



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 253 OF 2022 (C)

BETWEEN:

SRI.SURESH MARATI
S/O NAGU MARATI
AGED ABOUT 32 YEARS
R/AT BELAR MAKKI
ARESHIROOR,
NEAR HELIPAD
GOLIHOLE VILLAGE
BYNDOOR TALUK
UDUPI DIST – 576 214

... APPELLANT

(BY SRI.LETHIF B., ADVOCATE)

AND:

1. STATE BY CIRCLE
INSPECTOR OF POLICE,
BYNDOOR CIRCLE,
UDUPI DISTRICT
REP. BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.
2. BABU MARATHI,
S/O KORAGA MARATHI,
AGED 50 YEARS,



BELAGODLU,
GANGA NADU,
BYANDOOR TALUK,
UDUPI.

[AMENDED VIDE ORDER DATED
21.06.2024]

... RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1;
R2-SERVICE HELD SUFFICIENT
VIDE ORDER DATED 2.8.2024)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 09.12.2021 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE FTSC-1, UDUPI, (SPL. COURT FOR TRIAL OF CASES FILED UNDER POCSO ACT) IN SPL.CASE.NO.70/2018, CONVICTING THE APPELLANT / ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 363, 342, 376(2)(n) AND 506 OF IPC AND SECTION 5(I) PUNISHABLE UNDER SECTION 6 OF POCSO ACT.

THIS APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S RACHAIAH)

1. This appeal has been filed by the appellant, being aggrieved by the judgment of conviction and order on sentence dated 09.12.2021 in Special Case No.70/2018 on the file of the Additional District and Sessions Judge (FTSC-1), Udupi (Special Court for Trial of Cases filed under POCSO Act), wherein the appellant has been convicted for the offences under Sections 363, 342, 376(2)(n) and 506 of Indian Penal Code (for short 'IPC') and Section 5(l) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

Factual matrix of the case:

2. The case of the prosecution is that, a complaint came to be registered by the victim stating that she was working in the house of Babu Hegde for the past one year. She used to stay in the house and used to visit her own home often. Her sister was staying at Belar Makki along with her husband and they had no issues. Therefore, there were frequent quarrels between them in respect of not



begetting a child. On 06.08.2018 at about 10.00 a.m., the victim came out of the house of Babu Hegde and went to a shop to bring samosa. She met her sister near the shop accidentally. After having spoken with her sister, she took the samosa and was going towards the house of Babu Hegde. At that time, her brother-in-law came in a Maruti Omni car and enticed her by saying that he would drop her near the house of Babu Hegde. However, he diverted his route and went to his native and thereafter, he took her to a shed and kept her in the shed for four days and committed sexual assault on her. After four days, she was brought back to his house where she met her sister and informed her about the incident. After due deliberations, she lodged a complaint against the appellant. Based on the said complaint, the respondent - police conducted investigation and submitted the charge sheet.

3. To prove the case of the prosecution, the prosecution has examined 15 witnesses as PWs.1 to 15 and got marked 24 documents as Exs.P1 to P24 and identified 13 material



objects as M.O.1 to M.O.13. The Trial Court after appreciating both oral and documentary evidence on record, convicted the appellant for the aforesaid offences. Hence, the appellant is before this Court.

4. Heard Sri Lethif B., learned counsel for the appellant and Smt. Rashmi Patel, learned High Court Government Pleader for respondent No.1 – State. Service held sufficient in respect of respondent No.2 vide order dated 02.08.2024.
5. The submission of learned counsel for the appellant is that the Trial Court has committed error in appreciating the evidence of all the witnesses and also failed to take note of the settled principle of law. Consequently, the impugned judgment is passed which requires to be set aside.
6. It is further submitted that there are inconsistencies in the evidence of the victim and other witnesses. All the material witnesses have turned hostile. However, the Trial Court opined that the prosecution has proved the



case beyond reasonable doubt, which is erroneous and not proper. Therefore, the appeal may be allowed and the appellant may be acquitted. Making such submissions, the learned counsel for the appellant prays to allow the appeal.

7. *Per contra*, learned High Court Government Pleader for respondent No.1 vehemently justified the judgment of conviction passed by the Trial Court and submitted that even though the witnesses have turned hostile, the fact remains that it is an undisputed fact that the victim was a minor as on the date when the said incident had occurred and it is also established through the evidence of the Doctor and also RFSL report that she had been subjected to rape. Therefore, mere denial or winning over the witness would not absolve the act committed by the appellant. Therefore, the findings of the Trial Court need to be upheld. Making such submissions, the learned High Court Government Pleader for respondent No.1 prays to reject the appeal.



8. Having heard learned counsel for the respective parties and also on perusal of the findings of the Trial Court, the points which arise for my consideration are:

a) Whether the findings of the Trial Court appear to be proper?

b) Whether the appellant has made out grounds to interfere with the said order?

c) What order?

9. On going through the above facts, it is necessary to discuss the evidence of each witness for the purpose of re-appreciation.

10. P.W.1 is the victim. She has turned hostile and not supported the case of prosecution.

11. P.W.2 is the sister of P.W.1. She has turned hostile and not supported the case of prosecution.

12. P.W.3 is the father of PWs.1 and 2. He has turned hostile and not supported the case of prosecution.

13. P.W.4 is the mother of PWs.1 and 2 and wife of P.W.3. She has turned hostile and not supported the case of prosecution.



14. P.W.5 is the person in whose house P.W.1 is stated to have worked as a maid. He has turned hostile and not supported the case of prosecution.
15. P.W.6 is the wife of P.W.5. She stated that, P.W.1 was working in her house as a maid and later, the victim had left her house. She has turned hostile and not supported the case of prosecution.
16. P.W.7 is the person who was running a grocery shop at Thaggarse, Byndoor. He has stated that, in the year 2018, the victim and her sister had been to his shop and purchased something and went back. He has turned hostile and not supported the case of the prosecution.
17. P.W.8 is the witness to Exs.P2 and P3 and supported the case of the prosecution.
18. P.W.9 is also witness to the Exs.P2 and P3 and supported the case of the prosecution. However, in the cross-examination, he has deposed that he does not know what has been written in the mahazar.
19. P.W.10 is the Doctor who conducted examination of the appellant and submitted the report as per Ex.P14.



20. P.W.11 was working as a Panchayat Development Officer (P.D.O.) of Golihole Village Panchayat. He has submitted the report as per Ex.P15.
21. P.W.12 a signatory to Ex.P16. He has turned hostile in respect of seizure of clothes of the appellant.
22. P.W.13 is the witness to spot mahazar. He has affixed his signature to Exs.P4 and P5. He has supported the case of the prosecution.
23. P.W.14 is the Police Sub-Inspector of Byndoor police station. He has registered FIR as per the complaint. The said FIR has been marked through him as Ex.P17.
24. P.W.15 was working as Circle Police Inspector of Byndoor circle. He has conducted investigation and submitted the charge sheet.
25. On going through the evidence of all these witnesses, namely, the material witnesses P.Ws.1 to 4 have turned hostile and not supported the case of the prosecution. Even on a reading of their evidence on its entirety, those witnesses have not supported the case of the prosecution. When the material witnesses have not supported the case



of prosecution, rendering the conviction based on the evidence of such witnesses, in my considered view, is erroneous and not proper. Therefore, the findings of the Trial Court are liable to be set aside.

26. In the light of the observations made above, the points which arose for my consideration are answered as under:-

Point No.(i) - "Negative"

Point No.(ii) - "Affirmative"

Point No.(iii) - "As per the final order"

27. Hence, I proceed to pass the following:-

ORDER

- i) The Criminal Appeal is *allowed*.
- ii) The judgment of conviction and order on sentence dated 09.12.2021 passed in Special Case No.70/2018 by the learned Additional District and Sessions Judge (FTSC-1), Udupi (Special Court for Trial of Cases filed under POCSO Act), is set aside.
- iii) The appellant / accused is acquitted for the offences punishable under Sections 363, 342, 376(2)(n) and



506 of IPC and Section 5(I) punishable under Section 6 of the POCSO Act.

- iv) The Registry is directed to communicate this order to the concerned jail authority forthwith.
- v) The concerned jail authority is directed to release the appellant / accused forthwith, if he is not required in any other case.

Sd/-
(S RACHAIAH)
JUDGE

Bss
List No.: 1 Sl No.: 30