



2026:KER:82055

Crl. Appeal No.2042/2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

SATURDAY, THE 24TH DAY OF OCTOBER 2026 / 2ND KARTHIKA, 1948

CRL.A NO. 2042 OF 2024

CRIME NO.650/2021 OF Rajakkad Police Station, Idukki

AGAINST THE JUDGMENT DATED 04.10.2023 IN SC NO.678 OF
2021 OF SPECIAL COURT UNDER POCSO ACT, IDUKKI

APPELLANT/ACCUSED:

ANISH, AGED 38 YEARS, S/O SUNNY RESIDING AT
PERUNGATTUMALAYIL HOUSE, POOMALA BHAGAM, POTTANKADU
KARA, BYSON VALLEY VILLAGE, IDUKKI, PIN - 685565

BY ADVS.
SRI.N.K.SHYJU
SRI.GIREESH PANKAJAKSHAN
SHRI.VISHNU MOHAN
SMT.SAHLA NECHIYIL

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

OTHER PRESENT:

SR PUBLIC PROSECUTOR : P K SAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
28.09.2026, THE COURT ON 24.10.2026 DELIVERED THE FOLLOWING:



A. BADHARUDEEN, J.

Crl.Appeal No.2042 of 2024

Dated this the 24th day of October, 2026

‘CR’

JUDGMENT

This appeal has been filed by the sole accused in S.C.No.678/2021 on the files of the Fast Track Special Court, Idukki, Painavu for the trial of offences under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as ‘the POCSO Act’) challenging judgment dated 04.10.2023, rendered in the above case.

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the prosecution. Perused the verdict impugned and the evidence available.

3. The prosecution case is that the accused, who is the appellant herein, a relative of the victim aged 14 years, subjected her to repeated penetrative sexual assault during the month of December 2020 and in the last week of December 2020. As a consequence thereof, she became pregnant and gave birth to a



child. On that premise, the prosecution alleges commission of offences punishable under Sections 376(2)(f), 376(3), 506(i) of the Indian Penal Code (hereinafter referred to as 'IPC') and under Sections 3(a) r/w 4(2), 5(j)(ii), 5(n), 5(p) r/w 6 of the POCSO Act and under Section 75 of the Juvenile Justice Act (hereinafter referred to as 'JJ Act') by the accused.

4. When final report was filed before the learned Special Judge, learned Special Judge took cognizance for the said offences and proceeded with trial. During trial, PWs.1 to 23 were examined, Exts.P1 to P27 and MOs.1 to 6 were marked on the side of the prosecution. DW1 was examined on the side of the defence. On appreciation of evidence, it was found by the learned Special Judge that the appellant committed offences punishable under Sections 376(2)(f), 376(3) IPC and under Sections 3(a) r/w 4(2), 5(j)(ii), 5(n), 5(p) r/w 6 of the POCSO Act and accordingly, the appellant/accused was convicted for the said offences and sentenced as under:-

“The accused is sentenced to undergo rigorous imprisonment for a period of 20 (twenty) years and to pay a fine of Rs.10,000/-(ten thousands only) for the offence



under section 3 (a) r/w 4 (2) of Pocso Act, IDSI for six months. Accused is also sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs. ten thousands for the offence under section 5 (j)(ii) r/w 6 of Pocso Act IDSI for six months. Accused is further sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs. ten thousands for the offence under section 5 (p) r/w 6 of Pocso Act IDSI for six months. Accused is further sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs. ten thousands for the offence under section 5 (n) r/w 6 of POCSO Act IDSI for six months. In view of the mandate of section 42 of Pocso Act, no separate sentences are imposed on the accused in respect of offenses under section 376(2)(f) and 376(3) IPC. It is specifically made clear that the substantive sentences will run concurrently and default sentences will run consecutively. It is specifically made clear that if the fine is recovered, the same shall be paid to PW1 as compensation. Accused is entitled to get set off U/s 428 Cr.P.C. Properties are directed to be disposed of as per law, after the appeal period.”

5. According to the learned counsel for the appellant, PW1 became pregnant after she had attained the age of 18 years and the accused was not responsible for her pregnancy. It has



2026:KER:82055

Crl. Appeal No.2042/2024

5

been contended that the doctor, examined as PW4, who attended the delivery of PW1 recorded statement relating to the course of pregnancy of PW1. PW4, during her cross-examination, stated that a woman with a strict 28-day menstrual cycle would typically ovulate on the 14th day after the last menstruation. She further explained that the ovum usually would remain viable for 48 to 72 hours, and in some cases, up to six days. The doctor opined that if effective sexual intercourse would occur during this time, pregnancy might result. Doctor also testified that if intercourse would occur during the 'safe period,' the chances of pregnancy would be less, though not entirely impossible. Moreover, if ineffective sexual contact would happen within 78 hours after ovulation, pregnancy could still occur. The 'safe period' generally to be the time from the last ovulation to the next ovulation. According to PW1, her last LMP was in the first week of December 2020, and she testified that the sexual contact occurred in the last week of December 2020. Therefore, even if sexual intercourse had taken place between PW1 and the accused, she would not have become pregnant as the ovum



would no longer had been viable by that time. According to the learned counsel for the appellant, the Special court failed to look into veracity of Exhibit P21 DNA Result and Exhibit P20 Chemical analysis report. The DNA result made available to the court and marked as Exhibit P21 did not reflect the correct result as the procedures adopted for sampling and testing were not foolproof. Also the said certificates could not be accepted in evidence and relied on, without examining the authors of report. According to him, the Special Court relied too much on the DNA even though it is only an opinion evidence. It is submitted that the Special court failed to consider the evidence of DW1, the wife of the accused to the effect that the police summoned DW1 and her daughter and collected blood from them after 2 days of the arrest of the accused. It is pointed out further that the prosecution would not get support of presumption under section 29 of POCSO Act to prove the offences charged under the IPC. Thus the learned counsel for the appellant sought interference in the verdict impugned.



6. The learned Public Prosecutor supported the verdict and argued that the evidence given by PW1, the victim, supported by the evidence of PW3 and Ext.P20 FSL report dated 01.01.2022 tendered in evidence through PW19, the prosecution categorically established penetrative sexual assault committed by the accused against the victim, which resulted in her pregnancy. Therefore none of the contentions raised by the learned counsel for the appellant would yield to upset the verdict impugned.

7. In order to support the evidentiary value of DNA report, he had placed reliance on the decision reported in **Satheesh Babu v. State of Kerala (2024(1) KLD 108(DB))** wherein, in paragraph 15, this Court considered the impact of DNA profile to prove the pregnancy and sexual intercourse and held as under:

“15. **DNA profiling and its impact:** Since there was no facility for DNA profiling in the Chemical Examination Laboratory of the State Government, the vaginal swab and smear collected from the body of the victim were initially forwarded to the State Forensic Science Laboratory and then to Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram. PW64 was the DNA Examiner attached to Rajiv Gandhi Centre for Biotechnology.



Thiruvananthapuram. PW64 testified that he received the blood sample of the accused and the samples of the vaginal swab and smear of the victim and the same received by him were properly sealed and labelled. PW64 also testified that he extracted DNA from the same, prepared the DNA profile using Autosomal DNA profiling kit as also Y-Chromosomal DNA profiling kit and found that the Autosomal DNA profile obtained from the blood sample of the accused did not match with the Autosomal DNA profile obtained from the vaginal swab and smear of the victim. PW64, however testified that the Y-Chromosomal DNA profile obtained from the blood sample of the accused was found matching with the Y-Chromosomal DNA obtained from the vaginal swab and smear of the victim. PW64 also testified that the DNA test results are sufficient to conclude that the accused cannot be excluded as a possible contributor to the DNA obtained from the vaginal swab and smear of the victim. Ext. P61 is the certificate issued by PW64 in this regard. During cross-examination, PW64 stated that the Autosomal DNA profiling is intended to establish the identity of disputed individuals and the same is wide, elaborate and accurate. PW64 admitted in cross-examination that males belonging to same paternity shall have same Y-Chromosome.

15.1. There cannot be any doubt to the proposition that the DNA evidence is in the nature of opinion evidence as envisaged under Section 45 of the Indian Evidence Act, and like any other opinion evidence, its probative value varies from case to case and it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party. It is so held by the Apex Court in *Pattu Rajan v. State of T.N.* (2019 KHC 6361). The relevant portion of the judgment reads thus:



"52. Like all other opinion evidence, the probative value accorded to DNA the weight accorded to other evidence depecord, whether contrary or corroborative, evidence also varies from case to case, depending on the facts and circumstances and This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

In *Mukesh v. State (NCT of Delhi) (2017 KHC 6396)*, the Apex Court has held that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper, and if there is no evidence as to the tampering of the samples, the DNA test report is to be accepted. Paragraph 228 of the said judgment reads thus:

"228. From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted."

In *Mukesh*, the Apex Court has also quoted with approval a passage from the judgment in *Pantangi Balarama Venkata Ganesh v. State of A.P. (2009 KHC 5052)*, wherein the Apex Court has referred to the evidence tendered by an expert on the subject that the probability of two



persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.

"Conclusion

The DNA test performed on the exhibits provided is sufficient to conclude that the source of Exhibit A (Blood sample said to be of Satheesh Babu (T 451/15)) cannot be excluded as a possible contributor to the DNA obtained from Exhibit B (Vaginal Swab & Smear (T 69/16)).”

8. Apart from that, he had placed reliance on the decision reported in **Dnyandeo Bhujang Dahiphale v. State of Maharashtra (2023 KHC OnLine 5998)** wherein, the Bombay High Court also relied on DNA profiling as held in paragraphs 9 and 14 of the judgment.

9. Regarding proof of age of the victim, learned Public Prosecutor has placed decision of this Court reported in **Sibu John v. Circle Inspector of Police, Puthencruz Circle (2026 KHC OnLine 708)** wherein this Court held as under:

“It is relevant to note that the evidence of PW7 supported by Ext. P6 would show that the date of birth of the victim is 18/12/1998. During cross examination of PW7 given evidence that he had entered the date of birth in Ext. P6 after verifying the birth certificate of the victim. This version remains as unchanged as it was brought during cross-examination of PW7. Thus, the contention raised by the learned Senior Counsel for the appellant/accused that PW1 and PW2 did not state anything regarding the status of PW1 as a child at the time of occurrence



could not be found. Even otherwise, going by the decisions referred to above, Ext. P6, tendered in evidence, through PW7 found to be a reliable document to hold that the date of birth of PW1 is 18/12/1998 and that, at the time of the occurrence, she was below 18 years of age and, she was a 'child' as defined under Section 2(1)(d) of the PoCSO Act. In fact, the status of PW1 as a child is not at all disputed during trial and thus this argument mooted before this Court is childish. The evidence discussed in detail by way of re-appreciation would show that the argument advanced by the learned Senior Counsel for the accused/appellant that the status of PW1 as a child failed to be established by the prosecution and that the relationship to be found as consensual would not succeed.”

10. Adverting to the rival arguments, the points arise for consideration are:

(i) *Whether the Special Court is right in holding that the appellant/accused committed offence punishable under Section 376(2)(f) of IPC?*

(ii) *Whether the Special Court erred in holding that the appellant/accused committed the offence under Section 376(3) of IPC?*

(iii) *Whether the Special Court is justified in holding that the appellant/accused committed offence punishable under Section Sections 3(a) r/w 4(2) of POCSO Act?*

(iv) *Whether the Special Court is erred in holding that the appellant/accused committed offence punishable under Section Sections 5(j)(ii) of POCSO Act?*



(v) *Whether the Special Court went wrong in holding that the appellant/accused committed offence punishable under Section Sections 5(n) of POCSO Act?*

(vi) *Whether the Special Court is right in holding that the appellant/accused committed offence punishable under Section Sections 5(p) r/w 6 of POCSO Act of POCSO Act?*

(vii) *Whether the verdict would require interference?*

(viii) *The order to be passed?*

Point Nos.(i) to (viii)

11. PW1, the victim, was examined to prove the alleged sexual assault resulting in her pregnancy and delivery of a child. PW2 is the mother of PW1. PW2 was examined to prove the date of birth of PW1, the relation of the victim with the accused, pregnancy and delivery of a baby by PW1. PW3, doctor was examined to prove the pregnancy status of PW1, collection of blood samples from the victim, victim's baby, its packing and sealing for DNA analysis. PW4, doctor attended delivery of PW1 at the hospital also was examined. PW5 was examined to prove the date of birth of PW1. PW6, a neighbor to the accused, was examined to prove Ext.P6 scene mahazar. PW7 was also examined



2026:KER:82055

Crl. Appeal No.2042/2024

13

to prove the same fact. PW8, a Jeep driver was examined to prove the transportation of PW1 and PW2 upto Anachal. PW9 was examined to prove Ext. P7 ownership certificate relating to the house with door No.3/111A of Bysonvalley Grama panchayath. PW10, Bysonvalley Village Officer was examined and Ext.P8 scene plan was proved through him. PW11, the Sub Inspector of Police was examined to prove recording of Ext.P1 statement from PW1. PW12 was examined to prove registration of Ext.P9 FIR based on Ext.P1. PW13, a pharmacist, was examined to prove that the accused had come to his shop and purchased a pregnancy kit. PW14, SCPO was examined to prove Ext.P10 mahazar, by which the blood of the accused was seized and Ext.P11 mahazar by which the dress of accused was seized. PW16, the CPO was examined to prove the picking up of blood sample from the doctor and handing it over to the Investigating Officer. PW17, another CPO was examined to prove Ext.P10 mahazar relating to seizure of blood sample of accused. PW18, Adimaly Grama panchayath Secretary, was examined to prove the date of birth of PW1. It was PW19 who conducted main part of the investigation.



12. PW20, doctor was examined to prove the medical examination of the accused, collection of blood samples for DNA analysis from the accused. PW21 was examined to prove Ext.P15 Mahazar prepared while the blood samples of the victim and her baby were handed over to PW19, Investigating Officer. PW21 who signed in Ext.P14 mahazar relating to the seizure of the dresses worn by the accused was examined to prove the said aspect. PW22 was examined to prove his signature on Ext.P15. PW23, Adimaly Grama Panchayath Secretary was examined to prove the date of birth of PW1. Here, the learned Special Judge relied on the evidence of PW5, the LP school Assistant, LPS, Vengoor, and Ext.P5, the certified copy of admission register dated 19.05.2022, Ext.P5(a), certified copy of application for admission dated 19.05.2022, Ext.P5(b), birth certificate dated 13.10.2021 and Ext.P5(c), birth certificate dated 19.05.2022 tendered in evidence to hold that the date of birth of the victim was on 19.04.2007 and accordingly, she was a child during the period of occurrence. In fact, there is no dispute before this Court regarding the status of the victim as a child as defined under Section 2(d) of the POCSO



Act.

13. In the instant case, as already pointed out, apart from the evidence of PW1 and other evidence elicited summarily herein above, including the medical evidence would show pregnancy as a consequence of the sexual intercourse and also delivery of the victim. That apart, DNA profile report would establish the fact that the accused is the biological father of the child.

14. PW1's evidence would show that she was aged 14 years (as on the date of her examination dated 18.05.2022 and she was born on 19.04.2007). She deposed about her study in St. Thomas School, Vengoor, near Perumbavoor, Government LP School, Vengoor upto the 6th standard. Thereafter, she stayed at St.Thomas Orphanage run by sisters. During 2020 March, she had reached the house of one Aswathy, daughter of her mother's elder sister as she had no house of her own, for residence. Her father passed away and her mother had been working as a Home Nurse. When the Orphanage was closed down due to Corona, she came to the above residence. According to her, during the last of



2026:KER:82055

Crl. Appeal No.2042/2024

16

December 2020, the accused reached the residence at noon and, in the absence of others, brought her to the bedroom. During this time, sister's children were playing outside.

15. Her demeanor was recorded by the learned Special Judge in her statement as “*she looks very shy and emotionally distressed*”. According to her, she wore a nighty at the relevant time and the accused put her on the cot. He lifted her nighty, removed her undergarment and inserted his penis into her vagina and as a consequence thereof, she cried. Thereafter, there were no periods for her. When she informed the same to the accused, he brought pregnancy card for testing and on testing, the same showed positive result. Then the accused informed her that she did not divulge the same to anybody and he would give tablets. On 28th December, she felt pain and she went along with the accused and her sister to the hospital. When it was informed to her mother, she had given “boiled fenugreek” to her as she had no periods and she was brought to the Taluk Hospital, Adimali and admitted at the Labour room and then she delivered a child. Then police recorded Ext.P1 statement given by her. Also she



2026:KER:82055

Crl. Appeal No.2042/2024

17

had given statement under Section 164 of the Criminal Procedure Code. She identified her signatures in Exts.P1 and P2. According to her, the accused was the husband of her mother's sister's daughter and she identified the accused at the dock. She was subjected to searching cross-examination with a view to shake her version. During cross-examination, she reiterated that she was assaulted during the month of December 2020. During further cross-examination, it was suggested that, when there would be sexual intercourse during that time, there would be no possibility for pregnancy, she replied that what she stated was the events occurred. During further cross-examination, a suggestion was made to the effect that she had a relationship with one Kishore and when the accused annoyed the same, this case was foisted. This suggestion was denied by PW1. In fact, during cross-examination of PW1, nothing was extracted to disbelieve her version in any manner. No contradiction also elicited during her cross-examination.

16. In support of the evidence given by PW1, PW3, Dr.Divya V.S., who had examined PW1 on 29.09.2021 also gave



evidence. According to PW3, while she was working as the Assistant Surgeon Taluk Hospital, Adimali, she had examined the victim and the victim spoke about the forced sexual assault committed by the accused on the victim with full penetration and ejaculation, despite resistance offered. She had conducted genital and physical examination and found as under:

1. *Perspeculum examination showed the cervix patalous*
- 2 *Lochia plus or present suggestive of vaginal delivery.*

17. PW3 also collected samples from the victim and her baby in FDTA bottles, packed, sealed and handed over the same to police. She had given evidence that, accordingly, she had issued Ext.P3 which would bear her signature. Even though she was cross-examined, with a view to shake her version, particularly regarding collection of the DNA, collection of blood samples from the victim and baby for DNA profiling, nothing extracted to disbelieve her version and during re-examination, she had reiterated the procedure that she followed to ensure tamper proof collection of the blood samples.



2026:KER:82055

Crl. Appeal No.2042/2024

19

18. In addition to the evidence of PW3, PW4, Dr. Chinnu P, who had examined the victim on 28.09.2021, when she was brought to the labour room with complaints of pain in abdomen also was examined. PW4 testified that on examination of the victim, her finding was that the victim's uterus was appropriately 36 weeks size, with contractions. She also deposed that the victim delivered a live, term male baby having 3.2 kg at 2.26 p.m. on 28.09.2021. PW6, a nearby resident at the house of the accused supported Ext.P6 mahazar pertaining to the house and according to him, she had seen the victim girl while she was staying in the house of the accused. PW7 also supported Ext.P6 mahazar.

19. Ext.P7 is the ownership certificate of the house where the offence occurred was tendered in evidence through PW9, Lal Sing S, Secretary, Bysonvalley Grama Panchayath during the relevant period. Ext.P8 is the sketch prepared by PW10, the Village Officer, Bysonvalley town. Regarding forwarding of the blood samples collected by PW16, CPO, who had collected the same from the hospital and handed over the same to the



2026:KER:82055

Crl. Appeal No.2042/2024

20

Investigating Officer given evidence in terms of Ext.P10 and the same is supported by PW17 also. PW19 deposed about the investigation he had conducted, supported by the evidence of PWs.21 and 22. The Potency Certificate pertaining to the accused was tendered in evidence and marked as Ext.P14 though PW20, Dr. Souparnika, who had examined him on 02.10.2021.

20. Apart from the prosecution evidence, the wife of the accused got examined as DW1. She deposed that the victim is her mother's sister's daughter. Further, she deposed that the victim resided along with her. She came to know about the pregnancy of the victim when she was informed by her mother. She also deposed that, thereafter, Adimali police called her and obtained blood samples of the child. In fact, the prosecution has no such case and this evidence had been let in to shake the prosecution case in the matter of DNA profiling done on the child born to the victim in the sexual intercourse between the accused and the victim. During cross examination, she candidly stated that she had dislike in sending her husband to jail, since she had been living on his income. In fact the evidence of DW1 has no



significance to disbelieve the prosecution case since she being the wife of the accused had given such an evidence even without making any complaint against the police for collecting the blood sample for any purpose, whatsoever.

21. On a perusal of Ext.P21 DNA examination report, it was opined that *“in the absence of identical twins, the alleged father Aneesh to whom the sample blood in item No. 7 belongs is the biological father of the B/o Abhymol to whom the sample blood in item No.5 belongs”*. When the evidence of PW1, victim, as regards penetrative sexual assault and birth of a baby in the said course is fortified by the evidence of Ext.P21 report stating that the accused was the biological father of the baby child born within the period after the sexual intercourse between the victim and the accused.

22. Here, learned Special Judge had given emphasis to the extra judicial confession at the instance of the accused before PW2 when she enquired about the occurrence and the pregnancy after calling the accused. According to PW2, when she asked the accused what he had done, he replied that ‘he committed a wrong



and to be pardoned'. Even though the learned counsel for the appellant attacked the extra judicial confession, in this connection, the learned Public Prosecutor placed reliance on the decision of the Apex Court reported in **Pritinder Singh @ Lovely v. State of Punjab (2023 KHC OnLine 6727)** where the Apex Court considered and discussed the law regarding extra judicial confession and observed as under:

“12. The law with regard to extra-judicial confession has be (succinctly discussed in the case of *Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh* through Public Prosecutor, Hyderabad, Andhra Pradesh ((2012) 6 SCC 174), wherein this Court has also referred to its earlier judgments, which read thus:

“56. This Court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions. In *Balwinder Singh v. State of Punjab* [1995 Supp (4) SCC 259: 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10)

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

57. In *Pakkirisamy v. State of T.N.* [(1997) 8 SCC 158: 1997 SCC (Cri) 1249] the Court held that: (SCC p. 162, para 8)

8. ... It is well settled that it is a Rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”

58. Again, in *Kavita v. State of T.N.* [(1998) 6 SCC 108: 1998 SCC (Cri) 1421] the Court stated the dictum that: (SCC p. 109, para 4)



“4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made.”

59. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram* [(2003) 8 SCC 180: 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para 19)

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court further expressed the view that: (SCC p. 192, para 19)

“19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....”

60. In *Aloke Nath Dutta v. State of W.B.* [(2007) 12 SCC 230: (2008) 2 SCC (Cri) 264], the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other corroborating material, was unjustified, observed: (SCC pp. 265-66, paras 87 & 89)

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.



89. A detailed confession which would otherwise be within the special knowledge of the Accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.”

61. Accepting the admissibility of the extra-judicial confession, the Court in *Sansar Chand v. State of Rajasthan* [(2010) 10 SCC 604: (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 29-30)

“29. There is no absolute Rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore* [(1970) 2 SCC 105: 1970 SCC (Cri) 320], *Mulk Raj v. State of U.P.* [AIR 1959 SC 902: 1959 Cri LJ 1219], *Sivakumar v. State* [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41), *Shiva Karam Payaswami Tewari v. State of Maharashtra* [(2009) 11 SCC 262: (2009) 3 SCC (Cri) 1320] and *Mohd. Azad v. State of W.B.* [(2008) 15 SCC 449: (2009) 3 SCC (Cri) 1082]]

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.”

62. Dealing with the situation of retraction from the extra-judicial confession made by an Accused, the Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat* [(2009) 5 SCC 740: (2009) 2 SCC (Cri) 881] held as under: (SCC pp. 772-73, para 53)

“53. It appears therefore, that the Appellant has retracted his confession. When an extra-judicial confession is retracted by an Accused, there is no inflexible Rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”



23. Thus the law regarding acceptance of extra judicial confession is no more res-integra. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra- judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [**Ref. *Sk. Yusuf v. State of W.B.*** [(2011) 11 SCC 754: (2011) 3 SCC (Cri) 620] (SCC pp. 762-63, para 28) and ***Pancho v. State of Haryana*** [(2011) 10 SCC 165: (2012) 1 SCC (Cri) 223].]

24. As regards to the DNA profiling result, a contention was raised before the learned Special Judge and in paragraph 34 of the judgment, the learned Special Judge considered the same and dispelled the same as extracted hereunder:

“34. Next, this court may examine as to whether the defense has been successful in rebutting presumption. In this connection, learned defense counsel has raised two contentions. The first contention is that the Pw1 became



pregnant after she had attained the age of 18. The second contention is that she became pregnant from somebody else and that the accused had not have any sorts of sexual contacts with the Pw1. While discussing point- no-1, this court had already found that the pw1 was aged below 16 as on in the last week of December 2020. Hence, second contention needs to be discussed deeply. To support his second contention, learned defense counsel relies on the evidence of the Pw4, doctor who had attended the delivery on the Pw1 and recorded statement relating to the cause of pregnancy from the Pw1. Pw4 has in her cross examination stated that a girl having 28 days strict cycle of menstruation will have normally ovulation on the 14th day since the last menstruation and the ovum will be alive from 48 hours to 72 hours normally and in some cases, the ovum will remain alive up to six days and in case an effective sexual intercourse took place, woman could become pregnant. She has further added that in case an effective sexual contact took place during safe period, the chance for a woman to become pregnant is very remote, but, the chance cannot be completely ruled out. She has added that in case an effective sexual contact took place within 78 hours after ovulation, a woman may get pregnant. She added that the safe period is considered to be the time span from the last ovulation date to the next ovulation date. Relaying on these facts elicited during the cross examination of the Pw4, the following contentions were raised by the defense counsel; according to the Pw1, her last LMP was in the first week of December, 2020. According to her evidence, the sexual contact took place in the last week of December 2020. In that case, even if it was conceded that there had been sexual intercourse between the Pw1 and the accused, she would not have got impregnated, the reason being that the live ovum would have died in the Pw1 by that time. This court has considered this argument very deeply and is of the view that it cannot be accepted for the following reasons; Evidence of Pw3 doctor shows the Pw1 having disclosed to her that the intercourse took place on a day, just before the Christmas in the year 2020. When she says that her LMP was in the first week of December, it may be on any day from the first day of the week till the elapse of seven days in that week. In case she had a 30



days menstrual cycle, she will have ovulation by the elapse of 15 days from the last date of her menses. According to the Pw4, the ovum in all most all cases will have life span from 48 hours to 72 hours and in some cases, it will have life span up to six days. In case last menses took place in Pw1 on the last day of the first week, she must have had ovulation by turn of 15th day since then. The ovum will be alive up to 72 hours normally and in some cases, it may remain alive up to six days. Therefore, in case a sexual intercourse took place on any day just before the Christmas in the year 2020, the chances for the Pw1 to become pregnant from the accused is very much possible and probable, according to the evidence of the Pw4. Hence, this court is of the view that the contention of the defense counsel is liable to rejected.”

25. Going through the reasons given by the learned Special Judge, while rejecting the contention raised by the accused, the same appears to be justifiable and therefore, the said contention raised before this Court is also liable to be rejected.

26. Now it is necessary to address the contention raised by the learned counsel for the accused regarding impossibility of pregnancy if the sexual intercourse occurred in the last week of December. In this connection, the evidence of the Doctor is very much relevant.

27. PW4, during her cross-examination, stated that a woman with a strict 28-day menstrual cycle would typically



ovulate on the 14th day after the last menstruation. She further explained that the ovum usually would remain viable for 48 to 72 hours, and in some cases, up to six days. The doctor opined that if effective sexual intercourse would occur during this time, pregnancy might result. The doctor also testified that if intercourse would occur during the 'safe period,' the chances of pregnancy would be less, though not entirely impossible. Moreover, if ineffective sexual contact would happen within 78 hours after ovulation, pregnancy could still occur. The 'safe period' generally to be the time from the last ovulation to the next ovulation. According to PW1, her last LMP was in the first week of December 2020, and she testified that the sexual contact occurred in the last week of December 2020.

28. Thus when evaluating the evidence of PW4, she did not in any way ruled out pregnancy now found when the sexual intercourse was during the last month of December 2020. Therefore, this contention must fail.

29. Here, extra judicial confession alone is not the evidence available. Even without the extra judicial confession



evidence of PW1 and other evidence discussed, including the medical evidence and Ext.P21 DNA report, would establish the prosecution case beyond reasonable doubt. In such a case, the extra judicial confession spoken by PW2 also is acceptable to corroborate the other substantive evidence. Similar is the position with regard to the DNA profiling. In fact the DNA result fully established that the appellant is the biological father of the child. At the same time, in the absence of evidence in the form of DNA profiling, also the evidence of PW1 found to be of sterling quality is sufficient to prove the prosecution case as the same is wholly reliable. In such contingency, the non-examination of the author of Ext.P21 also is of no significance; a contention now raised without objecting tendering of Ext.P21 in evidence.

30. To sum up, on re-appreciation of the evidence, this Court is of the view that the learned Special Judge is right in finding that the accused herein committed offences punishable under Sections 376(2)(f), 376(3) IPC and under Sections 3(a) r/w 4(2), 5(j)(ii), 5(n), 5(p) r/w 6 of the POCSO Act. Therefore, conviction does not require any interference.

31. Coming to the sentence, the sentence imposed by the Special Judge is very reasonable. Accordingly, the sentence is



2026:KER:82055

Cr1. Appeal No.2042/2024

30

also confirmed.

Hence, this appeal fails and is dismissed by confirming the conviction and sentence imposed by the Special Court.

Since the appellant/accused is in Jail, no other orders are required.

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

Sd/-

A. BADHARUDEEN
JUDGE

Sbna/