



CNR: KAHC010010072019

NC: 2026:KHC:42088-DB
CRL.A No. 45 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE SHRI JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.45 OF 2019

BETWEEN:

STATE BY BILIKERE POLICE STATION
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-1

...APPELLANT

(BY SRI THEJESH P HCGP)

AND:

YOGANNA P
S/O PUTTARAJEGOWDA
AGED ABOUT 31 YEARS
R/O KUPPE VILLAGE
HUNSUR TALUK
MYSURU DISTRICT-571105

...RESPONDENT

(BY SRI PRAKASHA H C, ADVOCATE)

THIS CRL.A. IS FILED U/S.378(1) AND (3) OF CR.P.C
PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE
JUDGMENT AND ORDER DATED 05.07.2018 IN

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



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S.C.NO.220/2016 PASSED BY THE VI ADDITIONAL DISTRICT AND SPECIAL JUDGE, MYSURU, ACQUITTING THE RESPONDENT FOR THE OFFENCE P/U/S 376(2)(i) AND (n) OF IPC U/S 9 OF PROHIBITION OF CHILD MARRIAGE ACT AND ALSO U/S 5(j)(ii) AND (1) R/W 6 OF POCSO ACT AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE SHRI JUSTICE B.PRAMOD

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed against the judgment dated 05.07.2018 passed in S.C.No.220/2016 for the offence punishable under Section 376(2)(i) and (n) of IPC; under Section 9 of the Prohibition of Child Marriage Act and under Section 5(j)(ii) and (1) read with Section 6 of POCSO Act.

2. This matter is listed for admission. Heard the learned High Court Government Pleader appearing for the appellant and the learned counsel appearing for the respondent.



3. The Trial Court considered the material on record particularly the evidence of PW1, PW2 and PW11. PW11 who is in charge Headmaster of Government Higher Primary School has stated that he has produced the school admission register extract of the victim. In that register, the date of birth of the victim girl is mentioned as 20.07.2001. In the cross-examination, it is suggested that victim girl has not studied in Mallinathapura Government Higher Primary School and the said suggestion was denied. However, It is elicited in the cross-examination in respect of Ex.P13 document that there is no entry made regarding the class to which the victim girl was admitted and the date of her admission to the said school. The Trial Court also taken note of the evidence of PW12 who has also not collected the document of admission records and in his cross-examination, he categorically says that there is difference of date of birth in the hospital registers where the victim girl was admitted for delivery and when the victim girl was subjected to preliminary examination in the government hospital, when she became pregnant. It is further elicited that with regard to the difference of date of birth in the two hospital



records, he has not sought medical examination report regarding the correct date of birth of the victim girl. In the cross-examination of investigation officer, nothing worthwhile has been elicited to disbelieve the investigation conducted by him. There is nothing elicited that he has any animosity against the accused to falsely implicate him in the case.

4. However, the Trial Court in length considered the evidence available on record particularly with regard to the date of birth of the victim girl is concerned since the very victim girl admits the date of birth as 03.02.1997 and she claims that she is a major as on the date of her marriage that is discussed in paragraph 27 and in paragraph 28 discussed with regard to the authenticity of the document of Ex.P13 as the authenticity of the entry would depend on whose instruction/information such entries stood recorded and what was his source of information. Entry in school register/certificate requires to be proved in accordance with law. The Trial Court also taken note of the principals laid down in the judgment in the case of **Ram Suresh Singh vs Prabhat Singh** reported in **AIR 2009 SC 2805**, the authenticity of the entry would depend as on whose



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instructions and information such entries stood recorded and what was his source of information and it requires to be proved in accordance with law. Even the trial Court also taken note of the entry made in the document i.e., public document under Section 35 being a public document if prepared by a government official in exercise of its official duty and the same has to be proved. Except the school admission register, no document is placed on record in proof of date of birth of the victim girl. The school admission register does not contain the information as to the details of class to which she was admitted and what is the document relied upon for entering the date of birth in the register. Therefore, the version of PW2 regarding her date of birth that she has attained majority on the date of her marriage, seems to be probable.

5. The Trial Court also taken note of the material on record and also the principles laid down in the different judgments in paragraph 31 and in paragraph 32 taken note of the judgment in the case of **Subeg Singh and others vs State of Punjab** reported in **2015(1) AICLR 490** wherein the Apex Court held that the victim girl voluntarily and willingly



eloped with the accused. The prosecution has not been able to establish that her age is below 18 years at the time of occurrence. Having considered this material, Trial Court comes to the conclusion that prosecution has failed to prove the date of birth of the victim.

6. This Court also would like to rely upon the judgment of the Apex Court in the case of **P. YUVAPRAKASH vs STATE rep. by Inspector of Police** dated **18.07.2023** wherein discussed in detail with regard to the proving of factum of the date of birth particularly considering Section 34 of POCSO Act i.e., procedure in case of commission of offence by child and determination of age by Special Court and so also discussed Section 94 of the JJ Act, 2015, which becomes relevant. In paragraph 13 taken note of that 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.e., 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; the birth certificate given



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by a corporation or a municipal authority or a panchayat and only in the absence of above, the 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. But in the case on hand, the same is not found and no such documents are also available before the Court except the document of Ex.P13.

7. The Apex Court held that the document produced i.e., a transfer certificate and a extracts of the admission register, are not what Section 94(2)(i) mandates nor are they in accordance with Section 94(2)(ii) because DW1 clearly deposed that there were no records relating to the birth of the victim. In these circumstances, the only piece of evidence, accorded to Section 94 of the JJ Act was the medical ossification test, based on several X-rays of the victim, and on the basis of which PW9 made her statement and she explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18 to 20 years. In cross-examination, she said that the age of the



victim might be 19 years. These are the factors taken note of by the Apex Court while considering the same.

8. In the case on hand, except the document of Ex.P13, there are no other documents before the Court i.e., those documents which have been referred supra or even there is no any ossification test before the Court. The evidence of the IO who has conducted the investigation that she was not subjected to any medical examination. But the victim categorically deposes that she was major. When the victim was taken to the hospital for delivery, at that time, it is referred that she is a minor. But in order to substantiate the same, nothing is placed on record. When all these materials were taken note of by the Trial Court and comes to the conclusion that prosecution fails to prove that the victim girl was minor, the question of reconsideration of this matter does not arise. The very fundamental issue before the Court is that the victim girl was a minor and she became a pregnant but to prove the same, nothing is established before the Court. Though the offence is under Section 376(2)(i) and (n) of IPC and Section 9 of Prohibition of Child Marriage Act and also Section 5(j)(ii) and



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(1) read with Section 6 of POCSO Act, in order to prove the said allegation made against the accused by the prosecution that accused herein knowing fully well that the victim girl is a minor has married her on 23.03.2014 at Mahadeshwara Temple, Mallinathapura Village within the jurisdiction of Bilikere Police Station, Hunsur Taluk and the marriage was consummated and committed rape on her and due to the said act of accused, she has given birth to a male baby on 23.06.2015, nothing is placed on record to establish. Under the circumstances, we do not find any grounds to admit this appeal. Hence, the appeal is dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

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