



CNR: KAHC010115042020

NC: 2026:KHC:53212-DB
CRL.A No. 1207 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1207 OF 2020 (C)

BETWEEN:

KISHORE BUNYYA
S/O. LATE KANCHAN BUNYYA
AGED ABOUT 38 YEARS
OCC: MASON
R/O. LABOUR COLONY, BOLARA
MANGALURU-574 142

...APPELLANT

(BY SRI HARISH N. R. ,ADVOCATE)

AND:

THE STATE OF KARNATAKA
WOMEN POLICE STATION, MANGALURU
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, S.P.P.-II A/W
SRI RANGASWAMY R., H.C.G.P.)

THIS CRL.A IS FILED U/S.374(2) CR.P.C TO SET ASIDE
THE JUDGMENT OF CONVICTION DATED 12.12.2019 AND
ORDER OF SENTENCE DATED 16.12.2019 IN SPL. C. NO.
97/2017 BY THE LEARNED II ADDITIONAL DISTRICT AND

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by
SHARADAVANI
B
Location: HIGH
COURT OF
KARNATAKA





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SESSIONS (SPECIAL) JUDGE, D.K., MANGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376 & 506 OF IPC AND SECTION 6 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE B.PRAMOD

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

The appellant/accused has been convicted by the Court of the Second Additional District and Sessions (Special) Judge D.K. Mangaluru, in Special Case No.97/2017, vide Judgment dated 12.12.2019 for the offences punishable under Section 376 and 506 of IPC and Section 6 of the POCSO Act, 2012.

2. He is sentenced to undergo imprisonment for life for the offence punishable under Section 376 of IPC and Section 6 of the POCSO Act, 2012 and to pay a fine of



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Rs.5,000/-, in default of payment of fine, to further undergo RI for 3 months.

3. For the offence punishable under Section 506 of IPC, he is sentenced to undergo S.I. for a period of 1 year.

4. While passing the sentence, the learned trial Court has made the following observation:

"6. Since the act of the accused proved in the present case constitutes an offence punishable under the POCSO Act and also under Section 376 of IPC, as per the mandate of Section 42 of the Protection of Children from Sexual Offences Act, 2012, the court has to impose punishment which is greater in degree. As per Section 376 of IPC, the punishment prescribed is rigorous imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and shall also be liable to fine. The punishment prescribed under Section 6 of the Protection of Children from Sexual Offences Act, 2012 is rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

7. The imprisonment prescribed under Section 6 of the Protection of Children from Sexual Offences Act, 2012 is rigorous imprisonment for a term which shall not be less than ten years and it is undoubtedly greater than the punishment prescribed under Section 376 of IPC and hence Section 6 of the Protection of Children from Sexual Offences Act, 2012 is applicable while sentencing the accused."



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5. Heard the learned counsel for the appellant, learned SPP-II for the State and perused the material on record.

6. The case of the prosecution is that, 3 years prior to lodging of the complaint, the accused being the father of minor victim girl, aged about 14 years, when her mother was not present in the house, committed forcible penetrative sexual assault on her repeatedly and when the victim resisted, threatened her with dire consequences. As a result of the said act, she became pregnant and delivered a baby. Further, by such act, the accused outraged her modesty and thereby committed the offences punishable under Section 376, 506 and 354 of IPC and under Section 5, 6,7 and 8 of the POCSO Act, 2012.

7. In order to establish the charges, the prosecution examined 12 witnesses and got marked 24



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documents. The defense of the accused was one of total denial.

8. The law was set into motion, by the victim herself and based on her complaint-Ex.P1, case was registered against the accused.

9. The prosecution has got marked Ex.P12-school certificate, to prove the age of the victim. PW.5 is the teacher of the school, where the victim studied at the relevant point of time. As per Ex.P12, the date of birth of the victim is 13.09.2004. In fact, the defense has not disputed the age of the victim. It is also not in dispute that the victim is the daughter of the accused and PW.2.

10. The victim, examined as PW.1 has supported the case of the prosecution. She has corroborated the complaint averments. As per Ex.P1 and the evidence of PW.1, when victim's mother was in the hospital for her delivery, i.e., about 3 years prior to lodging of the



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complaint, the accused used to touch her private part and molest her. After she attained puberty, while her sister was sick and admitted to hospital, her mother had gone to the hospital to take care of her and at that time, the accused committed penetrative sexual assault on her.

11. The victim's mother, noticing some physical changes in her, took the victim to the hospital on 09.03.2017, wherein, it was revealed that she was pregnant. Hence the complaint was lodged. The statement of the victim was also recorded by the Magistrate under Section 164 Cr.P.C., which is marked as Ex.P9.

12. In this case, the victim's mother and elder brother examined as PWs.2 and 4 respectively, have not supported the case of the prosecution. However, based on the victim's testimony and the medical evidence, the trial Court has held that the prosecution has established the charges leveled against the accused for the offences



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punishable under Sections 376 and 506 of IPC and under Section 6 of the POCSO Act.

13. PW.8, the doctor has deposed that on 10.03.2017 she examined the victim, who was accompanied by her mother. The victim was brought before her with a history of alleged sexual intercourse by her father. She has further stated that the history was given by the victim as well as her mother and on examination, she found that the victim was pregnant by 26 to 27 weeks. Ex.P13 is the medical report issued by PW.8.

14. The Scientific Officer who conducted the DNA Profile Test has been examined as PW.12. As per the report, Ex.P19 furnished by PW.12, the accused is the biological father of the baby born to the victim.

15. The learned counsel for the appellant contended that the blood samples for the purpose of DNA



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examination was not collected properly and therefore, the result could not be accurate. However, the same has not been elicited in the cross-examination of PW.12. Hence, the conclusive result arrived at by PW.12 on examination of the blood sample and the report issued by him, marked as Ex.P19 cannot be doubted. The learned trial Court has extensively examined the evidence of PW.12, the procedure conducted by her, the DNA report-Ex.P19, coupled with the evidence of the victim to hold that there is absolutely no scope to disbelieve the DNA profile result.

16. The Learned trial Court relied on a decision of the Apex Court in the case **OF SUNIL V. STATE OF MADHYA PRADESH**, reported in **(2017) 2 SCC (Cri) 372**, to hold that even in the absence of the DNA profiling result, if the evidence of the victim is trustworthy and believable, the accused is liable to be convicted.

17. On a careful appreciation of the evidence on record, we are convinced that, the DNA report issued by



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PW.12 is reliable, as no ground is made to disbelieve the said report. The said report corroborates the evidence of the victim.

18. We have also taken into consideration the defense of the accused. Apart from the bare denial that the witnesses have deposed falsehood, no other specific defense has been taken by him. In such circumstances, the presumption under Section 29 of the POCSO Act also arises against the accused.

19. The victim in her evidence has specifically stated that the accused had threatened her while committing the penetrative sexual assault. Even in her statement recorded under Section 164(5) Cr.P.C., by the Magistrate, she has stated regarding the threat given by her father/accused.

20. Having re-appreciated the entire evidence and material record, we are of the considered view that the



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trial Court, based on the evidence and material on record has convicted the accused for the offences punishable under Sections 376 and 506 IPC and Section 5 read with Section 6 of the POCSO Act, 2012, the reasons assigned are in accordance with law.

21. The trial Court has sentenced the accused to undergo life imprisonment for the offence punishable under Section 376 of IPC and Section 6 of the POCSO Act, 2012.

22. The learned counsel for the appellant has submitted that the accused has suffered a stroke in the prison and he has taken treatment at Mc Gann Hospital, Shivamogga and Jayadeva Institute of Cardiovascular and Sciences Research, Bengaluru. The medical documents regarding the treatment availed by the accused are furnished. We have secured the medical report from the Central Prison Shivamogga, through learned SPP-II.



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23. We have noticed that due to seizure disorder, the accused went for CT scan of brain. As per the CT Scan report, there is a *scalp hematoma noted in the right front of the temporal region*. The medical reports would disclose that the accused was treated conservatively for *cardiovascular conditions* and for *old cerebrovascular accident (recurrent CVA)* and *seizure disorder*.

24. The incident took place prior to 01.10.2016. As on the date of incident, the punishment prescribed for the offence under Section 6, i.e., for committing aggravated penetrative sexual assault is imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. The punishment prescribed for Section 6 of the POCSO Act being higher than the punishment prescribed for Section 376 IPC, the accused is liable to be sentenced for the offence punishable under Section 6 of the POCSO Act.



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25. Considering the medical documents pertaining to the appellant, the sentence imposed can be reduced. Hence, we proceed to pass the following:

ORDER

- i. The appeal is ***allowed in part.***
- ii. The Judgment and Order dated 12.12.2019 passed by the Court of the II Additional District and Sessions (Special) Judge D.K. Mangaluru, in Special Case No. 97/2017, convicting the appellant/accused for the offences punishable under Section 376 and 506 of IPC and Section 6 of the POCSO Act 2012 is ***confirmed.*** The order on sentence dated 06.12.2019 passed for the offence punishable under Section 376 of IPC and Section 6 of POCSO Act, 2012 is hereby ***modified.***
- iii. The appellant/accused is sentenced to undergo rigorous imprisonment for a period of 12 years.



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- iv. He shall pay fine of Rs.5,000/-, in default of payment of fine, shall undergo RI for a period of three months.
- v. The sentence imposed for the offence punishable under Section 506 of IPC is ***confirmed.***
- vi. Both the sentences shall run concurrently. The accused shall be entitled to set off under Section 428 of Cr.P.C. (Section 468 of BNSS, 2023).
- vii. The rest of the order passed by the trial Court, regarding payment of compensation to the victim-PW.1 is not disturbed.
- viii. The compensation as directed by the trial Court, if not already paid, the Secretary, District Legal Services Authority (Dakshina Kannada),



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Mangaluru, shall take necessary steps to
release the compensation at the earliest.

- ix. A copy of the order shall be sent to the
secretary, DLSA (D.K.) Mangaluru.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

BSV
List No.: 1 Sl No.: 8