IN THE FAST TRACK SPECIAL COURT (POCSO)
THIRUVANANTHAPURAM.

PRESENT : Smt.Aaj Sudarsan, Special Judge.

Wednesday, 26th April, 2023 (6h Vaisakha, 1945)

SESSIONS CASE No.927/2019
(Crime No.246/2019 of Fort Police Station)

Complainant	:	State-represented by the Sub Inspector of Police, Fort Police Station Thiruvananthapuram City. (By Special Public Prosecutor, Sri.Vijay Mohan.R.S)
Accused	:	Dr.Gireesh.K, aged 55/2019, (By Advs.Sri.Sojan Michel, Smt.Sheebanath.S, and Sri.Kiran.P.Dev
Charge framed on 03/02/2023	:	Under Sections 506(i) IPC, 9(c) r/w 10, 9(e) r/w 10, 9(k) r/w 10, 9(l) r/w 10, 11(iii) r/w 12 of the POCSO Act, 2012.
Plea	:	Not guilty

Finding : Accused is found not guilty under Sections 506(i) IPC, 9(e) r/w 10, 11(iii) r/w 12 of the POCSO Act, 2012.

: Accused is found guilty under Section 9(m) r/w 10 of the POCSO Act, 2012.

Charge framed on 26/04/2023 : Under Section (9(t) r/w 10 of the POCSO Act, 2012.

Plea : Guilty

Finding : Accused is found guilty u/s.9(t) r/w 10 of the POCSO Act, 2012.

Sentence/ Order : (1) The accused is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand only) for the offence punishable under Section 9(c) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(2) The accused is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand only) for the offence punishable under Section 9(k) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(3) The accused is sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand only) for the offence punishable under Section 9(l) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(4) The accused is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) for the offence punishable under Section 9(t) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(5) In the event of realization of the fine amount, the entire amount of Rs.1,40,000/- (Rupees One lakh and Forty thousand only) shall be given to PW2 as compensation under Section 357(1)(b) Cr.PC.

(6) The accused is allowed set off on the substantive sentence of imprisonment from **31/01/2019 till 22/02/2019** the period he had undergone detention as an under trial prisoner. It is made clear that there is no set off for the period from 26/04/2023 till 27/04/2023 as he was detained as a convicted accused and not as an under trial prisoner.

(7) All the sentences shall run concurrently.

Description of the Accused

Name of accused	Father's name	Occupation	Religion	Residence	Age
Dr.Gireesh	Krishnan	Clinical Psychologist	Hindu	Kuriyathi	59

Date of

Offence	Complaint	Appre - hension	Released on bail	Commen cement of trial	Close of trial	Sentence /order	Explanation of delay
06/12/15	30/01/19	31/01/19	22/02/19	31/03/21	26/04/23	26/04/23	No delay

This case having been finally heard on 26/04/2023 and the court on 26/04/2023 delivered the following :

JUDGMENT

This case is charge sheeted against the accused by the Sub Inspector of Police, Fort Police Station in Crime No.246/2019 for the offences punishable under Sections 7, 9(e), (l), 10, 11(iii), 12 of the POCSO Act, 2012.

2. The prosecution case in brief is as follows:

The accused is an M.Phil holder. He is working as an Assistant Professor in Heath Department. He is involved in giving counselling to people with mental disorders, victims of abuse etc. He runs a counselling center by name ‘depraxis practice to perform’. It is functioning in the cellar portion of his residential house with the address Thanal, TC 41/895 (TNRA 62), Cellar floor, near Thirunarayanapuram Shiva Temple, Therakom Junction, Kuriyathi Ward, Manacaud Village. CW1 the victim boy while he was aged 13 years used to visit the counselling center run by the accused along with his parents

for consultation from 06/12/2015 till 21/02/2017. In between these days, the accused had assaulted him sexually more than once by asking him to go near him and then the accused used to remove the track suit and undergarments of CW1 the victim and has caressed and squeezed his penis. The accused had also played and shown pornographic videos to CW1 the victim from his mobile phone. The accused had criminally intimidated CW1 the victim from disclosing the incident to anyone else. Hence, he has committed the offences punishable under Sections 7, 9(e), (l), 10, 11(iii), 12 of the POCSO Act, 2012.

3. As per Order No.1/21 dated 07/01/21 of the Hon'ble District & Sessions Judge, Thiruvananthapuram, the case was transferred to this court for trial.

4. On issuance of summons the accused entered appearance. He was already on bail. Copies of prosecution records were given to him under Section 207 Cr.PC. After hearing both sides under Sections 226 and 227 Cr.PC, it was found that there were no grounds to discharge the accused. Charges under Sections 10 and 12 of the POCSO Act, 2012 was framed against the accused on 31/03/2021. It was read over and explained to the accused. He pleaded not guilty. Later, on 03/02/2023 after completion of the final arguments and before pronouncement of judgment, charges were altered as the charge framed by my learned predecessor did not contain the specific clauses under Sections 9 and 11 of the POCSO Act that would be attracted

against the accused. Hence, charge under Sections 506 (i) IPC, 9(c) r/w 10, 9 (e) r/w 10, 9(k) r/w 10, 9(l) r/w 10 11 (iii) r/w 12 of the POCSO Act, 2012 were framed. It was read over and explained to the accused. He pleaded not guilty.

5. PW1 to PW14 were examined and Exts.P1 to P4, P4(a), P4(b), P5 to P8, P9, P9(a), P10, P11, P11(a), P12, P12(a), P13 to P24 were marked from the side of the prosecution. CW8, CW10, CW13, CW14 were given up by the prosecution. The accused was examined under Section 313 (1)(b) Cr.PC on all the incriminating circumstances against him. According to the accused, he is innocent of the charges levelled against him. The accused being a Clinical Psychologist had flourished in his career. This has promoted jealousy towards him by certain doctors of Medical College Hospital, Thiruvananthapuram. Just before he was being appointed as Director, Kerala State Institute of Mentally Challenged, certain doctors of Department of Psychiatry, Medical College Hospital, Thiruvananthpuram by names, Dr.Anil Prabhakaran, Dr.Arun.B.Nair, Dr.Jayaprakasan had falsely foisted this case against him with the connivance of Inspector of Police, Aji Chandran Nair who had charge sheeted the accused in an earlier case. There has been petitions and complaints against Mr. Aji Chandran Nair, Inspector of Police for police harassment and falsely implicating the accused in Crime No.2100/2017. Ext P3 FIS is falsely recorded by the police officer after obtaining signature of PW2 on a blank white paper. After hearing under

Section 232 Cr.PC it was found that there were no grounds to acquit the accused at this stage. So, the accused was called upon to enter his defence. DW1 and DW2 were examined from the side of the accused. Exts.D1 and D1(a) were marked from the side of the defence. Both the prosecution as well as the defence have filed detailed argument notes. Heard both sides.

6. Before coming into detailed discussions of the evidence and legal aspects in this case, both the learned Special Public Prosector and the learned defence counsel Adv.Sojan Michel for the fine arguments done in this case.

7. Points that arise for consideration are as follows:

1. Whether PW2 was a child as defined under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 as on the date of occurrence, that is, in between 06/12/2015 till 21/02/2017?

2. Whether the accused had sexually assaulted PW2 in between 06/12/2015 and 21/02/2017 when he had visited the accused at his counselling Center for consultation?

3. Whether the accused being a public servant had sexually assaulted PW2?

4. Whether the accused being on the management of 'depraxis practice to perform', a counselling center which is in the nature of a hospital has sexually assaulted PW2?

5. Whether the accused had sexually assaulted PW2 taking advantage of his mental disability?

6. Whether the accused had sexually assaulted PW2 more than once?

7. Whether the accused had sexually harassed PW2 by showing him pornographic videos from his mobile phone?

8. Whether the accused had criminally intimidated PW2 in case he discloses the incident to anyone?

9. In the event of conviction, what shall be the order as to sentence?

8. <u>Point No. 1</u> : To sustain an offence under the provisions of the Protection of Children from Sexual Offences Act, 2012 the victim should be a child as defined in Section 2(d) of the Act. Section 2(d) defines the term 'child' to mean any person below the age of eighteen years.

9. PW2 has deposed that his date of birth is 03/11/2002. PW3 is his mother. She has also deposed that PW2 was born to her on 03/11/2002. She has produced Ext P5 birth certificate of PW2 which shows that PW2 was born to her on 03/11/2002. PW3 hails from Mahe. She would say that the nearest hospital is the hospital at Vadakara where she had given birth to PW2.

10. Though the incident narrated in this case took place while PW2 was studying in Class 6 -7 period he has given evidence before the court as a

student of Engineering. He has produced his matriculation certificate which shows that he had passed his Class X from Mannam Memorial RHS School, Neeramankara in 2019. His date of birth is entered in Ext P22 Matriculation Certificate as 03/11/2002. It is to be noted that PW2 was in need of the original of Ext P22 Matriculation Certificate as it is required to be maintained by his college where is doing his Engineering. So, the verified copy of his matriculation certificate was marked in evidence by returning back the original matriculation certificate to him.

11. In **Jarnail Singh v. State of Haryana (2013 KHC 4455)** the Supreme Court had considered the determination of age of victim by relying on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rule, 2007 which states that in the scheme of Rule 12(3), if an option is expressed in a preceding clause, it has over riding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation or equivalent certificate of the child is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate Rule 12(3) envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive and no other material is to be relied upon. Only in the absence of such entry Rule 12(3) postulates reliance on a birth

certificate issued by a corporation or a municipal authority or a Panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12 (3) postulates the determination of the age of the child on the basis of medical evidence.

12. The defence has raised a contention that PW2 would have only been 12 years during 2014-2015 when he had studied in Class 6. This argument also finds place in Para. No. 3 in Pg. No. 5 of the additional argument notes filed by the defence. What is to be proved by the prosecution as per Section 2(d) of the POCSO Act, 2012 is that the victim was a child below the age of 18 years on the date of commission of the offence by the perpetrator on the child. Here, PW2 had disclosed the incident of sexual assault that took place while he was 13 years in the year 2019. PW2 has stated that he had consulted the accused while he was in Class 6 and 7 and that consultation ran over a period of 2 to 3 years. His parents PW3 and PW4 have stated that they had taken PW2 to the accused from 2015 to 2017. PW4 has deposed that PW2 was taken for consultation before the accused towards the end of academic year of Class 6 and starting of Class 7. All these would show that the incident took place in between 2015 to 2017 at which time PW2 was aged below 18 years. These discussions on evidence and legal aspects are

enough to conclude that PW2 was a child on the date of incident as defined under Section 2(d) of the POCSO Act, 2012. Therefore, it can be safely concluded that the prosecution has proved the first step in the case. Hence, this point is found in favour of the prosecution.

13. Point No. 2 : According to the prosecution, the accused who is an M.Phil holder while working as Assistant Professor in Heath Department was running a counselling center by name ‘depraxis practice to perform’. It was functioning in the cellar portion of his residential house with the address Thanal, TC 41/895 (TNRA 62), Cellar floor, near Thirunarayanapuram Shiva Temple, Therakom Junction, Kuriyathi Ward, Manacaud Village. PW2 while he was 13 years old used to visit the counselling center run by the accused along with his parents for consultation from 06/12/2015 till 21/02/2017. In between these days, the accused had assaulted PW2 sexually more than once by removing the track suit and undergarments worn by PW2 and by caressing and squeezing his penis. The accused had also played and shown pornographic videos to PW2 from his mobile phone. The accused had criminally intimidated PW2 from disclosing the incident to anyone else.

14. Evidence adduced in this case shows that PW2 was a boy who had been suffering from conduct disorder with limited pro-social emotions adolescent onset. The evidence given by PW1, PW11 and DW2 who are expertise in the fields of psychiatry and psychology show that a child with

conduct disorder is in general, aggressive to people, deceitful, violates rules, do not feel guilty of wrong doings, do not feel guilty after hurting someone, unconcerned about feelings of others, emotions displayed to manipulate or intimidate, lying, cheating etc. PW1 is the PG student who consulted and recorded the case history of PW2. She is the person who has made all entries in Ext P11 case record. PW1 has deposed that PW2 was admitted in the Psychiatry ward of the Medical College Hospital on 25/01/2019 for the following reasons, viz., constantly avoid going to school and leaving home. She would depose that the reason for PW2 to stay back home without going to school was his constant stomach ache.

15. PW1 had done her MBBS from Government TD Medical College, Alappuzha. She was a PG student at Government Medical College, Thiruvananthapuram from 2017 to 2020 in the Department of Psychiatry. She has deposed that there are 3 Units in Psychiatry Department. During the relevant period, she was posted in Unit 2 of Psychiatry Department headed by PW11 as the Unit Chief. PW2 was admitted to Unit 2 on 25/01/2019. PW1 was responsible for taking care of PW2. She would say that PG students are given the duty to record the case history of every patient being admitted. Thus, she has recorded the case history of PW2, which includes sexual history of PW2. She has stated that on 25/01/2019 she recorded the case history of PW2 regarding his childhood. Next day while recording his sexual history, PW2 disclosed that 4 years back when he developed mental discomforts, he

had consulted a private psychologist who used to touch his private parts. PW2 also disclosed to PW1 that he was afraid to disclose the incident to his parents. PW1 has stated that PW2 disclosed to her that Dr. Gireesh, who is the accused herein had repeatedly assaulted him sexually. Evidence of PW1 shows that on PW2 disclosing this incident to her, she informed the matter to PW11. In the presence of PW11, PW1 again asked PW2 about the sexual assault and he was consistent with his version of sexual assault on him by the accused. This is corroborated by the evidence given by PW11 that PW1 had informed him about the disclosure of sexual assault by PW2. So, he had visited PW2 and had asked him about the sexual assault in the presence of PW1 in order to obtain a consistent version to rule out lying which is one of the common symptoms of conduct disorder. It is only after PW11 and PW1 had ascertained the statement given by PW2 about the sexual assault as genuine that they reported the matter to police through Ext P1 intimation. Ext P1 intimation is in the handwriting of PW1. DW2 is an expert in the field of Clinical Psychology. He has worked in various institutes at Belgaum, Kathmandu etc. and currently working in the Institute of Human Behaviours and Allied Science, Delhi. He is also a member of the Committee constituted by the Hon’ble Supreme Court to prepare guidelines for preliminary assessment under Section 15 of the JJ Act. His area of interest is child and adolescent mental health. The evidence given by DW2 shows that a person or child with conduct disorder is characterized by anti-social behaviour including lying, stealing, truancy, unconcerned about other’s emotions etc. He

has explained the condition of conduct disorder with pro-social emotions of which PW2 was diagnosed with as pro-social emotions are the emotions which are considered essential in the society and those emotions help society to function properly and these include empathy, concern for other's suffering, feeling of guilt or remorse for doing something which destroy the social fabric. DW2 has explained the process of how a doctor may conclude that his patient with conduct disorder had been sexually assaulted. He has elaborated that in such instances, doctors will gather information with regard to the abuse. Exploration under sexual history has to be favourably elaborate with support and without leading questions. Doctors will explore the emotional reaction, anxiety, fear, distress and then with the help of appropriate counselling and psychotherapeutic techniques help the victim. He would further state that his own patients have reported to him about sexual assault. In such cases, he would re-check the same by asking them as confirmation is required. DW2 has highlighted that there has been instances where his patients have repeatedly told him about sexual abuse which according to him shows their distress and traumatic experience. Giving consistent version is one of the criterion to ascertain the genuineness of sexual abuse. He has asserted that people with conduct disorder have the ability to report and speak about sexual assault. He has further deposed that in case of persons with conduct disorder, there can be chances of lying about sexual abuse as well as truth in saying about sexual abuse. In the instant case, PW3 the mother of PW2 has categorically stated that PW1 had given counselling to PW2. It was

a method adopted by her to relieve the stress which PW2 had. PW1 and PW11 have adopted the exact procedure as stated by DW2 that is required to ascertain the consistency of the statement given by PW2, a child with conduct disorder before intimating the police to rule out chances of lying. Ext P11 is the case record of PW2. Ext P11 (a) dated 30/01/2019 is the portion recorded by PW1 in her handwriting disclosing the sexual assault on PW2. It reads as follows: “child reports of being assaulted sexually 2 years back by a private psychologist. Informed Dr. Arun B. Nair and Unit Chief Dr. Anilkumar T.V about the incident. Police intimation sent as per POCSO Act”. In the same page PW1 is seen to have entered the following entry which shows that she had informed the child line about the alleged sexual assault as per the instructions of the Head of Department, Department of Psychology. PW11 has clarified that a detailed report on sexual assault is not usually recorded in the case history. After verifying the genuineness and consistency of such disclosures, doctors normally intimate it to the police, which has been done in this case too. A reading of all these evidences would show that PW1 and PW11 had ascertained the genuineness and consistency of the disclosure of sexual assault by PW2 before giving Ext P1 intimation to police. This is done to rule out false implication and the social stigma attached with such cases.

16. The learned defence counsel would argue that Ext P1 intimation was given to Medical College Police Station, but Ext P3 FIS was recorded by Fort Police station and Ext P14 FIR was registered by the Fort Police Station,

which is unheard in law. According to the learned defence counsel when intimation was sent to Medical College Police Station regarding commission of a cognizable offence, the Medical College Police Station had a duty to record the FIS and register the FIR and not Fort Police Station. Ext P3 FIS was recorded by PW13, the Sub Inspector of Police, Fort Police Station. He would depose that he received Ext P1 intimation in the Fort Police Station in the noon of 30/01/2019 and it is on the basis of that intimation he had proceeded to Medical College Hospital, Thiruvananthapuram to record Ext P3 FIS of PW2. PW14 the investigating officer has deposed that generally all intimations from Medical College Hospital, Thiruvananthapuram is given to the nearest police station which is the Medical College Police Station. It is from Medical College Police Station that intimations are sent to the jurisdictional police stations. This explanation given by PW14 is the procedure adopted by the police stations. It is to be noted that if Medical College Police station starts taking FIS and registering FIR in all cases in which intimation is received from the Medical College Hospital, Thiruvananthapuram and conducts preliminary investigation in all cases to ascertain jurisdiction, it will be a cumbersome procedure. A large number of medico-legal cases are intimated daily from Medical College Hospital to the nearest police station. So, the procedure adopted by the police department in sorting and sending the intimations to the respective jurisdictional courts would be ideal. Hence, the explanation given by PW14 is found satisfactory and accepted.

17. The learned defence counsel would further argue that PW4 the father of PW2 had deposed that he came to know of the incident from Medical College Police. PW4 is seen to have further deposed that police had asked him to come to the room where PW2 was admitted and the police had informed him of the incident. The learned defence counsel argues that this statement given by PW4 shows that the Medical College Police had reached the hospital and recorded the statement of PW2 and the witnesses. Later, they have managed not to bring those statements before the court. It is to be noted that all police stations in the State are computerized and are automatically recorded as per CCTNS System followed. So, if any such statement or FIR was registered by the Medical College Police Station, they can never cover it up as argued by the learned defence counsel. Therefore, these arguments made by the learned defence counsel are found to be baseless.

18. Coming to the evidence of PW2, it is seen that he developed some mental disturbances after he saw a black cat while he was studying in Class 6. PW3 would say that he was taken to an Ustad and some prayers were conducted. However, the condition of PW2 did not progress. PW2 is her 2nd child. It is as per the advice of their family doctor that PW2 was taken to the accused for counselling. The evidence given by PW2 and his parents viz., PW3 and PW4 would show that his parents used to accompany him to the counselling center run by the accused. The accused used to call his parents

first to the counselling room and after having spoken with them and sending them out of the consulting room, he used to call PW2 to his consulting room. At that time, parents used to sit outside the consulting room in the waiting area. They have stated that while PW2 used to be inside the consulting room with the accused, the door of the consulting room used to be closed. PW2 has deposed that the accused had sexually assaulted him by removing his track pants, undergarments and then caressed and squeezed his penis more than once. He has further deposed that the accused used to hold him every time he used to visit him for consultation. In his cross-examination, PW2 has stated that the accused had hugged him affectionately too. This throws light to the fact that PW2 could differentiate between a sexual touch and an affectionate touch. From the cross-examination of PW2 it is also clear that the accused played an important role in the life of PW2. PW2 used to get tensed during the time of his examination. If he could not meet the accused in person, his mother used to call the accused and hand over the phone to PW2. This according to PW2 has always eased his tension and had made him feel relaxed. This shows the emotional bond PW2 shared with the accused. It also shows influence the accused had on PW2. However, in due course of twice the disorder of PW2 worsened. This could be as deposed by DW2 that when a child especially one with mental disorder is assaulted sexually, the trauma and distress increases worsening the mental condition of such child. The evidence of PW1 and PW11 read along with the oral testimony given by PW3 and PW4 shows that the condition of PW2 deteriorated in the due course of

time. Then the accused himself had suggested psychiatric treatment for PW2. When PW2 has categorically deposed that though he used to feel relaxed by talking with the accused, his condition worsened further. He has already deposed that the accused used to caress his penis and squeeze his penis after removing his track suits and undergarments on many occasions during consultation. It has also come out in evidence that the accused used to consult PW2 in the consulting room with doors closed. This is the usual practice adopted by all counsellors or psychologists or psychiatrists as the confidentiality of the matter disclosed and discussed has to be maintained.

19. The learned defence counsel argues that this piece of evidence given by PW2 in his chief examination regarding the sexual assault cannot be accepted in evidence as this was brought out by the prosecution through leading question. Here, lets analyze the argument with the nature of evidence recorded in the chief examination. Sections 141 and 142 of the Indian Evidence Act explains what is a leading question and how, when and which party can put the same to a witness during examination. As per Section 141 of the Indian Evidence Act, leading question is any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question. Section 142 of the Indian Evidence Act deals with when leading questions must not be asked. According to the said Section, leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of

the court. The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved. In his examination in chief, PW2 has stated that he went to consult Dr. Gireesh and his treatment relieved him of his stomach ache. Then the learned Special Public Prosecutor is seen to have put the following question, “What has the doctor done”? To this PW2 has deposed that the accused removed his track pants and caressed and squeezed. As the next question, the learned Special Public Prosecutor has asked, “Whether doctor has removed your track suits alone”? To this question PW2 has deposed his that his undergarment was removed. For clarity sake these portions in the deposition of PW2 is reproduced hereunder:

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……..” The learned defence counsel has placed reliance on Varkey v. State of Kerala (1993 KHC 385 (SC) where is it is held that leading question offered fair trial guaranteed under Act 21 of the Constitution and is not a curable irregularity. A reading of the aforesaid questions put in by the prosecution to PW2 in his chief examination cannot be called as leading questions. This would have been a leading question, had the learned Special Public Prosecutor asked PW2 “Did the doctor assault you sexually”, and “Did the doctor remove your

undergarment”? When the prosecution has not asked these types of questions which are the types of questions that fall under Section 141 of the Indian Evidence Act, it cannot be said that the prosecution had brought out evidence of sexual assault on PW2 by putting leading questions to him. Further, it may be noted that though PW2 is aged 19 years at the time of giving evidence, he is a boy with mental disorder and a victim of sexual assault by a person whom he had reposed his utmost faith. So, these questions put in by the prosecution can be treated only as introductory questions which could make PW2 depose before the court as to what had happened to him so as to elicit the truth before the court. As rightly argued by the learned defence counsel the following questions put by the prosecution to PW2 into his examination. Chief are leading questions, viz., 25/01/2019 ……

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However, the following questions put by the prosecution to PW2 in his examination. Chief are not leading question, like

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…… A close reading of the evidence given by PW2 in his examination is chief shows that these questions are not at all

leading questions, the prosecution was only assisting PW2, a child with conducted disorder to speak out.

20. It is continued by the defence that PW2 was consulted by Dr.Ashraf, Dr.Arun.B.Nair etc before he was admitted in the Psychiatry Department of Medial College Hospital, Thiruvananthapuram but he did not disclose anything about the sexual assault by the accused to any of these doctors about whom PW2 has stated that he was fine and comfortable to disclose anything. PW3 has stated that PW1 gave counselling to PW2 and it was only PW1 who had given him counselling after the consultation with the accused, the other doctors whom PW2 had been after consultation with the accused never gave him counselling. They only treated his illness by prescribing and administering medicines. It is natural for any human being to feel emotionally bonded with people who care to listen to them and counsel them in their period of distress. In the natural human conduct a person or a child with mental disorder will feel comfortable only with certain people who supports them emotionally and mentally to open up freely. This is the reason why PW2 felt comfortable with PW1 and disclosed about the sexual assault that accused had committed on him. Therefore, there is no anomaly in PW1 disclosing about the incident of sexual assault to PW1. There is no material evidence to show that PW1, a PG student was made as a tool by the doctors of Psychiatry Department to falsely implicate the accused in this case as argued at length and breadth by the learned defence counsel. Therefore, the

contention raised by the defence that the prosecution had brought out its case through leading questions is not sustainable.

21. The learned defence counsel has then argued that much prejudice was caused to the accused by examining PW1 doctor a day before the case was scheduled for trial. It is to be seen that prosecution had filed CMP.193/2022 on 14/06/2022 to advance the case and to examine PW1 who had recorded Ext P11 case records and to whom PW2 had disclosed the offence as she was leaving the country to go to UK to pursue her high studies that weekend. On filing of CMP 193/2022 the defence was given notice and heard. They defence did not raise any objection to advance the case to 21/06/2022 and examine PW1 in this case on a date prior to the date on which her examination was scheduled to. Thus, the defence cannot be expected to raise such an argument at the final stage of the case.

22. Likewise, the learned defence counsel has argued that much prejudice was caused to the accused by altering the charge when the case was posted for judgment to 28/01/2023 the charge was altered on 03/02/2023 as the accused was absent on 28/01/2023. It is also argued by the learned defence counsel that the altered charge is not in compliance with Section 212 Cr.PC as it does not specify the exact date and time of the incident. As per Section 216 Cr.PC the court may alter or add to any charge at any time before judgment is pronounced. In compliance of Section 217 Cr.PC both the

prosecution and the defence were given opportunity to recall or re-summon and examine any witnesses with reference to such alteration of charge. Neither the prosecution nor the defence sought for recalling or re-summoning the witnesses already examined. Instead the defence opted for examining a further witness as DW2. At the time of argument, the learned defence cousel submitted that much prejudice was caused to the accused by not re-calling PW1 doctor who has gone to UK to pursue her higher studies. It to be noted here that PW1 was a post graduate student in the Department of Psychology at the time when PW2 was admitted for psychiatric evaluation and treatment. True, it to be her that PW2 made the disclosure of the incident that took place 2 years prior to his admission at the hands of the accused. However, the altered charge has nothing to do with any of these aspects. The court was compelled to alter the charge to make the charge appear understandable to avoid prejudice being caused to the accused as the learned predecessor did not specify the clauses to Section 10 and 12 of the POCSO Act, though all the ingredients of altered charge was found a place in the charge already framed. None of the ingredients specifically mentioned in the altered charge could be challenged by examining PW1. Likewise, coming to the argument based on Section 212 Cr.PC, it is to be understood that PW2, a child with conduct disorder, admitted to the Psychiatry Department of Medical College Hospital, Thiruvananthapuram had disclosed the incident that took place 2 years back. He could only recollect the period he had consulted the accused. He was not in a position to specify an exact date or time as to the commission of the

offence. PW3 and PW4 have also deposed about the time period extending from 2015 to 2017 as the period they had taken PW2 before the accused for consultation. In **Chittaranjan Das v. State of West Bengal (AIR 1963 SC 1696)** it was held that if the charge is of rape and there is insistence on specifying the date of offence, then there could be no charge successfully laid, since ordinarily the unfortunate victim would not be able to precisely state the dates on which she was made to submit to the accused. It was held that in dealing with the sufficiency of a charge, the court will have to examine all relevant facts and if it appears to the court that having regard to them, the charge could and ought to have been framed more precisely, the court may reach the conclusion and then enquire whether the defective charge has resulted in any prejudice to the accused. In the instant case, PW2 who was afraid to speak out about the incident gathered the courage and disclosed about the incident when PW1 gave him counselling 2 years later and while recording his sexual history in Ext P11 case records. So, when PW2 had disclosed of the incident only after 2 years, it is difficult to expect that he would speak of the specific dates of sexual assault by the accused. What can be expected from such a witness (victim) is an approximation of the period in which various incidents of sexual assault was committed on him. Thus, non-mentioning of a specific date in the charge or in the prosecution case would not cause prejudice to the accused as he is already conveyed by framing of the charge that the incident took place in between 06/12/2015 and 21/02/2017.

Therefore, this argument put forward by the learned defence counsel is not accepted.

23. It is contended by the defence that the prosecution has not proved the place of occurrence. PW2 has deposed that the dates he had consulted the accused is recorded in Exts P4, P4(a) and P4(b). However, as rightly argued by the defence, these are admit cards of 'depraxis practice to perform' with no address on it. So it cannot be taken into confidence that Exts.P4, P4(a) and P4(b) cards are issued by the counselling Center run by the accused. It does not show the name and address of the accused or his signature on it. It only shows certain phone numbers through which clients can book appointment. Therefore, the evidence given by PW3 and PW4 are to be analysed. It shows that they used to take PW2 for consulting the accused to his clinic that functioned in the cellar floor of his residential house situated at Kuriyathi, Manacaud. Ext P10 scene plan prepared by PW10, the Village Officer, Manacuad in Crime No.2100/2017 of Fort Police Station shows that the place of occurrence is situated on the cellar floor of a building. PW6 the attestor to Ext P6 scene mahazr has deposed that he was present while police had prepared Ext P6 scene mahazr and that he had put his signature in it at the house of the accused. Ext P9 and P9(a) are the ownership certificates issued by PW9, working in the Revenue Department, Thiruvananthapram Corporation which shows that these two buildings are in the ownership of K Gireesh, Manacaud with building Nos. 41/895 (1) and 41/895(2). Though a

contention was raised by the defence that building Nos.41/895(1) and 41/895(2) do not belong to the accused, no material is produced in evidence to prove the same. PW9 has issued Exts.P9 and P9(a) ownership certificates based on the entries contained in the assessment register maintained at his office. It is a general practice that house numbers and building numbers changed during election period. Also from a reading of the addresses mentioned in CMP.350/2022 and CMP.66/2023 filed by the accused in court, his address contains TC No.41/895(1). This aspect throws light to the fact that the buildings with TC No.41/895(1) is owned by the accused. It is only a vague argument from the side of the defence that building Nos.41/895(1) and 41/895(2) are not owned by the accused. This argument is raised by the defence only to show that the place of occurrence do not belong to him. But from Exts.P9, P9(a) and CMP.350/2022 and CMP.66/2023 filed by the accused it can be seen that the said building Nos. belong to the accused. Hence the prosecution has succeeded in proving the place of occurrence as the consulting room owned by the accused and functioning in the Cellar floor of his residential house. Thus, this argument raised by the defence is not tenable.

24. Next ground of attack on the prosecution case by the defence is that the accused was falsely implicated by certain doctors from the Department of Psychology, Medical College Hospital, Thiruvananthapuram viz., Dr.Arun B. Nair who had treated and on whose advice PW2 was

admitted to the Psychiatry Department, Dr.Anil Prabhakaran and Dr.Jayaprakasan. From the thorough cross-examination of PW1 PG student who recorded Ext P11 case records and mentioned about Ext P11 (a) report, PW11 the Unit Chief and Head of Department of Psychiatry, Medical College Hospital, Thiruvananthapuram the defence could not bring out any material to show existence of any animosity or jealousy these doctors or other doctors of the department have or had towards the accused to falsely implicate him in a case of sexual assault. Moreover, the evidence given by PW1 and PW11 clearly establishes that they had given Ext P1 intimidation to police only after thoroughly questioning PW2, a boy with conduct disorder as to the genuineness and consistency in his statement. That apart, the defence has failed to bring in any materials to show that the family of PW2 had any animosity towards the accused so as to utilize PW2 to give a false case against the accused. Therefore, these arguments raised by the defence is brushed aside.

25. It is further contended by the defence that the accused was arrested from the premises of his house at 6.30 pm on 30/01/2019 even prior to the registration of Ext P14 FIR. PW13 is the police officer who had recorded Ext P3 FIS of PW2 on receipt of Ext P1 intimidation sent from Medical College Hospital, Thiruvananthapuram. After recording Ext P3 FIS, PW13 has on its basis registered Ext P14 FIR at 7.44 pm. It is deposed by him that the FIR is registered using CCNTS System and the time of

registration of FIR is automatically done by the system. He has deposed that he had brought the accused who was found in the premises of his residential house at 9.30 pm to the police station and after complying the procedures recorded his arrest. He has stated that he had informed the arrest of the accused to his driver Subhash as requested by the accused. Exts P15 arrest memo and P16 inspection memo shows that the accused was arrested at 9.30 pm on 30/01/2019 and the arrest intimation was given to Subhash, the car driver of the accused. PW14 who is the investigating officer has deposed that the accused was taken from his residential premises at 6.30 pm, which is prior to the registration of Ext P14 FIR. It is however, to be noted that PW14 did not arrest the accused. The accused was arrested by PW13. So, a mere mistake while giving evidence by the investigating officer who has laid the charge sheet but has not arrested the accused does not mean that PW13 who in fact had arrested the accused, took him in custody prior to the registration of Ext P14 FIR. DW1 the Station House Officer, Fort Police Station had produced Ext D1 GD containing Ext D1 (a) entry No.295 dated 31/01/2019 showing that PW13 had arrested the accused Dr. Gireesh on 30/01/2019 at 9.30 pm. When these evidences throw light to the aspect that PW13 had complied with all the formalities of arrest and there was no illegality in his action in arresting the accused, the arguments raised by the defence are brushed aside. It is also to be noted that DW1 has stated that since the introduction of CCTNS system in 2016 the GD is maintained in the computer

system. The Fort police station does not maintain a hard copy of GD at present. All entries in GD are entered through computer since 2016.

26. It is further argued by the learned defence counsel that there has been violation of Sections 24 and 26 of the POCSO Act as PW13 a male police officer had recorded Ext P3 FIS of PW2 and the said statement does not mention anything about the presence of his parents with him while recording it. PW13 has deposed that it is true that Ext P3 FIS does not mention about the presence of the parents of PW2 while recording the statement. It could only be an omission on the part of PW13. Therefore, omission on the part of PW13 in not recording the presence of parents of PW2 while recording his Ext P3 FIS is not fatal to the prosecution. Section 24 of the POCSO Act does not mandatorily state that the statement of a victim of sexual assault should be recorded by a woman police officer. It only states that 'as far as practicable by a woman police officer'. So, the act of PW13 who in his bonafide belief that he can record the statement of PW2 because PW2 is a boy is not violative of Section 24 of the POCSO Act, 2012. Thus, these arguments by the defence are not sustainable.

27. At this juncture, the learned defence counsel argued that the offence of sexual assault being a grave offence was supposed to be conducted by Inspector of Police as per the Circular issued by the DGP of the State. A perusal of Circular No. 6/2017 dated 02/02/2017 has not included an offence

punishable under Section 9 r/w 10 of the POCSO Act as a grave offence that requires to be investigated by an Inspector of Police. That apart, issuance of such circulars by the DGP of the State is only to have effective investigation by senior officers in case of grave offences mentioned in that circular. Hence, this argument by the defence is not tenable.

28. When the prosecution has laid down the foundation of the case, it is armed with the presumptions under Sections 29 and 30 of the POCSO Act, 2012. The accused attempted to rebut the presumption by bringing in evidence that whenever the accused had consulted PW2 there were 3 interns sitting on a raised cabin in his consulting room. PW2 has deposed that there were interns with the accused at times and it is in their absence in the consulting room that the accused had sexually assaulted him. Further, it has been admitted by the accused in his examination under Section 313(1)(b) Cr.PC that whenever patients were reluctant to open up to him in the presence of his interns, he used to send his interns to the cabin present in his consulting room. Mere presence of interns inside the cabin present in his consulting room does not mean that they would be watching or listening to the secret and confidential talks between the patient and the accused. The aim of the accused to send his interns to the cabin situated in his consulting room is to create and provide a peaceful and confidential atmosphere to the patient to open up freely. The evidence given by PW3 and PW4 clearly shows that the accused used to talk to them first whenever they had taken PW2 for consultation and

after that he used to call PW2 to the consulting room and the consultation always took place behind closed doors while they used to wait outside the consultation room in the visitor's waiting area.

29. From the discussions made in herein it can be safely concluded that the accused had sexually assaulted PW2 more than once while he had visited the accused for consultation in the clinic run by the accused situated on the cellar floor of his residential house. Therefore, this point is found in favour of the prosecution.

30. <u>Point No. 3</u>: The accused was working as Assistant Professor with Health Department. Ext P23 is the attested copy of Order No. E2/2768/16/GMCT dated 02/02/2016 of the Principal, Government Medical College, Thiruvanathapuram produced by the Principal on receipt of summons from the court. Ext P23 shows that the accused, a Clinical Psychologist who was working in the Government Hospital, Alappuzha was posted on deputation for one year period in the existing vacancy of Assistant Professor in Clinical Psychology, Head of Department of Psychiatry, Medical College, Thiruvananthapuram with effect from 02/02/2016. The accused has admitted this in his examination under Section 313(1)(b) Cr.PC. He would further state in his examination under Section 313(1)(b) Cr.PC that he was not permitted to join in Thiruvananthapuram Medical College Hospital due to

professional jealousy of a few of doctors of the Psychiatry Department. So, he was transferred to Mental Hospital, Oolanpara.

31. Prosecution has relied on Ext P23 to show that the accused was a public servant during the relevant period. The learned defence counsel has argued that though the accused is admittedly a public servant, the prosecution has no case that he has committed the alleged offence in his capacity as such public servant in his place of work or in the course of his duty as such public servant. The learned defence counsel has argued that a reading of Clauses (a) and (b) to Section 9 relating to police officers and members of armed forces or security forces would show that an offence of sexual assault punishable under those clauses would lie against them if they had committed the offence within the limits of police station or premises at which he is appointed, or within the limits of the area to which the person is deployed or in the premises if any station house, whether or not in the police station to which he is appointed or in any area under the command or the forces or armed forces or in the course if his duties or otherwise or where he is known as or identified as a police officer or as a member of the security or armed forces. According to the learned defence counsel the sub-clauses to clauses (a) and (b) to Section 9 of the POCSO Act extends to clause (c) of Section 9 of the POCSO Act. He has relied on the literal rule of interpretation to extend the benefit of the sub-clauses to clauses (a) and (b) to Section 9 of the POCSO Act to decide clause (c) to Section 9 of the POCSO Act. It is argued that the legislature could never

think of any other situation while drafting clause (c) to Section 9 other than what is contained in the sub -clauses to clauses (a) and (b) to Section 9 of the POCSO Act.

32. Literal rule of interpretation is also known as the grammatical rule of law. This rule provides for the natural and ordinary meaning to the words used in the law. The rule says that the words must be read and understood in the literal sense. So, when the literal rule of interpretation is applied to the words contained in Section 9 (c) of the POCSO Act, it is understood that the accused person assaulting a child sexually need to be a public servant alone. He need not have committed the offence while being in his office or in the discharge of his duties as such public servant. When the legislature in its wisdom has clearly omitted sub-clauses to clause (c) to Section 9 of the POCSO Act unlike the sub-clauses provided for clauses (a) and (b) to Section 9 of the POCSO Act, the legislative intention and object is clear that the person assaulting a child need to be a public servant alone and he need not have committed the offence while discharging his duty as such public servant or in his public office.

33. So, the crucial question to be considered is whether the accused falls under the definition of public servant as defined in Section 21 IPC. Section 2(2) of the POCSO Act says that words and expressions not defined in the Act, but defined in Indian Penal Code, Code of Criminal Procedure,

Juvenile Justice (Care and Protection of Children) Act and Information Technology Act, then that meaning has to be taken. So, going by Section 21 IPC only those persons coming under the 12 descriptions contained in Section 21 IPC alone would fall under the meaning of a public servant. The accused is an M.Phil holder. He is not a medical doctor. He is a Clinical Psychologist. Ext P23 shows that he is employed by the Government of Kerala. So, by the 12th description to Section 21 IPC, he is a person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the government. That means, the accused who is in the government service or in the pay of the government is a public servant coming under Section 21 IPC.

34. By discussions made in Point No. 2, it is already established by the prosecution that the accused had sexually assaulted PW2. From the discussions made in this point, it is seen that the accused was a public servant at the time of sexually assaulting PW2. Therefore, this point is found in favour of the prosecution.

35. <u>Point No. 4</u>: The prosecution case is that the accused is conducting a counselling center in the cellar floor of his house. He is in the management of this counselling center which is in the nature of a hospital. From the discussions made in Point No. 2 it is found that the accused runs a

private consultation in the form of a counseling center in the cellar floor of his residential house.

36. The term ‘hospital’ is not defined in POCSO Act. According to WHO Expert Committee, 1963, a hospital is a residential establishment which provides short-term and long-term medical care consisting of observational, diagnostic, therapeutic and rehabilitation services for persons suffering or suspected to be suffering from a disease or injury and for parturient. It may or may not provide services for ambulatory patients or an out-patient basis. The dictionary meaning of the term ‘hospital’ is that it is an institution providing medical and surgical treatment and nursing care for sick or injured persons.

37. According to the defence, the accused is a Clinical Psychologist holding M.Phil and is not a MBBS graduate who can prescribe medicine to anyone. The statement given by the accused in his examination under Section 313(1)(b) Cr.PC shows that the accused had private practice at his residence where counselling were provided. PW2 has deposed that he had been to the clinic run by the accused along with his parents. PW3 has testified that she and her husband PW5 had taken PW2 to the clinic run by the accused situated on the cellar floor of his residential house for consultation. When it is clear from the evidence that the accused is not a medical doctor but an M.Phil holder he can only give counselling to the patients coming before him. So, though PW2 and PW3 has deposed that the accused used to consult PW1 at

his clinic it only means that he had given counselling sessions to PW2. The words ‘clinic’ and ‘consultation’ are the words of laymen like PW2 and PW3. When the accused was legally allowed to give only counselling sessions in his clinic or counselling center, it can never par take the definition of a hospital. According to Cambridge Dictionary, ‘counselling center’ is defined to mean services provided by qualified social workers, psychologists, guidance counsellors or other qualified personnel to persons with mental illness or serious emotional disturbances. Such psychologists who run or manages counselling centers or clinics cannot term their centers as hospitals. Things would have been different if the accused had availed service of a psychiatrist at his counselling center or clinic. Thus, prosecution cannot argue that the accused has been in the management of a counselling center or clinic similar to that of a hospital. Therefore, from these discussions it can be safely concluded that this point is found against the prosecution.

38**. Point No. 5:** The learned counsel for the defence has argued that prosecution has no case that the accused had sexually assaulted PW2 taking advantage of his mental disability and it is the court alone which has such a case. A reading of the prosecution case itself shows that PW2 had approached the accused with certain mentally related issues for which the accused in his capacity as a Clinical Psychologist had given counselling sessions. So, the imbedded case is that the accused had taken advantage of the mental disability of PW2 who had approached him for counselling. Though

the charge sheet filed by the prosecution records lack the specific words, a reading of the entire prosecution records show that the case of the prosecution is that the accused had sexually assaulted PW2 taking advantage of his mental disability. Thus, a charge under Section 9(k) r/w 10 of the POCSO Act was framed against the accused.

39. Coming into the crux of the matter, the learned defence counsel has drawn the attention of the court to Exts.P2, P11 and P12 which shows that PW2 was treated for conduct disorder. DW2 has categorically differentiated mental disorder and mental disability. He would say that mental disability is characterized by lack of abilities which includes cognitive, social, personal and occupational whereas conduct disorder is a behavioural disorder and any child with conduct disorder do not have these disabilities.

40. According to the Right of Persons with Disabilities Act, 2016 mental illness means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition or arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence. Conduct disorder refers to a group of behavioural and emotional problems characterized by a disregard for others. It is trite that it is a mental condition that worsens with age and if goes untreated can result in great

mental harm. According to researchers many factors contribute to conduct disorder. Such children are found to have impairment in the frontal lobe of the brain. This interferes with their ability to plan, avoid harm and learn from negative experiences. The term ‘disability’ means a physical, mental, cognitive or developmental condition that impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily activities and interactions. Even mental disorders are disabilities that interfere with the mental development of a child. In the instant case, PW2 when consulted the accused for counseling sessions the accused had the knowledge that PW2 has mental disorder. It is for getting a cure for his mental disorder that he had approached the accused. From the discussions made in Point No. 2, it is already found that the accused had sexually assaulted PW2. When PW2 had approached the accused a Clinical Psychologist, it is common knowledge that he has some mental disorder or disturbances. When a Clinical Psychologist after winning the confidence of his patient assaults him, it can only be understood that he had taken advantage of the mental disability of his patient to assault him. The evidence of PW2 is clear enough to show the depth of closeness PW2 had with the accused. He has deposed that he used to feel uneasy during his exam time and when he was not able to meet the accused, on whom he had reposed his faith, his mother PW3 used to contact the accused over phone and PW2 would talk with him and it used to unease his mental condition. These evidences are sufficient to conclude that the accused

had taken advantage of the mental disability of PW2 to assault him sexually. Therefore, this point is found in favour of the prosecution.

41**. Point No. 6**: The discussions made in Point No. 2 establishes that the accused had sexually assaulted PW2 on more than one occasion. This evidence calls for punishment for aggravated sexual assault. Hence, this point is found in favour of the prosecution.

42. Point No. 7 : According to the prosecution, the accused had shown pornographic videos to PW2 from his mobile phone during consultation time. PW2 has deposed that the accused had shown him pornographic videos from his mobile phone on many occasions when he had gone for consultation. In a case of sexual harassment by an accused by showing pornographic materials, as in the instant case, pornographic videos, the prosecution has a duty to prove that the electronic media used to show the pornographic material is seized and send for FSL report. It is only then the court can conclude that the accused had displayed pornographic videos to the victim from his electronic media.

43. In fact, PW14 the investigating officer had failed to seize the mobile phone used by the accused. In his examination before the court, PW14 has explained about non-seizure of mobile phone of the accused. He would say that PW2 had disclosed the commission of the offence by the accused

after a lapse of 2 years, which prevented him from tracing out and seizing of the mobile phone used by the accused to show pornographic videos to PW2. It is to be noted that only when such electronic device is seized and a report is obtained from the FSL as to the existence of such a content in that mobile phone, the prosecution can prove the commission of the offence punishable under Section 11(iii) r/w 12 of the POCSO Act, 2012. In the absence of cogent evidence to connect the accused that he had shown pornographic videos to PW2, this point is found against the prosecution.

44. Point No.8 : According to the prosecution, the accused had criminally intimidated PW2 from disclosing the incident to anyone. The evidence given by PW2 shows that he was afraid to disclose the incident to anyone and also because the accused had told him not to disclose the incident to anyone. PW2 has not stated in what manner the accused had criminally intimidated him generating fear in him which prevented him from disclosing the incident to anyone.

45. Section 503 IPC defines Criminal Intimidation as, “Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person

is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation: A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section".

46. A reading of the above provision shows that mere threat is not sufficient to attract the charge of criminal intimidation. The threat should be a real one generating fear in the mind of the person threatened. In the instant case, PW2 has not deposed in court anything about the accused threatening him or the accused had by such threatening, if any, generated a fear in him. The evidence only shows that the fear generated in PW2 is associated with his disorder and the trauma of being assaulted sexually. From these discussions it can be concluded that the prosecution has not proved that the accused had criminally intimidated PW2. Hence, this point is found against the prosecution.

47**. Point No. 9**: From the discussions made in the aforesaid points, it is found that the accused is not guilty of the offences punishable under Sections 506(i) IPC, 9(e) r/w 10, 11(iii) r/w 12 of the POCSO Act, 2012. He is found guilty of the offences punishable under Sections 9(c) r/w 10, 9(l) r/w 10, 9(k) r/w 10 of the POCSO Act, 2012.

In the result,

(1) The accused is acquitted of the offences punishable under Sections 506(i) IPC, 9(e) r/w 10, 11(iii) r/w 12 of the POCSO Act, 2012 and therefore acquitted of the said offences under Section 235 (1) Cr.PC.

(2) The accused is found guilty of the offences punishable under 9(c) r/w 10, 9(l) r/w 10, 9(k) r/w 10 of the POCSO Act, 2012 and therefore convicted of the said offences under Section 235(2) Cr.PC.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the **26th day of April, 2022).**

AAJ SUDARSAN
SPECIAL JUDGE.

48. When the case was taken on for hearing the question of sentence, the learned Special Public Prosecutor had argued that the accused stands convicted previously by the Fast Track Special Court (POCSO), Thiruvananthapuram on 05/02/2022 in SC.449/2019. The prosecution produced certified copy of the judgment dated 05/02/2022 in SC.449/2019 of the Fast Track Special Court (POCSO), Thiruvananthapuram. Hence, charge

under Section 9(t) r/w 10 of the POCSO Act, 2012 was framed against the accused. It was read over and explained to the accused. He pleaded guilty to the charge of previous conviction. The certified copy of the judgment dated 05/02/2022 in SC.449/2019 of the Fast Track Special Court (POCSO), Thiruvananthapuram is marked in evidence as Ext P24. The defence is given opportunity to adduce evidence or to produce any judgment of the appellate court setting aside the order of conviction and sentence in Ext P24. Hence, the case is adjourned to the 27th day of April, 2023. On convicting the accused for the offences punishable under Sections 9(c) r/w 10, 9(k) r/w 10 and 9(l) r/w 10 of the POCSO Act, 2012 his bail bond stands cancelled automatically. He shall be committed to prison with a direction to be produced before the court at 11 am on the 27th day of April, 2023.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the **26th day of April, 2022).**

AAJ SUDARSAN
SPECIAL JUDGE.

49. On this the 27th day of April, 2023 the accused is produced before the court. The defence has not produced any judgment of the appellate court setting aside the order of conviction and sentence in Ext P24 judgment. The learned counsel appearing for the defence submitted that the accused has no further evidence. It is also submitted that the appellate court has only suspended the sentence passed by the Fast Track Special Court (POCSO), Thiruvananthapuram in Ext P24 judgment. Hence, previous conviction is still in force. Ext P24 judgment shows that the court had earlier convicted the accused for the offence punishable under Section 10 of the POCSO Act by imposing a sentence of rigorous imprisonment for a period of 6 years and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only) with a default sentence of rigorous imprisonment for 6 months. Since, Ext P24 judgment establishes the previous conviction of the accused along with his pleading guilty to the previous conviction, the offence punishable under Section 9(t) r/w 10 of the POCSO Act, 2012 stands proved.

50. The accused is heard on the question of sentence. He submits that he is a 59 year old person suffering from kidney diseases, hypertension and cholesterol. He seeks to consider his health issues while imposing sentence on him. He also submitted that he has no source of income at present as his pension papers are under process.

51. The learned Special Public Prosecutor has argued that the offences committed by the accused, a renowned Clinical Psychologist on the victim who had approached him for getting cure for his mental disorder requires no leniency from the court and the act of the accused shakes the conscious of the society.

52. In the words of the world renowned American Psychologist Martin Elias peter Seligman, “Psychology is much larger than curing mental illness or curing diseases. I think it’s about bringing out the best in people; it’s about positive institutions; it’s about strength of character”. And here is a Clinical Psychologist who has remorselessly assaulted his patient, a boy for sexual gratification reminding of the old proverb ‘What can be done when fences eat crops’.

53. Sexual abuse or sexual harassment is never contained to a present moment. It lingers across a person’s lifetime and has pervasive long-term ramifications. From the facts and circumstances of this case, it is found that it is not a fit case to invoke the provisions of the Probation of Offenders Act, 1958. The object of imposing sentence to an accused is also to be seen as a deterrence to the society. It should also send a message across the society that there is no disgrace in being a survivor of sexual violence and the shame is always on the aggressor. Sentencing the accused in this case is based on the evidence adduced and the gravity of the offence committed by him being a public servant and a Clinical Psychologist who owes certain duties to his

client and the society and also on the child who approached him for curing his mental disorder along with the factors concerning the health issues as stated by the accused.

In the result,

(1) The accused is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand only) for the offence punishable under Section 9(c) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(2) The accused is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand only) for the offence punishable under Section 9(k) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(3) The accused is sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand only) for the offence punishable under Section 9(l) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(4) The accused is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) for the offence punishable under Section 9(t) r/w 10 of the POCSO Act, 2012. In the event of non-realisation of the fine amount, the accused shall undergo rigorous imprisonment for a period of 1 year.

(5) In the event of realization of the fine amount, the entire amount of Rs.1,40,000/- (Rupees One lakh and Forty thousand only) shall be given to PW2 as compensation under Section 357(1)(b) Cr.PC.

(6) The accused is allowed set off on the substantive sentence of imprisonment from **31/01/2019 till 22/02/2019** the period he had undergone detention as an under trial prisoner. It is made clear that there is no set off for the period from 26/04/2023 till 27/04/2023 as he was detained as a convicted accused and not as an under trial prisoner.

(7) All the sentences shall run concurrently.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the **27th day of April, 2023).**

AAJ SUDARSAN
SPECIAL JUDGE.

Appendix

Prosecution Witnesses:

PW1. Dr.Chitra.D, Consultant Psychiatrist MCH, Thiruvananthapuram.
PW2. Victim
PW3. Fathima Seniya
PW4. M.Muhammed Abdullah
PW5. Afsal Sait.E
PW6. Mohammed Ashraf
PW7. Kalyani.S.Nair, Casualty Medical Officer at General Hospital, Thiruvananthapuram.
PW8. Dr.Rakesh Thampi, Casualty Medical Officer at General Hospital, Thiruvananthapuram.
PW9. Vincent.E, Revenue Officer, Thiruvananthapuram Corporation.
PW10. Prathapan.P.G, Village Officer, Manacaud.
PW11. Dr.Anil Kumar.T.V, Professor and Head of the Department of Psychiatry, Medical College Thiruvananthapuram.
PW12. Sanal.S.Kumar, Civil Police Officer Fort Police Station.
PW13. Kiran.T.R, Sub Inspector of Police Fort Police Station.
PW14. Aneesh.A, Sub Inspector of Police Fort Police Station.

Exhibits for Prosecution :

P1. Intimation to Police dated 25/01/2019/ 04/04/2019.
P2. Treatment Certificate of the victim dated 10/05/2019.
P3. FI Statement dated 30/01/2019.
P4, P4(a),
P4(b) Registration Cards 07/02/2019.

P5. Birth Certificate of the victim dated 21/07/2010.
P6. Scene mahazar dated 31/01/2019.
P7. Potency Certificate of the accused dated 31/01/2019.
P8. Medical Examination report of the victim dated 04/02/2019.
P9. Ownership Certificate (Building No.41/895(1) dated 05/02/2019.
P9(a). Ownership certificate (Building No.41/895(2) dated 05/02/2019.
P10. Scene plan dated 28/02/2019.
P11 Discharge summary dated 07/07/2022.
P11(a) - do – page Nos. 1 to 25
P12. Note book (Treatment details)
P12(a) - do – page Nos.1 to 11.
P13. Inventory mahazar (registration cards) dated 07/02/2019.
P14. FIR dated 30/01/2019.
P15. Arrest memo dated 30/01/2019.
P16. Inspection memo dated 30/01/2019.
P17. Report (date correction) dated07/02/2019.
P18. Address report dated 31/01/2019.
P19. Documents in crime No.2100/17 of Fort Police Station dated 29/08/2017.
P20. Extract of Admission Register dated 11/06/2019.
P21. 164 statement of the victim dated 04/02/2019.
P22. Copy of SSL Certificate of the victim dated 18/11/22.
P23. Proceedings of the Principal of Govt. Medical College, Thiruvananthapuram dated 02/02/2016.
P24. Copy of Judgment in SC.449/2019 dated 05/02/2022.

Defence Witnesses :

DW1. Rakesh.J, Station House Officer
Fort Police Station.

DW2. Dr.Uday.K.Sinha, Addl. Professor & Head
of Clinical Psychology Department, Delhi.

Exhibits :

D1. General Diary of Fort Police Station

D1(a) Relevant page of General Diary

Material Objects : Nil

AAJ SUDARSAN
SPECIAL JUDGE.

//True Copy//

AAJ SUDARSAN
SPECIAL JUDGE.