



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO.153 OF 2018

BETWEEN:

THE STATE OF KARNATAKA
THROUGH MELUKOTE
POLICE STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

... APPELLANT

(BY SRI HARISH GANAPATHY, HCGP)

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MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. CHANDRU
S/O MANJUSHETTY,
AGED ABOUT 23 YEARS,
R/O KAADABEECHANAHALLI,
MARATAHALLI,
BENGALURU CITY,
PERMANENT RESIDING OF
MANAKANAHALLI VILLAGE,
SHEELANERE HOBLI,
K.R.PETE TALUK,
MANDYA DISTRICT-571 424.



2. RAMALINGA
S/O. SHIVANNEGOWDA,
AGED ABOUT 42 YEARS,
R/O. LAKSHMISAGARA VILLAGE,
MELUKOTE HOBLI,
PANDAVAPURA TALUK,
MANDYA-571434.

(VIDE COURT ORDER
DATED 26.03.2024)

... RESPONDENTS

(BY SRI V.N. MADHAVA REDDY, ADVOCATE FOR R-1;
SR S. JAVEED, ADVOCATE FOR R-2)

THIS CRL.A. IS FILED UNDER SECTION 378(1) AND (3) CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT AND ORDER DATED 27.02.2017 PASSED BY THE I ADDITIONAL DISTRICT AND SPECIAL JUDGE, MANDYA IN SPL.C.NO.46/2015 ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 366(A) AND 376 OF IPC AND SECTION 4 AND 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT.

THIS 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 MRS JUSTICE K.S. HEMALEKHA



ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

The State has preferred the present appeal against the order of acquittal dated 27.02.2017 passed by the I Additional District and Special Judge, Mandya in Special Case No.46/2015 for the offences punishable under Sections 366A, 376 of Indian Penal Code (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. PW.1 lodged a missing complaint of his daughter on 02.02.2015 under Ex.P.1. Initially, the case was registered against the accused for the offence punishable under Section 366A of IPC. After completion of the investigation, the accused was charge sheeted for the offences punishable under Sections 366A and 376 of IPC, and Sections 4 and 6 of the POCSO Act. The case of the prosecution is that on 30.01.2015 at about 9:00 p.m. near Mahadeshwarapura Gate in Melkote, the accused



instigated the prosecutrix, aged about 17 years, took her forcibly and tied (Arishinada kombu), and committed sexual assault on her.

3. The Special Court, assessing the evidence of the witnesses, more particularly PW.1-complainant, PW.2-prosecutrix and PW.10- Headmaster who issued the study certificate at Ex.P23, gave a reason that the age of the prosecutrix being below 18 years as on the date of the incident was doubtful. Referring to the evidence and statement of PW.2-prosecutrix i.e., at Ex.P4, the Special Court was of the opinion that the prosecutrix had accompanied the accused voluntarily. The medical examination report at Ex.P3 and Ex.P21 corroborated with the evidence of PW.9-Doctor also indicated that the hymen of the prosecutrix was intact and there was no penetrative sexual intercourse on her.

4. The Special Court, considering that the prosecutrix had sufficient opportunity to resist the alleged act of the accused or to inform the persons around them,



having failed to do so, disbelieved the testimony of PW.2 that the accused kidnapped the prosecutrix to forcibly marry her and commit sexual assault.

5. It is argued by the learned HCGP appearing for the State that, offences committed by the accused are heinous in nature and the material evidence produced by the prosecution clearly establishes the guilt of the accused, which was not appreciated properly by the Special Court. It is submitted that the prosecutrix in her evidence categorically stated that the accused committed the offence which is corroborated by her statement under Section 164 Cr.P.C. before the Magistrate. It is submitted that the medical report at Ex.P3 and the FSL report at Ex.P.24 clearly establish the commission of possible intercourse by the accused, and the age of the prosecutrix being below 18 years as on the date of the incident, the consent is inconsequential and to prove that the prosecutrix was minor, the prosecution has examined PW.1-the father of the prosecutrix, PW.10 – the



Headmaster of the school, who issued a study certificate at Ex.P23, evidencing that the date of birth of the prosecutrix is 22.10.1998. It is the submission of the prosecution that the date of birth of the prosecutrix mentioned in the study certificate will have to be considered as inviolable.

6. *Per contra*, learned counsel for the accused would submit that the age of the prosecutrix being below 18 years is not proved before the Special Court and Ex.P23 is a study certificate issued by the Headmaster, even if the said document is taken into consideration, with support of PW.10, there is absolutely no evidence forthcoming as to on what basis the date of birth of the prosecutrix is mentioned as 22.10.1998 in Ex.P23 which was rightly disbelieved by the Special Court. The burden of proving the age of the prosecutrix to be below the age of 18 years was squarely upon the prosecution and the prosecution has miserably failed to discharge the burden. The Special Court has rightly disbelieved the evidence



projected by the prosecution and considering the material on record, has ordered acquittal, which warrants no interference.

7. We have considered the contentions urged by the learned counsel for the parties and perused the material on record.

8. The offences charged against the accused are under Sections 366A, 376 IPC and Sections 4 and 6 of the POCSO Act. Before considering the case of the prosecution under Sections 366A, 376 IPC, the offences alleged against the accused under Sections 4 and 6 of the POCSO Act are to be considered. Section 4 of the POCSO Act imposes punishment for committing penetrative sexual assault and Section 6 imposes punishment for aggravated penetrative sexual assault. In terms of Section 2(d) of the POCSO Act, a child should be below the age of 18 years for the act to become applicable. To bring home the offence alleged against the accused under the POCSO Act, the prosecution has to prove that the prosecutrix was aged



below 18 years and it is after satisfaction of the applicability of the Act in terms of Section 2(d), only then the other offences under the POCSO Act will have to be considered.

9. The applicable rule to the present facts is found in the Juvenile Justice (Care and Protection of the Children) Rules 2007 ('JJ Rules 2007' for short). Rule 12 of the JJ Rules 2007 provides the procedure to be followed in determination of age of Juvenile, sub-rule (3) of Rule 12 envisages the evidence that could be relied to determine the age of the minor i) matriculation or equivalent certificates, if available; and in the absence whereof; ii) the date of birth certificate from the school (other than a play School) first attended; and in the absence whereof; iii) the birth certificate given by a corporation or a municipal authority or a panchayat. In the context of the Sub-Rule 3 of Rule 12, we need to peruse whether the prosecution has proved the age of prosecutrix to be below the age of 18 years. As per the case of the prosecution,



the date of birth of the prosecutrix is 22.10.1998, the complaint states that the prosecutrix is aged about 16 years, PW.1 and the prosecutrix-PW.2 asserted the age to be around 17 years as on the date of the incident. In order to prove the said aspect, they produced Ex.P23-the study certificate issued by the Headmaster, who endorsed that the prosecutrix had studied in the said school from 8th to 10th standard and her date of birth is 22.10.1998, that she left the school after she completed her 10th standard on 21.03.2014.

10. The complaint and the evidence of PW.1 are to the extent that the prosecutrix on 30.01.2015 was studying in 9th standard and she was also attending tailoring class. If the assertion of PW.1 and the complaint are read together with Ex.P23, it falsifies the case of the prosecution that on the date of the incident, the prosecutrix was aged about 17 years. Ex.P23 the study certificate clearly indicates that from 8th to 10th standard, the prosecutrix was studying in the government school as



issued by the Headmaster corroborated with his evidence as PW.10 and she completed her 10th standard in March, 2014 contrary to the case made out by the prosecution and evidence of prosecution witnesses. The study certificate issued by the Headmaster did not show that the date of birth was endorsed based on any panchayat record or municipal record. PW.1 in his cross examination stated that he has panchayat records to indicate the date of birth of the prosecutrix is 22.10.1998, however, no materials are forthcoming other than the study certificate to show the date of birth as issued by the Headmaster was correct and the same could be relied upon. PW.10-the Headmaster categorically admitted that the prosecutrix has studied till 7th standard in Government Senior Primary school and the entry in Ex.P23 is not entered based on the transfer letter issued by the previous school. At this stage it would be essential to mention the decision of the Apex Court in the case of ***Birad Mal Singhvi Vs. Anand Purohit***¹

¹ AIR 1988 SC 1796



(*Birad Mal*), the Apex Court held that the basis on which the entry pertaining to date of birth in a school register was recorded, needs to be established for it to have evidentiary value. The Apex Court held that *to render a document admissible under Section 35 of the Indian Evidence Act, 1872 ('Act' for short) conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specifically enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.*



11. Thus the law is well settled that a school register entry would not be a piece of evidence to show the date of birth of a person if they are unable to establish the recording of the entry in the school register was on the basis of some panchayat record or municipal record or it was mentioned in the register entry at an undisputed point of time. In the instant case, the document placed reliance by the prosecution is not even a school register but a study certificate issued by the Headmaster indicating that in the year 2014, the prosecutrix had left the school and her date of birth is 22.10.1998, prosecution has failed to place a credible document of date of birth of PW.2. Thus, acceptance of such evidence, on the face of it, is not believable and the study certificate issued at Ex.P.23 cannot be conclusive evidence to determine the age of the prosecutrix to be below the age of 18 years.

12. The prosecution having failed to establish that the prosecutrix was a minor as on the date of the incident, what remains for the Court is to decide whether there was



an offence of kidnapping and about sexual assault as per the case of the prosecution.

13. According to Section 366A of IPC, the person induced must be a minor girl, her consent is immaterial when the prosecutrix is a minor below the age of 18 years. We have already held that the prosecution has failed to prove the prosecutrix was a minor for charge sheeting the accused under section 366A IPC.

14. PW.2 in her evidence states she had gone for tailoring class, the accused came at Mahadeshwarapura Gate in an auto rickshaw and took her, saying that they would attend the 'beegara oota' of his elder brother at Mudugere village, stayed at his relative's house, and thereafter in a temple at Srirangapatna tied 'arishina kombu' married her and the accused committed sexual assault. The version of PW.2 is hard to believe that she was abducted in view of the situation explained by her that she stayed with the accused in his relative's house for almost 5 days without any resistance when she had every



chance to do so, as she was in the midst of people and if there was any force committed on her, she could have made the best possible way to escape, which she did not propose to do.

15. From the evidence of PW.1-the complainant and PW.2-the prosecutrix, the entire act from 30.01.2015 as narrated would only clearly indicate that the prosecutrix accompanied the accused to various places on her own free will and they were staying together for nearly 4 to 5 days. There was a sufficient opportunity to PW.2-prosecutrix to escape, but she did not show any agitation in any manner. If the act of the incidents that occurred from 30.01.2015 are perused, what can be gathered is that PW.2-prosecutrix accompanied the accused voluntarily.

16. It is relevant to note that Ex.P3-the medical examination report, PW.9, who was examined in support of Ex.P3, the final opinion rendered on examination of the prosecutrix was that there were no signs suggestive of



vaginal/anal intercourse, but there was evidence of non-penetrative sexual assault. The prosecutrix having accompanied the accused, the prosecutrix was tied with 'arishinada kombu', the conduct of the prosecutrix in not resisting at all the places where she was taken to by the accused gives a benefit of doubt to the accused.

17. If the case of the prosecutrix is taken that there was sexual intercourse by the accused for two days and if Ex.P3 is perused, it indicates that the hymen of the prosecutrix was intact. PW.9 also opined that there are no signs suggestive of vaginal/anal intercourse. If the evidence of PW.9 and Ex.P3 are considered, the prosecutrix being subjected to a penetration of sexual assault has not been established by the prosecution. If the entire evidence of the witnesses and the statement of the prosecutrix are perused, it clearly falsifies the version of the prosecution regarding the alleged forcible incident.

18. On consideration of the evidence of the prosecution before the Special Court, it becomes clear that



the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. It is trite law that an acquittal judgment cannot be interfered by the appellate Court unless there is gross perversity in appreciation of evidence. The appellate Court can exercise its power under Section 386 Cr.P.C. to interfere with the order of acquittal when there is perversity in the fact and law. The Apex Court in the case of ***Sampat Babso Kale Vs. State of Maharashtra***² (*Sampat Babso*) has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against the order of acquittal. The Special Court on basis of the evidence on record, considered the entire material in its proper perspective and rightly held that the prosecution has failed to establish the offences alleged under Sections 366A, 376 IPC and under the provisions of the POCSO Act, as there is no evidence to hold that the prosecutrix was below the age of 18 years.

² AIR 2019 SC 1852



19. Therefore, we are of the considered view that the appellant-State has not made out any ground for entertaining this appeal and the prosecution has failed to bring home the guilt of the accused for the offences charged and the order of acquittal passed by the Special Court warrants no interference and this Court pass the following:

ORDER

The criminal appeal is hereby ***dismissed***.

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

**Sd/-
(K.S. HEMALEKHA)
JUDGE**