



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO. 1877 OF 2024

Between:

The State of Karnataka
By the Sullia Police Station
Represented by the
State Public Prosecutor
High Court Building
Bengaluru-560001.

...Appellant

(By Sri Vijaykumar Majage, SPP-II)

And:

1. Kishore K.,
S/o Kunki Ajila
Aged about 34 years
R/at Kothnadka House,
Kavalakatte House,
Baalugou Village
Sullia Taluk-574239

2. Smt. Susheela
W/o Late Honnappa
Aged about 42 years
Haladka Sampaje
Sullia Taluk-574239

...Respondents

(By Smt. Melanie Sebastian, Advocate for R1;
vide order dated 18.03.2025, R2 - Dead)



This Criminal Appeal is filed u/s.378(1)(3) Cr.P.C. praying to grant leave to appeal against the judgment and order of acquittal dated 21.09.2023 passed by the Learned V Additional District and Sessions and Special Judge, sitting at Puttur, Dakshina Kannada, in Special Case No.21/2018 acquitting the Respondent for the offence p/us/ 376 of IPC and section 506 and section 5(i) and 5(j)(ii) of POCSO Act 2012 and etc.

This Criminal Appeal, coming on for admission, 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 MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal is by the State against acquittal judgment in Spl.C.No.21/2018 on the file of V Additional District and Sessions Judge and Special Judge, Dakshina Kannada (Sitting at Puttur).

2. The first respondent/accused faced trial for the offences punishable under Section 376 of IPC read with Sections 5 and 6 of the POCSO Act. The prosecution case is that accused developed acquaintance with PW1 when he came to work as a coolie to her house and in the course of time he



had forcible intercourse with her on the promise of marrying her.

3. PW1 to PW12 were the witnesses examined by the prosecution to prove its case. PW1 is the prosecutrix. Finding that there is no consistent proof with regard to place of incident and the dates of the incidents, and the age of PW1 the trial court recorded acquittal.

4. We have heard Sri Vijayakumar Majage, learned SPP-II for the appellant/State and Smt. Melanie Sebastian, learned counsel for respondent No.1/accused at the time of admission.

5. It was the argument of Sri Vijayakumar Majage that the trial court has misread the evidence of PW1 in regard to incident and her age. Medical evidence supports the testimony of PW1 that she was subjected to rape by the accused. Ex.P10 is the document produced by the



prosecution to prove the date of birth of the girl as 13.09.2002. Therefore PW1 was a minor when she was subjected to forcible sexual intercourse. In this view the trial court judgment requires to be interfered with.

6. But Smt. Melanie Sebastian refuted the argument of Sri Vijayakumar Majage by submitting that the whole case appears to be false in order to falsely implicate the accused. Rightly the trial court has disbelieved the evidence of PW1 and other witnesses. The evidence with regard to age is not consistent. According to PW1 her date of birth is 13.09.2002. In the history recorded by the doctor while examining PW1, the date of birth is noted as 13.09.2003. In Ex.P10 the date of birth is shown as 13.09.2002. Therefore when there is no consistent proof with regard to age, the accused cannot be held guilty of the offences to which he was charged.



7. On going through the evidence extracted in the impugned judgment, it is found that though PW1 has stated that the accused subjected her to aggravated penetrative sexual assault and as a result she became pregnant, the medical report as per Ex.P12 ruled out forcible intercourse and also the pregnancy. According to PW1 it was on 02.08.2017 that accused had intercourse with her forcibly and again it was repeated on 03.08.2017. When PW1 gave statement before the Magistrate under Section 164 of Cr.P.C., she gave the date of incident as 02.08.2017. But the FIR was registered as per Ex.P1 on 24.10.2017. This delay was not explained. That apart, according to PW11, the investigating officer, the incident occurred for the first time on 22.10.2017. Therefore there is no consistent evidence as to when actually the girl was subjected to forcible intercourse. Even otherwise the whole incident appears to be consensual one. But if she was minor at that time,



her consent is of no consequence and in this view the age proof assumes importance.

8. Ex.P10 is the document produced by the prosecution to prove the age of PW1. Date of birth is mentioned there as 13.09.2002. It is held by the trial court that this is not in the prescribed format and PW7 the Headmaster of the school has stated that he had no information as to on what basis date of birth was entered. Added to this the mother of PW1 i.e., PW2 stated that she did not know the date of birth of her daughter. Above all in Ex.P1 firstly the age was written as 17 years and after erasing by putting whitener, the age was written as 15 years. In this background it has been held that there is no cogent proof with regard to age of PW1. If there is no cogent proof with regard to age, the provisions of POCSO Act cannot be applied.



9. In this view of the matter we are of the opinion that the trial court has appreciated the evidence on record properly and correctly to record acquittal of the accused and we do not find a good ground to interfere. Hence appeal is ***dismissed***.

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

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