

**IN THE COURT OF FAST TRACK SPECIAL JUDGE,
PATHANAMTHITTA**

Present: Sri. **DONEY THOMAS VARGHESE, SPECIAL JUDGE**

Monday the 28rd day of April 2025/ 8rd day of Vaishaka 1946 (S.E)

SESSIONS CASE NO.38/2023

Complainant	:	State of Kerala represented by the Deputy Police Superintendent, Pathanamthitta Crime No.435/2022 of Vanitha P.S., Pathanamthitta. (By Adv. Smt.Roshan Thomas, Special Public Prosecutor Pathanamthitta).
Accused:	:	Rahul Monachan, S/o. T.P.Monachan, aged 30 years, Pothuvammadathil Veedu, Kanjiraveli Onthekkadu, Punnakkadu Muri, Mallapuzhasseri Village. (Adv. Sri. Brijendralal.S.P)
Charges	:	Offences u/s.offences u/ss.366,376(2)(n) IPC u/s. 6 r/w 5(l)(j)(ii) of the PoCSO Act and u/s. 3(1)(w)(i) and 3(2)(v) of SC/ST (POA)Act.
Plea of the Accused	:	Not guilty
Finding of the Court	:	Not guilty.

Sentence of the Court : Accused is found not guilty of the offences u/ss.366,376(2)(n) IPC u/s. 6 r/w 5(l)(j)(ii) of the PoCSO Act and u/s. 3(1)(w)(i) and 3(2)(v) of SC/ST (POA)Act. He is acquitted u/s.258(1) BNSS in respect of said offences and he is set at liberty.

Dates of Trial : 21.12.2023, 18.04.2024,09.05.2024,
28.05.2024, 07.06.2024, 22.06.2024,
07.03.2025, 17.03.2025, 22.03.2025,
22.04.2024 25.04.2025, 28.04.2024

Dates of Hearing : 21.12.2023, 18.04.2024,09.05.2024,
28.05.2024, 07.06.2024, 22.06.2024,
07.03.2025, 17.03.2025, 22.03.2025,
22.04.2024 25.04.2025, 28.04.2025

This case having been finally heard on 28.04.2025 and the court on the same day delivered the following.

JUDGMENT

This is a case charge sheeted by the Dy.S.P, Pathanamthitta against the accused alleging the commission of offences u/ss.366,376(2)(n) IPC u/s. 6 r/w 5(l)(j)(ii) of the PoCSO Act and u/s. 3(1)(w)(i) and 3(2)(v) of SC/ST (POA)Act.

2. The prosecution case in brief is as follows: On 26.03.2022 at 11 AM accused has enticed and taken the victim female child from Tharayil Mukku to his residence at Onthekkad by way of his motor cycle bearing no KL-3-V-155 by giving a promise to marry her. By taking her to his house accused has subjected her to penetrative sexual assault. Thereafter she was subjected to penetrative sexual assault for three days from 27.03.2022 to 29.03.2022 at the

said place and as a result of which she became pregnant and she had given birth to a female child on 17.10.2022. Thereby accused has committed the offences alleged against him.

3. After completing investigation charge was laid by the investigating officer before the Additional Sessions Court-I (POCSO Court), Pathanamthitta where cognizance was taken as SC. 38/2023 and thereafter as per the order of the Principal Sessions Judge, Pathanamthitta the case was made over to this court for disposal.

4. Learned Special Public Prosecutor opened the case by describing the charge brought against the accused and stating by what evidence she proposes to prove the guilt of the accused. Upon consideration of the records of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution charge was framed against the accused for offences u/ss.366,376(2)(n) IPC u/s. 6 r/w 5(1)(j)(ii) of the PoCSO Act and u/s. 3(1)(w)(i) and 3(2)(v) of SC/ST (POA)Act which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. Evidence for the prosecution consists of the oral testimony of PW1 to PW22 and Ext. P1 to P37 were marked. Remaining witnesses were given up by the learned Special Public Prosecutor.

6. After the conclusion of the prosecution evidence accused was examined u/s.351 BNSS. He denied all the incriminating circumstances appearing against him in the prosecution evidence.

7. After hearing both sides I am satisfied that it is not a case of no evidence for an acquittal u/s.255 BNSS and accordingly accused was called upon to enter on his defence and to adduce evidence he may have in support of his defence.

8. No oral evidence was adduced on the defence side but Ext.D1 was marked.

9. Heard both sides. The points that arise for consideration are:-

1. Whether accused has kidnapped PW1?
2. Whether accused has committed rape on PW1 more than once?
3. Whether accused has committed penetrative sexual assault on PW1 more than once?
4. Whether accused has committed penetrative sexual assault on PW1 and made her pregnant?
5. Whether offences u/s. 3(1)(w)(i) and 3(2)(v) of SC/ST (POA) Act is made out against the accused?
6. What are the offences, if any, made out against the accused?
7. In the event of conviction what ought to be the punishment?

10. **Point nos: 1 to 5:**

For the sake of convenience, point nos. 1 to 5 are discussed together.

Prosecution case is that on 26.03.2022 at 11 AM accused has enticed and taken

PW1, victim female child from Tharayil Mukku to his residence at Onthekkad by way of his motor cycle bearing no KL-3-V-155 by giving a promise to marry her. By taking PW1 to his house accused has subjected her to penetrative sexual assault. Thereafter PW1 was subjected to penetrative sexual assault for three days from 27.03.2022 to 29.03.2022 at the said place and as a result of which she became pregnant and she had given birth to a female child on 17.10.2022. PW1 has deposed on lines with the prosecution case. Oral evidence of PW1 is corroborated by that of PW2, mother of PW1 and PW3 and PW19 colleagues of the accused.

11. According to PW4 on 13.08.2022 while she was working as Consultant, General Hospital, Pathanamthitta she had examined PW1 and issued Ext.P2 medico legal certificate. On examination her hymen was found ruptured with old tire and 26 weeks fetus movement was noted. According to PW4, PW1 was pregnant at the time of examination.

12. PW5 has identified his signature on Ext.P3 scene mahazar.

13. PW6, Gynecologist, SAT Hospital, Trivandrum has deposed that the blood samples of PW1 and the newborn child were collected by her for DNA profiling and handed over the same to the investigating officer. Ext.P4 is the treatment certificate issued by PW6.

14. Ext.P5 is an extract of the birth register of PW1 issued by (PW7, Local Registrar (Births), Pathanamthitta Municipality. As per Ext.P5 PW1 was born on 05.02.2005. Ext.P12 is an extract of the birth register of the infant of

PW1 issued by PW14, Local Registrar (Births), Trivandrum Corporation. As per Ext.P12 document said child was born on 17.10.2022. Ext.P6 series(a) and (b) are the site plans of the scene of occurrence prepared by PW8, Village Officer, Mallappuzhasserry whereas Ext.P7 is the ownership certificate of the scene of occurrence prepared by PW9, Secretary, Mallappuzhasserry Grama Panchayath. As per Ext.P7 certificate said building is in the name of a person namely Monachan.

15. Ext.P8 is the caste certificate of the accused issued by PW10, Tahsildar, Kozhencherry. As per Ext.P8 accused belongs to Latin Catholic community. Ext.P9 is the caste certificate of PW1 issued by PW11, Tahsildar, Kozhencherry. As per Ext.P9 PW1 belongs to Scheduled Caste Hindu Sambhava community.

16. According to PW12, AMVI, Pathanamthitta Ext.P10 inspection certificate of motor cycle bearing no KL-3 V-155 was issued by him. As per Ext.P10 certificate no mechanical defects were noted. PW13, Joint RTO, Pathanamthitta has deposed that Ext.P11 RC particulars of the said vehicle was issued by him. As per Ext.P11 certificate accused is the RC owner of the said vehicle.

17. Ext.P1 FIS of PW1 was recorded by PW15, SCPO. She has also identified her signature on Ext.P13, P14, P15, P16 and P18 seizure mahazars. Ext.P19 FIR was registered by PW16, SHO, Vanitha Police Station, Pathanamthitta. Ext.P3 and P20 scene mahazars were also prepared by PW16.

Accused was apprehended. Ext.P21 is the arrest memo of the accused. Ext.P22 is the report showing the identity of the accused. Ext.P25 is the potency test certificate of the accused. Seized items were produced in court. Ext.P23 series are the lists of property. Ext.P26 is a copy of the forwarding note. Complicity of the accused for offences under the SC/ST (POA) Act was revealed on investigation. Ext.P24 is the report filed to that effect. Ext.P28 is the correction report filed by PW17, Dy.SP. Accusation was added and Ext.P29 is the report filed to that effect. Ext.P33 is the receipt of FSL. Ext.P36 series are the call details and certificate u/s. 65 B of the Evidence Act of mobile phone no.9383474224 issued by PW18, Alternate Nodal Officer, BSNL. Ext.P37 is an extract of the driving license of the accused. After completing investigation charge was laid by PW17, Dy.S.P.

19. Here the admitted prosecution case is that on 26.03.2022 accused has enticed and taken PW1 to his residence and subjected her to penetrative sexual assault. Thereafter for the period from 27.03.2022 to 29.03.2022 she was subjected to penetrative sexual assault by the accused at the said place. PW1 has deposed on lines with the said version. Her version is that her last menstruation was on 28.02.2022. Her version is that she had given birth to a female child on 17.10.2022. According to PW4, medical witness on 13.08.2022 when PW1 was examined 26 weeks pregnancy was noted. According to PW4 expected date of delivery will be the first week of December. But according to PW6, medical witness PW1 had given birth to a child on 17-10-2022. PW6 has

further deposed that it was a normal delivery. Prosecution has no case that PW1 had given birth to a premature baby. By relying on all these inconsistencies the case of the defence is that if the last “LMP” was on 28-02-2022 and she was subjected to penetrative sexual assault by the accused only during the period from 26-03-2022 to 29-03-2022 there is no likelihood of taking place a normal delivery on 17-10-2022 nor will it result in 26-weeks pregnancy as on 13-08-2022. I find merit in that contention. Normal gestation period for humans is around 40 weeks (280 days) and it is calculated from the first day of the mother's last menstrual period. Here the LMP of PW1 was on 28-02-2022 and she had given birth to a child as a normal delay on 17-10-2022 and I find merit in the aforesaid contention advanced by the defence. The version of PW1 is that in the year 2020 while she was brooming the courtyard of her house a piece of paper was placed there in the courtyard by the accused who was living in the neighbourhood. Phone number of the accused is written there in the said piece of paper but the said piece of paper was not recovered nor accounted for. Likewise the version of PW1 is that on 26.03.2022 she proceeded to an Akshaya Centre at Ikkaramukku. After visiting the Akshaya Centre she proceeded to Tharayil mukku. But no investigation was done as to whether she visited the Akshaya Centre at Ikkaramukku on 26.03.2022. Aforesaid things show that no fair investigation was done in this case. Further Ext.D1 is the DNA result of the child of PW1. Said report shows that accused is not the biological father of the child. Said report was not tendered in evidence on the

side of the prosecution but it was tendered in evidence by the defence and the same was admitted in evidence without any objection by the learned Special Public Prosecutor. Aforesaid report cut at the root of the prosecution case. The the prosecution case is that accused has subjected PW1 to penetrative sexual assault and made her pregnant. Same is the version of PW1. But Ext.D1 report shows that accused is not the biological father of the child of PW1. If result of DNA came about against the accused it would constitute clinching evidence against him for further proceedings. If the result is favouring the accused as held in **Swamy B .Vs. State 2022 SCC Online Kar.1542** then the weight of other materials and evidence on record will still have to be considered for corroboration. But here no such corroborative evidence was adduced. Further as stated above said report was admitted in evidence without any objection by the prosecution. The case of PW1 is that she was not only subjected to sexual assault but also accused had made her pregnant and as such Ext.D1 report will absolve him from the alleged offences. In view of the above I find merit in the contention that it is quite unsafe to act upon the interested and partisan testimony of PW1. Heresay evidence of PW2, the mother of PW1 and the oral evidence of PW3 and PW19 who allegedly had the opportunity to see the accused in the company of PW1 would not suffice. The version of PW3 is that PW1 visited the aluminium fabrication shop where PW3 was working alongwith accused. PW1 visited there alongwith another girl and accused left the shop alongwith them. According to him PW1 was found travelling in the

motorcycle alongwith the accused. But PW1 has no such case. Likewise the version of PW19 another colleague of the said aluminium fabrication workshop is that he had the opportunity to hear about the travelling PW1 in the motorcycle ridden by the accused. On one occasion he had opportunity to witness it. On another occasion PW1 visited the shop alongwith another girl. He came out of the shop and talked with PW1. But according to PW3 accused left the shop along with them. According to PW19 proprietor of the shop scolded him for that. Prosecution case is that no one was there at the house of the accused during the impugned days. No investigation was done as to the absence of others in the said house. No person in the neighbourhood of PW1 was examined to prove the same. All these things also would cause dent in the prosecution case. Likewise in her evidence the version of PW1 is that accused has been in love with another woman. Accused is in love with her for the last 10 years PW1 had interacted with her. But in Ext.P1 FIS she has no such case. It also throws doubt as to the deeds of the prosecution case. Available evidence on record are insufficient to bring to home the complicity of the accused for any of the alleged offences and the accused is entitled to get the benefit of doubt. Points 1 to 5 are answered in the negative.

20. **Points 6 and 7**

Prosecution failed to prove the guilt of the accused beyond all reasonable doubts for any of the alleged offences. Point No.6 is answered accordingly.

In the result accused is found not guilty of the offences u/ss.366,376(2) (n) IPC u/s. 6 r/w 5(l)(j)(ii) of the PoCSO Act and u/s. 3(1)(w)(i) and 3(2)(v) of SC/ST (POA)Act. He is acquitted u/s.258(1) BNSS in respect of said offences and he is set at liberty.

Office is directed to forward a copy of this judgment to the Secretary, District Legal Services Authority, Pathanamthitta for awarding compensation for the rehabilitation of the victim based on the recommendation by this court u/s. 396(3) BNSS.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this 28th day of April, 2025.

Sd/-
DONEY THOMAS VARGHESE,
SPECIAL JUDGE

APPENDIX

Exhibits marked for the prosecution

P1/PW1	-	First information statement proved on 18.04.2024
P2/PW4	-	Medico legal certificate proved on 09.05.2024
P3/PW5	-	Scene mahazar proved on 09.05.2024
P4/PW6	-	Treatment certificate proved on 09.05.2024
P5/PW7	-	Extract of Birth Register proved on 09.05.2024
P6(a)/PW8	-	Site plan-I proved on 28.05.2024
P6(b)/PW8	-	Site plan-II proved on 28.05.2024
P7/PW9	-	Ownership certificate proved on 28.05.2024
P8/PW10	-	Caste Certificate of the accused proved on 28.05.2024
P9/PW11	-	Caste certificate of the victim proved on 28.05.2024

P10/PW12	-	Inspection Report proved on 28.05.2024
P11/PW13	-	R.C. Particulars proved on 28.05.2024
P12/PW14	-	Birth Certificate of the daughter of victim proved on 07.06.224
P13/PW15	-	Mahazar proved on 22.06.2024
P14/PW15-		Mahazar proved on 22.06.2024
P15/PW15-		Mahazar proved on 22.06.2024
P16/PW15-		Mahazar proved on 22.06.2024
P17/PW15-		Mahazar proved on 22.06.2024
P18/PW15-		Mahazar proved on 22.06.2024
P19/PW16-		First information report proved on 22.06.2024
P20/PW16	-	Scene mahazar II proved on 22.06.2024
P21/PW16	-	Arrest memo proved on 22.06.2024
P22/PW16	-	Report proved on 22.06.2024
P23(a)/PW16-		Property list proved on 22.06.2024
P23(b)/PW16-		Property list proved on 22.06.2024
P23(c)/PW16-		Property list proved on 22.06.2024
P24/PW16	-	Report proved on 22.06.2024
P25/PW16	-	Potency test certificate proved on 22.06.2024
P26/PW16	-	Copy of forwarding note proved on 22.06.2024
P27/PW17	-	Report proved on 22.06.2024
P28/PW17	-	Correction report proved on 22.06.2024
P29/PW17	-	Mahazar proved on 22.06.2024
P30/PW17	-	Mahazar proved on 22.06.2024
P31/PW17	-	Property list proved on 22.06.2024
P32/PW17	-	Forwarding note proved on 22.06.2024
P33/PW17	-	Receipt of FSL proved on 22.06.2024
P34/PW17	-	Form 15 proved on 22.06.2024
P35(a)/PW17-		Call Data Records proved on 22.06.2024

P35(b)/PW17- Customer Application Form proved on 22.06.2024
 P35(c)/PW17- Certificate u/s. 65 (B)(4)(c) proved on 22.06.2024
 P36(a)/PW18- Call Data Records proved on 07.03.2025
 P36(b)/PW18- Customer Application Form proved on 07.03.2025
 P36(c)/PW18- Certificate u/s. 20 IT Act proved on 07.03.2025
 P37/PW20 - Extract of driving license proved 07.03.2025

Exhibits marked for the defence: - Nil

Court Exhibits - Nil

Witness examined for the prosecution.

PW1 - 18.04.2024 - Victim
 PW2 - 18.04.2024 - Mother of the victim
 PW3 - 18.04.2025 - Shahul Hameed
 PW4 - 09.05.2024 - Dr. Biji.A.S
 PW5 - 09.05.2024 - Haridas. P.N
 PW6 - 09.05.2024 - Dr. Anila Azad
 PW7 - 09.05.2024 - Aneez.P.Mohammad, Local Registrar(Birth and Death)
 PW8 - 28.05.2024 - Sreerekha, Village Officer.
 PW9 - 28.05.2024 - Mohammed Shafi, Panchayat Secretary.
 PW10- 28.05.2024 - Sudeep.P, Tahsildar.
 PW11- 28.05.2024 - Mohanakumaran Nair.G, Tahsildar.
 PW12- 28.05.2024 - Sameer.A, AMVI
 PW13- 28.05.2024 - Ajikumar.B, Joint R.T.O
 PW14- 07.06.2024 - Malathi.O.V, Local Registrar (Births)
 PW15- 22.06.2024 - Mayakumari.G, SCPO 2426
 PW16- 22.06.2024 - Leelamma.A.R, Inspector of Police.
 PW17- 22.06.2024 - S.Nandakumar. Dy.S.P
 PW18- 07.03.2025 - Sajeev.P.K, Alternative Nodal Officer, BSNL
 PW19- 07.03.2025 - Vishnu Vijayan.

PW20- 07.03.2025 - Dilu.A.K, TRO
 PW21- 07.03.2025 - Sreelal.R. CPO
 PW22 22.03.2025 - Lekha.B, CPO

Witness examined for the defence :

Material objects marked: Nil

1. Serial No. - SC 38/2023
2. Name of Police Station - Vanitha Police Station
 & Crime No. - 435/2022 of Vanitha.P.S, Pathanamthitta
3. Name of Accused - Rahul Monachan,
4. Fathers Name - T.P.Monachan,
5. Residence - Pothuvammadathil Veedu,
 Kanjiraveli Onthekkadu,
 Punnakkadu Muri,
 Mallapuzhasseri Village.
6. Occupation - -
7. Age - 30 years,
8. Date of occurrence - 26.03.2022 to 29.03.2022
9. Date of Complaint - 12.08.2022
10. Date of apprehension - 13.08.2022
11. Date of release on bail - 31.10.2022
12. Date of commencement of trial- 02.12.2023
13. Date of close of trial - 25.04.2025
14. Date of sentence or order - 28.04.2025
15. Explanation for delay - No Delay

Sd/-

Special Judge

//True Copy//

Typed by: Prasanna

Compared by: Renuka.

Special Judge

