



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 10TH DAY OF DECEMBER 2025 / 19TH AGRAHAYANA, 1947

CRL.A NO. 651 OF 2021

CRIME NO.105/2016 OF Vellarikundu Police Station, Kasaragod

AGAINST THE JUDGMENT DATED 14.10.2019 IN SC NO.345 OF 2016 OF
SPECIAL COURT FOR ATROCITIES AGAINST WOMEN AND CHILDREN/ADDL.

SESSIONS COURT - I, KASARAGOD

APPELLANT/ACCUSED:

SURESH.K
AGED 25 YEARS, S/O KANNAN,
MALAYIL HOUSE,
PADIMARUTHU, KODOM VILLAGE,
PADIMARUTH P.O., KASARGOD,
KERALA-671 531.

BY ADVS.
SRI.BALU TOM
SRI.BONNY BENNY
SHRI. BEJOY JOSEPH P.J.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
REPRESENTING SHO IN CRIME NO 105/2016,
VELLARIKUNDU POLICE STATION,
KASARGOD DISTRICT-671 531



2025:KER:95276

SRI. NOUSHAD K.A., PUBLIC PROSECUTOR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.11.2025,
THE COURT ON 10.12.2025 DELIVERED THE FOLLOWING:**

**"C.R."****BECHU KURIAN THOMAS, J.****Crl.Appeal No.651 of 2021**

Dated this the 10th day of December, 2025

JUDGMENT

Appellant challenges the conviction and sentence imposed upon him in S.C No. 345 of 2016 on the files of the Special Court for Atrocities against Women and Children, Kasaragod.

2. By the impugned judgment, the appellant has been found guilty for the offences punishable under section 376(2)(i) and 376(2)(n) of the Indian Penal Code,1860, (for short 'the IPC') and section 6 r/w section 5(l) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO'). He has been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.15,000/-, in default to undergo rigorous imprisonment for a further period of two years under section 376(2)(i) and section 376(2)(n) of IPC, in view of section 42 of the POCSO Act. The accused was, however, found not guilty for the offence under section 5(n) of the POCSO Act. Compensation to the victim under the victim compensation scheme was also directed to be paid by the trial court.

3. The prosecution alleged that in September, 2015 and thereafter on



several days, till February 2016, the accused raped a minor girl aged 13 years in her house at Malom village and thereby committed the offences alleged.

4. The prosecution had, in an attempt to prove its case, examined PW1 to PW12 and marked Exhibit P1 to Exhibit P17, apart from material object MO1 series. After analysing the evidence adduced, the trial court found the accused guilty and sentenced him as mentioned earlier.

5. The learned counsel for the appellant contended that the prosecution allegations are totally false and the same do not make out any offence against the appellant. It was also submitted that the age of the victim was not proved as per law as Exhibit P2 birth certificate does not refer to or identify the victim. It was submitted that Ext.P2 mentions only the name of the victim's parents and since it had come out in evidence that the victim has another sibling, the said birth certificate could possibly relate to the sister of the victim as well and therefore, the benefit of doubt ought to be extended to the accused. The learned counsel also submitted that, on a perusal of the scene mahazar of the room, where the incident is alleged to have taken place, the instances of rape alleged was practically impossible as there were only two rooms in the house and it cannot be believed that the victim, who was allegedly only 13 years at that time, was occupying one room in that house all to herself, while around six other remaining adult family members occupied the only remaining room. In any event, it was submitted that, considering the young age of the appellant i.e. 20 years in 2016, a lenient view ought to be adopted in respect of the sentence imposed upon him.



6. The learned Public Prosecutor, on the other hand contended that the allegations are serious in nature and the prosecution had clearly proved the offence committed by the accused beyond reasonable doubt and therefore there is no reason to interfere with the impugned judgment. The learned Public Prosecutor also submitted that a minor girl of 13 years had been repeatedly subjected to penetrative sexual assault and hence the Court ought not to show any leniency in the matter of sentencing. Controverting the contentions regarding Ext.P2 birth certificate, it was submitted that such certificates are generally issued with the column designated for entering the name of the child filled as 'child of either of the parents' and since the mother had identified the victim and further the victim herself had clearly stated in her deposition that her date of birth was 18.08.2002 and also that she was subjected to penetrative sexual assault by the accused, there cannot be any doubt regarding the age of the victim or the offences alleged.

7. I have considered the rival contentions and also perused the evidence adduced. Having regard to the arguments advanced, the following issues arise for consideration:- (i). Whether the accused had committed penetrative sexual assault/raped the victim as alleged? (ii). What was the age of the victim at the time of the alleged incident and whether the prosecution had proved her age? The above issues are discussed as below.

Issue No. (i). *Whether the accused had committed penetrative sexual assault/raped the victim as alleged?*

8. PW6 is the victim, who, in her deposition, stated that her date of birth



was 18.08.2002 and also that the accused, who is the brother of her neighbour, had subjected her to sexual assault on several occasions at her old and new house. The first incident is alleged to have occurred prior to the Onam festival of the year 2015 and according to the victim in the middle of the night, the accused came and laid down beside her and when she woke up, he gagged her mouth and after promising to marry, disrobed her and committed penetrative sexual assault. The victim also deposed that, after the Onam festival of the said year, her family shifted to their new house and even there, she was subjected to such sexual assaults for around five times. According to the victim, the accused used to come to her house at night, remove the iron rod of the window of her room and used to rape her.

9. The medical evidence adduced by the prosecution through PW1 - the doctor proved that the hymen of the victim was torn. The doctor had also deposed that there was evidence of sexual intercourse which was consistent with the history of sexual assault on the victim.

10. The mother of the victim, who was examined as PW9, also deposed in tune with the prosecution case and stated that the sexual assault was narrated to her by her daughter and when she questioned the accused about the incident, he assaulted her and thereafter she went to the police and lodged the complaint.

11. Sexual offences targeting young victims whose innocence of childhood are exploited must be dealt with a stern hand. When the evidence of the victim is unwavering and of a sterling quality, the foundational facts get



established. Once the foundational facts are proved, section 29 of the POCSO Act sets in and creates a statutory presumption of guilt of the accused.

12. On an appreciation of the oral evidence of the victim as PW6, that of her mother as PW9, as well as the doctor examined as PW1, it is evident that the victim was subjected to penetrative sexual assault by the accused, who was identified without any incertitude. There are no reasons to disbelieve the prosecution witnesses. No significant inconsistency has also been brought out through their cross-examination. The victim's testimony was unwavering, free from any embellishments, medically corroborated and even supported by the evidence of other witnesses. The foundational facts were thus proved by the prosecution and hence the presumption under section 29 of the POCSO Act is attracted. Thus, the substantive evidence available before the Court indicate that the accused had committed penetrative sexual assault/raped the victim, repeatedly, inside her house on several days, during the period from September 2015 till February 2016. Hence, the finding of the trial court that the accused had subjected the victim to rape does not warrant any interference.

Issue No. (ii). What was the age of the victim at the time of the alleged incident and whether the prosecution had proved her age?

13. PW6 the victim, had in her deposition, stated that she was 17 years old at the time of giving evidence and that her date of birth was 18.08.2002. The name of her parents have also been specifically mentioned in her deposition which tallies with the name of the 'father' and 'mother' as



mentioned in Exhibit P2 birth certificate.

14. In a case where the offence alleged involves the commission of sexual assault on a minor, the victim's age has to be determined and the burden is on the prosecution to prove it. Section 34(2) of the POCSO Act stipulates that when any question arises in a proceeding before the Special Court regarding whether a person is a child or not, such question shall be determined after recording in writing the reasons for such determination. Under the POCSO Act, the extent of punishment can vary based on the age of the victim. Since the age of a victim under the POCSO Act is a significant issue, determination of the age of the victim is an essential requirement in a proceeding under the POCSO Act.

15. The mode of determination of age of a victim has been a contentious subject and some obscurity exists regarding the mode of proof required. In **Jarnail Singh v. State of Haryana** [(2013) 7 SCC 263], while considering the impact of the Juvenile Justice Rules of 2007, the Supreme Court held that the age of a victim of a crime should also be determined on the basis of the said rules. The following observations from the above mentioned decision are relevant. "*Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime.....*" (emphasis supplied).



16. Yet again, the issue was considered under the provision of the JJ Act of 2015 in **Yuvaprakash P. v. State** [AIR 2023 SC 3525] wherein, the Supreme Court observed as follows:

"It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in S.94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".

17. The above decisions do, on the face of it, indicate that, when the age of a victim has to be determined under the POCSO Act, recourse has to be made to the provision of the statutes relating to juveniles.

18. In this context, it is appropriate to mention that the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the JJ Act of 2000') was in force till it was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the JJ Act of 2015') enacted w.e.f 01.01.2016. Since the incidents of penetrative sexual assault in the instant case is alleged



to have taken place during the period from September 2015 till February 2016, both the statutes are applicable. Section 94 of the JJ Act of 2015 prescribes the mode in which the age of a juvenile has to be proved, while under the JJ Act of 2000, determination of age ought to have been done as per the provisions of rule 12 of the JJ Rules.

19. As per rule 12(3) of the JJ Rules of 2007, the age of a child is ascertained by adopting the first option out of the available options mentioned in the Rule and the preceding option will have precedence over the subsequent option and only in the absence of the first two options can the court consider the birth certificate issued by the local authority. The evidence of the prosecution witnesses do indicate that the victim had studied in a school. However, no certificate from the school first attended by the victim has been produced. Strictly going by the words used in **Jarnail Singh** (supra), the birth certificate produced as Ext.P2 cannot be relied upon to prove the age of the victim in respect of the incident alleged to have occurred prior to 01.01.2016. After coming into force of the JJ Act of 2015 w.e.f 01.01.2016, the nature of documents required to prove the age of a juvenile underwent a change.

20. The POCSO Act does not stipulate in section 34(2) that when the victim is a child, age can be determined only as per the law relating to juveniles. It was in **Jarnail Singh** (supra) and **Yuvaprakash** (supra) the said proposition was laid down. Nonetheless, it is relevant to bear in mind that the words in a judgment ought not to be interpreted as that in a statute. A decision is only an authority for the questions determined therein and while



applying the ratio, the court ought not to pick out a word or a sentence from the judgment disassociated from the context in which the issue under consideration arose. Reference to the decisions in **Goan Real Estate and Construction Ltd and Another v. Union of India and Others** [(2010) 5 SCC 388] and **Bhavnagar University v. Palitana Sugar Mill (P) Ltd and Others** [(2003) 2 SCC 111] are relevant in this context.

21. Viewed in the light of the above principle, it has to be held that the words '*should be the basis for determining age, even for a child who is a victim of crime*' as observed in **Jarnail Singh** (supra) has to be interpreted as '*can be the basis for determining age, even for a child who is a victim of crime*'. A contrary view, if adopted, would defeat the very object of the statute. Hence, the decision in **Jarnail Singh** (supra) which mandated that the age should be determined as per 2007 Rules, according to me, cannot be interpreted as laying down the principle that the only method to determine age of a victim in a POCSO offence is as per the said provision.

22. It is appropriate in this context to refer to section 34 of the POCSO Act, which reads as below.

"34. Procedure in case of commission of offence by child and determination of age by special court-

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.



(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person."

23. A perusal of the above provision reveals that when an offence is committed by a child, he shall be dealt with under the JJ Act of 2015, but when it comes to determining the question as to whether a person is a child or not, such a question will have to be determined by the Special Court after satisfying itself about the age. The principles of the law of evidence can apply when the issue before a court relates to the determination of the age of a child. The provisions of the statutes relating to juveniles can be one of the modes and need not be the only mode. Under the law of evidence, all facts, except the contents of documents, can be proved by oral evidence as per section 59 of the Indian Evidence Act, 1872 (for short 'the IE Act') and the only requirement is that the oral evidence must be direct. When evidence required is in relation to a fact which could be seen or heard or perceived, direct oral evidence as per section 60 of IE Act means the evidence given by a person who had seen, heard or perceived the fact, as the case may be. Contents of a document can be proved by primary or secondary evidence. Even section 35 of the IE Act can be resorted to, for determining the age of a victim in a POCSO offence.

24. When the mode of determination of the age of a victim has not been specifically delineated in any statute, there cannot be any absolute restriction for entertaining any other mode for determination of the age of a victim in a POCSO offence. In fact, in **Ram Vijay Singh v. State of Uttar Pradesh**



[2021 SCC Online SC 142] a three Judge Bench of the Supreme Court had relied upon the date of birth given in an application submitted by an accused for a gun license as proof of his age. The following observations made therein are relevant: “.....*The Court is not precluded from taking into consideration any other relevant and trustworthy material to determine the age as all the three eventualities mentioned in sub-section (2) of S.94 of the Act are either not available or are not found to be reliable and trustworthy. Since there is a document signed by the appellant much before the date of occurrence, therefore, we are of the opinion that the appellant cannot be treated to be juvenile on the date of incident as he was more than 21 years of age as per his application submitted to obtain the arms licence.*”

25. Apart from the above, in **Silvester Pigaruz v. State of Kerala** [2024 KER 9026], a Division Bench of this Court held as follows: “.....*The judgement in Jarnail Singh, according to us, cannot be understood as laying down a proposition that the age of the minor victims in cases of rape and sexual assaults, is hereafter to be established only in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 or in terms of the subsequent legislation namely, the Juvenile Justice (Care and Protection of Children) Act, 2015 which replaced the said legislation, notwithstanding the provisions contained in the Evidence Act and the various judgments of the Apex Court rendered prior to Jarnail Singh, as has been referred to herein - above in paragraph 18. The argument advanced by the learned Senior Counsel that the date of birth of the victim*



should have been proved by the prosecution in terms of S.94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, is therefore only liable to be rejected."

26. Similarly, in **Biju v. State of Kerala** [2024 (2) KLT 130], another Division Bench of this Court had observed that the JJ Act does not preclude a court from determining the age of a victim based on evidence admissible under the Indian Evidence Act. The following observations are relevant to the issue under consideration:

".....While the oral testimony of the victim PW1 is of sterling quality and speaks to the commission of the offence, the fact that the victim was only 16 years old at the time of the commission of the offence is proved through her own testimony and the testimony of her mother PW2. The contention of the learned counsel for the appellant that Ext.P8 certificate, proved through PW13 Sainaba Beebi, and showing the date of birth of the victim as 28.05.2001, cannot be relied upon since it is not a document mentioned under the Juvenile Justice (Care and Protection of Children) Act for proving the age of a juvenile, is also one that we find ourselves unable to accept. Firstly, there is nothing under the POCSO Act that indicates that the unchallenged oral testimony of the mother of the victim cannot be taken as proof of the date of birth of the victim. Secondly, we are of the view that the provisions of the Juvenile Justice (Care and Protection of Children) Act that deal with the documents that can be relied upon to prove the age of a juvenile for the purposes of that Act do not, and indeed cannot, preclude a court considering a question regarding the age of a victim under the POCSO Act from placing reliance on other evidence admissible as per the Indian Evidence Act. We are of the view that the objects of both legislation being different, with the former being concerned with issues regarding the competence of a juvenile in conflict with the law to stand trial before



a court and the latter being concerned with issues regarding the physical and mental effects on a child, of an offence committed against her, the manner of establishing the age of a child for the latter legislation can be in any one of the ways permitted under the Indian Evidence Act. In the instant case, we find the testimony of PW2 to be the most reliable evidence as regards the age of the victim for the purposes of S.5 of the POCSO Act, and consequently for the purpose of attracting the presumption under S.29 thereof to the appellant. The decisions in Justin @ Renjith & Anr. v. UOI & Ors. - (2020 (6) KHC 546); Shaju @ Shaju v. State of Kerala & Anr. - (2022 (5) KHC 663) and Yuvarakash P v. State - (2023 KHC OnLine 6709 (SC)) relied upon by the learned counsel for the appellant, are thus clearly distinguishable on facts." (emphasis supplied)

27. Thus, the age of a victim can be determined by any of the modes available under law and not necessarily only as per the JJ Act of 2015. A contrary view may not only defeat the object of the statute, but can also enable several perpetrators of sexual offences to go scot free. Such an eventuality is an antithesis of law relating to sexual offences especially that relating to minors.

28. In the instant case, the prosecution had marked Exhibit P2 birth certificate through the Grama Panchayat Secretary, who was examined as PW2. As per the said certificate, the date of birth is shown as 18.08.2002. The certificate however does not mention the name of the child, but in the column for recording the name of the child, it is mentioned as 'not recorded'. Absence of the name of the child in the birth certificate cannot be regarded as a flaw as it is normal not to incorporate the name of the child. In fact the Supreme Court had taken judicial notice of such certificates in **Murugan v. State of Tamil**



Nadu [(2011) 6 SCC 111] where it was observed that “.....*It is a matter of common knowledge that the birth certificate issued by the Municipality generally does not contain the name of the child, or the reason that, it is recorded on the basis of information furnished either by the hospital or by the parents immediately after the birth of the child and by that time the child is not named.*”

29. The accused has been questioning the connection between Ext.P2 birth certificate and the victim. True that Panchayat Secretary had deposed that there was nothing to indicate that Ext.P2 certificate related to the victim and the Investigating Officer when examined as PW12 also deposed that the name of the child is not mentioned in Ext.P2 certificate and that the parents of the victim have two daughters and also that he had not verified any document to connect Ext.P2 with the victim. Nevertheless, the victim had specifically deposed that her date of birth was 18.08.2002 and even at the time of giving evidence she was only 17 years in age. The said deposition was not challenged at all and no questions were even put to the said witness regarding her age. Even in the statement under section 313 of Cr.P.C, the accused had not disputed the age of the victim specifically. On the other hand, the date of birth stated by the victim tallies with the date given in Ext.P2 certificate.

30. While determining the age of a victim, this Court cannot ignore the definition of the word ‘proved’ in section 3 of the Indian Evidence Act which states that “*a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so*



probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." Considering the certificate produced as Ext.P2 and the unchallenged evidence of the victim, it is highly probable that the date of birth of the victim is the same as that recorded in Ext.P2. Hence it is held that the prosecution did prove that the date of birth of the victim is 18.08.2002.

31. In the instant case, the trial court, having found that the victim is below 16 years, concluded that the accused is guilty for the offence under section 6 r/w section 5(l) of the POCSO Act as well as for the offence punishable under section 376(2)(i) and 376(2)(n) of the IPC and imposed sentence under the latter statute. Considering the circumstances, the finding of guilt and consequential sentence imposed on the accused in S.C No. 345 of 2016 on the files of the Special Court for Atrocities against Women and Children, Kasaragod does not call for any interference. Compensation directed to be paid under the victim compensation scheme is also sustained.

The appeal hence lacks merit and is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps