

IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, KANNUR.

Present: Sri. Jomon John, Special Judge

Dated this the 25th day of April, 2023 / 5th day of Phalguna, 1944**SC No. 88/2022**

Complainant : Station House Officer, Mayyil Police Station
(Cr.No.526/2021).
By Special Public Prosecutor.

Vs

Accused : Rafeeqe P, S/o. Abdul Rahiman P, aged 34 years,
Poolakkal House, Nannabram village,
Thaiyyalingal PO, Thattathala, Malappuram.
Defended by Sri.Abdul Salam E.K, Advocate).

Offence U/s.7 r/w 8, 9 (m) r/w 10 of Protection of Children
from Sexual Offences Act, 2012.

Plea Not guilty

Finding Not guilty

Sentence or Order Accused is acquitted U/s.235 of Cr.P.C.

This Sessions case having been come up for final hearing before me on 20.04.2023 in the presence of the Special Public Prosecutor and counsel for accused and having stood over for consideration till this day, the court delivered the following:-

JUDGMENT

This is a case charge-sheeted by the Sub Inspector of Police, Mayyil Police Station, in Crime No.526/2021, alleging commission of the offences punishable under Section 7 r/w 8, 9 (m) r/w 10 of Protection of Children from Sexual Offences Act, 2012, against the accused.

2. The prosecution case is, in brief, as follows :- At 12.30 pm on a day before 01.09.2021, at the bed room of the accused attached to a mosque bearing No. III-391

of Kuttiattur Panchayath situated at Pavannur centre, the accused, with his sexual intent, laid over the 11 years old survivor and hence, the accused is booked for the offences punishable U/s.7 r/w 8, 9 (m) r/w 10 of Protection of Children from Sexual Offences Act, 2012 .

3. On the basis of the First Information Statement recorded from the victim, this crime against the accused was registered by CW14, the Senior Civil Police Officer, Mayyil Police Station with vide Crime No.526/2021. Thereafter, CW15, Inspector of Police of the same police station investigated this crime and laid a final report before the Additional District and Sessions Court-I, Thalassery where it was taken on file as SC 88/2022. Subsequently, after constitution of this Court, the above file was made over to this Court for trial and disposal in accordance with law.

4. On appearance of the accused, copies of all relevant records of the prosecution were furnished to him. Thereafter, the learned Special Public Prosecutor opened the case by describing the charge brought against the accused and stating by what evidence she proposed to prove the guilt of the accused. Upon consideration of the records of the case and documents submitted there with, and after hearing the submissions of the accused and the prosecution in this behalf, a charge was framed against the accused for the offences punishable U/Ss.7 r/w 8, 9 (m) r/w 10 of Protection of Children from Sexual Offences Act, 2012. When it was read over and explained to the accused, he pleaded not guilty. He was enlarged on his bail. To prove its case, prosecution examined PW1 to PW3 and Ext. P1 to Ext.P10 documents were marked. As the survivor and the other material witness did not support the

prosecution case, the examination of the remaining witnesses was given up by the learned Special Public Prosecutor. On close of the prosecution evidence, the accused was questioned U/s.313 Cr. PC so as to enable him to explain about all the incriminating circumstances brought out in evidence against him. He reiterated his innocence. Thereafter, the prosecution and the accused were heard U/s.232 of Cr. P.C. However, no order of acquittal was recorded thereunder as there is evidence against the accused. No defence evidence is adduced.

5. Heard both sides.

6. Points those arise for consideration :-

- (1) Whether the prosecution has succeeded in proving the guilt of the accused for the offences charged against him ?
- (2) What is the punishment, if any, to be awarded to the accused ?

7. **Point No. (1)** : PW1 is the survivor in this case. He was a child witness having an age of 13 years at the time of his examination before Court. Since PW1 could give rational answers to the questions put to him, his competency as a witness was declared.

8. PW1 testified that he was born on 03.07.2010 and that he was studying at a High School by name Rahmanya Orphanage in the year 2021. He further testified that the accused was the Moulavi at the mosque attached to the School. However, PW1 denied that the accused had subjected him to any kind of sexual assault. Although, PW1 admitted the signature in Ext.P1 First Information Statement, he denied its contents.

9. PW2 is another child witness, who is a friend of PW1. PW2 also testified that accused was the Moulavi at the mosque. However, PW2 expressed his ignorance about the alleged occurrence.

10. Although PW1 and PW2 were declared hostile to the prosecution and vehemently cross-examined by the learned Special Public Prosecutor, nothing was extracted from their mouth in support of the prosecution. It appears from their evidence that the entire matter had been settled out of court.

11. PW3 is the Investigation Officer of this case. During his examination, Ext.P2 to Ext.P10 documents were marked. He deposed that he had conducted the investigation and laid final report against the accused. However, as the material witnesses did not support the prosecution, the evidence of PW3 assumes no significance.

12. From the material evidence of PW1, nothing is gathered to believe that the accused committed any of the offences charged. It is inferred from the evidence of PW1 that the entire matter had been settled out of court. Since no incriminating circumstances are brought out against the accused, it is held that prosecution has failed to prove the guilt of the accused. Thus, **Point No.(1)** is answered against the prosecution.

13. **Point No. (2)** : In the result, accused is found not guilty of the offences punishable U/Ss. 7 r/w 8, 9 (m) r/w 10 of Protection of Children from Sexual Offences Act, 2012 and he is acquitted for the same U/s.235 Cr. PC. He is set at

liberty forthwith. Bail bond executed by the accused shall be in force for six months from this date as per Section 437A of Cr. PC.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open Court this the 25th day of April, 2023.

Sd/-
SPECIAL JUDGE, KANNUR

APPENDIX

A. PROSECUTION WITNESSES :

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical Witness, Other witness.
PW1	Victim	Eye witness.
PW2	Safwan C.P	Other witness.
PW3	Suresh Babu P.K	Police Witness.

B. DEFENCE WITNESSES : Nil

C. COURT WITNESSES : Nil.

A. PROSECUTION EXHIBITS :

<u>Sl. No.</u>	<u>Exhibit Number</u>	<u>Description</u>
1.	Ext.P1/PW1	First Information Statement.
2.	Ext.P2/PW3	First Informtion Report.
3.	Ext.P3/PW3	Scene mahazar.
4.	Ext.P4/PW3	Site plan.
5.	Ext.P5/PW3	Ownership certifiante.
6.	Ext.P5(a)/PW3	Report of Examination of a victim.
7.	Ext.P5(b)/PW3	Birth certifiante.

8.	Ext.P6/PW3	Potency certificate.
9.	Ext.P7/PW3	Report to add name and address of accused.
10.	Ext.P8/PW3	Report to add Sec.10 of Protection of Children from Sexual Offences Act.

B. DEFENCE EXHIBITS : Nil.

C. COURT EXHIBITS : Nil.

MOs. MARKED : Nil

Sd/-

SPECIAL JUDGE, KANNUR

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SPECIAL JUDGE, KANNUR

IN THE COURT OF THE SPECIAL JUDGE, FAST TRACK SPECIAL COURT,
KANNUR.

TABULAR STATEMENT

1. Sl. No. : SC 88/2022
2. Name of Police Station : Station House Officer, Mayyil Police Station
(Cr.No.526/2021).

Description of the accused:

3. Name of Accused	4. Father's Name	5. Occupation	6. Residence	7. Age
Rafeeque P	Abdu Rahiman P	Coolie	Thattathala	34

DATE OF:

8.	Occurrence	:	01.09.21
9.	Complaint	:	02.09.21
10.	Commitment	:	-
11.	Apprehension	:	30.12.21
12.	Release on bail	:	30.12.21
13.	Commencement of trial	:	25.03.23
13A.	Commencement of Evidence	:	20.03.23
14.	Close of trial	:	20.04.23
15.	Judgment pronounced	:	25.04.23
16.	Sentence/Order	:	Acquitted U/s. 235 Cr. PC.
17.	Service of copy of judgment or finding on the accused	:	25.04.23
18.	Period of detention undergone during investigation, inquiry or trial for the purpose of Sec. 428 Cr PC.	:	-
19.	Explanation for delay	:	No delay.

Sd/-
SPECIAL JUDGE, KANNUR

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SPECIAL JUDGE, KANNUR