



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 304 OF 2025 (C)

BETWEEN:

1. SHIVU A. K. @ SHIVAKUMAR,
S/O MAHESHAPPA,
AGED ABOUT 25 YEARS,
LABORER.
R/O DODDERAHALLI VILLAGE,
HONNALI TALUK,
DAVNAGERE DISTRICT - 577 217.

...APPELLANT

(BY SRI. H.C. SHIVARAMU., ADVOCATE)

AND:

1. STATE BY HONNALI POLICE,
DAVANAGERE DISTRICT,
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGLURU - 560 001.

Digitally
signed by
SUSHMA
LAKSHMI
BS
Location:
High
Court of
Karnataka



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

2. SMT. HALADAMMA,
W/O BEERAPPA,
AGED ABOUT 35 YEARS,
OCC: COOLIE.
R/OF H. GOPAGAONDANAHALLI
VILALGE, HONNALI TALUK,
DAVANAGERE DISTRICT – 577 217.

...RESPONDENTS

(BY SRI. S. JAVEED., HCGP FOR R1;
R2 IS SERVED AND UNREPRESENTED)

THIS CRL.A IS FILED U/S 374(2) CR.PC BY THE
ADVOCATE FOR THE APPELLANT/ ACCUSED NO.1 PRAYING TO
SET ASIDE THE JUDGMENT OF CONVICTION DATED
16.12.2024 AND ORDER OF SENTENCE DATED 17.12.2024,
PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE,
FTSC-I AT DAVANAGERE, IN S.C.NO.180/2021, FOR THE
OFFENCE P/U/S 363, 376 OF IPC AND SEC.6 OF POCSO ACT.

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

CORAM: HON'BLE MR. JUSTICE S RACHAIAH



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

ORAL JUDGMENT

1. This criminal appeal is filed by the appellant/accused No.1 seeking to set aside the judgment of conviction dated 16.12.2024 and order on sentence dated 17.12.2024 passed in S.C.No.180/2021, by the learned Addl. District and Sessions Judge, FTSC-I at Davangere, for the offence punishable under Sections 363, 376 of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO').
2. The rank of the parties will be considered henceforth as per their rankings before the Trial Court.

Factual matrix of the case:

3. The case of the prosecution is that the victim, who was a minor, was going for coolie work in the field of accused No.2. In that place, accused No.1 was working as a tractor driver. He came into contact with the victim, enticed her, and forced her to love him. Then, on 08.07.2021, accused No.1 asked the victim to come near Hosakatte road at about 4:00 p.m. with the intention to



CNR: KAHC010065222025

marry her. Accused No.1 also informed accused No.2 about the said matter. At that time, accused No.2 gave Rs.4,000/- and also arranged a motorcycle bearing Reg. No. KA-17-AH-4291 for accused No.1, stating that he would look after everything. Then, accused No.1 kidnapped the victim on the motorcycle, took her to a jewellery shop, and parked the motorcycle. Thereafter, they proceeded to the house of accused No.3. In the said house, they stayed for a period of one month. During this period, it is alleged that accused No.1 committed penetrative sexual assault on the victim every day.

4. In the meantime, the mother of the victim filed a missing complaint before the respondent – police. Based on the said complaint, the respondent – Police registered a case in Cr.No.154/2021, conducted investigation and submitted the charge sheet.
5. In order to prove the case, the prosecution examined 19 witnesses as P.Ws.1 to 19 and got marked 37 documents as Exs.P.1 to 37 and also 18 material objects were identified and marked as M.Os.1 to 18 On the contrary, 6



CNR: KAHC010065222025

documents were got marked as Exs.D1 to 6. The Trial Court, after appreciating both oral and documentary evidence on record, recorded the conviction against the accused for the aforesaid offences.

6. Heard learned counsel Sri. H.C.Shivaramu, learned counsel for the appellant and Sri. S. Javeed, learned High Court Government Pleader for the respondent No.1 – State.
7. The submission of the learned counsel for the appellant is that the judgment of conviction and order on sentence passed by the Trial Court is erroneous and contrary to the evidence on record. Therefore, the same is liable to be set aside.
8. It is further submitted that the victim immediately after the incident i.e., after one month from the date of filing of the complaint was traced and secured by the respondent - police. Her statement under Section 164 of Cr.P.C. was recorded. In the said statement, she had mentioned the names of two persons; however, the Investigating Officer



CNR: KAHC010065222025

has managed not to included their names either in the FIR or in the charge sheet.

9. It is further submitted that the prosecution has projected that the age of the victim is 15 years 7 months as on the date of alleged incident and produced Ex.P.17 – School Admission Extract of victim and also Ex.P.20- School document of accused No.1. However, those two documents are not in consonance with the settled principles of law. However, the Trial Court ignored in considering those documents properly which requires re-appreciation.
10. It is further submitted that the statement of the victim would indicate that she had been to the house of accused No.3 and stayed there for a period of one month. However, the Investigating Officer has not made any efforts to include the localites as witnesses to the spot mahazar. P.W.4 -Mr. S.H. Shekarappa even though supported the case of the prosecution along with P.W.1



CNR: KAHC010065222025

and victim in respect of the spot mahazar, is from a different village.

11. It is further submitted that the victim had been subjected to medical examination. The Doctor who conducted medical examination, submitted a report stating that "*I am of the opinion that depending on the above findings, clinical examination negative findings does not rule out the occurrence of recent sexual assault or intercourse and her age between 16 to 17 years. However, FSL report would indicate that no seminal stains were found on the articles seized.*"
12. It is further submitted that the Trial Court has committed grave error in appreciating the evidence on record properly; consequently, the impugned judgment passed which requires to be set aside. Making such submission, learned counsel for appellant prays to allow the appeal.
13. *Per contra*, learned High Court Government Pleader for the respondent No. 1 – State vehemently justified the judgment of conviction and order on sentence and stated



CNR: KAHC010065222025

that the evidence of P.Ws.1 and 2 are consistent that the victim had been kidnapped and subjected to rape on the pretext of marriage.

14. P.W.4 being an independent witness supported the case of the prosecution in respect of spot mahazar conducted at the place of the incident occurred i.e., in the house of accused No.3.
15. P.W.14 who was working as a head master submitted the Admission Register Extract of victim as per Ex.P.17 which indicates the accurate date of birth of the victim.
16. P.W.19 was also working as Head Master has also produced the document which is marked as Ex.P.37 and brought original Admission Register Extract. The Trial Court confirmed the documents upon inspecting the original records. As per the said records, the age of the victim was 15 years and 7 months. Hence, the case of the prosecution has been proved.



17. It is further submitted that P.W.9 was working as an ENT surgeon, had conducted the examination of the victim after taking the consent of the victim and her mother and submitted her report as per Exs.P.21 and 22. The said reports would indicate that the victim had been subjected to sexual assault. Having considered these aspects, the Trial Court has rightly rendered the conviction. Therefore, interference with the said findings may not be necessary. Hence, the appeal deserves to be dismissed, is the submission of learned High Court Government Pleader for the respondent No.1 – State.
18. Having heard learned counsel for the respective parties and on perusal of the findings of the Trial Court, to determine the age of the victim, it is relevant at this stage to refer the ratio laid down by the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh Vs Anurudh and Anr.***, reported in ***2026 SCC OnLine SC 40***, which reads as under:

13.1. Section 2(d) of the POCSO Act defines a child as any person below eighteen years. So, for the provisions of this Act to be applied, the person



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

against whom the offence in question has been perpetrated must necessarily be below 18 years of age. This is the sine qua non. The natural question which then arises is how the age of victim is to be determined. Jarnail Singh v. State of Haryana²³ put this question to rest as follows:

"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned,

between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is

ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under

Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied

upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion."

(emphasis supplied)

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, it must be noted, provides the same hierarchy of documents as has been provided by Section 94 of the JJ Act. The same is reproduced below for felicity of reference:



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

"12.Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(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;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

19. On going through the ratio laid down by the Hon'ble Supreme Court in the said judgment, it makes clear that the aforesaid documents are necessary to determine the age of the victim. In the absence of production of those documents to determine the age of the victim, the benefit of doubt should be given to the accused while determining the age of the victim.
20. In the present case on hand, as per Exs.P.17, 20 and 37, the date of birth of the victim was 13.04.2006, her age



CNR: KAHC010065222025

was 15 years 7 months as on the date of alleged incident. However, as per Exs.P.21 and 22, the approximate age of the victim is around 16 to 17 years. The Trial Court has committed gross error in rendering the conviction against the appellant on considering the irrelevant documents.

21. The prosecution has de-railed to make out a case in respect of the spot inspection. The victim – P.W.2 stated in her evidence that she had been to the house of accused No.3 and stayed there for a period of one month. However, no localites have been cited as witnesses to the spot mahazar.
22. P.W.4 is stated to be the witness to the spot-mahazar wherein he has stated that he had visited the place where P.W.2 had been subjected to sexual assault and affixed his signature to the spot-mahazar.
23. P.Ws.1 and 2 are also the witnesses to the spot mahazar. Both of them have supported the case of the prosecution. However, they are interested witnesses to the incident.



24. P.Ws.8, 14 and 19 are the witnesses would depose about the certificates produced by them to indicate the date of birth of the victim. Those documents have been marked as Exs.P. 17, 20 and 37 respectively. Those documents are not relevant and they are not in consonance with the judgment of the Hon'ble Supreme Court stated supra. Hence, the evidence of these witnesses is not sufficient to conclude that the prosecution has proved the age of the victim.
25. The Doctor who conducted the medical examination of the victim has been examined as P.W.9. Her evidence would indicate that the victim had been subjected to sexual assault and the age of the victim would be 16 to 17 years.
26. Moreover, it is also noted here that P.W.13 who is stated to be running the jewellery shop at Honnali and he has deposed that he has not seen accused Nos. 1 and 2 and further stated that accused Nos. 1 and 2 neither parked



CNR: KAHC010065222025

the vehicle in front of his shop nor handed over the key to him. He has turned hostile and not supported the case.

27. On going through the evidence of the witnesses stated supra, it makes clear that the prosecution has failed to prove the age of the victim beyond reasonable doubt in accordance with law. More over, the medical report would indicate the age of the victim is between 16 to 17 years. Having considered these aspects and also other facts and circumstances of the case, such as, the Investigating Officer has not cited any of the localities to the Ex.P.10-spot mahazar and the prosecution has not proved that P.W.2 was residing in the house of accused No.3 for a period of one month. Such being the fact, rendering the conviction for kidnapping and committing sexual assault cannot be survived. Hence, the same is liable to be set aside.
28. In the light of the observations made above, I proceed to pass the following:



CNR: KAHC010065222025

NC: 2026:KHC:47257
CRL.A No. 304 of 2025

ORDER

- i) The Criminal Appeal is *allowed*.
- ii) The judgment of conviction dated 16.12.2024 and order on sentence dated 17.12.2024 passed in S.C.No.180/2021, by the learned Additional District and Sessions Judge, FTSC-I, Davanagere for the offences punishable under Sections 363, 376 of IPC and Section 6 of POCSO Act, 2012 is set aside.
- iii) The accused is acquitted for the offences punishable under Sections 363, 376 of IPC and Section 6 of POCSO Act, 2012.
- iv) Bail bonds executed, if any, stand cancelled.
- v) Registry is directed to communicate this order to the concerned Jail Authority forthwith.
- vi) The Jail Authority is directed to release the appellant forthwith, if he is not required in any other cases.

**Sd/-
(S RACHAIAH)
JUDGE**