



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO.100235 OF 2023 (C)

BETWEEN:

PEERSAB KASIMSAB AGASAR,
AGE: 32 YEARS, OCC: COOLIE,
R/O. YALAGACHCHA,
HAVERI TALUK AND DISTRICT-581213.

...APPELLANT

(BY SRI SUBHASH J.BADDI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY GUTTAL POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENCH AT DHARWAD-580011.

...RESPONDENT

(BY SRI M.B.GUNDAWADE, ADDL.SPP)

THIS CRIMINAL APPEAL IS FILED U/SEC. 374(2) OF CR.P.C. PRAYING TO, ALLOW THIS CRIMINAL APPEAL BY SETTING ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 02.12.2019 BY THE I ADDL. DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE AT HAVERI IN SPL.S.C.NO.45/2016, THEREBY CONVICTING THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 376(I) OF IPC AND SEC. 4, 8 AND 12 OF POCSO ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

The conviction judgment dated 02.12.2019 in Spl. S.C.No.45/2016 on the file of 1st Addl. District and Sessions Judge and Special Judge, Haveri, has given rise to this appeal by the accused.

2. Accused faced trial for the offences punishable under Section 376, 376(1) of Indian Penal Code (for short, 'IPC') and Section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

2.1 The accused was found guilty of the offences punishable u/sec.376(i) of IPC and Section 4, 8 and 12 of the POCSO Act.

2.2 Accused was sentenced to imprisonment for life and a fine of Rs.50,000/- and in default to undergo



imprisonment for 1 month for the offence u/sec.376(1) IPC and Section 4 of the POCSO Act.

2.3 He was sentenced to undergo imprisonment for 5 years and to pay fine of Rs.5,000/- in default to undergo imprisonment for 15 days for the offence u/sec.8 of the POCSO Act.

2.4 Further he was sentenced to undergo imprisonment for 3 years and fine of Rs.3,000/- in default to undergo imprisonment for 10 days for the offence u/sec.12 of the POCSO Act.

3. FIR was registered at the instance of PW2 who is the mother of the victim (PW3). Ex.P6 is the complaint made by her to the police which led to registration of the FIR in Ex.P20. Perusal of Ex.P6 discloses that the victim was aged 13 year old, the complainant is a labour working in the village. The accused is a known person to the village; he is married having two wives and children. On 17.07.2016 at about 12.00 noon, while working in the field



she received information from the neighbours went home and found that the victim was weeping. On enquiry, she informed her that, while watching television along with her grandfather in her uncle Sangappa's house, accused came there on the pretext of asking for drinking water, took her to the house of PW2 where he committed sexual assault on her. On verification, PW2 came to know the injuries on the private parts of the victim. Hence, she reported the matter to the police under Ex.P6. After registration of the FIR, the accused was arrested and subjected to judicial custody.

4. The investigation led to filing of the charge sheet against the accused. During trial, the prosecution examined 12 witnesses as PWs.1 to 12 and got marked 21 documents as Exs.P1 to P21. MOs.1 to 13 were the material objects marked by the prosecution. The accused did not lead any evidence except denying the incriminating circumstances pointed out while he was examined under Section 313 of Cr.P.C. On appreciation of the evidence, the



Trial Court recorded conviction and sentenced him referred supra. Aggrieved by the same, the accused is before this Court.

5. We have heard the arguments of Sri Subhash J.Baddi, learned counsel for the appellant/accused and Sri M.B.Gundawade, learned Addl. SPP for the respondent/State.

6. Learned counsel for the accused has contended that the prosecution has not placed any evidence in proof of the ingredients of the charged offences beyond all reasonable doubt. There are no eyewitnesses to the incident. Medical evidence as well as FSL evidence is not in support of the prosecution. Bloodstains of the victim or the seminal stains were not traced either in the cloths of the victim as well as the accused. The evidence of sexual assault is bleak. The accused has been falsely implicated. The evidence is artificial in nature does not inspire the confidence of the Court. In the absence of proof of presence of any physical or biological articles either on the



cloths of the victim or the accused and in the absence of eyewitnesses, it is unreasonable to hold that the accused is guilty. The Trial Court did not appreciate the evidence in proper perspective. Two hypotheses have been demonstrated one in favour of the accused, benefit of doubt is not extended and he sought for interference.

7. On the other hand, learned Addl.SPP has contended that the prosecution has placed quality evidence through the victim/PW3, the mother as PW2, neighbours who rushed to the spot in the form of PWs.6 and 7, whereas PWs.4 and 5 have caught hold of the accused at the spot while the accused tried to escape from the company of victim. There is no delay in reporting the complaint. Medical evidence is placed through PW8 explaining the victim had sustained injuries corresponding to the sexual assault. Medical evidence clearly demonstrates that there is a recent sexual assault against the victim and same is supported by the FSL opinion. By relying concrete evidence placed by the prosecution, Trial



Court rightly held that the accused is guilty of the charged offences and imposed the proper sentence which does not call for interference.

8. We have perused the entire evidence. The defence did not dispute that the victim was not a minor. Ex.P16 is the School Certificate which shows the victim was born on 20.04.2004. Medical evidence through PW8 points out the dental examination confirming the age of the victim being between 13-15. Thus, we are persuaded to hold that the victim was a minor aged less than 18 at relevant point of time.

9. We have carefully perused the recitals in Ex.P6-complaint which narrates the information that was furnished to PW2 by the victim (PW3). The statement of the victim is inconsonance with the recitals in Ex.P6. There are no eyewitnesses to the incident. We have scrutinized the evidence of the victim, her mother-PW2, neighbours-PWs.6 and 7, persons caught hold of the accused such as



PW5, medical evidence through PWs.8 and 10 and the evidence of the Investigating Officer.

10. PW11-B.C.Kallammanavar, PSI who received the Ex.P6 from PW2 and registered the Ex.P20-FIR. According to him, at 4.00 p.m. on 17.07.2016, he has registered the FIR. The alleged incident took place at 11.30 a.m. The distance between the police station and the place of incident as mentioned in the FIR is 15 kms and the FIR was reached the jurisdictional Magistrate at 8.15 p.m. on the very day. We do not find any delay in the complaint to reach the concerned.

11. On careful evaluation of statement of PW3-the victim, it is pertinent to note that she was watching the television in the house of her uncle Sangappa situated by abutting to her house along with her grandfather. At about 11.30 a.m. on 17.07.2016, the accused visited the house of Sangappa asking for drinking water. He insisted the victim to come with him to her house. From the kitchen the victim brought up the cup of water. Instead of drinking



water, he kept the glass there itself and holding her hand dragged inside kitchen, made her to lie on the floor and committed sexual assault. Due to the said act of the accused, she sustained pain, shouted for help, but he persuaded her to keep quiet and completed his act of sexual assault. Due to which the white liquid was dropped on the floor. After hearing hue and cry of the victim, PW7-Bibijan rushed to her rescue. Accused by tying his shorts escaped towards arrack shop. She informed the act of the accused to them. In turn, they consoled her and informed her mother. When her mother returned home she informed the said aspect and thereafter she was taken to the police station and then to the hospital for treatment. She gave her cloths to the doctor marked as MOs.1 to 7. She also gave statement before the JMFC as per Ex.P7. She identified that the accused was culprit who committed sexual assault against her. Her cross-examination did not brought out anything except mere denial.



12. The testimony of PW2-complainant goes to show that she had gone to Maachapura for coolie on the date of the alleged incident, victim was alone in the house, she received a call from Shahnaj Kwati to come home immediately and she returned home, there victim was sitting in the house and weeping. Soon after her arrival, she informed about the details of the alleged incident and on verification, she found the injuries in the private parts of the victim and also observed white discharge on the floor of the kitchen. After consoling the victim, she informed her husband and later as per the advice of the neighbours, she went to the police station and filed the Ex.P6-complaint. Along with police, she took the victim to the hospital, after treatment the victim was also taken to the Magistrate for recording her statement.

13. She also narrated visit of police to her house and drawing of the mahazar in the place shown to them by the victim as per Ex.P1. According to her, she knew the accused, as he belonged to the same village, he is married



and has two wives and children. The cross-examination of PW2 did not demonstrate anything that she was not aware of any incident nor the victim informing her about the act of the accused. It is a mere denial and nothing demonstrated which will damage the veracity of her evidence.

14. PW6-Mamtaj and PW7-Bibijan are the neighbours of the victim. We have carefully evaluated their testimonies. Though they have turned hostile but their evidence cannot be ignored totally as in the examination-in-chief itself both have stated that after hearing hue and cry of the victim, they rushed to the house of the victim found the presence of the accused, who ran away and that the victim informed her about the incident and in turn they informed to her mother and victim was taken to the police station. The testimonies of these two witnesses clearly point out that around 12.00 noon, the victim was raising hue and cry, they being the neighbours rushed to the spot and found the presence of the accused and the victim



together in the house of PW2, accused escaping from the spot and the victim informing about the incident.

15. PW4-Shivanand and PW5-Shekappa, they are the persons belonging to the same village, both came to know that there is a gathering near the house of the victim, they heard somebody shouting to catch hold of the accused. As the accused was escaping, he caught hold of him with the assistance of others. They came to know that the accused having committed sexual assault against the victim, escaping from the home of PW2 and he was handed over to police. The cross-examination of PWs.4 and 5 did not bring out anything other than they catching the accused when he was running away from the house of the victim. There was no occasion for them to chase the accused to catch him for the reason other than what has been proposed by the prosecution. In this background let us examine the medical evidence and the evidence of the Investigating Officer.



16. We have evaluated the evidence of PW8-Medical Officer of Government Hospital, Haveri. On 18.07.2016 at 9.45 a.m. when he examined the victim brought by the woman constable, he has found presence of white discharge, tenderness on perineum, absence of hymen, bleeding from the edges of the hymen. She noticed that the victim was a minor, there was signs of recent sexual intercourse. Victim was subjected to dental opinion to confirm her age between 13-15. Ex.P10 is the preliminary opinion and Ex.P11 is the final opinion and Ex.P12 is the FSL report. Ex.P12 is marked through Investigating Officer which has been perused by the Medical Officer before giving final opinion as per Ex.P11. The cross-examination did not demonstrate anything that there was any doubt in the opinion of the Medical Officer. The medical evidence takes support from the testimony of victim, the testimony of the victim being corroborated by the PWs.6 and 7 that they rushed to the house of the victim after hearing her hue and cry, accused and the victim alone present in the house, victim sustaining



injuries and accused running away from the house. PWs.4 and 5 ratify that the accused was chased and caught red-handed on the pretext that he has committed sexual assault against the victim. The presence of PW2-the mother of the victim was secured by the neighbours. On her arrival, she was briefed by the victim about the incident and the victim as well as the mother reporting the incident to the police and the police subjected the victim to the medical examination and medical examination clearly confirmed that she had become the victim of sexual assault.

17. PW1-Kumar is the panch witness to the spot and also seizure of the cloths belonging to the victim as well as the accused. His testimony stands in support of the prosecution that the police have drew up mahazar under Ex.P1 at the place shown to them by the victim herself. Later in the police station, the material objects sampled at the hospital have been seized by the police.



18. Ex.P12 is the FSL report and it is not relevant as did not support the proposal of the prosecution regarding presence of seminal stains. The medical evidence is conclusive that the victim was found bleeding from the edges of the hymen, absence of hymen and presence of white discharge indicate the victim has been subjected to sexual assault and all the circumstances clearly point out towards the accused. If really accused is innocent, what was the circumstances that made him to run away from the house of the victim at 12.00 noon. The victim was taken to her house from the house of Sangappa on the pretext of drinking the water. Instead the accused dragged her to the kitchen and completed his desire of sexual assault.

19. We also examined the evidence of the PW12- Investigating Officer who has narrated the procedure of investigation. On totality of the evidence, it is thus clear that the victim was aged less than 18 years, she was subjected to sexual assault and accused was the person



who carried the victim to her house and inside the kitchen he did committed sexual assault as narrated by the victim which is corroborated by the medical opinion. We are persuaded to accept the victim was subjected to sexual assault in the heads of the accused.

20. We have carefully perused the impugned judgment. The Trial Court has rightly recorded that the evidence of the prosecution inspires the confidence, there is a medical evidence which ratify the sexual assault against the victim and accused was the person responsible for the same. The Trial Court has rightly convicted the accused for the offence under Section 376(1) of IPC and Section 4, 8 and 12 of the POCSO Act. Section 8 and 12 of the POCSO Act are the minor offences. When the accused is found guilty of Section 4 of the POCSO Act, the ingredients of Section 8 and 12 have been merged with Section 4. Separate sentence under Section 8 and 12 of the POCSO Act is not necessary.



21. The alleged incident took place on 17.07.2016. Punishment prescribed for an offence u/sec.4 of the POCSO Act as on that day, shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life, and shall also be liable to fine. The punishment so prescribed has been amended with effect from 16.08.2019 by Act 25 of 2019. Whereas the punishment prescribed for an offence u/sec.376(1) of IPC, shall be punished with rigorous imprisonment either description for a term which shall not be less than 7 years, but which may extend to imprisonment for life, and shall also be liable to fine. In view of the punishment prevailing in the year 2016, the punishment prescribed by the Trial Court for imprisonment of life is not proper and fine imposed at Rs.50,000/- is on the lower side and hence the sentence passed against the accused requires modification accordingly.



22. In view of our discussion made above, the appeal deserves consideration, in the result, we pass the following:

ORDER

Appeal is allowed in part;

The conviction of the accused under Section 376(1) r/w Section 4, 8 and 12 of POCSO Act is hereby confirmed.

The accused is sentenced to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Section 376(1) of IPC r/w Section 4 of the POCSO Act and also pay fine of Rs.1,00,000/-. In default of payment of fine, the accused shall undergo imprisonment for 1 month.

As the sentence under Section 8 and 12 merges with Section 4, imposition of separate sentence for the said offence is set aside.



Out of the fine amount, a sum of Rs.80,000/- shall be paid to the victim as compensation and Rs.20,000/- shall be appropriated towards the prosecution expenses.

Accordingly impugned judgment is modified.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE