

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.2223 OF 2022

BETWEEN:

MR. BHASKAR NAIK
S/O LAKASHMAN NAIK,
AGED ABOUT 28 YEARS,
R/AT RAGHAVENDRA NILAYA,
ANKRALU, KALMAE, NALKURU POST,

KUDI VILLAGE, BAHMAVARA,
UDUPI - 576 234

....APPELLANT

(BY DR. S. ARUMUGHAM., ADVOCATE)

AND:

1. THE STATE BY INSPECTOR OF POLICE WOMEN
POLICE STATION, UDUPI,
UDUPI DISTRICT,
BY S.P.P HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

2. XXXX
AGED ABOUT 14 YEARS,
D/O RAMESH NAYAK,
OLABAIL, KOKKARNE,
PEJAMANGURU VILLAGE,
BRAHMAVARA TALUK,
UDUPI TALUK.

...RESPONDENTS

(BY SRI. B. LAKSHMAN, HCGP FOR R1;
R2 IS SERVED AND UNREPRESENTED)

THIS CRL.A IS FILED U/S 14(A)(2) OF SC/ST (POA) ACT
PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND
ORDER OF SENTENCE DATED 14.12.2022 PASSED BY THE

ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-I, UDUPI (SPL. COURT FOR TRIAL OF CASES FILED UNDER POCSO ACT) IN SPL.C.NO.22/2020 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376(2)(i)(n), 506 OF IPC AND SEC.5(L),6 OF POCSO ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.11.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 14th December, 2022 passed in SC.No.22/2022 by the Principal District & Sessions Judge, Udupi (for short "the trial Court") for the offence punishable under Sections 506, 376(2)(n)(i) of the Indian Penal Code and Section 6 of the POCSO Act, 2012, accused has preferred this appeal.

2. Facts of the case briefly stated are that pursuant to a complaint lodged by the victim, a minor studying in Class 9, the Women Police Station, Udupi has registered Crime No. 1/2020 under Sections 506, 376(2)(n)(i) of the Indian Penal Code and Section 6 of the POCSO Act, 2012. It is stated in the complaint that approximately two months prior to the primary incident, the victim had become acquainted with the accused,

a van driver, while en-route to a relative's wedding; the accused provided his mobile number, and the victim shared her mother's contact details, leading to frequent telephonic communications initiated by the accused with ulterior motives.

3. On 18.12.2019, while the victim was alone at home as her mother had left for work, the accused contacted her around 10:30 a.m. told her to proceed to Muddur in an autorickshaw he arranged and if she refused, he threatened the victim to reveal their conversation to her family. Upon arrival, the accused transported her in his van, commencing inappropriate physical contact around 2:00 p.m., and under coercion, perpetrated sexual intercourse before releasing her near her residence.

4. Subsequently, on 01st January, 2020, while the victim was on her way to school, the accused intercepted her, falsely claiming a friend was aboard his van containing other school children, and deviated to Mandarthi where the children alighted. He misrepresented her destination as a hospital in Brahmavar to the children, then took her to a hotel for food, returning via Barkur to a secluded area where, under renewed threats, he committed sexual intercourse thrice—between

12:45 p.m. and 2:30-3:00 p.m., before dropping her near home.

5. Intimidated by the accused, the victim concealed the assaults from her family until her mother inquired about her school absence, prompting full disclosure; following consultations with relatives, the complaint was formally registered on 03rd January, 2020. Investigation ensued, culminating in the accused's arrest and remand to judicial custody, followed by the filing of a charge sheet, upon cognizance of which, trial Court has proceeded in Spl. Case No. 22 of 2020.

6. The Trial Court has ensured that the charge-sheet along with its annexures was furnished to the learned counsel for the accused pursuant to Section 207 of the Code of Criminal Procedure, 1973 and after hearing in the presence of both sides, the trial court has framed charges against the appellant/accused under Sections 376(2)(n)(i) and 506 of the Indian Penal Code, 1860, as well as Section 5 read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"). The charges were explained to the appellant/accused in the language known to him, whereupon he pleaded not guilty and claimed trial. The Trial Court has noted

that the prosecution examined PWs.1 to 20 out of 28 charge-sheet witnesses, dispensing with the rest as formal or repetitive; documents marked as Exhibits P1 to P43 and material objects MOs1 to 8 were admitted in evidence. The appellant/accused's statement under Section 313 Cr.P.C. was recorded, denying all incriminating circumstances, though no defence evidence was led. The Trial Court has heard arguments advanced by the Special Public Prosecutor and the learned counsel for the appellant/accused, and has meticulously perused the oral evidence, documentary exhibits, and entire record. The Trial Court, upon consideration of the evidence and arguments, answered Points 1 and 2 in the affirmative, holding that the accused was guilty of the offences punishable under Sections 376(2)(n)(i) and 506 of the Indian Penal Code, 1860, as well as Section 5 read with Section 6 of the POCSO Act, and passed final orders accordingly. The Trial Court has sentenced the accused to undergo rigorous imprisonment for 10 years under Section 376 IPC with a fine of Rs.10,000/- and simple imprisonment for 1 year in default to undergo 6 months' simple imprisonment under Section 506 IPC, with a fine of Rs.5,000/- and 3 months' simple imprisonment in default; and to 20 years rigorous imprisonment under Section 6 of POCSO Act, with a fine of Rs.10,000/- and 6 months' simple imprisonment in

default. The Trial Court has directed that, upon the accused depositing the total fine of Rs.25,000/-, Rs.5,000/- shall be forfeited to the State and Rs.20,000/- paid to the victim (PW.1) as compensation; additionally, Rs.2,00,000/- victim compensation under Section 357A Cr.P.C. shall be provided by the State authority, considering the victim's age (aged about 15 years), student status, and her parents' rural, uneducated background, amid the rape offence. The Trial Court has ordered all sentences to run concurrently, with set-off under Section 428 Cr.P.C. for the period of judicial custody from 05th January to 16th July, 2020. Aggrieved by the same, the appellant accused has preferred this appeal.

ARGUMENTS BY APPELLANT/ACCUSED COUNSEL:

7. The learned counsel reiterated the grounds of appeal and has filed the notes of arguments on 20th November, 2025. The learned counsel for the appellant argued in length and has submitted that the prosecution did not prove the charges beyond reasonable doubt. The victim's statements in the complaint, her Section 164 Cr.P.C. statement before the Magistrate, chief-examination, and cross-examination contain major contradictions about time, place, and events on 18.12.2019 and 01.01.2020. On 18.12.2019, she first said a

crowded tempo took her to a wedding hall in Peraduru for food, but later claimed rape in the accused's van near a forest or road; her Section 164 statement mentioned rape during a bus stop midway to Peraduru.

8. The learned counsel further submits that on 01st January, 2020, the victim described the accused tricking her into a school van claiming friend Nagaratna was inside, dropping students at Mandarthi, going to a Brahmavar hotel and garage, then raping her thrice en-route to Barkur/Althar/Mandarthi. However, her Section 164 statement said the accused called saying "maaduva baa" , took her directly to Altharu/Barkur for rape, then hotel and third rape in Brahmavar—showing no consistent sequence, undermining reliability, despite no mandatory corroboration in rape cases.

9. The Counsel stressed that CW15-Dr. Anita S who has issued the medical certificate (Ex.P33) and opinion, however she was not examined, whose medical report noted doubtful penetration and no sperm/pubic hair; FSL reports Ex.P38-39 issued by CW18-Dr. Kasturi Wodeyar and CW19-Dr. Veena P. showed 'nil' report from victim's swabs/organs and students CWs10-12 who saw the victim in van but denied incident hence turned hostile witnesses. The garage owner

CW5, hotel owner CW8, and PW4 Vignesh the "roovari" who signed mahazars have not supported the case of prosecution and have weakened the case. The cross-examination of Investigating Officer-CW27 revealed arrest/seizure at Kokkarne and not Brahmavar as claimed by victim, with no mahazar there, suggesting fabrication; unexplained FIR delay and voluntary conduct by minor victim indicated no force.

10. The learned counsel for the accused has argued that there is a discrepancy with regard to the spot of the incident. The victim girl has given different version so far as the place of incident. The case is registered at the instance of PW7-Vigneshwara. PW1 and PW2 have admitted this fact in the cross-examination. There is an enmity between PW7 and the accused. In order to take revenge against the accused, PW7 has filed a false case through the victim girl. Medical evidence do not support the case of the prosecution. RFSL report also do not support the case of the prosecution.

11. The Counsel further submits that the Trial Court erred in convicting the accused under Sections 376(2)(n)(i), 506 IPC and Section 6 POCSO Act (aggravated penetrative sexual assault on child, punishable by 20 years to life RI), ignoring benefit of doubt from these lapses, and on all these

grounds prayed to set aside conviction/sentence, acquit appellant.

ARGUMENTS BY STATE-RESPONDENT.NO1:

12. On the other hand, the learned HCGP has argued that the victim girl was aged only 14 years. The victim girl has stated that the accused has given threat to her and took her to different places in the van and committed sexual intercourse in the van as well as in the mini forest. The evidence of the victim girl is supported by the medical evidence. As per Section 29 of POCSO Act, the accused has to rebut the presumptions in favour of the prosecution. The accused has neither led any evidence nor submitted any defence during the statement recorded u/s 313 of Cr.P.C. Hence, the prosecution has proved the case and the appellant/accused is liable to be convicted. In the light of this submission, the counsel seeks dismissal of the appeal on aforementioned grounds.

13. On hearing the arguments of both sides and on perusal of the records the following points would arise for our consideration:

(1) Whether the Appellant/Accused has made out grounds to interfere with the impugned judgment or order of conviction?

(2) What order?

14. My answer to the above points are as under:

Point No.1: in the affirmative;

Point No.2: as per final order

RE. POINT NO.1:

15. I have carefully considered the contentions urged by both sides in the light of the evidence on record. Before appreciating the evidence put forth, it is very important to keep in mind the presumptions availed under the POCSO Act. Without defeating the object of the POCSO Act, which is to prevent children aged less than 18 years from offences like sexual harassment, sexual assault and child pornography, appreciation of evidence shall be made. Section 2(d) of the Act defines child as "any person below the age of 18 years.

16. Section 29 of POCSO Act provides that the Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. A three-Judge Bench of

the Supreme Court in SAMBHUBHAI RAISANGBHAI PADHIYAR v. STATE OF GUJARAT reported in (2025)2 SCC 399, has held that Section 29 of POCSO Act comes into play once the foundational facts are established. It holds as follows:

"35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act defines what penetrative sexual assault is..."

17. A gainful reference in this regard may also be made to the decision of a co-ordinate Bench of this Court in VEERPAL v. STATE, reported in 2024 SCC ONLINE DEL 2686, wherein it was held as under:-

"20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the

incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability."

18. In the present case, concededly, neither the age of the child victim nor her competence to depose, was disputed during the trial or in the present appeal. However it has to be seen that whether the prosecution has been able to lay the foundational facts and thus brought into play Section 29 of POCSO Act, the presumption of which the whether the appellant has failed to rebut and also whether the appellant has failed to discredit the prosecution witnesses or demonstrate any fatal flaws or gaps in the case of the prosecution.

19. In this case, the prosecution has claimed that the victim girl is aged about 14 years. Now burden lies heavily on the prosecution to prove this aspect. In order to prove this aspect the prosecution has produced Exhibits P23 & P34. Exhibit P22 is the certificate issued by Govt. High School, Kokkarne. Exhibit P33 is the birth of the victim girl. The prosecution has adduced the evidence of PW14, who has deposed in-conformity with Exhibit P23. On this point the appellant counsel has argued that the question is whether PW14-Mrs. Jayashree the Head Mistress of the High School proved the date of birth certificate issued by her at Ex.P23 is in

negative. The contention of the appellant counsel as per Exhibit P23 (Page 151-153) the victim's date of birth is 26th May, 2005, however during cross examination, she has stated "Ex.P.23 ಯಾವ ಆಧಾರದ ಮೇಲೆ ಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದು ಬರೆದಿರುವುದಿಲ್ಲ. ಪೊಲೀಸ್ ಒತ್ತಡಕ್ಕೆ.....", and further argued that the learned Sessions Judge has given the finding regarding the date of birth (Page 27 para 26) PW14 deposed in conformity with Ex.P23. In cross-examination, there is no denial with regard to the date of birth of the victim girl as 26th May, 2005. Apart from this, PW14 categorically stated her date of birth is 26th May, 2005. The date of birth stated by the victim is in conformity with Exhibits P23 and P34. But the statement in Exhibit P23 (study certificate) and Exhibit P34 (date of birth), discloses the entry of date of birth as 22nd June 2005. So, PW14 the author or the prosecution, didn't prove the date of birth in her testimony, the material inconsistency in her statement between testimony and statement in Exhibits P23 and P34 raised material contradiction and the date of birth is not proved. So the question of raising prima facie presumption under section 29 of the POCSO Act does not arise. Accordingly, the finding that the appellant/accused did not rebut the prosecution with defence evidence and statement under Section 313 Cr.P.C., has no

application, and Learned Sessions Judge has misconceived the facts. However, it is well settled that the prosecution has the burden to prove the age of the victim. For age determination in POCSO cases, applying Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, establish a mandatory priority: (i) matriculation/equivalent certificate; (ii) birth certificate from municipal authority; (iii) ossification test as last resort. The Hon'ble Supreme Court in JARNAIL SINGH v. STATE OF HARYANA reported in (2013)7 SCC 263, has extended Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, to POCSO victims, mandating documentary priority over medical evidence; matriculation certificate conclusive if available and in the case of P. YUVAPRAKASH v. STATE (REP. BY ITS INSPECTOR OF POLICE), CBCID, COIMBATORE, (2023)7 SCC 700: the Supreme court has held School transfer certificates inadmissible as primary proof; strict adherence to Section 94 hierarchy required, rejecting secondary school records. Courts must record reasons under Section 94(3); prosecution proves age beyond doubt, with benefit to accused on ambiguity. Ossification test uses upper age range plus 2-year margin.

20. In the present case the birth certificate-Exhibit P34 clearly shows the age of the victim 14 years 6 months and 22 days. Regarding the age of the victim, the prosecution has clearly established and hence Section 29 of the POCSO Act comes in the way of appellant.

21. The victim's statement and the FIR (Ex.P1) describe the rape as occurring around 2:00 PM on 18.12.2019 at the roadside near Mudur. However, during cross-examination, it emerges that at the very same time—2:00 PM on 18.12.2019—the victim, together with other guests, apparently attended a "*samman oota*" at Mangalya Sabha Bhavan in Perdoor and spent time there until about 4:00 PM. This places the victim in a public gathering, in company of several others, at the alleged time and presumably at a considerable distance from the supposed scene of crime. The victim cannot have been both at the roadside in Mudur (isolated) where the assault allegedly took place, and simultaneously among a group at the Mangalya Sabha Bhavan in Perdoor for the *samman oota*. These statements are mutually exclusive and irreconcilable. Section 11 of the Evidence Act states that when two statements of the same witness are contradictory and cannot be reconciled, the latter

statement has to be taken as the true statement and the former rejected unless there is a satisfactory explanation. Here, no such plausible explanation exists to harmonize the two positions. The contradictions in the victim's testimony create reasonable doubt as to whether the alleged offence occurred as described. The prosecution must prove guilt beyond reasonable doubt and failure to resolve this material contradiction, weakens their case substantially. The evidentiary record reveals significant material contradictions in the victim's account regarding the alleged incident dated 01st January, 2020, as compared between the FIR (Ex.P1) dated 03rd January, 2020 and the 164(5) Cr.P.C. statement (Ex.P11) recorded before the JMFC. These contradictions pertain to the timeline and locations of the alleged sexual assaults, with discrepancies relating to the sequence and places of occurrence such as Barkur, Alktar, and Brahmavar. The victim's initial narration to her mother indicated the entire day's ordeal, but the FIR and subsequent investigative record reflect omissions and embellishments, including the introduction of a prior incident dated 18th December, 2019 that was not disclosed to the mother or in the victim's initial complaint. During the cross examination on 16th January, 2021 in page No.6, the victim has narrated that earlier she had

an affair with one Prathiv Raj and there was quarrel and said person was assaulted. In page No.7, the victim has admitted that the complaint Exhibit P1 was filed at the insistence of CW4. These inconsistencies fundamentally undermine the veracity of the prosecution's case and suggest possible embellishment or concoction aimed at influencing the investigation. In judicial scrutiny, such material contradictions—particularly those affecting the core narrative of the prosecution—call for a cautious approach in assessing the credibility of the victim as a witness. The accused has rebutted the presumption against him under Sections 29 and 30 of the POCSO Act, and entitled to the presumption of innocence.

22. The medical evidence presented by the prosecution, specifically the medical report Exhibit P33 issued by CW15 on 03rd January, 2020, which is a vital document, however the author of the Exhibit P33 was not testified in court. It is well established principle of appreciation of evidence and to prove the veracity of the contents of the document, the author or the expert must adduce the evidence before the court after administering the oath, it is clear that the doctor who issues such a certificate can authenticate it, without her examination

rendering Exhibit P33 inadmissible. The report notes healed hymeneal tears but opines only a possibility of sexual intercourse, which is medically inconclusive. Additionally, the timing and physiological details conflict with the occurrence of intercourse, evidenced by the absence of spermatozoa and negative pregnancy tests on samples analyzed by experts. The victim's testimony also shows inconsistencies and contradictions regarding the place and time of the alleged incident, undermining the prosecution's case. The medical evidence does not corroborate the victim's version, and the presence of a consensual relationship with another individual further complicates establishing non-consensual sexual intercourse. These discrepancies create reasonable doubt, and under the rule of benefit of doubt, the accused deserves acquittal. Therefore, the prosecution has failed to prove the case beyond reasonable doubt.

23. Viewed from any angle, absolutely that there is no consistency, cogent, corroborative, clinching, believable and trustworthy evidence, the trial court has not properly appreciated the evidence on record in accordance with law and facts and passed the impugned judgment of conviction. After re-appreciation of evidence on record, I find it is just and

proper to interfere in the impugned judgment. Hence, I answer point No.1 in the affirmative.

RE. POINT No.2:

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

ORDER

- i) The appeal is allowed;
- ii) The judgment of conviction and order of sentence dated 14th December, 2022 passed in S.C. No.22/2022 by the Principal District and Sessions Judge, Udupi convicting the accused for the offences punishable under Sections 506, 376(2)(n)(i) of the Indian Penal Code and Section 6 of the POCSO Act, 2012, is set aside;
- iii) The accused is acquitted of all charges;
- iv) The accused, presently undergoing sentence, shall be released forthwith from judicial custody, if not required in any other case;

- v) The Registry is directed to communicate a copy of this order forthwith to the Superintendent of the concerned Jail for compliance and release of the accused.

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

Inn