated that history was stated by child in that case that he did not come to her house after attacking her during night on a day in March 2018 and after stealing Rs.70,000/- from her mother. On perusing Ext.D3 it is seen that name of accused was stated in the history given in Ext.D3. The learned defence counsel relied upon the history stated by the child in Ext.D3 to DW1 to contend that accused No.1 did not come to the house of PW12 after March 2018 and hence the prosecution version and the evidence of PW1 that accused No.1 committed penetrative sexual assault on PW12 while she was studying in first and second standard cannot be believed. It is highly necessary to consider whether the history stated by the child in Ext.D1 case as deposed by DW1 can be considered as substantive evidence. Section 60 of the Indian Evidence Act 1872 is relevant in this context. As per section 60 of the Indian Evidence Act oral evidence must be in all cases whatever be direct if it refers to a fact which could be seen, it must be the evidence of a person who says he saw it. The history stated by child in Ext.D1 case to DW1 cannot be accepted as the substantive evidence of the same from the deposition of DW1 by virtue of section 60 of Indian Evidence Act. Hence deposition of DW1 cannot be relied upon by the learned defence counsel to contend that accused No.1 did not come to the house of PW12

after March 2018 and hence the version of PW12 that accused No.1 committed penetrative sexual assault on PW12 at her house and at the house of accused No.1 while she was studying in first and second standard is false.

16.Deposition of PW12 that she was subjected to aggravated penetrative sexual assault was corroborated by medical evidence also. PW8 deposed that on 24/01/2021 PW12 was brought before her for examination and she did not examine her as PW12 was already examined by a Gynecologist and mental condition of PW12 was not stable. PW9 deposed that at 1.24 pm on 24/01/2021 she examined PW12 while she was working as Duty Medical Officer at Women and Children Hospital, Thycaud. According to PW9, PW12 stated that accused No.1 penetrated his penis into her mouth and vagina and inserted his finger into her vagina. PW9 noticed old hymen tear at 10 "O'clock position. PW9 opined that history and examination revealed sexual assault but final opinion was pending chemical examination report. As per the deposition of PW9 she collected swab and smear. PW9 stated that presence of semen can be determined through chemical analysis report. PW9 issued Ext.P8 medical examination report. The evidence of PW9 that examination of PW12 revealed sexual assault subjecting final opinion to chemical analysis report can be relied upon is the important aspect to be considered in this case. This court has no hesitation to hold that chemical

examination report would not afford any evidence regarding the commission of the offences in the case at hand where the incident had happened in 2018 and 2019 and examination of PW12 was done in the year 2021. Hence the opinion of PW9 that there was evidence of sexual assault can be accepted without any chemical examination report. It is true that as per Ext.P25 first information report, case was registered against another accused also on the allegation of penetrative sexual assault on PW12 on the basis of Ext.P23 statement given by PW12 and that accused was included in Ext.P21 first information report which was re-registered on that basis. It is evident from the deposition of PW12 before this court that accused No.1 committed aggravated penetrative sexual assault on her several times. The same was corroborated by the presence of tear in 10 'O' clock direction in the hymen of PW12 deposed by PW9 and the opinion evidence of PW9 regarding the commission of sexual assault revealed from examination of PW12. Moreover PW10 who conducted potency examination of accused No.1 clearly deposed that there was nothing to suggest that accused No.1 was incapable of performing sexual act. Since the evidence of PW12 that she was subjected to penetrative sexual assault was corroborated by medical evidence also, this court find no reason to disbelieve the evidence adduced by PW12.

17. On evaluating the deposition of PW12 it is crystal clear that she stood the test of cross examination. The learned defence counsel was not able to create a dent in the deposition of PW12 regarding the aggravated penetrative sexual assault on her by accused No.1. PW12 is found to be completely reliable and trustworthy on that aspect. This court is of the considered opinion that evidence of PW12 can be accepted without any doubt. It can be safely concluded from the deposition of PW12 that accused No.1 committed penetrative sexual assault on her several times at her house and at the house of accused No.1 when she was only 6 – 7 years.

18.The crucial aspect before this court is whether accused No.2 abetted accused No.1 in committing penetrative sexual assault on PW12. At the risk of repetition, the evidence of PW12 regarding the penetrative sexual assault on her by accused No.1 is to be reproduced in detail in order to decide whether accused No.2 intentionally aided accuse No.1 in committing penetrative sexual assault on PW12. As per the deposition of PW12, accused No.1 penetrated his penis into her vagina and mouth and placed his finger into her vagina at her residence and at the residence of accused No.1. According to PW12, her mother was bringing her to house of accused No.1 for accused No.1 to assault her. PW12 categorically stated that her mother was present while she was subjected to penetrative sexual assault by accused No.1. As per the version of PW12, mother told

her that it was okay when she had told her about accused No.1. PW12 again reiterated that accused No.1 assaulted her several times and in front of her mother too several times. PW12 stated in cross examination that her mother was aware of the penetrative sexual assault committed on her by accused No.1. PW12 identified accused No.2 standing in the court as her mother. During further cross examination on 18/09/2023 also PW12 reiterated that her mother helped accused No.1 in assaulting her and mother was well aware of said assault. PW12 stated in further re-examination on 18/09/2023 that she stated that mother helped accused No.1 as accused No.2 told her that it was okay when she had told her about the assault of accused No.1.

19.**The** learned defence counsel vehemently argued that PW12 did not state anything regarding the role of mother in committing aggravated penetrative sexual assault on her by accused No.1 in Ext.P23 first information statement and that mother was aware of the same. The learned defence counsel further pointed out that there was omission in stating the place of incident deposed by PW12 in Ext.P23 first information statement. The learned defence counsel vehemently argued on the basis of the above said omissions to contend that PW12 is not a reliable witness. PW12 was asked about the above said omissions by the learned defence counsel and her explanation was also called for. PW12 testified that she had told in Ext.P23 the place of incident and that the

mother aided accused No.1 to commit penetrative sexual assault on her and that mother was aware of the same. PW17 who recorded Ext.P23 first information statement of PW12 deposed that PW12 did not state specifically the places of commission sexual assault by accused No.1 and that mother was aware of the same and mother aided accused No.1. The learned defence counsel vehemently argued that the above said omissions amount to contradictions having serious bearing on the credibility of the evidence adduced by PW12 against accused No.2. In this context it is worthwhile to note the decisions of the Hon'ble Supreme Court in **Shankar A v. State of Karnataka (2011 KHC 4525)**. The Hon'ble Supreme Court held in paragraph 17 of that decision that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the

witness and record a finding as to whether his deposition inspires confidence. “Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions”. The omissions which amount to contradictions in material particulars, ie. materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

20.It is pertinent to note that this is not a case where there is complete omission in stating the role of accused No.2 in the previous statements of PW12. Ext.P23 statement was seen recorded at 11 am on 24/01/2021. As per the deposition of PW17 and PW2, Ext.P23 statement of PW12 was recorded in the presence of PW2 also. Deposition of PW9 would go to show that PW12 was examined by her at 1.24 pm on

24/01/2021 itself at Women and Children Hospital, Thycaud. As per the deposition of PW9, PW12 had told her in the history stated to her the role of mother and the places of incident and the same was recorded in Ext.P8 medical examination report. In Ext.P12 164 statement recorded on 24/02/2021 also PW12 clearly stated the role of accused No.2 and the places of incident. So it is crystal clear that the omission in stating the role of accused No.2 and the places of incident occurred only in Ext.P23 first statement of PW12. While considering the reliability of the evidence of PW12 on the role of accused No.2 in committing penetrative sexual assault on her by accused No.1 and of the knowledge of mother regarding that assault and of the places of incident in the light of omissions in Ext.P23, the plight of PW12 and her mental disposition at the time of giving Ext.P23 statement and the relationship of accused No.2 with PW12 are to be looked into. It is evident from the deposition of PW2 who was the housemother of the institutional home where PW12 was staying that PW12 has been in that institution since November 2019 and the incident of sexual assault on her had come to light in the year 2021 from the counselling report of PW12. PW3 who counselled PW12 in the shelter home deposed that PW12 had revealed the sexual assault on her during a counselling session which was held after several sessions of counselling and she submitted counselling report to PW2. Nothing has been forthcoming from the cross examination of PW2 and PW3 to

discredit their version. Deposition of PW2, PW3 and PW17 revealed that PW12 disclosed the sexual assault on her in the year 2021 while she was in the shelter home. PW12 clearly deposed before this court that she did not disclose the incident out of fear of accused No.1. PW17 also deposed that PW12 was in a state of fear at the time of giving Ext.P23 statement. As per the deposition of PW2, PW12 was reluctant to meet and talk to mother and hence she was subjected to counselling. On combined analysis of the deposition of PW2, PW3, PW12 and PW17 it can be assumed that PW12 was in a mentally disturbed state and was under fear also while she was giving Ext.P23 statement to PW17. PW12 who was emotionally battered due to the sexual assault and also due to despondency out of not having the company of her kith and kin might not be able to disclose the entire details of the incident at the time of giving Ext.P23 statement. Moreover difficulty of child of tender years to give statement to implicate her own mother also can not be discarded. So it can be assumed that PW12 omitted to state the role of accused No.2 in abetting the commission of penetrative sexual assault on her and the knowledge of mother regarding the same and the places of incident in her first statement due to her mental disposition at the time of giving such a statement. PW12 must have gained confidence and mustered more courage after the first disclosure in Ext.P23. It can be assumed from the deposition of PW12, PW9 and from Exts.P8 and P12 that PW12 deposed

clearly the role of mother, knowledge of mother regarding the offences committed on her and the places of incident in a free and relaxed atmosphere before the doctor and magistrate at a later point of time.

21.The learned defence counsel relied upon the decision in **Ramlal N.R. V. State of Kerala reported in (2020 (1) KHC 249**, to contend that the tendency of PW12 to make improvisation in her subsequent statements from Ext.P23 affected the credibility of the evidence adduced by her. In **Ramlal N.R. v. State of Kerala and Another**, final report was sought to be quashed on the basis subsequent improvement in the prosecution case in the additional statement. Prosecution allegation in that case was that accused had taken a nearby to the minor victim girl in a school van and that he had hit her hands with her shoulders. In the additional statement an improvisation was made to the effect that accused had not only touched her hand but also he had lay his back on her body and further that she felt that accused touched her abdomen. The Hon'ble High Court held that new version of the minor victim girl was nothing but a drastic improvisation and embellishment her initial version. Accordingly final report was quashed. In the present case PW12 had stood the test of cross examination and this court found that evidence adduced by PW12 before the court cannot be rejected in view of the omission in her first statement and the circumstances under which she gave statement against accused No.2 in her subsequent

statements. So the decision in Ramlal's case where final report was quashed cannot be made applicable to a case where the reliability and acceptability of the deposition of PW12 was considered by this court after a full fledged trial.

22. PW12 deposed that accused No.2 took her to the house of accused No.1 for him to assault her. The learned defence counsel vehemently argued that there was omission in stating the above statement of PW12 in the statement before the police and before the magistrate and hence the said evidence of PW12 is not reliable. It is highly necessary to consider whether such an omission was proved. During cross examination of PW1, a question was put to PW12 that she did not give a statement to the police and magistrate that accused No.2 took her to the house of accused No.1 for the purpose of committing sexual assault on her. It was recorded by my predecessor in office in the deposition paper that PW12 simply blinked and she has not understood the question even on repeating. The aspect to be considered is whether accused No.2 can absolve from the burden to prove the omission by simply putting a question that PW12 did not give such a statement to the police and magistrate. In **Tahsildar Singh v. State of UP reported in 1959 KHC 577**, The Hon'ble Supreme Court held that the procedure prescribed is that, if it is intended to contradict a witness by writing, his attention must, before the writing can be proved, be called to those parts of it, which are

to be used for the purpose of contradicting him. The proviso to S.162 of the Code of Procedure Code only enables the accused to make use of such statement to contradict a witness in the manner provided by section 145 of the Evidence Act. The manner of proving contradiction was laid down in the decision in **State of Kerala v. Thomas reported in 2005 KHC 1823**. The Hon'ble High Court held in that decision that under section 145 of the Indian Evidence Act, proof of statements follows the putting up of it to the witness. Section 162 Criminal Procedure Code states that a previous statement to the police can be used to contradict a witness if it is duly proved. A combined reading of section 161 and 162 Criminal Procedure Code shows that the attention of the witness is to be called to the previous statement before the same can be proved. If the witness admits the previous statement or explains the discrepancy or contradiction, it obviously makes it unnecessary for the statement thereafter to be proved by making it. If the statement still requires to be proved, that can be done later by calling the police officer before whom the statement was made. It is well settled position of law that before using the statement, the witness must be afforded a reasonable opportunity of explaining the contradictions, after his attention has been drawn to such statements, in a fair and reasonable manner. The correct procedure to contradict a witness is to draw his attention to the relevant part of the contradictory statement which he had made before the Police

Officer and to question him whether he did make that statement. If he replies in the affirmative, that admission establishes the contradiction. If he denied that part of the statement, that is to be proved in accordance with the provisions of the Evidence Act. If he denied having made such a statement or states that he does not remember having made the assertion or spoken the sentence, the officer who recorded the statements will have to be called to prove that he had made or spoken it. Omission amounting to contradiction is also to be proved in same manner as aforesaid. It is evident from the deposition of PW12 that explanation of PW12 was not called for regarding the omission argued by the learned defence counsel. Omission was not proved in the manner laid down in the above cited decisions. In the absence of proper proof of omission, accused No.2 cannot challenge the deposition of PW12 before the court stating that there was omission in her previous statements to police and magistrate.

23. PW12 stated the places of incident as her house and house of accused No.1. It was already found that omission to state the places of incident in Ext.P23 do not affect the credibility of the evidence adduced by PW12 before the court in respect of the places of incident. PW12 deposed that by travelling some distance through the road adjacent to her house, the house of accused No.1 can be accessed. Before considering the acceptability of evidence of PW12 regarding the places of incident, it is imperative to consider the other evidence adduced by the prosecution to

prove the possession and ownership of the houses where the incident had happened. PW5 is Village Officer, Madavoor Village Office who prepared Ext.P1 scene plan of house of accused No.1 and Ext.P2 scene plan of house of accused No.2 and Ext.P3 possession certificate of house of accused No.2 and Ext.P4 possession certificate of house of accused No.1. Nothing has been forthcoming from the evidence of PW5 regarding the possession of the houses involved in this case except that he had issued Exts.P3 and P4 possession certificates. Exts.P3 and P4 possession certificates are actually statement in writing given to investigating officer. Hence Exts.P3 and P4 are hit by section 162 of the Criminal Procedure Code. PW6 is Madavoor Grama Panchayat Secretary who produced Ext.P5 ownership certificate of accused No.1. There is nothing in the deposition of PW6 regarding the number and name of the house owned by accused No.1. Ext.P5 is also a statement in writing which is interdicted by section 162 of Criminal Procedure Code. On evaluating the deposition of PW5 and PW6 who were produced by the prosecution to prove the possession and ownership of the houses of accused No.1 and 2 this court has no hesitation to hold that testimony of PW5 and PW6 did not prove the possession and ownership of accused No.1 and 2 over the houses involved in this case.

24. On evaluating the entire evidence adduced by prosecution it is evident that PW12 is the sole witness who is competent to adduce

evidence regarding the places of incident as the offences were committed on PW12 in secrecy by accused No.1 and 2 in exclusion of others. The mere fact that prosecution was not able to prove the possession and ownership of accused No.1 and 2 over the houses involved in this case is no ground to reject the evidence of an innocent victim of sexual assault. PW12 was only 10 years old at the time of examination before the court and 6 – 7 years of old at the time of incident. A witness of such a tender age cannot be expected to give the address of the places of incident even if one of the place is her house. In cases involving sexual assault committed on children of tender years in secrecy excluding others, courts are left with no option but to rely upon the evidence of such victims regarding the places of incident. It is not a case where PW12 was not able to state the places of incident. What is lacking in the evidence of PW12 is the name of the houses and the places where the houses were situated. PW12 was able to depose that incident occurred in her house and at the house of accused No.1 and accused No.2 went to the house of accused No.1 to cook food for him and brought her too to that house for accused No.1 to commit sexual assault on her. This court is able to conclude from the deposition of PW12 the places of incident. In cases where there is only the evidence of victim of tender years like PW12, it cannot be accepted as the mandate of law that places of incident should be proved with its name and location. Such a requirement would

definitely be a travesty of justice when there is reliable evidence regarding the commission of penetrative sexual assault on PW12. Since this court is able to conclude from the deposition of PW12 the places of incident, the absence of name and location of the said houses in the deposition of PW12 is not at all a ground to reject the prosecution case.

25. The learned defence counsel relied upon some part of the evidence of PW12 regarding the active role played by mother in protecting her and in taking action against the perpetrator of sexual assault on her elder sister to contend that it cannot be believed that such a mother had abetted the commission of penetrative sexual assault on PW12. PW12 deposed that her father attacked her with firebrand and her mother prevented the same and hence her father deserted mother. According to PW12 accused No.2 worked as domestic help and attended works of employment guarantee scheme after her father had left the house. PW12 stated that accused No.2 and one Bhasi uncle admitted her to shelter home and mother filed case against accused No.1 for assaulting her sister and thereafter mother was not in good term with accused No.1. The above said deposition of PW12 was largely relied upon by the learned defence counsel to contend that accused No.2 was a mother who had left no stone unturned to protect her daughters from the violence of father and accused No.1 and did not commit the abetment. PW12 genuinely and innocently adduced evidence regarding the action taken by

mother to protect her from violence of her father and the case lodged by mother in respect of the assault on her daughter. The above said evidence of PW12 actually made her deposition regarding the sexual assault on her more credible. If PW12 had any animosity towards mother, she could have adduced evidence against mother in respect of the incidents mentioned above in this paragraph. Instead PW12 deposed the incident suffered by her and also the course of action taken by mother in respect of the other incident. This court is mindful of the difficulty of PW12 to depose before a court of law regarding the abetment played by her own mother. The mere fact that accused No.2 discharged her responsibility as a mother in protecting PW12 from other dangers is no ground to give any excuse to accused No.2 in respect of the abetment stated by PW12 to have been committed by accused No.2. The evidence of PW12 regarding the course of action taken by accused No.2 in respect of other incident to protect her and her elder sister is no ground to presume that accused No.2 could not and did not commit the abetment stated by PW12.

26. The learned defence counsel relied upon Ext.D6 contradiction also to contend that PW12 is not a reliable witness. PW12 was asked in cross examination as to whether she stated to the police that mother told her that she put accused No.1 in jail for assaulting her daughter in the same way as she was assaulted. PW12 could not remember that such a

statement was given. PW12 stated that she had no explanation to offer when learned defence counsel had put to her that such a statement was given to police. Accordingly relevant part of the said statement in Ext.P23 was marked as Ext.D6. PW12 deposed in court also that mother filed case against accused No.1 for subjecting her elder sister to assault. Ext.D6 did not actually contradict with any of the statement of PW12 before the court. Hence Ext.D6 cannot be relied upon by the learned defence counsel as a material contradiction affecting the credibility of the evidence adduced by PW12 before the court.

27.On evaluating the deposition of PW12 it can be concluded that PW12 was very consistent in deposing that accused No.1 committed aggravated penetrative sexual assault on her several times in front of accused No.2 at her house and at the house of Accused No.1 and accused No.2 transported her to the house of accused No.1 for the purposes of committing sexual assault on her by accused No.1 and cross examiner was not able to create any doubt in the said evidence of PW12. It is highly necessary to consider whether deposition of PW12 suffers from any infirmity due to tender age and this court can rely upon uncorroborated testimony of PW12 being the solitary witness. In **State of Punjab v. Gurmit Singh and Others (1996 KHC 711)** the Hon'ble Supreme Court held that the testimony of the victim in sexual molestation cases is vital and unless there are compelling reason which necessitate

looking for corroboration of her statement, court should find no difficulty to act on the testimony of victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule amounts to adding insult to injury. In **Ranjeet Kumar Ram @ Ranjeet Kumar Das and Others v. State of Bihar (2015 KHC 4391)** the Hon'ble Supreme Court held that evidence of a child witness and its reliability would depend upon the circumstances of the each case. Only precaution which the court has to bear in mind while assessing the evidence of child witness is that witness must be a reliable one. In **Polachan v. State of Kerala reported in (1993 KHC 365)** it was held that the testimony of a child witness should not be rejected simply on the ground that she was likely to be tutored. In **Lalu v. State of Kerala (2015 KHC 535)** it was held that the real test for either accepting or rejecting the testimony of a child is to see how consistent the story spoken to by it is, how the evidence stands the test of cross examination and how far it fits in with the rest of the evidence and the circumstances of the case.

28.There is no rule of law which says that evidence of child witnesses cannot be accepted. Child witness is just like any other witness except the possibility of danger of being tutored by interested elders to give out a coloured version which they want. Being easily amenable to

tutoring by influence and capable of giving out that version by their capacity to remember and reproduce the evidence of such witnesses will have to be carefully considered against the possibility of such danger. When once that danger, which gives a only a rule of caution to court, is ruled out, the evidence is having better sanctity than that of elders on account of tender age and incapacity of malice and consequent concoctions (**Krishna Pilla v. State of Kerala, 1988 KHC 523**).

29. Deposition of PW12 is to be adjudged in the light of the prepositions laid down in the decisions mentioned in the foregoing paragraph. PW12 was staying in shelter home at the time of evidence before the court also. No evidence has been forthcoming to prove that PW12 was influenced and tutored by some others to adduce evidence against accused No.2. The allegation of defence that PW12 was compelled to give such an evidence against accused No.2 due to the influence of police and child welfare committee cannot be accepted as there arise any reason for them to tutor PW12 to adduce evidence against her own mother. Another contention was raised by defence was that this case was foisted at the instance of PW1. PW1 is actually the mother of first husband of accused No.2 and grandmother of elder daughter of accused No.2. It is evident from the deposition of PW1 and PW12 that father of elder daughter of accused No.2 was not father of PW12. PW1 deposed that PW12 and her elder sister revealed the sexual assault to her.

PW1 did not state the date on which such a revelation was made by them. That could be possible only before November, 2019 as PW12 has been in shelter home from November, 2019 onwards. If PW1 was very much interested in implicating accused No.2 also in respect of the sexual assault on PW12, she could have implicated accused No.2 then and there. Ext.P25 first information report was registered on the basis of Ext.P23 first information statement in 2021 when PW2 came to know of the same from the counselling report of PW12. So the contention of learned defence counsel that this case was foisted at the instance of PW1 cannot be believed. It is evident from the available evidence that PW1 was not under the influence or tutoring of any interested person at the time of adducing evidence before the court. Since the deposition of PW12 is not vitiated by tutoring of any interested persons, deposition of PW12 has more sanctity due to tender age and incapacity of malice. Nothing has been forthcoming from the cross examination of PW12 also to suggest any reason for her to adduce evidence falsely against her own mother. It is pertinent to note that defence counsel was not able to bring about any circumstances in cross examination to doubt the evidence of PW12. PW12 has stood the test of cross examination. Nothing could be elicited in the cross examination of PW12 regarding the role of accused No.2 in abetting the commission of penetrative sexual assault on her by accused

No.1. Hence this court find no reason to reject the evidence of PW12 on the ground of her tender age and her status as solitary witness in this case.

30.It is necessary to consider at this stage that the role of accused No.2 stated by PW12 actually amount to abetment in section 16 of Protection of Children from Sexual Offences Act. As per the deposition of PW12, accused No.1 committed penetrative sexual assault on PW12 in front of accused No.2 and accused No.2 told PW12 that it was just okay when PW12 had told her about accused No.2. Third part of section 16 mentioned as 'Thirdly' is relevant to the present case. As per thirdly of section 16 a person abets an offence who intentionally aids by an act or illegal omission the doing of that effect. As per the deposition of PW12 accused No.1 committed penetrative sexual assault on PW12 in front of her. Nothing has been forthcoming from the deposition of PW12 to assume that accused No.1 was prevented by any threat or injury to object to the commission of penetrative sexual assault on PW12. Moreover apart from physically present while the sexual assault was being committed on PW12 and from being a witness to the commission of penetrative sexual assault on PW12 by accused No.1, the response of accused No.2 that it was just okay when PW12 had told about the act of accused No.1 to her and the conduct of accused No.2 bringing PW12 to the house of accused No.1 by accused No.2 for committing penetrative sexual assault on her by accused No.1 as deposed by PW12 further

proved that accused No.2 was intentionally aiding accused No.1 in committing penetrative sexual assault on PW12.

31.The learned defence counsel contended relying upon the decision in **xxxx v. State of Kerala and Others reported in 2022 (2) KHC 725** to contend that section 29 of the POCSO Act will not absolve the prosecution from proving its case. In **xxxx v. State of Kerala and Others** it was held that the statutory presumption under section 29 cannot be understood to mean that in every case when a prosecution is prosecuted for the specified offences, the prosecution version should be taken as gospel truth. The presumption will not mitigate the primary duty of the prosecution to establish the foundational facts constituting the offence, which duties static on the shoulders of the prosecution. Once the same is done, the burden shifts to accused by virtue of section 29 of the act prove that he had not committed or abetted or attempt to commit the offence as the case may be. The case at hand is not one in which foundational facts were not proved by the prosecution. Prosecution succeeded in proving that PW12 was aged 6 – 7 years at the time of incident and accused No.1 committed penetrative sexual assault on her several times and accused No.2 abetted accused No.1 in committing penetrative sexual assault on her. Prosecution succeeded in proving the foundational facts in this case. Hence by virtue of section 29 of the Act, it is for accused No.2 to prove that she had not abetted the commission of

the offences. Accused No.2 did not succeed in proving that she did not abet the commission of the offences. It can be safely concluded from the deposition of PW12 and from section 29 of Protection Children from Sexual Offences Act that accused No.2 abetted aggravated penetrative sexual assault on PW12 by accused No.1 several times while she was aged 6 – 7 years.

32.The learned defence counsel argued that there were several defects in the investigation which pointed out to the falsity of the prosecution case. Delay in forwarding FIR to the court was cited by defence as a major factor casting doubt on the prosecution case. Deposition of PW15 revealed that he re-registered Ext.P21 FIR on the basis of Exhibit 25 first information report of Poojappura police station. Ext.P21 FIR was registered on 24-2-2021 at 16.01 hours. It can be seen from the writing in Exhibit P21 that it was produced before the court at 10 p.m. on 24/02/2021 itself. As per the deposition of PW14, he registered Exhibit P13 first information report on the basis of another statement of PW1. As per Ext.P13, it was registered at 16.45 p.m on 24-02-2021 and produced before the court at 9 p.m. on that day itself. The registration of multiple FIR with respect to the incident will be considered later. Now the multiple FIR registered in connection with this case were considered only to address the contention of accused regarding the delay in producing the same before the court. It can be assumed from

the entries of the court in Exhibits P21 and P13 that both FIRs were produced before the court on the very same day without much delay. Exhibit P25 was the first information report in point of time registered by PW19 in connection with the incident. Exhibit P25 FIR was registered at 12.15 pm on 24-1-2021. According to PW19, Exhibit P25 FIR was forwarded to the court on that day itself. As per the deposition of PW20, he omitted to produce Ext. P24 first information report and Ext.23 first information statement along with the final report. It is evident from the case records that Exhibit P24 certified copy of first information report and Exhibit P23 certified copy of first information statement was produced before the court at a later stage by the prosecution. It could be assumed from the date and time noted in the seal of court in Exhibit P24 that it was produced before the court at 10:35 a.m. on 25-01-2021. There is delay of one day in forwarding Exhibit P24 first information report to the court. The said delay would affect the credibility of the evidence adduced by PW12 is the crucial question to be considered. In **Rattiram and Others v. State of M.P. reported in 2013 KHC 4330** the Hon'ble Supreme Court held that when there is delayed despatch of the FIR, it is necessary on the part of the prosecution to give an explanation for the delay. We may further state that the purpose behind sending a copy of the FIR to the concerned magistrate is to avoid any kind of suspicion being attached to the FIR. Such a suspicion may compel the

court to record a finding that there was possibility of the FIR being ante-timed or ante-dated. The court may draw adverse inferences against the prosecution. However, if the court is convinced as regards to the truthfulness of the prosecution version and trustworthiness of the witnesses, the same may not be regarded as detrimental to the prosecution case. The Hon'ble Supreme Court in **Ombir Singh v. State of Uttar Pradesh and Another reported in 2020 KHC 6398** while considering a delay of 11 days in forwarding first information report to the court held that time and again, this court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating effect on the case of prosecution. The Hon'ble Supreme Court further held that delay in complaints of section 157 of the Code cannot, in itself be a good ground to acquit the appellant. Albeit, this fact has to be considered when we examine the credibility of the version of the eye witnesses. In the present case no prejudice was proved to have been happened to accused No.2 by the delay in forwarding Ext.P25 FIR to the court. Moreover nothing was found to doubt the truthfulness of the prosecution version and the trustworthiness of the deposition of PW12. For the above reasons the delay in forwarding Ext.P25 first information report to the court cannot be accepted as having a detrimental effect on the prosecution case even though the delay was unexplained.

33. Delay in registering regular first information report in the police station within which limits the offences were committed was also pointed out by the defence as a reason to doubt the prosecution case. Exhibit P25 First Information report which was the first information report in point of time in connection with the incident was registered on 24-01-2021 on the date on which Exhibit P23 first information statement was given by PW17. Exhibit P25 First Information report which was the regular first formation report in the jurisdictional police station was registered on 23-02-2021. As per the deposition of PW19 who registered Exhibit P25 First Information, it was sent to jurisdictional police station without any delay. Deposition of PW15 who re-registered Ext.P21 FIR revealed that Exhibit P25 first information report was received in the jurisdictional police station on 23-2-2021. According to PW15, Ext P25 first information report was first sent to office of the City Police Commissioner, Thiruvananthapuram and from there it was sent to office of the Rural SP and finally it was sent to the jurisdictional police station from the office of the Rural SP. The above said reason was explained by PW15 as the reason for delayed receipt of Exhibit P25 in the jurisdictional police station. As per the deposition of PW14 who registered Exhibit P13 First Information report subsequent to Exhibit P21, Exhibit P25 first information report was received in jurisdictional police station on 23-02-2021. Exhibit P21 first information report was

re-registered on 23-02-2021 itself. No other circumstances has been forthcoming to conclude that there was some deliberate delay in sending Exhibit P25 first information report to the jurisdictional police station and in re-registering Exhibit P21 first information report . The reason for receiving Exhibit P25 first information report in the jurisdictional police station on 23-02-2021 was sufficiently explained by PW14. Since Ext.P25 first information report was registered without any delay on the date of lodging of Exhibit P23 first formation report and Exhibit P21 was registered on the very same date on which Exhibit P25 was received in the jurisdictional police station, this court cannot find any reason to reject the prosecution case on the ground that there was delay of about 1 month in registering regular FIR in the jurisdictional police station.

34.Multiplicity of first information reports is a serious matter to be considered in this case. The sequence of events leading to the lodging of First Information statement and subsequent registration of three first information reports in connection with the incident as emerged from the evidence adduced by the prosecution is recapitulated below to get a clear picture of how three first information reports happened to be registered in this case. PW1 has been in a shelter home since November 2019 and she disclosed the sexual assault on her to PW3 who was the counsellor there and PW2 who was the house mother of the that shelter home came to know of the sexual assault on PW12 from the counselling report and she

alerted the police. Accordingly Exhibit P23 first information statement of PW12 was recorded by PW17, a lady civil police officer attached to Poojappura Police station within which limits the shelter home was situated. On receipt of Exhibit P23, PW19 who was sub inspector of police station, Poojappura police Station registered Exhibit 25 first Information report even though the place of incident was within the jurisdiction of Pallikkal police station. There after PW19 sent Exhibit P25 first information reports and its case records to the jurisdictional police station. On receipt of Exhibit P25 first Information report in Pallikkal police station, PW15 who was sub Inspector of police Pallikkal police station re-registered Exhibit P21 first information report at 4.01 p.m on 23-02-2021 on the basis of Exhibit P25. Thereafter at 4.45 p.m on 23-02-2021, PW14 who was the Inspector of Pallikkal police station registered Exhibit P13 First Information report after recording Ext.P11 statement of PW12 again. As per Ext.P25 and P21, there were three accused including accused number 1 and 2 in this case. Exhibit P13 first information was registered against accused number one alone and thereafter accused number 2 was implicated in that case also. The reason stated for registering Exhibit P13 first Information report in it was that since the offences committed by accused number 1 in that case and accused number 2 and 3 in that case were committed in different place and at different time as per the statement of PW12 recorded by PW13,

registration of Exhibit P13 was necessitated in respect of accuse number 1 alone.

35.Now I consider whether the course adopted by PW14 in registering Ext.P13 on the basis of Ext.P11 and registration of Exhibits P25 and 21 first information report are legal. Exhibit P25 is the first information report registered by Poojapura police station on receipt of Exhibit P23 First Information statement revealing the commission of cognizable offence. Exhibit P21 was the regular FIR re-registered in the jurisdiction police station on receipt of Exhibit 23 and its records. The Hon'ble Supreme Court in **Lalita Kumari v. State of U.P. (2013 (4) KHC 552)** held that registration of FIR is a mandatory if the information discloses the commission of cognizable offence. In **Satvinder Kaur v. Sate (Govt. of N.C.T Delhi) (1999 (8) SCC 728)** the Hon'ble Supreme Court refused to quash first information report on the ground of lack of jurisdiction by the police officer. In **State of Andhra Pradesh v. Punati Ramulu and Others (AIR 1993 SC 2644)** the police constable at the police station refused to record the complaint presented by PW1 on the ground that the said police had no territorial jurisdiction over the place of crime. The Hon'ble Supreme Court held that it was a dereliction of duty on the part of constable because any lack of territorial jurisdiction could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having

jurisdiction over the area in which the crime was said to have been committed. In **Neelu Shrivastava v. State and Others (2022 KHC 2382)** the Hon'ble High Court of Delhi succinctly explained the concept of Zero FIR and regular FIR. The Hon'ble High Court of Delhi held that as per section 154 Cr.PC, if any information relating to the commission of any cognizable offence is received by a police station, the police is duty bound to register the FIR. However if the crime does not occur within the jurisdiction of said police station, then, after the registration of the Zero FIR, the same has to be transferred to the police station concerned where the offence has indeed been committed. Therefore the place of crime and the jurisdiction of the police station becomes irrelevant when a cognizable offence is disclosed and the police station is obligated to instantly transfer the pertinent documents over to the police station vested with the jurisdiction which numbers the FIR and begins the investigation. The court observed that the provision of Zero FIR came up as a recommendation in the Justice Verma Committee Report, in the new Criminal Law (Amendment) Act 2013 after the horrendous Nirbhaya rape and murder case which took place in December 2012. The Hon'ble High Court in that decision held that the only difference between 'FIR' and 'Zero FIR' is that an FIR is registered when the incident has occurred within the jurisdiction of a particular police station and a Zero FIR can be lodged at any police station irrespective of where the incident has taken

place. A Zero FIR is admittedly more efficient and is meant to provide quick redressal to the victim so that timely action can be taken after the registration of the FIR. In view of the above cited decisions, Zero FIR and regular FIR re-registered thereafter have the sanction of law. Exhibit P25 was actually the Zero FIR and Exhibit 21 was the regular FIR re-registered in connection with the incident. Registration of Exhibit P25 Zero FIR and Exhibit P21 FIR are perfectly legal in view of the above mentioned decisions. Hence no fault can be found on the part of PW19 and PW15 who registered Exhibit 25 FIR and Exhibit 21 regular FIR

36. After registration of Exhibit P21 regular FIR in Pallikal police station, PW14 again registered Exhibit P13 First Information report after recording Exhibit P11 statement of PW12. In **Antony v. State of Kerala (2001 KHC 655)** cited by the learned defence counsel the Hon'ble Supreme Court held that under the scheme of the provisions of S.154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of S.154 Cr.P.C. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering

the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in S.173 of the Cr.P.C. In **Tharak Dash Mukharjee and Others v. State of U.P. and Others (2022 KHC 6889)** the Hon'ble Supreme Court held that if multiple first information report by same person against same accused are permitted to be registered in respect of same acts and allegations, it will result in the accused getting entangled in multiple criminal proceedings for the same alleged offence. Therefore the registration of such multiple FIRs is nothing but abuse of the process of law. Moreover the act of registration of successive FIRs on the same set of acts and allegations at the instance of same informant will not stand the scrutiny of Art. 21 and Art.22 of the Constitution of India. It is pertinent to know that Exhibit P13 first information report and Exhibit P11 statement of PW12 was presented along with the final report as the regular FIR and first information statement of PW12. Accordingly Exhibit P11 statement of PW12 was happened to be marked as the first information statement. It is revealed from Exhibit P 23 that it was the first information statement of PW12. Exhibit P11 statement which was the additional statement of PW12 after registration of Exhibit P25 First Information report was actually the statement of PW12 under section 161

of Cr.PC and hit by section 162 of Cr.PC. The course adopted by PW 14 in registering Exhibit P13 First Information report on the basis of of an additional statement of PW12 recorded under section 161 of Cr.PC is illegal. PW14 ought to have continued the investigation in respect of the incident in this case in Exhibit P21 itself and filed split charge.

37.The next vital aspect to be considered is whether an illegality committed by PW14 in registering Exhibit P13 First Information report can be allowed to have a bearing on the credibility of the evidence adduced by PW12. It was already found that evidence adduced by PW12 regarding the penetrative sexual assault committed on her by accused No.1 and abetment of the same committed by accused number 2 is reliable and can be accepted. In **Karnel Singh v. State of MP (1995 KHC 482)** it was held that in cases of defective instigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. In **Paras Yadav and others v. State of Bihar (1998 KHC 938)** it was held while commenting upon certain omissions of the investigating agency that it may be that such lapse is committed designedly or because of negligence and hence the prosecution case is required to be examined de hors such omissions to find out the said evidence is reliable or not. Similar view was taken in

Ram Bihari Yadav v. State of Bihar (1999 KHC 968). The Honourable Supreme Court in **State of UP v. Jagdeo and Others (2003 KHC 762)** held that assuming the investigation was faulty, for that reason alone accused persons cannot let off or acquitted. For the fault of the prosecution, the perpetrators of such a ghastly crime cannot be allowed to go scot free. In **Suresh Babu v. State of Kerala (2023 (3) KLT SN 27 (Case No.13)** the Hon'ble High Court of Kerala held that defects in investigation cannot be a ground to reject the prosecution case. It is evident from the above cited decisions that omissions of the investigating agency is not a ground for acquittal if there is reliable evidence to prove the commission of the offences. The commission of penetrative sexual assault on PW12 by accused No.1 and abetment of the same by accused No.2 was proved from the unblemished testimony of PW12. In view of the dictum in the above cited decisions, the defect in the investigation on the part of PW14 in registering Ext.P13 FIR on the basis of Ext.P11 cannot be considered as a ground to reject the reliable evidence of PW12 who is an innocent child of sexual assault suffered by the abetment of the offences by her own mother.

38.Delay in lodging Exhibit 23 first information report was also projected by the defence as a ground to reject the evidence of PW12. It has come out in evidence that the incident occurred in the year 2018 and 2019 while PW12 was studying in 1st standard and 2nd standard. The

incident came to light when she had revealed sexual assault to PW3 during a counselling session in 2021. PW12 has been in shelter home since November 2019. PW12 deposed that she did not reveal the incident due to fear of accused No.1. A child who was 6 - 7 years at the time of commission of the offences committed on her by the abetment of her own mother and has been in shelter home after the incident could not be able to bring the incident to light immediately after the incident. PW12 was able to disclose the incident after attending several sessions of counselling. PW2 alerted the police immediately after the incident had come to her notice. In **State of Punjab vs. Gurmit Singh and Others** mentioned supra the Hon'ble Supreme Court held that in sexual offences delay in lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complaint about the incident which concerns the reputation of the prosecutrix and honour of her family. Deposition of PW12 revealed that she was under fear and hence she could not disclose the incident. This court is taking due notice of the difficulty of PW12 to come forward and to give a statement implicating her own mother also. Considering the plight of PW12 and sequence of events leading to the disclosure of sexual assault by PW12, this court is of the considered opinion that delay in lodging Exhibit P23 first information statement cannot be considered as a ground to reject the evidence of PW12.

39.The learned defence counsel argued that the statement of PW12 was recorded under 164 Cr.PC immediately after the registration of Exhibit 25 First Information report. But that was not produced and marked in this case. The said defect was also canvassed by the defence side as a ground to doubt the prosecution case. As per the deposition of PW14, statement of PW 12 was recorded under section 164 Cr.PC in Exhibit P25 case also. Exhibit P12 is the statement of PW 12 recorded under section 164 Cr.PC after the registration of Exhibit 21 and Ext.P13 first information report. It is for PW 14 and PW20 to produce the statement of PW 1 under 164 Cr.PC in Exhibit P25 case along with the final report. The said defect in investigation committed by PW 14 and PW20 is not a tenable ground to reject the reliable evidence of PW 12 in view of the decisions in **Karnel Singh v. State of MP, Paras Yadav and others v. State of Bihar, Ram Bihari Yadav v. State of Bihar, State of UP v. Jagdeo and Others and Suresh Babu v. State of Kerala** mentioned supra.

40.On evaluating the entire evidence adduced by the prosecution it can be summed up that prosecution succeeded in proving through the deposition of PW12 that accused number 1 committed penetrative sexual assault on her several times when she was 6 to 7 years old and accused number 2 abetted the commission of the said offences and accused number No.2 did not report the commission of the penetrative sexual

assault on PW12 by accused No.1 even though she was well aware of the incident. The offences proved to have been committed by accused No.1 from the evidence of PW12 and other evidence adduced by the prosecution are aggravated penetrative sexual assault on PW 12 more than once punishable under section 6 read with section 5(l) and aggravated sexual assault on PW12 who was below 12 years of old punishable under section 6 read with the 5(m) of Protection of Children from Sexual Offences Act. Hence accused who abetted the commission of said offences also committed the offences punishable under section 17 read with section 16 (3) of section 6 read with 5(l) of Protection of Children from Sexual Offences Act and section 17 read with the 16(3) of section 6 read with 5(m) of Protection of Children from Sexual Offences Act. Accused No.2 is liable to be punished for the abetment of both offences committed by accused number 1. Prosecution succeeded in proving that accused No.2 committed the offence under Section 21 of Protection of Children from Sexual Offences Act also. Point Nos.1 to 3 are found in favour of the prosecution.

41. Point No. 4. : Accused No.1 is no more. Hence charge against accused No.1 abated.

42.In view of the finding on point Nos.1 to 3 accused No.2 is found guilty of the offences punishable under section 17 read with section 16(3) of section 6 read with section 5(l) and section 17 read with

section 16(3) of section 6 read with section 5(m) of Protection of Children from Sexual Offences Act and section 21 of Protection of Children from Sexual Offences Act. Hence accused No.2 is convicted under section 235(2) Criminal Procedure Code for the offences punishable under section 17 read with section 16(3) of section 6 read with section 5(l) and section 17 read with section 16(3) of section 6 read with section 5(m) of Protection of Children from Sexual Offences Act and section 21 of Protection of Children from Sexual Offences Act.

43. Considering the gravity of the offences committed by accused No.2 on PW12 who is her own daughter of tender age, this court is satisfied that it is not expedient in the interest of justice to invoke the benevolent provision of Probation of Offenders Act.

44. Accused No.2 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 **27th day of November, 2023.**

REKHA.R
SPECIAL JUDGE.

45. Accused No.2 was heard on the question of sentence. Accused No.2 pleaded for lenient view. Accused No.2 submitted that she was suffering from a disease of head and under treatment in a

Government hospital. According to accused No.2, she is aged 42 years and residing alone at her house and has two daughters and her elder daughter is residing with her mother in law. As per the submission of accused No.2, she has been living on the income from works of employment guarantee scheme. Accused No.2 did not produce any medical records to prove her illness. The learned Special Public Prosecutor prayed for imposing maximum sentence on accused. Sentencing for any offence has a social goal. 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**). It is a mockery of criminal justice system to take a lenient view showing misplaced sympathy to accused on any consideration whatsoever

including the delay in conclusion of criminal proceedings. (**State of M.P. v. Babulal & Others 2013 KHC 4621, Sagar v. State of Hayana 2014 KHC 5304**). Prosecution succeeded in proving that accused No.2 abetted the commission of penetrative sexual assault on PW12 who is her own daughter of tender years. PW12 who was supposed to spent time in cheerfulness was dealt with aggravated penetrative sexual assault due to the abetment of her own mother. Accused No.2 who is supposed to be the protector and guardian of PW12 is responsible for shattering the childhood of PW12 and for depriving family environment to her by abetting the commission of penetrative sexual assault on her. The act of accused No.2 is unpardonable and a blot on motherhood. It demands just punishment from the court. The mitigating factors put forth by the accused No.2 are meant to invite mercy but the factual matrix cannot allow mercy to accused No.2 who had committed an insult to motherhood. Considering the gravity of the offence committed by accused No.2 on PW12, this court is of the definite view that severe punishment should be imposed on accused No.2 to prevent recurrence of similar offences and to deter potential offenders from committing similar offences.

46.In the result,

Accused No.2 is sentenced to undergo **rigorous imprisonment** for a period of **20 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten

thousand) and in default of payment of fine to undergo **rigorous imprisonment** for a further period of **2 months** for the offence punishable under section 17 read with section 16(3) of section 6 read with section 5(l) of Protection of Children from Sexual Offences Act and to undergo **rigorous imprisonment** for **20 years** and to pay a fine of **Rs.10,000/-** (Rupees Ten thousand only) and in default of payment of fine to undergo rigorous imprisonment for a further period of **2 months** for the offence punishable under section 17 read with section 16(3) of section 6 read with section 5(m) of Protection of Children from Sexual Offences Act and to undergo **rigorous imprisonment** for **6 months** for the offence punishable under section 21 of Protection of Children from Sexual Offences Act. Substantive sentences shall run concurrently.

47. Accused was in judicial custody for the period from 19/04/2021 to 06/09/2021. Accused is entitled to get set off for 4 months and 21 days against the substantive term of imprisonment.

48. Invoking the power under section 357- A of the Code of Criminal Procedure Code, 1973 and section 33(8) of Protection of Children from sexual Offences Act, this court hereby makes recommendation to the District Legal Services Authority, Thiruvananthapuram for adequate compensation to PW12.

49. The Superintendent of Jail is directed to provide medical aid to accused No.2 as and when required.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the Open Court on this the 27th day of November, 2023.

REKHA.R
SPECIAL JUDGE.

Appendix

Prosecution witnesses

PW1.	07/11/2022	Mother-in-law of accused No.2, Occurrence witness
PW2.	07/11/2022	House Mother of Shelter home.
PW3.	07/11/2022	Aiswarya R.V, Supervisor, ICDS Changanasery.
PW4.	07/11/2022	Chippy.S, Filed Worker of Women & Children's Home.
PW5.	07/11/2022	Shali.T.L, Village Officer, Madavoor
PW6.	07/11/2022	Sunilkumar.B.S, Secretary, Madavoor Grama Panchayat.
PW7.	07/11/2022	Sasankan, mahazar witness
PW8.	08/11/2022	Dr.Aiswarya Lekshmi R.V, Medical witness
PW9.	08/11/2022	Dr.Valsala.L, Medical witness
PW10.	08/11/2022	Dr.Sajiv.W.G, Medical witness
PW11.	08/11/2022	Anumohan.S, Police witness
PW12.	18/11/2022	Child Victim, Occurrence witness
PW13.	14/12/2022	Shamla.A, Police witness

PW14.	14/12/2022	Anil Kumar.L, Police witness
PW15.	12/01/2023	Saralal.S, Police witness
PW16.	20/01/2023	J.Madhu Soodhanan Unnithan, Secretary, Kadakkal Grama Panchayat.
PW17.	20/01/2023	Shini.K.S, Police witness
PW18.	10/02/2023	Ushakumari.D, Headmistress Govt.LPS, Madavoor
PW19.	16/02/2023	Aneesh Kumar.M, Police witness
PW20.	08/03/2023	Sreejith.P, Police witness

Prosecution Exhibits :-

P1.	08/07/2021	Scene plan proved by PW5 on 07/11/2022.
P2.	08/07/2021	Scene plan proved by PW5 on 07/11/2022.
P3.	08/07/2021	Possession certificate proved by PW5 on 07/11/2022.
P4.	08/07/2021	Possession certificate proved by PW5 on 07/11/2022.
P5.	15/06/2021	Ownership certificate proved by PW6 on 07/11/2022.
P6.	24/02/2021	Scene mahazar proved by PW7 on 07/11/2022.
P7.	24/02/2021	Certificate of treatment of victim proved by PW8 on 08/11/2022.
P8.	24/01/2021	Copy of Medical examination report of child victim proved by PW8 on 08/11/2022.
P9.	24/02/2021	Potency certificate of accused proved by PW10 on 08/11/2022.
P10.	22/03/2021	Scene mahazar proved by PW11 on 08/11/2022.
P11.	Nil	First Information Statement proved by PW12 on 18/11/2022.
P12.	24/02/2021	164 statement of child victim proved by PW12 on 18/11/2022.
P13.	24/02/2021	Statement of PW12 marked through PW14 on 18/11/2022.

- P14. 14/02/2022 Section added report proved by PW14 on 14/12/2022.
- P15. 24/02/2021 Arrest memo of accused 1 proved by PW14 on 14/12/2022.
- P16. 24/02/2021 Inspection memo proved by PW14 on 14/12/2022.
- P17. 25/02/2021 Address report of accused 1 proved by PW14 on 14/12/2022.
- P18. 19/04/2021 Arrest memo of accused 2 proved by PW14 on 14/12/2022.
- P19. 19/04/2021 Inspection memo proved by PW14 on 14/12/2022.
- P20. 14/02/2022 Address report of accused 2 proved by PW14 on 14/12/2022.
- P21. 23/02/2021 Copy of First Information Report in crime No.281/2021 proved by PW15 on 12/01/2023.
- P22. 24/06/2021 Birth certificate of victim proved by PW16 on 20/01/2023.
- P23. 24/01/2021 Copy of First Information Statement of PW12 marked on 20/01/2023.
- P24.14/02/2022 Extract of Admission Register of child victim proved by PW18 on 10/02/2023.
- P25. 24/01/2021 Certified copy of First Information Report in crime 74/21 of Poojappura Police Station proved by PW19 on 16/02/2023.
- P26. 14/02/2022 Section added report proved by PW20 on 08/03/2023.
- P27. 14/02/2022 Correction report (date of occurrence - FIR) proved by PW20 on 08/03/2023.

Defence witnesses:

- DW1. 05/07/2023 Dr.Salini.R, Medical witness
- DW2. 05/07/2023 Aji.G.Nath, Police witness

Defence Exhibits:-

- D1. 17/09/2019 Copy of FIR in crime No.938/2019 of Pallikkal Police Station marked on 24/04/23
- D2. 17/09/2019 Copy of first information statement in crime No.938/2019 of Pallikkal Police Station marked on 24/04/2023.
- D3. 18/09/2019 Certified copy of Medical examination report in crime No.938/2019 of Pallikkal Police Station proved by DW1 on 05/07/2023.
- D4. 17/09/2029 Copy of Remand report of accused No.1 in crime No.938/2019 of Pallikkal Police Station proved by DW2 on 05/07/2023.
- D5. 17/09/2019 Inspection memo of accused No.1 in crime No.938/2019 of Pallikkal Police Station proved by DW2 on 05/07/2023.
- D6. Nil Contradiction in Ext.P23 statement of PW12 marked through PW12 on 18/09/2023.

Material Objects :- Nil

REKHA.R
SPECIAL JUDGE.

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SPECIAL JUDGE.

Judgment in SC.455/2022

Dated: 27/11/2023.