

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 1ST DAY OF JULY 2022 / 10TH ASHADHA, 1944

CRL.A NO. 649 OF 2021

AGAINST THE JUDGMENT IN SC 726/2014 OF I ADDL.DIST. &
SESSIONS COURT, KOLLAM

APPELLANT/ACCUSED:

XXX
X

BY ADVS.
T.U.SUJITH KUMAR
DINESH G WARRIER

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM 682 031
- 2 THE INSPECTOR OF POLICE
PATHANAPURAM POLICE STATION,
KOLLAM DISTRICT 689 695

BY ADV SMT.AMBIKA DEVI S, SPL.GP ATROCITIES
AGAINST WOMEN AND CHILDREN
SMT. BINDU O.V. PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
23.06.2022, THE COURT ON 01.07.2022 DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 1st day of July, 2022

This appeal has been preferred under Sections 374(2) of the Code of Criminal Procedure by the accused in S.C. No. 726/2014 on the file of the 1st Additional District and Sessions Judge, Kollam (for short, the court below) challenging the judgment of conviction and sentence dated 6th October, 2017.

2. The accused faced trial for the offence punishable under Section 9(n) r/w 10 of the Protection of Children from Sexual Offences Act (for short, POCSO Act).

3. The victim was a minor girl aged 15 years at the time of the incident. The accused is none other than the father of the victim. The prosecution case in short is that during the year 2006 and on 30.05.2014 at about 11 p.m., and also on 02.06.2014 at 2 a.m. in the night, the accused sexually assaulted the victim at their house at Pathanapuram.

4. The crime was registered on the basis of Ext. P1 statement given by the victim to the Sub Inspector of Police,

Pathanapuram. After completing the investigation, the final report was filed at the Court below.

5. The accused appeared at the Court below. After hearing both sides, the court below framed charge against the accused for the offences punishable under Section 9(n) r/w 10 of the POCSO Act. The charge was read over and explained to the accused who pleaded not guilty. The prosecution examined PW1 to PW6 and marked Exts. P1 to P7. No defence evidence was adduced. Considering the evidence on record, the court below found the accused guilty for the offence punishable under Section 9(n) of POCSO Act and he was convicted for the said offence. The accused was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/-, in default to suffer simple imprisonment for three months under Section 10 of POCSO Act. Challenging the said conviction and sentence, this appeal has been preferred.

6. I have heard Sri. Sujithkumar T.U., the learned counsel appearing for the appellant and Smt. Bindu O.V., the learned Public Prosecutor.

7. The learned counsel for the appellant impeached the

findings of the Court below on appreciation of evidence and resultant finding as to the guilt. The counsel submitted that the conviction is based on the uncorroborated testimony of the child witness which suffers from contradictions and omissions. The counsel further submitted that there is inordinate delay in reporting the matter and lodging the FIR, the benefit of which should go to the accused. The counsel also submitted that the age of the victim has not been legally proved. Per contra, the learned Public Prosecutor, Smt. Bindu O.V. supported the findings and verdict handed down by the court below and argued that the prosecution has succeeded in establishing and proving the case beyond reasonable doubt.

8. The prosecution mainly relied on the evidence of PWs 1 and 2 to prove the incident and to fix the culpability on the accused. PW1 is the victim who gave Ext. P1 statement and PW2 is her mother.

9. PW1, the victim girl, deposed that even at the age of 7 years, the accused sexually abused her by making her to lie on his body and he also touched her private parts. PW1 further deposed that thereafter, he went to Gulf and after returning from

Gulf, he regularly sexually assaulted her by catching her breast, buttocks and private parts at night. She narrated an incident, that on 30.05.2014, when the accused came to sexually assault her at night, she cried aloud, her mother woke up and together they made him to go out of the house and closed the door. She further deposed that, again on 02.06.2014 at about 2 a.m. while she was asleep, the accused caught her breast, buttocks and private parts and she cried aloud. She also deposed that the accused made a hole in the bathroom to see her taking bath. Hence, the victim along with PW2 went to the police station, gave Ext. P1 statement and lodged the complaint.

10. PW2, the mother of the victim gave evidence that, the accused is her husband and after their marriage, the accused disturbed her elder sister and there was a case with respect to that and after the said incident, she along with the accused started to live separately. She deposed that, while they were so residing with their daughter, who is the victim herein, then aged 7 years, one day the victim cried aloud at night and told her that the accused sexually abused her. The accused went to Gulf within a week and came back after 7 years. She further deposed that,

after returning from Gulf, the accused began to disturb PW1 by catching her breast and buttocks. She also deposed that, on 30.05.2011 at 11 p.m. such an incident occurred while PW1 was sleeping and she along with PW1 pushed the accused out of the house and closed the door. But, on the next day, the accused promised them that he will not repeat such things. Hence, he was allowed to enter the house. But, again on 02.06.2014, the accused repeated the same acts of sexual assault against PW1 and on that day also, they pushed him out of the house and intimated the matter to the brother of the accused. She added that, on the next day, the accused made a hole in the door of the bathroom for peeping while PW1 was taking bath and hence, she along with PW1 went to the police station and lodged the complaint.

11. I have perused the evidence of PW1 meticulously. Even though she was cross-examined at length by the learned counsel for the accused, nothing tangible could be extracted from her to create any shadow of doubt that she is not a truthful witness. She clearly deposed the manner in which the accused assaulted her sexually on various occasions. She gave a reliable,

consistent, and credible version of the crime which inspires confidence. It is settled that, the evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding. It is equally settled that the statement of a child witness should be scrutinized with great care and caution. At the same time, it must be taken note of that, children by their inherent nature are honest. Corroboration of the testimony of the child witness is not a rule but a measure of caution and prudence is a well-accepted principle [See ***Hari Om v. State of Uttar Pradesh*** (2021) 4 SCC 345]. Here, there is absolutely no ground for doubting the veracity of the witness, PW1.

12. The learned counsel for the accused submitted that the conviction was based on the sole evidence of the victim and no occurrence witness was examined. In ***State of Himachal Pradesh v. Asha Ram*** (AIR 2006 SC 381), it was held that it is well within the limits to rest a conviction based on the sole testimony of the victim, whose evidence is more reliable than that of injured witness. In ***State of Punjab v. Gurmit Singh*** [(1996) 2 SCC 384], the Apex court took the view that in cases involving sexual molestation, even discrepancies in the statement

of the prosecutrix should not, unless the discrepancies are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. It was further held that, the courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. Here, the evidence of the PW1 is found to be genuine, credible and reliable. It can safely be relied on to prove the incident and to fix the culpability on the accused. That apart, the evidence of PW2 corroborates the evidence of PW1. There is nothing to doubt the evidence given by PW2.

13. The learned counsel for the appellant vehemently argued that, there is inordinate delay in reporting the matter to the police and lodging the FIR. The delay in sexual offence has to be viewed differently. The delay in a case of sexual assault cannot be equated with a delay in a case involving other offences since several factors weigh on the mind of the victim and members of her family. In a tradition bound society like ours, particularly in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there was a delay in lodging the FIR. The delay becomes fatal only in a case when there is doubt

as to the genesis or genuineness of the prosecution case. The failure to mention the exact time of occurrence with respect to the incident which happened while PW1 was aged 7 years does not create doubt in the prosecution case. Apart from that, PW1 has clearly stated that she was very ashamed to complain about such acts against her father before others. Thus, there is nothing on record to doubt about the genesis or genuineness of the prosecution case on account of the alleged delay.

14. The learned counsel for the appellant further submitted that the age of the victim has not been proved before the Court below. But, no such plea was taken at the court below. The accused is none other than the father who is supposed to know the age of the victim. The evidence of PW1 and PW2 would show that PW1 was a minor at the time of the incident. She clearly deposed that the accused sexually exploited her since she was seven years old. There is no challenge to the said evidence.

15. The prosecution evidence clearly establishes that the accused has committed the offence punishable under Section 9(n) of POCSO Act. The court below was absolutely justified in convicting the accused under the aforesaid provisions and no

interference is called for on the said findings.

16. What remains is the sentence. The court below sentenced the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs. 25,000/-, in default to undergo simple imprisonment for three months under Section 10 of POCSO Act. Section 10 of POCSO Act prescribes punishment of imprisonment of either description for a term which shall not be less than five years and may extend to 10 years and shall also be liable to fine. The accused was sentenced only with the mandatory minimum period of punishment. Considering the entire facts and circumstances of the case, I am of the view that the sentence imposed by the Court below is absolutely reasonable.

In the result, the conviction and the sentence passed by the Court below are confirmed. Accordingly, this criminal appeal stands dismissed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp