



CNR: KAHC010035082019

NC: 2026:KHC:42194-DB
CRL.A No. 197 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 MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.197 OF 2019 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY ASHOK NAGAR POLICE STATION
BENGALURU
REPRESENTED BY
STATE PUBLIC PROSECUTOR
BENGALURU-01

...APPELLANT

(BY SRI THEJESH P., H.C.G.P.)

AND:

SRI PRASHANTH THAMI
S/O. NARESH THAMI
31 YEARS
R/AT NO.52, 1ST FLOOR
4TH CROSS, M.G. GARDEN
BAZAAR STREET, NEELASANDRA
BENGALURU-560 001

...RESPONDENT

(BY SRI K. B. K. SWAMY, ADVOCATE)

THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C BY THE
STATE P.P. FOR THE STATE PRAYING TO GRANT LEAVE TO
APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL
DATED 21.06.2018 PASSED BY THE L ADDITIONAL CITY CIVIL

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by
SHARADAVANI
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Location: High
Court of
Karnataka



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AND SESSIONS JUDGE, BENGALURU IN SPL.C.C.NO.340/2016 ACQUITTING THE RESPONDENT-ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 366, 376 OF IPC AND SECTIONS 4, 6, 9(i) AND 10 OF POCSO ACT.

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

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

ORAL JUDGMENT

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

This matter is listed for final hearing.

2. Heard learned High Court Government Pleader appearing for the respondent-State and also the learned counsel appearing for the respondent-accused.

3. The factual matrix of case of the prosecution before the trial Court is that:

a) While invoking the offence punishable under Sections 366 and 376 of IPC, it is contented that on 27.04.2016, at 05.30 p.m., the accused took the victim girl to Ashokanagara, from her House situated at No.52,



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2nd Floor, M.G.Garden, Bazaar Street, Neelasandra, Bengaluru stating that they can go around Bengaluru and induced her to go along with him and thereafter, he subjected her for sexual act in the house of CW-11 initially. So also in the house of CW-13 and Cw-16 and then he took her to different places including Calcutta and Darjeeling and subjected her for sexual act. As she was a minor girl, hence the offences punishable under Sections 4, 6, 9(i) and 10 of POCSO Act, 2012 came to be invoked.

b) The accused was booked for the aforesaid offences and police have also investigated the matter and filed the charge sheet. The accused did not plead guilty and claims the trial. Hence, The prosecution mainly relies upon the evidence of PWs1 to 17 and the documents produced at Exhibits P-1 to P-25. The material objects at MOs-1 to 9 were also marked.

c) The trial Court having considered the oral and evidentiary material available on record comes to the



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conclusion that the evidence of PW-1 does not inspire the confidence of the Court and though she supported the evidence in her chief examination, subsequently she turned hostile. The trial Court also taken note of the evidence of PW-1 to PW-3 was recorded in the absence of accused and thereafter learned counsel for the accused filed an application under Section 273 of Cr.P.C., and the said application was also allowed on 17.01.2017 and the said earlier evidences of PW1 to PW3 was taken out from the records and subsequently were re-examined afresh on 12.10.2017 again renaming as PW1 to PW3.

d) Further, the trial Court taken note of the evidence of PW1-victim girl that she has deposed that she was born on 16.07.1999. But no such document was placed to establish that she was born on 16.07.1999. Further, she has deposed that she studied first standard at Nepal but, she cannot remember at that time what her age was. However, now she is studying in Nepal but says that about one and half years back, she was residing at Neelasandra



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in Bengaluru, along with her parents and she doesn't know where the accused was residing and accused is not known to her and she doesn't know the facts of the case and she was called by the concerned police After one and half year back. She claims that she don't know for what purpose she was called by the police and they have obtained her signatures on certain papers on Ex.P1 and Ex.P2(A) are her signatures and she doesn't know the contents of Ex.P1 and Ex.P2 and this witness was treated as hostile to the prosecution case and when suggested that she was kidnapped by the accused and thereafter she was taken to different places in Bengaluru, then to Siliguri Darjeeling, Kolkata in West Bengal and Chennai. The same was denied by her. The victim-PW1, was not supported to the case of the prosecution. But trial Court took note of the Certificate issued i.e. Exhibit P7 to arrive at the age of the victim is concerned. The doctor collected the clothes of victim girl as per MOs. 6 to 9 and the same were seized. But when



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the same were sent to the FSL for examination, but the FSL Report does not support the case of the prosecution.

e) In furtherance, the father of the victim girl-PW2 was also examined and he is also the son-in-law of PW3. But he deposed that about 18 years back, he left Nepal and settled in Bengaluru along with his mother-in-law and daughter. Earlier he was residing at Neelasandra in Bengaluru and he has seen the accused one or two times. But he claims that the age of the victim girl is 14 to 15 years and she was studying in a school by name Infant Indian School and he has got two children. Out of two, one is the victim girl and another is the son. It is his evidence that at the time of the incident, he was residing at Neelasandra and about one and half years back, the victim girl left the house and found missing. He has given missing complaint as per Ex.P3 and he identifies his signature too. It is also his evidence that after searching, the victim girl was traced after 8 to 9 days of lodging of the complaint in Darjeeling. Thereafter, he went to Darjeeling along with



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police to bring his daughter. At that time, he came to know the victim girl was with the accused. But he doesn't know who had taken her to Darjeeling and also doesn't know for what purpose the accused had taken his daughter to Darjeeling. When he saw his daughter was in tension, as such, he did not enquire her about what had happened. Though he agrees that the victim girl was subjected to medical examination but denies that for what purpose she was subjected to such medical examination. He also did not support the case of the prosecution and turned hostile. The other witness is PW-3, who is none other than the grandmother of the victim girl and her evidence is also not helpful to the case of the prosecution.

4. Learned counsel HCGP taking this Court to the document at Ex.P7 which is the age estimation document and also Ex.P13-School Records, submits that the doctor who has examined the victim girl, has assessed the age of the victim girl as 14 to 16 years and as per the School Records, as per Ex.P13 i.e, age certificate of victim, she



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was born on 16.07.2004 and studied in a school at Nepal in the year 2013-14. He also vehemently contended that the trial Court did not consider the medical evidence available before the Court. The doctor has opined in terms of Ex.P16 i.e., that she was subjected to sexual act and hymen was not intact. However, doctor's evidence is very clear that the clothes of the victim girl she has collected and thereafter seized and sent for FSL, the FSL report is not positive.

5. Learned HCGP appearing on behalf of the State would submit that the evidence available on record has not been properly considered by the trial Court and committed an error in not making a detailed discussion while passing the order of acquittal and hence it requires interference of this Court.

6. Per contra, learned counsel appearing for the respondent-accused would submit that in order to prove that she was a minor; no authenticated documents are



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produced before the Court. He only relies upon the document at Exs.P7 and P.13. The Ex.13 is not based on any medical examination. It is only an age assessment and the same is not an authenticated document. The learned counsel also would submit that the Ex. P13 is just a Transfer Certificate and not the document of proving the age of the victim girl. He also brought to notice of this Court to the document at Ex.P24 i.e. FSL Report and stain was not detected in Item Nos. 1, 3, 5, 6, 7, 8 and 9 and spermatozoa were not detected in item Nos.2 and 4 and the same also does not support the case of the prosecution.

7. Learned counsel for the respondent - accused vehemently contends that no material evidence is produced before the appellate Court to prove that this accused subjected the victim girl for sexual act. Even though doctor has stated that she was subjected to sexual act and hymen was not intact, the learned counsel would submits that unless it is proved that she was a minor and



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subjected to sexual act, the question of reversing the judgment of the trial Court doesn't arise.

8. Having heard the counsel appearing for the appellant-State as well as the learned counsel appearing for the respondent-accused and also considering both oral and documentary evidence available on record, the points that would arise for consideration of this Court are as follows:

"i) Whether the trial Court committed an error in acquitting the accused?

ii) Whether this Court can interfere with the findings of the trial Court and reverse the finding and convict the accused for the offences invoked against the accused?

What order? "

9. No doubt, the police have filed the charge sheet against the accused for the offences punishable under Sections 366 and 376 of IPC and Section 469 read with Sections 4,6,9(i) and 10 of POCSO Act, 2012. This Court also to takes note of the allegations made against the



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accused that he had kidnapped the girl and took her to different places and made her to stay in Bengaluru and other places, subjected her for sexual act and then taken her to the Darjeeling, where the victim girl was found. But this Court has to consider the evidences of PWs1 to 3, which was earlier recorded in the absence of the accused and hence, an application is filed under Section 273 of Cr.P.C and the trial Court having considered that evidence was recorded in the absence of the accused, allowed the said application and recorded the fresh evidence of PWs1 to PW3 afresh, particularly the evidence of victim girl as PW1, her father as PW2 and her grandmother as PW3. Having perused these evidences, it can be said that their evidence is not consistent with regard to the allegations and charges made against the accused and they turned hostile and not supported the case of the prosecution.

10. Apart from the above, the victim girl was subjected to medical examination and found that she was subjected to sexual act and hymen was not intact. The



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PW.14-doctor who examined the victim girl gave her opinion in a medical report which is marked as Ex.P16 wherein she mentions that she seized the clothes of the victim girl after her examination and the same were sent to the FSL through IO and categorically says that those items were did not consist of seminal stains and also this spermatozoa in Article Nos.2 and 4 and this witness was also subjected to cross-examination and in the cross-examination, the doctor says that victim girl has not given the history, but mother has given the history. She further says that if the victim girl was subjected to forcible sexual act, there would be injuries. But no such injuries found in her private part as well as on the chest. Having taken note of the material available before the Court, particularly the Ex.P16 and the same is negative with regard to the seminal stains as well as spermatozoma and no doubt her evidence is very clear that hymen was not intact. There are no cogent evidence for proving that hymen was not intact and only because of the sexual act, the hymen was



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not intact. There is no positive evidence before the Court to prove the same.

11. Further, with regard victim girl is a minor by age is concerned, the prosecution mainly relies upon the document at Ex.P13 which is a Age certificate of victim and another document at Ex.P7 which is nothing but an Age Estimation Certificate issued by the doctor who has assessed the age of the victim girl between the age group of 14 to 16 years and counsel for the respondent-accused also brought to the notice of this Court that the same is not based on the medical examination and no Ossification Test Report is produced before the Court to believe the same.

12. In that light, this Court also likes to rely upon the judgment of the Apex Court in ***P. YUVAPRAKASH vs State, REP. BY INSPECTOR OF POLICE***, reported in ***2023 INSC 676***, has held that to determine a victim's age under Section 34 of the POCSO Act as well as Section



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94 of the Juvenile Justice Act, 2015. Wherein it has held that the same is relevant and applicable to consider the age of the victim. It comes to the conclusion that the document of Matriculation or Date of Birth Certificate or Equivalent Certificate from the relevant examination are relevant for consideration. No such material is placed before the Court. It has further held in paragraph No.22 that the provisions of POCSO Act will not be applicable in this case. In absence of those particular documents is concerned the charges leveled against the accused under Section 6 of POCSO Act as well as Section 10 of the Prohibition of Child Marriage Act cannot be sustained. The findings of the courts below, i.e. conviction and sentence imposed are set aside by considering this material on record. The age of the victim girl is also not proved and first of all, victim has not supported the case of prosecution so also her father and grandmother. Apart from that, no legal evidence is produced before the Court to come to a conclusion that she was a minor and the



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documents at Ex.P7 and Ex.P13 are not the authenticated documents as observed by the Apex Court in the judgment referred *supra* and particularly with regard to subjecting the minor girl for sexual act is concerned, except the hymen was not intact and doctor also opined based on the hymen was not intact that she was subjected to sexual act. But on medical examination and the clothes which were seized, which were sent to the FSL and FSL report at Ex.P24 has also not shown positive and the same is negative with regard to the presence of semen and also the spermatozoa and when such material discloses about the prosecution case, the trial Court rightly extended the benefit of doubt in favour of the accused in acquitting him.

13. With regard to the kidnapping of the victim girl also, the evidence available before the Court, particularly the evidence of PW1 to PW3 also does not inspire the confidence of the Court. Even with regard to Exs. P1 and Ex.P2, the victim girl says that she is not aware of the



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contents of the same. When such being the case, it does not call for any interference of this Court.

14. It is a settled position of law that in a case of acquittal and while reversing the judgment, even if the Court comes to a conclusion that when there are two views which are available on record to be considered, then benefit goes in favour of the accused. But, only in a case of reversal, if the role of the accused and act of the accused is pointed out specifically and no other person has committed such offence and then only the Court can reverse the judgment of the appellate Court i.e. converting the acquittal judgment into the conviction and such circumstances is also not warranted in the case on hand.

15. In the light of the said discussions made hereinabove, we answer the points raised *supra* in the "**negative**". Hence, the following:



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ORDER

Appeal stands ***dismissed***.

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

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

BSV
List No.: 1 Sl No.: 15