

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1778 OF 2021

BETWEEN:

FARUQ @ MOHAMMED FARUQ
S/O MOHAMMADSAB,
AGED ABOUT 57 YEARS,
R/O BEHIND KOTE,
CHANNAGIRI TOWN,
DAVANAGERE DISTRICT-577213

...APPELLANT

(BY SRI. SAMEER S. N., ADV.)

AND:

THE STATE OF KARNATAKA,
BY CHANNAGIRI POLICE STATION,
CHANNAGIRI,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU -560001.

...RESPONDENT

(BY SRI. B. LAKSHMAN, HCGP)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET
ASIDE THE JUDGMENT OF CONVICTION DATED 13.09.2021
AND SENTENCE DATED 14.09.2021, PASSED BY THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE, AND SPL.
JUDGE, DAVANAGERE IN S.C.NO.75/2019, CONVICTING THE
APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376 AND 506
OF IPC AND SEC.6 OF POCSO ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.11.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

The appellant/accused has preferred this appeal against judgment of conviction dated 13th September, 2021 and order on sentence dated 14th September, 2021 passed in SC No.75 of 2019 by the II Additional District and Sessions Judge and Special Judge, Davanagere.

2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.

3. The brief facts leading to this appeal are that the Dy.S.P., Rural Sub-Division, Davanagere, has submitted charge sheet against the accused for the offences punishable under Sections 376 and 506 of IPC, Section 4 of POCSO Act and Sections 3(1)(w), 3(2)(v-a) and 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 (for short 'SC/ST (PoA) Act,').

4. It is alleged by the prosecution that, about three months prior to the date of filing complaint, the victim had been to Aafiya Palace in Channagiri town to chop vegetables in

a marriage function. After completing her work, when she wanted to return home, the accused told her to stay back in the choultry, as she had to come again next day in the early hours. At that time, he committed forcible sexual intercourse on the victim against her will and without her consent. Again on 12th February, 2019, the accused has taken the victim to Shivamogga on the pretext to assist him for preparation of food and later took her to Ganesha Lodge situated on B.H.Road, and stayed there in a room and despite her resistance, he has committed forcible sexual intercourse on her repeatedly. The victim is a minor and belongs to Adi-Karnataka which comes under the Scheduled Caste. The accused has also threatened her with dire consequences, if she discloses about his act to anybody. Thus, the accused committed the alleged offences.

5. After filing of the charge sheet, case was registered in SC No.75 of 2019. Accused was arrested on 25th February, 2019. Since the date of arrest, accused is in judicial custody.

6. Upon hearing on charges, the trial Court framed the charges for the offences punishable under Sections 376 and 506 of IPC, Section 6 of POCSO Act and Sections 3(1)(w), 3(2)(va) and 3(2)(v) of the SC/ST (PoA) Act, 1989. The same

was read over and explained to the accused, having understood the same, accused pleaded not guilty and claimed to be tried.

7. To prove the guilt of the accused, 24 witnesses were examined as PWs.1 to 24, 35 documents were marked as Exs.P1 to P35 and 12 material objects were marked as MO.1 to 12. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C., was recorded and accused has totally denied the evidence of prosecution witnesses. However, he did not choose to lead any defence evidence on his behalf. Having heard the arguments on both sides, trial Court convicted the accused for the offences punishable under Sections 376 and 506 of IPC and Section 6 of POCSO Act. Being aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the appellant/accused has preferred this appeal.

8. Learned counsel for the appellant would submit that the judgment of conviction and order on sentence passed by the trial Court is illegal, invalid, contrary to law & evidence and probabilities of the case.

9. The specific contention of prosecution is that, the victim was a minor aged about 15 years, as on the date of incident. Therefore, the accused had committed the offence

charged against him. The prosecution has examined PW1 who is the mother of the victim. She has deposed that the date of birth of the victim is 25th June, 2004 and the victim studied 5th standard in her village in the Government School and studied 6th standard in Channagiri Government Girls School. But in the cross-examination, she admitted that there is no birth certificate of the victim. PW2-victim has stated that her date of birth is 25th June, 2004 and same has been mentioned in her school records. In the course of cross-examination, she admitted that the concerned Birth Certificate was not produced before the Court.

10. PW10-Chandrappa, Assistant Teacher of Government Higher Primary School, Channagiri has produced Exhibit P20-School Declaration Certificate which shows date of birth of victim as 25th June, 2004 and same has been entered as per her Birth Certificate. PW9-Senior Assistant Teacher of Government Girls School, Channagiri produced Exhibit P19 School Certificate to show the date of birth of the victim. But in his cross-examination he has stated that the victim's date of birth is entered as per Transfer Certificate Exhibit P11. PW11-Smt. Aruna, Sheristedar of Taluk Office, issued Exhibit P21 endorsement, stating that date of birth of the victim was not

entered in the concerned register maintained by in the Office of Town Municipality, Channagiri. The said oral and documentary evidence goes to show that the date of birth and age of the victim has not been proved by the prosecution. No Birth Certificate was obtained and on the basis of the date mentioned in the school register, the said witness issued certificate.

11. The Hon'ble Supreme Court has held that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable to determine age of the victim. Rule 12 of the Rules makes it clear that matriculation or equivalent certificate, Birth Certificate from school or Birth Certificate issued by Corporation or Municipal Authority or a Panchayath is necessary, and only in the absence of above, the medical opinion about the age of the Child could be sought.

12. The prosecution is relying upon Exhibits P19 and P20 which were issued by the Assistant Teachers of the Government Higher Primary School. Herein again, Rule 12 (3)(a) of Rules is to be taken into consideration. This Rule does not prescribe relying on the birth certificate issued from any school but specifies that birth certificate issued from the school first attended by the child other than play school, is to be basis for determining the age of the child. Exhibits P19 and P20 were

on the basis of the date of birth maintained in the admission form submitted to the school. There is absolutely nothing on record to show that the victim first attended the Government Higher Primary School. The learned trial judge has wrongly come to the conclusion based on the school certificate that victim is aged about 15 years at the time of alleged incident. Hence, the prosecution has miserably failed to prove the age of the victim. On this ground, the judgment of conviction and order on sentence of trial Court is liable to be set aside.

13. Further it is submitted that PW1, in the course of examination, has clearly stated that workers of Bakery suspected the Hindu girl accompanying a Muslim, and informed the Davanagere Police Station who came and took the accused to the Channagiri Police Station, and the victim to Mahila Police Station. Neither the police examined the accused and victim, nor the victim reported the alleged sexual act of the accused to the police. PW1 went to the police station and took the victim to her house, the accused was also allowed to go his place. PW1 did not file a complaint before the police. The complaint was lodged on 25th February, 2019. There is a long delay in lodging the complaint and hence, it is fatal to the case of the prosecution. The grounds for delay is not offered by the

prosecution. PW1 has not properly supported the evidence of PW2.

14. The mother of the victim turned hostile and the trial Court has committed an error in convicting the accused relying on the sole testimony of victim-PW2. Exhibit P1-complaint was written by PW7, who is the ex-president of Dalita Sangharsha Samithi. The said witness clearly deposed that his friend had given information to write Exhibit P1-complaint. It clearly discloses that, Exhibit P1 is created by PW1 and PW7, and falsely implicated the accused in the alleged offence only to get the compensation from the government, and complainant has received compensation of Rs.3,00,000/- from the Government.

15. PW16-Medical Officer of C.G. Hospital, Davanagere issued Exhibit P5-preliminary report, and Exhibits P25 and P26-final opinion. She examined the accused and referred to Psychiatrist and for examination by surgeons. Specimen was collected for FSL. In the course of cross-examination, she clearly deposed that if the accused were to be examined within 24 hours from the alleged act, they could have traced some materials, but she examined the victim on 25th February, 2019.

16. PW19-Ashwini M.S., Assistant Professor of Mc. Gann Hospital, Shivamogga states that on 21st February, 2019 at 05.30 p.m., victim was brought by Channagiri Police with the history of sexual assault in Shivamogga on 17th February, 2019. She examined the victim and found that there were no local injuries and hymen was ruptured. There was no bleeding and she collected specimen for FSL. In the course of cross-examination she admitted that she did not find any injuries on the private part of the victim.

17. PW21-Dr.Chayakumari, in-charge Deputy Director, RFSL, Davanagere has deposed that seminal stain was not detected in Item Nos.2 to 7, 9 to 11, skin tissue was not detected in Item Nos. 1 to 8, spermatozoa was not detected in Item No. 12 or in hair. Blood stains were not detected in Items 2 to 9 and Items 4 to 7, respectively. The said medical witnesses and their report clearly proves that there was no sexual intercourse by the accused with the victim. As such, there was no evidence of penetrative sexual assault by the accused. The said medical witnesses along with their reports, has not been properly appreciated by the trial Court.

18. Further, it is admitted that the evidence of the child witness requires corroboration. But, in case, if the deposition

given by the child witness inspires confidence of the Court and there is no embezzlement or improvement, then the Court may rely upon the evidence of such witness and convict the accused.

19. PW2-victim has clearly admitted that the police have tortured her to give statement under Section 164 Code of Criminal Procedure statement before the Court. The statement under Section 164 of Code of Criminal Procedure is not substantive evidence and it can only be used to corroborate or contradict evidence. PW2 has stated in her oral evidence that she has not informed about the alleged sexual act of the accused until three months prior to the complaint lodged by her mother. Further, PW2 has not informed about the alleged sexual act in the police station or to her mother. PW7 has created the story of sexual assault by gathering information from his friends and wrote a complaint-Exhibit P1 and further, gave it to PW2, who lodged the same in Channagiri Police Station. The oral evidence clearly proves the false implication of the accused in the alleged offence.

20. The mahazar witnesses, PW3 and PW6 have not proved that the accused stayed in a room at Ganesha lodge, Shivamogga with the victim. The evidence of PW2 does not

inspire confidence about the offence committed by the accused. The trial Court has not appreciated the clear admission made by the prosecution witnesses and created a doubt about the offence said to have been committed by the accused. On all these grounds, sought for allowing this appeal.

21. As against this, the learned High Court Government Pleader B.Lakshman appearing for the respondent-State, would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts and sought for dismissal of this appeal.

22. Having heard the arguments on both sides and perusal of the materials, the following points would arise for my consideration:

1. Whether the trial Court has committed an error by arriving at the conclusion that the prosecution has proved the victim was a child at the time of commission of offence as defined under Section 2(d) of POCSO Act 2012?
2. Whether the appellant has made out grounds to interfere with the impugned judgment of conviction and order on sentence passed by the trial Court?
3. What order?

Regarding Point No.1:

23. Before appreciation of evidence and record as to the age of victim, it is necessary to rely on the judgment of Hon'ble Apex Court in the Case of P YUVAPRAKASH v. STATE REPRESENTED BY INSPECTOR OF POLICE reported in 2023 SCC ONLINE SC 846, wherein at paragraphs 11 to 19, it is observed as under:

"11. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of the POCSO Act which reads as follows:

"34. Procedure in case of commission of offence by child and determination of age by Special Court. – (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person."

12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

"94. Presumption and determination of age. – (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an

ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

"(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age

determination test conducted on the orders of the Committee or the Board”.

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. *In a recent decision, in Rishpal Singh Solanki vs. State of Uttar Pradesh & Ors. this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:*

"20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the 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. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

16. *Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this court held in Sajneev Kumar Gupta vs. The State of Uttar Pradesh & Ors. that:*

"Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.".....

24. In the case on hand, to prove the fact that the victim was child as on the date of commission of offence as defined under Section 2(d) of POCSO Act is concerned, the prosecution has produced documents Exhibits P19, P20 and P21. Perusal of Exhibit P20-school certificate, reveals that the date of birth of victim was 25th June 2004. Exhibit P19 is also certificate issued by Headmaster, Government Girls High School, Channagiri, which reveals that the date of birth of victim was 25th June 2004. Exhibit P30 is the report submitted by the Medical Officer, Department of Obstetrics and Gynaecology, which reveals the age of victim as 15 years. In Exhibit P1, the age of victim is shown as 15 years. PW1-

mother of the complainant, has deposed that the age of victim was 15 years. PW2-victim has deposed in her evidence that at the time of recording the evidence, her age was 16 years. While recording statement under section 164 of Code of Criminal Procedure as per Exhibit P10, the victim has deposed that her age was 15 years. The accused has categorically denied as to the age of the victim. During the course of cross-examination of PW1, she has admitted that she does not know the date of birth of the victim. Further, she has admitted that she has no birth certificate of the victim. At the time of delivery, an Anganwadi worker has entered the date of birth of the victim, but the same is not produced and there is no impediment to produce the same. During the course of cross-examination of PW2, she has clearly admitted that the competent authority has issued the birth certificate, but the same is not produced and that there is no impediment to produce the same before the court.

25. PW12-Thimmappa, Environmental Engineer working in the Office of Town Municipality, Channagiri, has deposed as to the issuance of endorsement as per Exhibit P21 in which it is stated that there is no entry of date of birth of victim in the register maintained in their department.

26. PW10-Assistant Teacher of Government High School, Channagiri has admitted in his cross-examination that the school authorities have entered the date of birth on the basis of the birth certificate. The investigating officer has not collected the birth certificate issued by the concerned Authority or from the Anganwadi worker who has maintained the date of birth of the victim as stated by PW1. The investigating officer has not explained anything as to non-production of these material piece of evidence. Even at the stage of evidence, the prosecution has not taken any legal steps to produce the abovementioned materials. Investigating officer has not obtained ossification test certificate to prove the exact age of the victim. Even after production of victim before the medical officer, the medical officer has not complied with the mandatory provisions of Section 164A of Code of Criminal Procedure to determine the age of the victim. The school document does not reveal as to on what basis the school authorities have entered the date of birth of the victim. In the absence of these materials, it is clear that the investigating officer has failed to comply with the mandatory provisions of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 12 Juvenile Justice (Care and Protection of Children) Rules, 2017, and also Section 34 of POCSO Act as per the aforestated

decision of the Hon'ble Apex Court. Viewed from any angle, there is no cogent, convincing or corroborative legal evidence to prove that the victim was child as defined under Section 2(d) of POCSO Act, at the time of commission of alleged offence. Hence, I answer point number one in the affirmative.

Regarding Point No.2:

27. When the prosecution has failed to prove that the victim was child as defined under Section 2(d) of POCSO Act, the question of committing offence under Section 6 of POCSO Act does not arise. With regard to offence punishable under Sections 376 and 506 of Indian Penal Code, the prosecution has examined PWs1 to 24 and marked 35 documents as Exhibits P1 to P35. In Exhibit P1, PW1 has stated as under:

"ಈ ಮೂಲಕ ತಮಗೆ ಕಂಪ್ಲೆಂಟ್ ಮಾಡುವುದೇನೆಂದರೆ ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದ ವಾಸಿಯಾಗಿದ್ದು ಕೂಲಿ ಕಾರ್ಮಿಕಳಾಗಿರುತ್ತೇನೆ. ನನ್ನ ಮಗಳು ಭೂಮಿಕ, 15 ವರ್ಷ ಇವಳು ತನ್ನ ಅಜ್ಜಿಯ ಉರಾದ ಹೊದಿಗೆರೆ ಗ್ರಾಮಕ್ಕೆ ಈಗ ಒಂದು ವಾರದ ಹಿಂದೆ ಹೋಗಿದ್ದಳು. ಆಗ ಚನ್ನಗಿರಿ ಟೌನ್ ಕೋಟೆ ಹಿಂಭಾಗದ ವಾಸಿಯಾದ ಫಾರುಖ್ ಬಿನ್ ಶೇಖ್ ಮಹಮ್ಮದ್ ಸಾಬ್ ಎಂಬುವನು ದಿನಾಂಕ 14.02.2019 ರಂದು ಹೊದಿಗೆರೆಯ ನನ್ನ ತಾಯಿಯಾದ ಗೌರಮ್ಮ ಎಂಬವರಿಗೆ ನಿಮ್ಮ ಮೊಮ್ಮಗಳಾದ ಭೂಮಿಕ ಎಂಬವಳನ್ನು ಅಡಿಗೆ ಕೆಲಸದ ಸಹಾಯಕಳಾಗಿ ಕೆಲಸಕ್ಕೆ ಕಳಿಸು ಎಂದು ಚನ್ನಗಿರಿಗೆ ಕರೆಯಿಸಿಕೊಂಡು ಕೆಲಸಕ್ಕೆಂದು ಶಿವಮೊಗ್ಗಕ್ಕೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಕೆಲಸ ಮುಗಿದ ಮೇಲೆ ನನ್ನ ಮಗಳನ್ನು ಉರಿಗೆ ಕಳಿಸದೆ ಒಂದು ರೂಂಮನ್‌ನಲ್ಲಿ ಮಲಗಲು ತಿಳಿಸಿದರು. ನಂತರ ಸದರಿ ಫಾರುಖ್ ಎಂಬುವನು ನನ್ನ ಮಗಳಿಗೆ ಲೈಂಗಿಕ ಕೃತ್ಯ ನಡೆಸಲು

ರೂಂ ಒಳಗೆ ಪ್ರವೇಶ ಮಾಡಿ ನನ್ನ ಮಗಳಿಗೆ ಬಲಾತ್ಕಾರ ಮಾಡಿ ಆಕೆಯ ಬಾಯಿ ಮುಚ್ಚಿ ಅತ್ಯಾಚಾರ ನಡೆಸಿರುತ್ತಾನೆ. ನನ್ನ ಮಗಳು ಎಷ್ಟೇ ಪ್ರಯತ್ನ ಮಾಡಿದರೂ ಕೊನೆಯದರೂ ಬಟ್ಟೆಯನ್ನೆಲ್ಲ ಬಿಚ್ಚಿ ಮೈಕೈಯನ್ನೆಲ್ಲ ಹಿಚುಕಿ ಪೈಚಾಂಚಿಕ ಕೃತ್ಯ ನಡೆಸಿರುತ್ತಾನೆ. 2-3 ಬಾರಿ ಸಂಬೋಗ ಮಾಡಿರುತ್ತಾನೆಂದು ನನ್ನ ಮಗಳು ನನಗೆ ತಿಳಿಸಿರುತ್ತಾಳೆ.

ನಂತರ ದಾವಣಗೆರೆಯಲ್ಲಿ ಬೇಕರಿ ಅಂಗಡಿಯಲ್ಲಿ ಕೆಲಸ ಇರುತ್ತದೆ ಎಂದು ಅಲ್ಲಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಅಲ್ಲಿಯೂ ನನ್ನ ಮಗಳಿಗೆ ಬಲಾತ್ಕಾರದಿಂದ ಸುಮಾರು ಸಾರಿ ಅತ್ಯಾಚಾರ ನಡೆಸಿರುತ್ತಾನೆ. ಈ ವಿಚಾರವನ್ನು ನಿನ್ನ ತಾಯಿ ಅಥವಾ ಬೇರೆಯಾರ ಹತ್ತಿರ ಹೇಳಿದರೆ ನಿನ್ನನ್ನು ಕೊಲೆ ಮಾಡಿ ಚಾನಲ್‌ಗೆ ಬಿಸಾಕುತ್ತೇನೆ ಎಂದು ಜೀವ ಭಯ ಹಾಕಿರುತ್ತಾನೆ ಎಂದು ನನ್ನ ಮಗಳು ದುಃಖದಿಂದ ಹೇಳುತ್ತಾಳೆ."

28. The alleged incident took place on 14th February, 2019. Complaint came to be filed on 22nd February, 2019. The complainant has not stated any reasons for the delay in filing the complaint. PW1 has not whispered anything as to delay in filing the complaint. The contents of the complaint-Exhibit P1 and the evidence of PW1 reveals that only on the basis of information given by PW2-victim, PW1 has lodged the complaint. The statement under Section 313 of Code of Criminal Procedure is also recorded by the concerned jurisdictional magistrate as per Exhibit P10, in which the victim has stated nothing as to the exact date of the alleged rape committed by the accused. She has stated that, when she was in the house of grandmother, the accused called her over phone and told to come to Channagiri for work. Then he has

stated that there is work in Shivamogga and asked her to come to Shivamogga. At Shivamogga, she stayed in a lodge and during that time, the accused has committed rape on her 2 to 3 times. She has further stated that the accused had taken her to Davanagere Bakery for work, and while conversing with the people at the Bakery, the accused mentioned her name, which created a suspicion and they have intimated the same to the Channagiri Police. The police took her and the accused to Channagiri Police Station. She has stated that, about three months back when she was going to work, the accused has committed rape in Aafiya Palace, Channagiri. PW2-victim has deposed in her evidence as under:

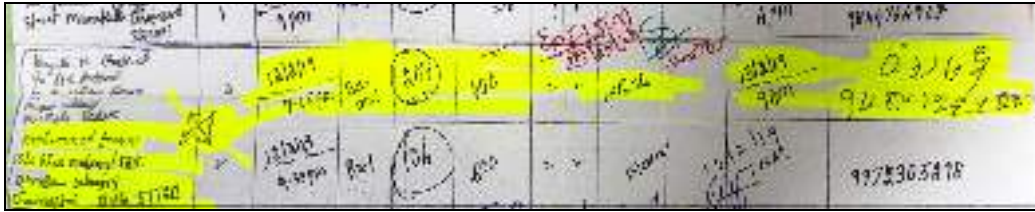
"ಅ.ಸಾ.1 ನನ್ನ ತಾಯಿ. ಗೌರಮ್ಮ ನನ್ನ ಅಜ್ಜಿ. ನನಗೆ ಆರೋಪಿಯ ಪರಿಚಯವಿದೆ. ನನ್ನ ಅಜ್ಜಿ ಹೊದಿಗೆರೆ-ಗ್ರಾಮದಲ್ಲಿ ಇರುತ್ತಾರೆ. ನನ್ನ ತಾಯಿ ಚನ್ನಗಿರಿಯಲ್ಲಿ ಇರುತ್ತಾರೆ. ಆರೋಪಿ ಅಡುಗೆ ಕೆಲಸ ಮಾಡುತ್ತಾನೆ. ಈಗ ಒಂದು ಆರೇಳು ತಿಂಗಳ ಹಿಂದೆ ನಾನು ನನ್ನ ಅಜ್ಜಿ ಮನೆಯಲ್ಲಿದೆ. ಆರೋಪಿ ಫೋನ್ ಮಾಡಿ ಶಿವಮೊಗ್ಗದಲ್ಲಿ ಕೆಲಸ ಇದೆ ಬಾ ಅಂತಾ ಕರೆದ. ನಾನು ನನ್ನ ಅಜ್ಜಿಗೆ ತಿಳಿಸಿ, ಶಿವಮೊಗ್ಗಕ್ಕೆ ಹೋದೆ. ಅವನು ಶಿವಮೊಗ್ಗಕ್ಕೆ ನನ್ನನ್ನು ಕರೆಸಿ, ಅಲ್ಲಿ ಉರೆಲ್ಲ ತಿರುಗಾಡಿಸಿ, ಮತ್ತು ಲಾಞ್ಜಿನಲ್ಲಿ ನನ್ನನ್ನು ಎರಡು ಮೂರು ಸಲ ಹಾಳು ಮಾಡಿದ್ದಾನೆ. ನಾನು ಅವನನ್ನು ಉರೆಲ್ಲ ಏಕೆ ತಿರುಗಿಸುತ್ತೀಯಾ, ಕೆಲಸಕ್ಕೆ ಅಂತಾ ಕರೆಸಿ ಅಂತಾ ಕೇಳಿದೆ. ಅವನು ಕೆಲಸ ಇಲ್ಲ, ಏನೂ ಇಲ್ಲ, ಬಾ ನನ್ನ ಜೊತೆ ಅಂತಾ ಹೇಳಿದ. ಆ ನಂತರ ಅವನು ನನ್ನನ್ನು ಲಾಞ್ಜಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿದ್ದ. ಆ ದಿನ ಅವನು ಲಾಞ್ಜಿನಲ್ಲಿ ಮಧ್ಯಾ ರಾತ್ರಿ ಎರಡು ಮೂರು ಸಲ ಅತ್ಯಾಚಾರ ಮಾಡಿದ. ನಾನು ಅವನಿಗೆ ನಾನು ಚಿಕ್ಕವಳಿದ್ದೇನೆ ಬೇಡ ಅಂತಾ ಹೇಳಿದರೂ ಅವನು ಆ ಕೃತ್ಯ ಮಾಡಿದ. ಅವನು ಈ ವಿಚಾರವನ್ನು ನಿನ್ನ ತಾಯಿ ಮತ್ತು ಅಜ್ಜಿಗೆ ಹೇಳಿದರೆ ಅವರನ್ನು ಕೊಚ್ಚಿ ಚಾನಲ್-ಗೆ ಹಾಕುತ್ತೇನೆ ಅಂತಾ

ಹೇಳಿದ. ನಂತರ ಅವನು ಮೋತಿ ಬೇಕರಿಯಲ್ಲಿ ಕೆಲಸ ಕೊಡಿಸುತ್ತೇನೆ ಅಂತಾ ಹೇಳಿ ದಾವಣಗೆರೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದ. ಮೋತಿ ಬೇಕರಿಗೆ ನನ್ನನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿ, ನನ್ನ ಹೆಂಡತಿ ಅಂತಾ ಹೇಳಿದ. ಅಲ್ಲಿದ್ದ ಜನಕ್ಕೆ ಅವನು ಮುಸ್ಲಿಮ್, ನಾನು ಹಿಂದು ಎನ್ನುವ ವಿಷಯವಾಗಿ ಅನುಮಾನ ಬಂದು ಪೊಲೀಸ್ ಠಾಣೆಗೆ ವಿಷಯ ತಿಳಿಸಿದರು. ಆಗ ದಾವಣಗೆರೆ ಮಹಿಳಾ ಪೊಲೀಸರು ಅಲ್ಲಿಗೆ ಬಂದರು ಮತ್ತು ನಮ್ಮಿಬ್ಬರನ್ನು ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದರು. ನನ್ನನ್ನು ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ಉಳಿಸಿಕೊಂಡು, ಆರೋಪಿಯನ್ನು ಚನ್ನಗಿರಿ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಕರೆದುಕೊಂಡು ಹೋದರು. ನನ್ನನ್ನು ನಂತರ ಚನ್ನಗಿರಿ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಕರೆದುಕೊಂಡು ಹೋದರು, ನಾನು ಮನೆಗೆ ಹೋಗುತ್ತೇನೆ ಅಂತಾ ಹೇಳಿ ಮನೆಗೆ ಹೋದೆ. ನನ್ನ ತಾಯಿ ನಾನು ಮಂಕಾಗಿದ್ದೇನೆ ಅಂತಾ ಪ್ರಶ್ನೆ ಮಾಡಿದರು, ಆಗ ನಾನು ಆರೋಪಿ ಮಾಡಿದ ಕೃತ್ಯವನ್ನು ನನ್ನ ತಾಯಿಗೆ ಹೇಳಿದೆ. ನಾನು ನನ್ನ ತಾಯಿಗೆ ಶಿವಗದ್ದಲ್ಲಿ ಮತ್ತು ದಾವಣಗೆರೆಯ ಬೇಕರಿಗೆ ಬಂದ ವಿಚಾರ ಎಲ್ಲವನ್ನು ತಿಳಿಸಿದೆ. ಈ ಘಟನೆ ಆಗುವ ಎರಡು ಮೂರು ತಿಂಗಳು ಮುಂಚೆ ಆರೋಪಿತನು ಆಫಿಯಾ ಚೌಟ್ಟಿಯ ಕಿಚನ್ ರೂಮಿನಲ್ಲಿ ನನ್ನನ್ನು ಹಾಳು ಮಾಡಿದ್ದ. ನಾನು ಶಿವಮೊಗ್ಗ ಲಾಠಿನಲ್ಲಿ, ದಾವಣಗೆರೆಯ ಬೇಕರಿಯಲ್ಲಿ ಮತ್ತು ಆಫಿಯಾ ಚೌಟ್ಟಿಯಲ್ಲಿ ಆಗಿದ್ದ ಎಲ್ಲ ವಿಷಯಗಳನ್ನು ನನ್ನ ತಾಯಿಗೆ ಹೇಳಿದೆ. ಈಗ ನಿಪಿ.3 ಮತ್ತು 4 ಫೋಟೋ ನೋಡುತ್ತಿದ್ದು, ಅವುಗಳಲ್ಲಿ ನಾನು ಇದ್ದೇನೆ ಮತ್ತು ಅವುಗಳನ್ನು ಶಿವಮೊಗ್ಗ ಲಾಠಿನಲ್ಲಿ ತೆಗೆಸಿದ್ದರು ಎಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ. ಈಗ ನಿಪಿ.2 ನೋಡುತ್ತಿದ್ದು, ಅದರಲ್ಲಿ ನನ್ನ ಸಹಿ ಇದೆ. ಆ ಸಹಿಯನ್ನು ನಾನು ಶಿವಮೊಗ್ಗ ಲಾಠಿನಲ್ಲಿಮಾಡಿದ್ದೇನೆ. ನನ್ನ ಸಹಿಯನ್ನು ನಿಪಿ.2(ಬಿ) ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಈಗ ಇನ್ನು ಮೂರು ಫೋಟೋ ನಿಪಿ.7, 8, 9 ಗಳನ್ನು ನೋಡಿ, ಸಾಕ್ಷಿ ಅವುಗಳನ್ನು ಆಫಿಯಾ ಚೌಟ್ಟಿಯಲ್ಲಿ ತೆಗೆಸಿದ್ದು ಎಂದು ಗುರುತಿಸುತ್ತಾರೆ. ಈಗ ನಿಪಿ.6 ನ್ನು ನೋಡುತ್ತಿದ್ದು, ಅದರಲ್ಲಿ ನನ್ನ ಸಹಿ ಇದೆ ಅಂತಾ ಹೇಳಿದ್ದು, ನನ್ನ ಸಹಿಯನ್ನು ನಿಪಿ.6(ಬಿ) ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಆ ಸಹಿಯನ್ನು ನಾನು ಆಫಿಯಾ ಚೌಟ್ಟಿಯಲ್ಲಿ ಮಾಡಿದ್ದೇನೆ. ನಾವು ಆದಿ ಕರ್ನಾಟಕ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರು. ಆರೋಪಿ ಮುಸ್ಲಿಮ್ ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರು. ನಾನು ಆರೋಪಿತನಿಂದ ಎರಡು ಸಾವಿರ ಹಣ ಸಾಲ ಪಡೆದು, ನನ್ನ ತಾಯಿಗೆ ಕೊಟ್ಟಿದ್ದೆ. ಆರೋಪಿ ನನಗೆ ಲಾಠಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿದ್ದೇನೆ,

ಇನ್ನುಮೇಲಿಂದ ದುಡ್ಡು ಕೊಡಲ್ಲ, ಏನೂ ಕೊಡಲ್ಲ ಅಂತಾ ನನಗೆ ಹೆದರಿಸಿದ್ದ.
ಮತ್ತು ನಿಮ್ಮ ಕಷ್ಟಕ್ಕೆ ಆಗುವುದಿಲ್ಲ ಅಂತಾ ಹೆದರಿಸಿದ್ದ.

2. ಪೊಲೀಸರು ನನ್ನನ್ನು ಚನ್ನಗಿರಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಕರೆದುಕೊಂಡು
ಹೋಗಿದ್ದರು. ನಾನು ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಹೇಳಿದ ಎಲ್ಲಾ ಅಂಶಗಳನ್ನು
ನಾನು ಅಲ್ಲಿ ಹೇಳಿದ್ದೇನೆ. ಈಗ ಒಂದು ಶೀಲ್ಡ್ ಕವಲಿನಲ್ಲಿರುವ ಕಲಂ.164
ಹೇಳಿಕೆಯನ್ನು ಆರೋಪಿಪರ ವಕೀಲರ ಸಮಕ್ಷಮ ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ
ಒಡೆದು ಸಾಕ್ಷಿಗೆ ತೋರಿಸಲಾಯಿತು. ಸಾಕ್ಷಿಯ ಹೇಳಿಕೆಯನ್ನು ನಿಪಿ.10 ಎಂದು
ನನ್ನ ಸಹಿಯನ್ನು ನಿಪಿ.10(ಎ) ಎಂದು ಗುರುತಿಸಲಾಯಿತು."

29. The investigating officer has conducted spot mahazar as per Exhibits P2 and P6. Exhibit P2-spot mahazar dated 21st February, 2019 reveals that on 12th February, 2019 accused has committed rape on the victim in Ganesh Lodge at room No.207, situate on the second floor. Photos are also produced as per Exhibits P3 and P4. Rough sketch of Ganesh Lodge is also produced as per Exhibit P5. Prosecution has also produced the visitor book maintained by the Ganesh Lodge which is marked as Exhibit P15. Exhibit P15(a) reveals that on 12th February 2019 at 9:15 pm due to missing of bus, the accused stayed in the said lodge in room No.207, wherein the number of persons stayed is shown as "2". But the name of victim is not shown in the visitor book. PW6-Uday Shetty, Manager of Ganesh Lodge has deposed as to the issuance of Exhibit P15. The scanned copy of exhibit P15 is reproduced below:



Perusal of this document makes it crystal clear that Mohammed Farooq has stayed in the lodge in room No.104 and he has written his mobile number as 9972305298, but there is no signature and the signature column is left blank. Whereas in the previous column all the necessary details are shown. During the examination-in-chief of PW6, he has clearly admitted that room numbers are interchanged in Exhibit P15. During his cross-examination, he has clearly admitted that name of Mohammed Farooq is referred to with respect to room No.104. The mobile number of this accused is not collected by the investigating officer. Even in the Mahazar-Exhibit P2, there is no reference as to the alteration of rooms shown in Exhibit P15. Mobile numbers are also not mentioned. PW6-Uday Shetty has deposed that he has obtained Exhibits P2 and P13, but the name of victim is not mentioned in the document produced by the prosecution. The date of commission of offence as alleged in Exhibit P1-complaint is 14th February 2019. The place of offence committed i.e., Ganesh Lodge, is not disclosed in the complaint. PW2-victim has not deposed as

to the date of commission of alleged rape in Ganesh Lodge at Shivamogga.

30. As per the complaint, accused has committed rape on the victim in Aafiya Palace, Channagiri. But the same is not disclosed in the complaint Exhibit P1. Mahazar Exhibit P6 reveals that the victim has shown the spot of Aafiya Palace. Police have also produced Exhibits P7 to P9 photos of Aafiya Samudaya Bhavana. Rough sketch is also produced as per Exhibit P11. During the cross-examination of PW2-Victim, she has clearly admitted that "ನಾವು ಹೋದ ಆ ಮೂರು ಜಾಗಗಳಿಗೂ, ಎರಡು ಪಂಚನಾಮೆಗಳಿಗೂ, ಆರೋಪಿಗೂ ಸಂಬಂಧವಿಲ್ಲ ಎಂದು ಸೂಚಿಸಿದರೆ ನಿಜ. ಪಂಚನಾಮೆ ಕಾಲಕ್ಕೆ ಘೋಷೋಗಗಳನ್ನು ಪೊಲೀಸರು ಇಂತಹ ಕಡೆ ನಿಲ್ಲ ಅಂತಾ ಅವರೇ ಹೇಳಿ ನಿಲ್ಲಿಸಿ ತೆಗೆಸಿದ್ದಾರೆ ಎಂದರೆ ನಿಜ." Further, she has admitted that "ನನಗೆ 164 ಹೇಳಿಕೆ ಮಾಡಿಸುವಾಗ ಪೊಲೀಸರು ಈ ಲೇತಿ ಹೇಳಿಕೆ ಹೇಳಬೇಕು ಅಂತಾ ಕಲಿಸಿ ಅಲ್ಲಿ ಹೇಳಿಕೆ ನೀಡಲು ಕಳುಹಿಸಿದ್ದರು ಎಂದು ಸೂಚಿಸಿದರೆ ನಿಜ." She has also clearly admitted that "ನನಗೆ ಯಾವುದು ಸಲಿ, ಯಾವುದು ತಪ್ಪು ಅಂತಾ ಗೊತ್ತಾಗುತ್ತದೆ ಎಂದು ಸೂಚಿಸಿದರೆ ನಿಜ. ನನ್ನ ಮನಸ್ಸಿಗೆ ಇಷ್ಟ ಇಲ್ಲದ ಕೆಲಸವನ್ನು ನಾನು ಮಾಡುವುದಿಲ್ಲ ಎಂದು ಸೂಚಿಸಿದರೆ ನಿಜ. ಯಾರದಾದರೂ ಮಾತು ಕೇಳಬಾರದು ಅಂತಾ ಅಥವಾ ಅವರು ಹೇಳಿದ್ದು ಮಾಡಬಾರದು ಅಂತಾ ನನಗೆ ಅನ್ನಿಸಿದರೆ ನಾನು ಅದನ್ನು ಮಾಡುವುದಿಲ್ಲ ಎಂದು ಸೂಚಿಸಿದರೆ ನಿಜ. ನಾನು ಯಾರಾದರೂ

ನನ್ನನ್ನು ಮುಟ್ಟಲು ಅಥವಾ ಹಲ್ಲೆ ಮಾಡಲು ಬಂದರೆ ನಾನು ಅದನ್ನು ಪ್ರತಿಭಟಿಸುತ್ತೇನೆ ಎಂದು ಸೂಚಿಸಿದರೆ ನಿಜ."

31. On careful examination of evidence of victim, it is crystal-clear that she has got knowledge as to what is right and what is wrong. However, from the date of alleged incident till three months, the victim or her parents have not lodged complaint against the accused. There is no consistency in the evidence of material witnesses/victim and the contents of complaint. While answering point No.1, this Court has held that the prosecution has failed to prove that the victim was a child as defined under Section 2(d) of POCSO Act. At the time of alleged incident, victim had attained majority. However, she has not protested against the alleged act of the accused. Therefore, the evidence of PW2 and other material witnesses cannot be believed, as the same is contrary to the conduct of an ordinary prudent person. The evidence placed before this Court appears to be unnatural. Even if it is presumed that the accused had intercourse with the victim, that can be termed to be a consensual sex. Absolutely, there is no legal evidence to constitute the offence under Sections 376 and 506 of Indian Penal Code. Viewed from any angle, I do not find any cogent, convincing, clinching or trustworthy evidence to convict the

accused for the alleged offence. Prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Accordingly, the appellant has made out a ground to interfere with the impugned judgment of conviction and order on sentence. Hence, I answer point No.2 in the affirmative.

Regarding Point No.3:

32. For the reasons aforestated and discussion, I proceed to pass the following:

ORDER

- i. Appeal is allowed;
- ii. Judgment of conviction dated 13th September, 2021 and order on sentence dated 14th September, 2021 passed in S.C. No.75 of 2019 by the II Additional District and Sessions Judge and Special Judge, Davanagere, is set aside;
- iii. Accused is acquitted of the offence punishable under Sections 376 and 506 of Indian Penal Code and Section 4 of POCSO Act.
- iv. Registry is directed to send the intimation through e-mail to the concerned Jail authority to release the accused, if he is not involved in other cases.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn