



2026:KER:80591

Crl.A.No.2143/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 12TH DAY OF OCTOBER 2026 / 20TH ASWINA, 1948CRL.A NO. 2143 OF 2024

CRIME NO.819/2022 OF Cherpu Police Station, Thrissur

AGAINST THE JUDGMENT DATED 11.09.2024 IN SC NO.454 OF 2023 OF
FAST TRACK SPECIAL COURT II, THRISSURAPPELLANT/ACCUSED:MUHAMMED,
AGED 61 YEARS,
S/O. HAMEED, PUYUVEETIL HOUSE, PATLANGADI DESOM,
VADANAPPILLY VILLAGE, THRISSUR., PIN - 680614.BY ADVS.
SHRI.BALAMURALI K.P.
SRI.MANU TOM
SHRI.RENIL IQUBAL K.
SMT.HARIPRIYA.M
SHRI.AMAL C. PETER
SHRI.MOHAMMED ASHIQ R.S.
SRI.M.B.SOORIRESPONDENT/COMPLAINANT:STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

PUBLIC PROSECUTOR SRI M A SHIHAB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.09.2026,
THE COURT ON 12.10.2026 DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.Appeal No.2143 of 2024******Dated this the 12th day of October, 2026******J U D G M E N T***

The verdict in S.C.No.454/2023 on the files of the Special Court under the Protection of Children from Sexual Offences Act ('POCSO Act' for short), Thrissur, is under challenge in this appeal, filed at the instance of the sole accused.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor. Perused the judgment and evidence available.

3. Here the prosecution alleges commission of offences punishable under Sections 354 A(1)(i) and 376(1) of the Indian Penal Code ('IPC' for short), by the appellant/ accused. The specific allegation is that at about 12.30 p.m on 08.10.2022 the appellant herein reached the



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house of the victim, an aged lady, and thereafter he had subjected her to penetrative sexual assault by inserting his finger on her vagina and also on poking her anus and pressing on her breast.

4. The learned Special Judge recorded the evidence of PWs 1 to PW13 and marked Exts.P1 to P19 on the side of the prosecution. On the side of the defence, DW1 was examined, apart from putting Exts.D1 to D4 contradictions during the cross-examination of PWs 3, 5, 6 and 8 respectively. On appreciation of evidence, the learned Special Judge found that the appellant/accused had committed the offences punishable under Sections 354 A(1)(i) and 376(1) of IPC and accordingly he was convicted and sentenced as under:

“In the result,

1. The accused is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- u/s.376(1) of IPC. In default of fine he shall undergo rigorous imprisonment for a period of 1 year.

2. The accused is also sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.25,000/- u/s.354(A)(1)(i) of IPC . In default of fine he shall undergo rigorous imprisonment for a period of 2 months.

3. Substantive sentences shall run concurrently.

4. The accused is allowed to set off u/s.428 of Cr.PC., the period



of detention already undergone in judicial custody from 03.12.2022 to 13.01.2023 against the substantive sentence of imprisonment.

5. If the fine amount is realized, it shall be given to PW2, the survivor u/ s.357(1)(b) Cr.PC.”

5. The learned counsel for the appellant/accused argued that the learned Special Judge failed to appreciate the evidence in its proper perspective. According to him, PW2, the victim, who gave evidence in support of prosecution, initially had given evidence that the occurrence was at 07.10.2022. Thereafter, on the defence side, DW1, the son of PW2, was summoned and examined. Thereafter PW2 was recalled and then PW2 had given evidence that the date of occurrence was on 08.10.2022 and what she stated during her initial examination as to the date of occurrence as 07.10.2022 was incorrect. According to the learned counsel for the appellant, this version of PW2 is a material improvement, and a witness cannot be permitted to introduce a material improvement in support of the prosecution case after having tendered evidence earlier on the same aspect. In support of the said contention, the learned counsel placed reliance on the following decisions:

(i) [(1981) SCC 752], ***State of Rajasthan v. Kalki*** wherein



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it was held that minor discrepancies may be ignored, but material contradictions affecting the substratum of the prosecution case cannot.

(ii) [(2014) 5 SCC 389], *Radhey Shyam v. State of Rajasthan* wherein it was held that material improvements affecting the core prosecution story render the testimony unreliable.

(iii) [(2009) 11 SCC 334], *Mahendra Pratap Singh v. State of Uttar Pradesh*, it was held that improvements introduced during trial on vital facts substantially weaken the prosecution case.

6. It is also pointed out that the original FIS did not contain the time at which it was recorded, as is evident from Ext.D4. It is further pointed out that Ext.P2, produced on her behalf, is an FIS in similar terms, wherein the time of recording the statement is specifically shown as 21:45 hours. According to him, an unexplained alteration or interpolation of the earlier version creates serious doubt regarding the genuineness of prosecution case and in this connection he had given reliance on the decision reported in [(1972) 3 SCC 393], *Thulia Kali v. State of Tamil Nadu*. Similarly, it is pointed out that the suspicious circumstances surrounding the FIR have seriously impaired its evidentiary value. In this



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connection, the learned counsel had relied on the decision of the Apex Court reported in [(1980) 4 SCC 425], ***Marudanal Augusti v. State of Kerala.***

7. Another contention raised by the learned counsel for the appellant is that the FIR was registered after 19 days' delay, but the delay not at all explained and according to him, the delay assumes significance, when the same is not explained and in this connection, he had relied on the decision of the Apex Court reported in [(2007) 12 SCC 641], ***Dilawar Singh v. State of Delhi.*** According to him, PW2 had initially given evidence that the occurrence was on 07.10.2022, but PW2 later deposed that the occurrence was on 08.10.2022. That apart, during the examination of PWs 3, 5, 6 and 8, Exts.D1 to D4 contradictions were brought out, which, according to the learned counsel, cast doubts in the prosecution case. It is further contended that the above material omissions, amounting to contradictions, seriously affect the reliability of the prosecution case. In support of the said contention, reliance is placed on the decision of the Apex Court reported in [(2011) 2 SCC 715], ***Subhash v. State of Haryana.*** It is pointed out that even though PW13, the Nodal Officer was



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examined to prove call details to show 3 calls made by the accused on 08.10.2022, Section 65 certificate was not produced and therefore, the said evidence is inadmissible and cannot be looked into. According to him, PW12, who registered the FIR had investigated this case and filed charge-sheet and the same if would create prejudice to the accused, the same would vitiate the prosecution. Further the medical evidence tendered through PW9, in no way would show any external injury to corroborate the prosecution case. That apart, DW1, son of PW2 spoke about a possible enmity between PW2 and the accused in connection with the sale of property as demanded by him and the same may be the reason for falsely implicating the accused in this crime. Thus he sought for interference in the verdict impugned.

8. The learned Public Prosecutor strongly opposed the contention and read out the relevant evidence of PW2 to contend that, in fact, at the time of giving FIS and registration of FIR, the date stated by PW2 as the date of occurrence was 07.10.2022, but subsequently by additional statement, she had corrected the date as 08.10.2022. However, when PW2 was examined initially before court, mistakenly, the date was



spoken in accordance with the earlier statement and thereafter she was recalled for the purpose of deposing about the correct date of occurrence and accordingly she deposed the date of occurrence as 08.10.2022. According to him, there is no delay in lodging the FIR and also the other contentions raised by the appellant would not sustain. Therefore, the verdict is liable to be confirmed.

9. Having appraised the rival contentions, the following points arise for consideration:

(i) Whether the Special Court is justified in holding that accused committed the offence punishable under Section 354A(1)(i) of the IPC?

(ii) Whether the Special Court erred in holding that the accused committed the offence punishable under Section 376(1) of IPC?

(iii) Is it necessary to interfere with the impugned judgment in any manner?

(iv) The order to be passed?

Point Nos.(i) to (iv)

10. In this case, PW2 is the victim of this crime, who was



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aged 74 years on her date of examination during 2023 as on 11.12.2023, that is to say, during October, 2022, she was aged 73 years. She had given evidence supporting the prosecution and lodging of Ext.P2 FIS alleging sexual molestation at the hands of the accused. According to her, she along with her daughter in law and 2 children had been residing in the house and on 07.10.2022, the daughter in law and the children had gone to the daughter in law's house at Chanangad. During this time, her son, who was abroad, telephoned her and told her to contact Muhammed (the accused) and tell him about her difficulties and sorrows. Accordingly, his son had given her the phone number of the accused and she called him. Soon the accused agreed to reach her house and after some time he had reached the house. Then they talked for a while sitting at the hall. Then the accused informed that there were 'moorthis' (idols) and other evil spirit on her body and he would vanish them. Then he caught hold of her breast. Then he asked about whether she had itching on her breast or vagina and the same were signs of the said discomfort. Then he agreed to cure the same and caught hold of her breast when she asked whether this was the treatment, the accused stated that, in order to get out of the



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`moorthis' (idols) and evil spirit, this would be the treatment. Then he asked her to lay on the bed in her room and caught hold of her breast and also inserted his finger on her vagina and touched on the vagina. Then he stated that he would drop this in the kitchen and brought her to the kitchen. When they reached the kitchen he caught hold of her breast, vagina and anus and put something in the furnace (aduppu). Then he had permitted to hold his penis and when she found the attitude of the accused to be wrong, she had sent him out and she had informed the same to the police. During cross examination she had reiterated that, apart from the occurrence on 07.10.2022, there was no other occurrence at the instance of the accused. It is true that thereafter by allowing Crl.M.P.No.137/2024 filed by the prosecution, PW2 was recalled and she had given evidence that, apart from recording the FIS given by her, the police had recorded her statements 3 times. According to her, initially she had given statement disclosing `07.10.2022' as the date of occurrence. But in the subsequent statement she had stated that 08.10.2022 as the actual date of occurrence after correcting her version in the FIS. She was subjected to cross examination regarding the date spoken by her as 08.10.2022, as the actual date of



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occurrence and she had deposed that in the FIS as well as the statement under Section 164 of the Code of Criminal Procedure ('Cr.P.C' for short hereafter) she had mistakenly stated the date of occurrence as 07.10.2022 instead of 08.10.2022.

11. PW3 is the daughter of the victim and, according to her, the accused reached the house of the victim and committed rape on the victim by stating that her body contains some evil spirit and in order to ward off the same, he had done the alleged act of rape on her. PW1 is the Secretary Chazhur Grama panchayat. He had issued Ext.P1 Ownership certificate pertaining to the place of occurrence. PW4 is the witness to Ext.P3 scene mahazar.

12. PW5, a relative of PW2, testified that, the son of the victim and the accused were friends and they used to go to some mosques along with the accused and as per the direction of the son of the victim, she called the accused to her house. On a day when he came to his house for lunch, he had seen the accused going to the house of the victim at 12.30 pm. PW6 deposed that, during the period of the alleged incident she was the Advocate for Jagratha Samithy in the Chazhur Grama Panchayath



and the victim informed her that on 07.10.2022, at her house the accused caught hold on her breast and penetrated his finger into her vagina and made the victim to touch on the penis of the accused and she informed the said matter to police.

13. PW7, the Village officer, who prepared Ext.P4 sketch, pertaining to the place of occurrence, had given evidence supporting the same.

14. PW8 had recorded the FI statement of the victim and she had taken the victim for medical examination. PW9 conducted the medical examination of the victim and issued Ext.P5 certificate. PW10 is a witness to Ext.P6 seizure mahazar and, according to her, the dress used by the accused at the time of the alleged incident was seized by the investigating officer. PW11 is another daughter of the victim and, according to her also, the accused committed rape on the victim by stating that her body contained some evil spirit. According to her, she is a witness to Ext.P7 mahazar, by which, the dress worn by the victim at the time of the alleged incident was seized by the investigating officer in this case.



15. The Investigating Officer got examined as PW12. It was he, who registered Ext.P8 FIR on the strength of Ext.P2 FIS of the victim. After inspecting the place of occurrence, he had prepared Ext.P3 scene mahazar. The victim was sent for medical examination and her statement u/s.164 Cr.PC was recorded. The dress worn by the victim at the time of the alleged incident was seized as per Ext.P7 seizure mahazar and it was produced before the court as per Ext.P9 property list. The accused was arrested as per Ext.P10. Exts.P11 and Ext.P12 were the inspection memo and intimation memo. He identified the accused before the court. The potency examination of the accused was conducted and report was collected, which was marked as Ext.P17. Ext.P13 is the address report of the accused. During investigation, he had obtained the sketch and ownership certificate pertaining to the place of occurrence. The dress used by the accused at the time of the alleged occurrence was seized by him as per Ext.P6 seizure mahazar and it was produced before the court as per Ext.P14 property list. He had prepared Ext.P15 forwarding note, for sending the material objects for chemical analysis. He had filed Ext.P16 correction report for correcting the date of the occurrence. He collected the



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CDR of the mobile phone of the accused and the victim to prove the phone contact between the accused and the victim. Ext.P17 is the potency certificate of the accused and Ext.P18 is the chemical analysis report in this case. After completing the investigation, he had filed charge sheet before the court.

16. The Nodal officer, Vodafone Idea Ltd., examined as PW13. Ext.P19, call details of mobile phone number 9539753958 with certificate under Section 65B of the Evidence Act were tendered in evidence through him. According to her, '9539753958' mobile number is in the name of the accused and phone number '9048126372' is in the name of the victim and it was ported to Reliance Jio on 04.09.2023. As per the CDR, on 08.10.2022, there were three calls between the said two numbers.

17. Here the prime contention raised by the learned counsel for the appellant to unsustain the verdict is the conflicting versions given by PW2, the victim of crime, about the date of occurrence. It is true that when she was examined before the court at first instance on 11.12.2023, she stated the date of occurrence as 07.10.2022 and thereafter she corrected the date of occurrence as 08.10.2022 when she was recalled and re-examined, in deviation from her evidence



earlier recorded. According to the learned counsel for the appellant, this is a material improvement and a witness would not be permitted to introduce a material improvement in support of the prosecution case after having tendered the evidence earlier on the same aspect. In this regard he had relied on the decisions *State of Rajasthan v. Kalki (supra)*, *Radhey Shyam v. State of Rajasthan(supra)* and *Mahendra Pratap Singh v. State of Uttar Pradesh (supra)*. Here going through the evidence of PW2, during her examination in chief, initially on 11.10.2022 she had spoken about the date of occurrence as 07.10.2022 and when she was recalled, her version was that, when she had given FIS, she had disclosed the date of occurrence as 07.10.2022 due to her memory loss and she had given statement on 18.10.2022 about the date of occurrence as 08.10.2022.

18. It is true that when the victim of a sexual assault is not even able to say about the date of occurrence specifically, and she changes the same in deviation to her previous statement or additional statement given to the police, at the time of evidence, the same is a material omission to disbelieve the prosecution case, as argued by the learned counsel for the appellant. But the situation is quite different herein. That is to say, here at the time of lodging the FIS, by mistake or by memory loss or otherwise, the date of occurrence is



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wrongly mentioned as '07.10.2022' and the same when stood corrected in the subsequent additional statement given on the next day. In the said circumstances, it could not be held as a material omission in the evidence of PW2. It is true that in such situation, PW2 ought to have stated 08.10.2022 as the date of occurrence during her examination initially. In fact, improper prosecution and failure of the Public Prosecutor in getting her version as to the date of occurrence as 08.10.2022 is to be noted. But failure on the part of the Public Prosecutor would not stand in the way of disbelieving the version of PW2, which is supported by three calls in between the accused and PW2 on the date of occurrence, viz. 08.10.2022, as could be seen from the evidence of PW13 and Ext.P19. In such view of the matter, the material omission in this regard, pointed out by the learned counsel for the appellant, could not be found. Similarly, it is contended by the learned counsel for the appellant that there is delay in lodging the FIR and the same failed to be explained. Going through Ext.P2 FIS, it could be gathered that PW2 had given explanation for the short delay of 19 days in lodging the FIR, stating that the delay was occasioned as she decided to give the statement only after having discussion with his son, who was



abroad and the daughters. During chief examination also, PW2 deposed this aspect to justify the delay of 19 days in lodging the FIR. Since the delay in lodging the FIR inasmuch as sexual molestation of an aged lady is concerned, the explanation offered is sufficient and even otherwise in case of sexual molestation, a short delay shall not be the reason to disbelieve the case of prosecution and throughout the evidence of the prosecution.

19. Sexual molestation spoken by PW2, the victim, an aged lady of 74 years, is confined to catch of her breast and also insertion of his finger on her vagina and touching on her vagina apart from pressing on her breast, vagina and anus. Thus the evidence of PW2 would show the ingredients for the offences punishable under Sections 354A(1)(i) and 376 of IPC.

20. PW9, the doctor who had examined the victim, at 12.20 p.m on 28.10.2022, i.e, 20 days after the occurrence, did not notice any external injury though it was noted that hymen was absent. Accordingly, the doctor affirmed that “since the incident took place 20 days back, if at all any injury was occurred due to the assault, it would have healed by the time of examination” and she had supported Ext.P5 medical certificate



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issued by her. Thus the contention raised by the learned counsel for the appellant that no external injury was noted by the doctor when PW2 was examined by her, would indicate that the statement of PW2, about sexual molestation spoken by her is false, also could not be countenanced. In this case, 3 phone calls between the accused and PW2 from 9539753958, the number of the accused, to the number of PW2 viz., 9048126372, could be seen from Ext.P19 call details were tendered in evidence through PW13. According to the learned counsel for the appellant, since no certificate under Section 65B of the Evidence Act was tendered in evidence, the evidence of PW13 and Ext.P19 could not be acted upon. But on perusal of Ext.P19 and the evidence of PW13, it could be seen that Ext.P19 includes the certificate under Section 65 of the Evidence Act as well. Therefore, this contention also must fail. Coming to the Exts.D1 to D4 contradictions elicited during cross examination of PWs 3, 5, 6 and 8, the same are not material contradictions to disbelieve the evidence given by PW2, the victim of crime. Thus Exts.D1 to D4 contradictions have no serious consequences. Thus, it is held that none of the contentions raised by the learned counsel for the appellant is appreciable.



21. On scrutiny of the evidence *in toto*, it could be seen that, the accused herein, on the premise of healing some infirmities of PW2, had reached her residence, who also had familiarity with her as he had visited the house of PW2, three times before the occurrence also. After reaching the house of PW2 on 08.10.2022, the accused subjected her to rape and sexual molestation by outraging her modesty. It is true that DW1, the son of the victim, who was examined on the side of the accused to show that the mother opposed DW1 in the matter of sale of property, who was entrusted with the sale of property and when the property was sold and DW1 shifted his residence and attempted to purchase the property in Vadanappilly and the accused helped him to do so. Thus PW2 had animosity towards the accused as per his understanding. In fact, the evidence of DW1 in no way would suggest that the sexual molestation stated by PW2 was denied by DW1 though he had spoken about some dispute between PW2 and the accused and also about the dispute between himself, siblings and the mother. In fact, the evidence of DW1, who admittedly was inimical with PW2 could not be appreciated for the purpose of disbelieving the version of PW2, a victim of sexual molestation



and the same is a fact fully known to PW2 alone. Thus this Court is of the view that the learned Special Judge is right in holding that the accused committed the offences punishable under Sections 354 A(1)(i) and 376(1) of IPC. Therefore, the conviction entered into by the learned Special Judge would not require any interference.

22. Coming to the sentence, going through the sentence imposed on par with the nature and seriousness of the offences committed by the appellant/accused, no interference in the sentence is found justifiable. Therefore, the sentence also is liable to be confirmed.

23. In the result, this Appeal fails and is accordingly dismissed. The conviction and sentence imposed by the Special Court are confirmed. As a sequel thereof, the order suspending sentence and granting bail to the accused stands cancelled and the bail bond also stands cancelled.

24. The accused is directed to surrender before the Special Court to undergo the sentence forthwith, failing which the Special Court shall execute the sentence forthwith.



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Registry is directed to forward a copy of this judgment to the
Special Court for compliance and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

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