



CNR: KAHC010070942019

NC: 2026:KHC:43910-DB
CRL.A No. 442 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.442 OF 2019 (A)

BETWEEN:

STATE OF KARNATAKA BY
CHINTAMANI RURAL POLICE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-1

...APPELLANT

(BY SRI SUHAS GOWDA M., H.C.G.P.)

AND:

VENKATAKRISHNA
S/O. NARAYANAPPA
AGED ABOUT 24 YEARS
RESIDENT OF MALLIKARJUNAPURA VILLAGE
CHINTAMANI TALUK
CHICKBALLAPURA DISTRICT-563 125

...RESPONDENT

(BY MISS K. R. BHUVANASHRI, ADVOCATE FOR
SRI C. R. RAGHAVENDRA REDDY, 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

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by
SHARADAVANI
B
Location: HIGH
COURT OF
KARNATAKA





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DATED 13.11.2018 PASSED BY THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPUR IN SPECIAL S.C.NO.66/2016 ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366 AND 376 OF IPC AND SECTIONS 3 AND 4 OF POCSO ACT, 2012 AND THE SPP/STATE PRAYS THAT THE ABOVE ORDER OF ACQUITTAL MAY BE SET ASIDE AND CONVICT AND SENTENCE THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366 AND 376 OF IPC AND SECTIONS 3 AND 4 OF THE POCSO ACT, 2012

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 appeal is filed by the appellant - State against the acquittal order passed by the trial Court for the offences punishable under Sections 366, 376 of IPC and Sections 3 and 4 of POCSO Act, 2012, praying this Court to set aside the acquittal passed by learned II Additional District and Sessions Judge, Chickballapur, in S.C.No.66/2016 and convict the accused for the above offences.



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2. The factual matrix of case of prosecution are that:

a) As per the complaint and the allegation given by the complainant-PW1 who is the father of the victim has stated that girl is aged about 16 years. That on 11.05.2016 at about 03.00 p.m. Chintamani Rural Police have registered a case in Crime No.177/2016 based on the complaint of PW1 that missing complaint was given and FIR is also registered in terms of Ex.P15. It is the allegation in the complaint that his daughter is a student of SSLC and after appearing for her final examinations, she was staying at home. That on 10.05.2016 in the evening at about 07.30 p.m., the victim, who had gone out of the house did not come back. The informant-PW1 and his relatives searched for the victim girl and they did not find her. It is alleged that accused-Venkatakrishna used to frequently talk to the victim girl and informant had advised the accused not to talk to his daughter. The informant suspected about the accused and suspecting the



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same went to the house of accused and accused was also not in the village and gave the complaint-Ex.P1. The missing complaint was received by PW10-ASI. The investigation was also launched. On the very next day on 11.05.2016 the victim girl came back to her house in some autorikshaw in the evening time and on enquiry, she revealed that accused took her and she was taken to the police station and complaint was given.

b) Based on the complaint, case was registered against the accused for the above offences and victim girl was subjected to medical examination and also she made a statement before the learned Magistrate-Senior Civil Judge in terms of Ex.P5. The police have conducted investigation in the matter and filed a charge sheet. The accused was secured before the Court and he did not plead guilty and pledged the trial.

c) The prosecution examined witnesses as PWs.1 to 15, got marked documents as Exs. P1 to P.13 and also



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material objects as MOs.1 to 4. Since the medical report relating to the accused was marked by consent as Ex.P13, CW.12 doctor was given approval. The Date of Birth Confirmation Certificate relating to the victim girl was marked as Ex.P12 by her consent. Hence, CW.11-Headmaster was also given up, the learned Public Prosecutor has given up examination of other witnesses i.e., CWs.3, 4 10 and 9. On closure of the prosecution evidence, recorded the statement of accused under Section 313 Cr.P.C. The accused did not choose to lead any evidence.

d) The trial Court having considered both oral and documentary evidence on record, comes to the conclusion that the prosecution paid to prove the very age of the victim girls and only marked the document at Ex.P7 and it is not the proof of document. The trial Court also came to the conclusion that the evidence of PW2 victim girl also does not inspire the confidence of the Court as she says before the learned Magistrate that she only went along



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with the accused and question of invoking Section 366 does not arise and since she was not intending to marry a boy who was fixed by her parents and then she left the house. However, she says that on the next day, accused subjected her for sexual act in the house. The said statement under Section 164 Cr.P.C., is considered by the trial Court which is marked as Ex.P5. The evidence of PW.2 before the Court that she was subjected to sexual act in a park and not in any of the house and also no material or no consistency in her statement made before the learned Magistrate as well as before the Court. The trial Court also taken note of the fact that PW.3 is examined as an attesting witness to the two-wheeler seizure mahazar said to have been done in the premises of Chintamani Rural Police, in which the victim was taken. The PW.4 also deposed before the Court that about 10 months ago while he was coming back from Kaiwara Temple, and the accused was riding his two-wheeler in which victim or girl was the pillion-rider. He came to the house of the



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complainant and informed that accused and victim girl were going in a two-wheeler vehicle.

e) The trial Court also took note of the evidence of PW.5-doctor who issued Ex.P3-medico legal examination report of sexual violence in respect of the victim girl. She has deposed that victim girl had narrated the incident that he had known to the accused since one year and they loved each other. That on 10.05.2016 at about 07.00 p.m. he took her from her house, asked her to come with him that they will get marry. That on 11.05.2016 around 01.00 to 02.00 p.m., the accused intercourse with her. But opinion of the doctor as per Ex.P7 that on *perusal of history, clinical examination, findings and FSL report, an act like that of sexual intercourse has occurred but there are no signs of recent sexual intercourse*. Though the victim girl was examined on the very next day and also given the Certificate. The FSL report is Ex. P8. The trial Court taking into consideration, has discussed in paragraph nos. 20 and 21 that entire evidence on record



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would indicate that victim girl had voluntarily gone with the accused. It appears that she had threatened the accused to take her away since her parents had fixed her marriage with another person against her wish. The trial Court also took note of Ex.P5 as well as Ex.P7 and also the evidence of PW.2 and only the evidence of PW.11 to 15 are the police witnesses and comes to the conclusion that evidence given by the material witnesses such as informant father of the victim girl- PW.1 and the victim girl PW.2 is not very convincing with regard to the alleged incident, it is inconsistent and there is absolutely no convincing and corroborative evidence in the evidence adduced by the prosecution witnesses and acquitted the accused.

3. Mr. Suhas Gowda, learned HCGP appearing on behalf of the appellant-State, in his arguments vehemently contended that the trial Court failed to take note of the statement of victim girl-PW.2 and she categorically deposes in her statement before the learned



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Magistrate that she was subjected to sexual act on 11.05.2016 and the medical evidence is also not properly considered by the trial Court. The trial Court erred in acquitting the accused on the ground that prosecution has failed to prove the place of incident as there is a contradictory version and also failed to appreciate that the victim girl herself has deposed that the sexual assault having been made against her will and wish. The minor discrepancies will not take away the case of the prosecution.

4. Learned HCGP further vehemently contended that the trial Court fails to take into consideration penal provisions of Sections 29 and 30 of POCSO Act, 2012 where there is a presumption and there is no rebuttal of presumption and victim also subjected to medical examination and medical report is also very clear that she was subjected to sexual act. But even though it is not recent sexual act and hence the counsel would contend



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that when she was aged about 15 years and 11 months, the question of consent also does not arise.

5. Per contra, learned counsel appearing for the respondent-accused submits that the age of the victim girl is not proved in accordance with law and vehemently contends that the documents available before the Court i.e. in the Radiological Report, it is clear that she is more than 16 years below the age of 18 years as per the document Ex.P12. He also vehemently contends that the age proof document Ex. P12 also cannot be relied upon. He submits that there is contradiction in the statement of very victim girl-PW.2, who made the statement before the learned Magistrate that she was subjected to sexual act in a house and before the Court, she made the statement that she was subjected to sexual act in a park and this is inconsistent evidence. When the Specific case of the prosecution that she was subjected to sexual act on 11.05.2016 and when the doctor examined her on the next day, that too within 24 hours of the alleged sexual



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act and there was no any recent sign of sexual act and hence, the very theory of she was subjected to sexual act is not believable. The same is taken note of by the trial Court and hence no grounds are made out to reverse the findings and hence rightly acquitted.

6. Having heard the learned counsel appearing for the parties and also considering the material available on record, the point that would arise for consideration of this Court are as follows:

"i) Whether the trial Court has committed an error in acquitting the accused for the offences alleged against him and whether this Court can reverse the finding and converting the same as a conviction as against the acquittal and the findings of the trial Court is perverse?

ii) What order?"

7. Having heard the respective counsel and also on perusal of material available on record, no doubt, the father of the victim girl i.e. PW.1 had lodged the complaint of missing and case was registered and on the very next



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day the victim girl PW.2, who is the daughter of PW1 came back in an autorikshaw.

8. It is also the case of the prosecution that the victim girl made the statement that accused only took her and subjected her for sexual act. It is also important to note that on the very next day, she was taken to the learned Magistrate to record the statement under Section 164 Cr.P.C., and having taken note of the contents of Ex.P5 made before the learned Magistrate is contradictory to the oral evidence of PW.2. The PW.2 in the statement made before the learned Magistrate stated that at about 01.00 p.m. on yesterday she was subjected to sexual act by accused in a house. But in the oral evidence, she states that she was subjected to sexual act in a park. There is a material contradiction with regard to the place of incident.

9. The other circumstances that goes against the prosecution is that victim girl was subjected to sexual act on 11.05.2016 and when she came back, she was taken to



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the doctor on the next day and on her examination, she gave the history and also she was subjected to clinical examination. The FSL report does not support the case of the prosecution that victim girl was subjected to sexual act recently. In the doctor's evidence also, it is very clear that she was subjected to sexual act, no recent signs of she being subjected to sexual act. When the victim girl has stated that she was subjected to sexual act previous day and medical evidence is contrary to the case of the prosecution and apart from that, FSL report with regard to the incident occurred is concerned also, there is a contradiction and trial Court also taken note of the same.

10. No doubt, the document at Ex.P12, discloses the date of birth of the victim girl as 25.02.2000 and this document is not Birth Certificate or Matriculation Certificate or the First Admission Record and the same is issued by the Headmaster, SRET High School and her admission is in 2014, when she was studying in 9th standard and hence the same is not within the meaning of



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Section 94 of JJ Act in view of Apex Court judgment in Yuvaprakash Case.

11. This Court would like 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 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



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findings of the courts below, i.e. conviction and sentence imposed are set aside by considering this material on record.

12. When such being the case, the prosecution failed to prove the age of the victim. When PW.1 - complainant/father has stated that his daughter - victim girl was aged about 16 years and Ex. P14 discloses that when she was subjected to radiological examination, her age is mentioned as 16 years and below 18 years and there is no any report of Ossification Test before the Court to come to such a conclusion. Therefore, it can be held that first of all the prosecution has not proved the age of the victim girl and also with regard to the incident is concerned, the evidence of the doctor is otherwise and the same is taken note of by the trial Court in paragraph no. 17 while considering the medical evidence as per Ex.P5, the history is given is different.



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13. With regard to the place of occurrence of alleged incident, in the oral evidence, the place of incident is also mentioned differently and there is no recent sign of subjecting her for sexual act. Though the victim girl made the statement before the doctor, her statement is also clear that from last one year she is having an acquaintance with the accused and loved him and also Section 164 Cr.P.C., statement clearly discloses that when the parents have fixed the marriage with another boy, she only insisted the accused to take her and hence ingredients of Section 366 as well as 376 of IPC and also Section 4 of POCSO Act is missing and hence the trial Court has not committed any error in acquitting the accused.

14. Therefore, we do not find any grounds to come to other conclusion that it is a case for conviction and trial Court not committed an error in appreciating the evidence and unless the judgment and reasoning of the trial Court is perverse and not considered the material on record, the



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question of reversing the same does not arise. In a case of acquittal also, the benefit of doubt goes in favour of the accused if two views are possible.

15. It is a settled position of law that if any two views are possible and even if Court comes to the conclusion that two views are possible, particularly, only by relying upon certain evidence, this Court cannot convert the acquittal into conviction as contended by learned HCGP for State and benefit of doubt goes in favour of the accused only and unless, the cogent evidence is placed before the Court and any miscarriage of justice is found in appreciating the evidence available on record, then the Court can convert the acquittal into conviction and in the case on hand, even for coming to two views also, the evidence available before the Court is inconsistent with regard to the place of incident and subjecting the victim girl for sexual act and also the medical report also goes against the prosecution including the FSL report.



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16. Under the circumstances, we do not find any reason to convert the same for a conviction as against the acquittal and hence answer the point for consideration as ***Negative.***

17. In view of the discussions made hereinabove, we pass the following:

ORDER

Appeal is hereby ***dismissed.***

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

BSV
List No.: 1 Sl No.: 11