



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CRIMINAL APPEAL No. 2151 OF 2018 (C)

BETWEEN:

1. LAKSHMAN M.,
S/O LATE MAYANNA,
AGED ABOUT 52 YEARS,
RESIDING AT No.74-1,
SY. No.26, DIVISION No.48,
ITTAMADU EXTN.,
NEAR CHRISTIAN GUDDA,
BSK III STAGE,
BANGALORE-5600026.

...APPELLANT

(BY SRI M. KRISHNE GOWDA, ADVOCATE)

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by VALLI
MARIMUTHU
Location: High
Court of
Karnataka

AND:

1. THE STATE OF KARNATAKA
STATE BY C.K.ACHHUKATTU POLICE,
HIGH COURT GOVT PLEADER,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.
2. NARASIMHA MURTHY,
S/O NARASIMHA GOWDA,
AGE 35 YEARS,
No.138, 5TH CROSS,
T.G. LAYOUT,
BSK III STAGE,
BANGALORE-560085.



...RESPONDENTS

(BY SRI VIJAYKUMAR MAJAGE, SPP-II FOR R1;
SRI H.S. SURESH, ADVOCATE FOR R2;
AMICUS CURIAE APPOINTED V/O DATED 16.01.2025;
V/O DATED 28.10.2024 NOTICE TO R2 IS HELD SUFFICIENT)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE DATED 27.09.2018, PASSED BY THE LIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, IN SPL.C.C.No.89/2016, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376 OF IPC R/W SECTION 5(m) R/W SECTION 6 OF POCSO ACT.

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

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is preferred against the judgment and order on sentence dated 27.09.2018 in Spl.C.C. No.89/2016 on the file of LIII Additional City Civil and Sessions Judge, Bengaluru.

2. The prosecution case is that on 11.12.2015 at 5.00 p.m., father of PW.1 left her in the house of his neighbor i.e., PW.3 and went out. PW.2 is the mother of PW.1 and she was not in town on that day. PW.1 was playing



outside the house of PW.3. Accused was a neighbor and was known to PW.1 very well. Accused went to the place where PW.1 was playing, gave her an eatable called "Bonda" to eat and took her inside the house of PW.3. Having taken her inside the house, he removed the clothes of PW.1 and he also removed his clothes and subjected her to sexual assault. After the arrival of mother, PW.1 told her about what happened. PW.1 was taken to hospital. Thereafter, FIR was registered. Investigation followed and accused came to be charge sheeted for the offences punishable under Section 376 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for short) and Section 4 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for short). The trial court framed charge for the offences punishable under Sections 376 of IPC and section 5(m) read with Section 6 of the POCSO Act. Having examined 11 witnesses and mainly relying upon the testimonies of PWs.1 to 3, the trial court recorded conviction for the offences punishable under Section 376 of IPC and Section



5(m) read with Section 6 of the POCSO Act. Accused was sentenced to undergo imprisonment for life till his death and fine of Rs.50,000/-. The trial court also ordered for payment of compensation to victim.

3. We have heard the argument of Sri.M. Krishne Gowda, learned counsel for the appellant, Sri. Vijaykumar Majage, learned SPP-II for respondent No.1 - State and Sri. H. S. Suresh, who was appointed as amicus curiae for respondent No.2.

4. It is the argument of Sri. M. Krishne Gowda, learned counsel for appellant that the trial court proceeded to record conviction hurriedly without giving the accused an opportunity of cross-examining the prime witnesses namely, PWs.1 to 3. The accused was denied fair trial. He submits that an application under Section 311 of Cr.P.C. was filed by the accused to recall PWs.1 to 3 for cross-examination but application was rejected keeping it pending from 01.03.2018 to 25.08.2018. The medical report does not indicate that PW.1 was subjected to



aggravated penetrative sexual assault for the reason that her hymen was intact. Even though in the FSL report it is mentioned that seminal stains were detected on the clothes, the same could not have been relied upon by the trial court because the prosecution ought to have obtained further corroborative evidence to prove that the stains found on the clothes were that of the accused only. In the absence of this kind of evidence, the trial court should not have placed reliance on the FSL report. His another limb of argument is that the trial court should not have sentenced the accused to the remainder of his life while imposing life imprisonment because the incident took place in the year 2015 to which the amended provisions are not applicable. Therefore, it is his submission that the appeal is to be allowed, the impugned judgment to be set aside and case remanded to trial court to see that accused is given an opportunity to cross-examine PWs.1 to 3.

5. Sri. Vijaykumar Majage, learned SPP-II submits that paragraph Nos.18 and 19 of the trial court judgment



makes it very clear as to how the accused was successful in dragging on the case. Accused took a direction from the High Court for completing the trial within a time bound period, but did not cooperate with the trial court. The trial court having found that the counsel engaged by the accused was not appearing gave the services of an advocate Smt. Jyothilakshmi to defend the accused. Therefore, it is clear that it is not that the trial court did not give an opportunity to the accused to cross-examine PWs.1 to 3, but he did not avail many opportunities given to him. In this view, there is no scope for remand.

6. It is the further argument of Sri. Vijaykumar Majage, learned SPP-II that the testimonies of PWs.1 to 3 are fully believable. PW.1 is the victim, who has narrated the incident. Her age was seven years at that time. Her evidence clearly discloses the manner in which she was sexually exploited by the accused. Even if FSL report is ignored, her testimony cannot be ignored at all. Added to this, PWs.2 and 3 have corroborated the prosecution case.



Merely because medical report shows that hymen was intact, it cannot be said that PW.1 was not at all subjected to sexual assault by the accused. Therefore on merits, the appeal deserves to be dismissed.

7. Sri. H. S. Suresh, learned amicus curiae argues for sustaining the trial court's judgment. Having regard to the age of the girl, the sentence imposed by the trial court is proper and it does not require interference.

8. We have perused the entire records and also the impugned judgment. At the outset we have to state that the first limb of argument of Sri. M. Krishne Gowda, learned counsel for the appellant that the accused was denied of fair opportunity to cross-examine PWs.1 to 3, cannot be accepted. In paragraph Nos.18 and 19 of the impugned judgment, the trial court has referred to the events that occurred during trial. Without elaborating much on this, we want to just say that the trial court cannot be found fault with. The accused did not avail of the opportunities given to him, it cannot be said that the



trial court hastened to decide the case. Having taken direction from this court, accused should have co-operated with the trial court in completion of trial. Instead he tried to drag the case in all possible ways. Rejection of application under Section 311 of Cr.P.C., cannot be said to be illegal.

9. On perusal of the evidence, we find that the evidence of PWs.1 to 3 is believable. PW.1 is the victim girl, whose age at that time was seven years. She has given a narration of the incident and what the accused did when she was playing outside the house of PW.3. The trial court has held that the girl of seven year old cannot be expected to lie. PW.2 is the mother of PW.1. Though she is not an eye witness, her evidence discloses what she came to know from PW.1. PW.3 is the neighbor. Her evidence shows that accused had come to her house. When she questioned the reason for arrival of accused to her house and when she was sitting on the bed, she noticed some stains on the bedsheet. Immediately, she went to the



house of PW.2 and saw PW.1 crying while revealing the incident to her mother. She has stated PW.1 was thereafter taken to hospital and also that when the police came to her house, they tore the portion of the bed sheet and seized it by writing panchanama as per Ex.P3. Then, the evidence of PW.7 may be referred. He was the doctor, who examined PW.1. Though he did not find any injury on the person of PW.1, history given at that time was about sexual assault on PW.1. Therefore, he gave intimation to the police. PW.6 is the Doctor, who examined the accused and his opinion is that accused was potent enough to indulge in sexual activity. PW.6 collected one underwear and blue colour banian of the accused, sealed them and gave it to police. He identified these two clothes in the court. Ex.P5 is the birth certificate of the victim girl. It shows that her date of birth was 22.07.2008. Ex.P10 is the FSL report, which shows that on item Nos. 1, 3, 4, 5, 6 and 8 seminal stains were detected. Item No.1 is a cloth piece i.e., piece of bed sheet which the police collected



under Ex.P3. Item No.4 is the underwear of the accused and item 6 is the banian of the accused.

10. Now if the entire evidence is assessed once again, we find that the case of the prosecution has stood beyond reasonable doubt. Merely for the reason that PWs.1 to 3 have not been cross-examined, the testimonies of these three witnesses cannot be brushed aside. Nothing prevented the defence from cross-examining the witnesses.

11. However, we find that the trial court has erred in imposing the sentence. Since the offence was of the year 2015, the trial court should have imposed sentence in accordance with law that stood at that time. Amendments to POCSO Act were introduced by Act No.25/2019 which came into effect from 16.08.2019. Before the amendment, the minimum sentence of imprisonment was 10 years and maximum being extendable up to life imprisonment. There was no provision that the imprisonment for life should be understood as



imprisonment for remainder of life. It is here the trial court has erred in directing that the life imprisonment should be understood as imprisonment for rest of his life.

12. At the time of incident, the age of the accused was 52 years. He has been in custody for the last 9 years 2 months. It is a fact to be noted here that being a man of 52 years and whom PW.1 was addressing as 'Nayimane tata (ನಾಯಿಮನೆ ತಾತ)' he misused the trust that the girl had reposed in him by sexually exploiting her. Therefore, we find that the imprisonment for minimum of 10 years is insufficient however, it cannot be extended for life. Striking the balance, we find it appropriate that imprisonment for a period of 15 years would meet the ends of justice. In view of this discussion, we proceed to pass the following,

ORDER

- (i) Appeal partly succeeds.



- (ii) Judgment of conviction is confirmed but sentence imposed by the trial court is modified.
- (iii) The accused is directed to serve rigorous imprisonment for a period of 15 years without entitled to remission till he completes 15 years of imprisonment.
- (iv) Rest of the judgment with regard to fine amount and direction given to Karnataka State Legal Services Authority to compensate the victim girl is not altered, that direction is confirmed.

The High Court Legal Services Committee is hereby directed to remunerate Sri. H. S. Suresh, amicus curiae by an amount of Rs.10,000/.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**