



CNR: KAHC010156562019

NC: 2026:KHC:45671-DB
CRL.A No. 445 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.445 OF 2019 (A)

BETWEEN:

STATE BY HARIHARAPURA
POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-1

...APPELLANT

(BY SRI CHENNAPPA ERAPPA, H.C.G.P.)

AND:

AHAMED BAIG
AGED ABOUT 65 YEARS
S/O. BUDAIN BAIG
R/O. GANDHINAGARA
SIBINAKERE POST
THIRTHAHALLI TALUK
SHIVAMOGGA DISTRICT-577 432

...RESPONDENT

(BY MISS PAVANA B. K., ADVOCATE FOR,
SRI PRATHEEP K. C., ADVOCATE)

Digitally signed
by
SHARAD DAVANI
B
Location: HIGH
COURT OF
KARNATAKA





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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 DATED 01.06.2018, IN SPL.CASE (POCSO) NO.8/2017 PASSED BY THE I ADDITIONAL SESSIONS AND SPL.JUDGE, CHIKKAMAGALURU, THEREBY ACQUITTING THE RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376(2)(i)(n) OF IPC, SECTIONS 3(a), 4, 5(1) AND 6 OF THE POCSO ACT AND SET ASIDE THE AFORESAID JUDGMENT AND ORDER OF ACQUITTAL DATED 01.06.2018 IN SPL.CASE (POCSO) NO.8/2017 PASSED BY THE I ADDITIONAL SESSIONS AND SPL.JUDGE, CHIKKAMAGALURU, THEREBY ACQUITTING THE RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376(2)(i)(n) OF IPC, SECTIONS 3(a), 4, 5(1) AND 6 OF THE POCSO ACT AND ALSO CONVICT AND SENTENCE THE RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376(2)(i)(n) OF IPC, SECTIONS 3(a), 4, 5(1) AND 6 OF THE 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



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ORAL JUDGMENT

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

This matter is listed for final hearing and we have heard Sri Chennappa Erappa, learned HCGP for the State and Miss Pavana B.K., learned counsel for Sri Pratheep K.C., learned counsel for the respondent/accused.

2. The factual matrix of the case of prosecution before the Trial Court is that the daughter of complainant by name, Radhika was a minor and studying in 6th Standard, the accused used to come to the shop situated near Masjid of Kammaradi for selling flower. That on 19.12.2016 at about 08.30 a.m., the accused took the minor girl victim into the forest of Sy.No.139, situated behind Sree Kalikamba Temple, Kammaradi Village, by assuring to give money and by threatening her, put his hand into her clothes, smeared the chest, face, body and removed her underwear, inserted his penis into her mouth and committed rape against the victim girl. The accused used to commit sexual assault on the minor victim girl from the past 4 months. One Prashant and Umesh



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Poojari saw the accused sexually harassing the victim girl and reported same to the complainant. The complainant lodged the report to the Hariharapura Police. The police, based on the said complaint, registered the case, arrested the accused and after investigation filed the charge sheet. The accused did not plead guilty and claimed to be tried.

3. The prosecution, in order to bring home the guilt of the accused, examined 10 witnesses as PW1 to PW.10 and also got marked 17 documents as Exhibit P1 to Exhibit P17. The accused was subjected to 313 statement as contemplated under the provisions of Code of Criminal Procedure. Accused has not led any defense evidence.

4. The Trial Court having taken note of the inconsistency in the medical evidence of the Doctor who has been examined as PW10 and the evidence of victim as well as the mother in respect of the statements made before the learned Magistrate under Section 164 of CrPC not supports the case of prosecution and having considered the material on record comes to the conclusion that the prosecution has



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failed to prove the alleged act of the accused and acquitted the accused. Being aggrieved by the same, the present appeal is filed by the State.

5. The learned HCGP for the State would vehemently contend that the Trial Court has committed an error in not considering both oral and documentary evidence available on record and proceeded erroneously though other witnesses have supported the case in proving alleged act of the accused. The learned HCGP also brought to the notice of this Court the evidence of PW10-Doctor and the document of Exhibit P12-School Certificate and also Exhibit P3-Medical Examination Report of the Doctor and prayed this Court to convict the accused by reversing the judgment of acquittal of the Trial Court.

6. Per contra, the learned counsel appearing for the respondent/accused would submit that the evidence of the prosecution i.e. victim girl and mother have not supported the case of the prosecution and even the documentary evidence at Exhibit P3 not supports the case of persecution.



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The learned counsel would submit that though it is the case of the prosecution that the victim is a minor, the same is not proved by adducing cogent evidence and the document produced as per Exhibit P12 cannot be believed. The Trial Court having taken note of all the materials available on record has rightly acquitted the accused.

7. Having heard the learned counsel for the respective parties and having perused the material on record, the points that would arise for the consideration of this Court are:

"i) Whether the Trial Court has committed an error in not relying the evidence of PW10-Doctor as well as the documentary evidence of Exhibit P3 and also not considered the evidence of 164 Statement which is marked before the Trial Court as per Exhibit P6 and whether it requires interference of this Court converting the said into a conviction from acquittal?

ii) What order?"

Regarding Point No.(i):

8. Having considered the both oral and documentary evidence, the prosecution has mainly relies on the evidence



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of PW.3 and PW.4 i.e. the victim and her mother. But they have not supported the case of prosecution and have turned hostile. Even the Trial Court has taken note of the evidence of both victim as well as the mother in paragraph No.23 wherein also stated that victim herself contradict her evidence compare to the statement under Section 164 of CrPC. The evidence before the Court is contrary to the statement made before the learned Magistrate under Section 164 of CrPC. The version of PW2 and PW5 before the Court is that the accused put his penis into the mouth of victim girl. The victim has not stated anything against the accused before the Court. Apart from that, the Trial Court also taken note of the evidence of PW3 and PW10.

9. PW10-the Doctor, in his evidence has stated that the victim girl was brought with the history of rape and on examination, no injuries were found on the body of the victim and he has conducted the blood test, urine test and scanning of the victim and given the report as per Exhibit P3 and on perusal of Exhibit P3 also there is no any sign of



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history of sexual assault and no injuries noted anywhere on the body and no history of sexual assault of any type. When such report is available before the Court and in order to prove the fact that she was subjected to sexual act there is no any positive evidence.

10. With regard to victim girl is a minor by age is concerned, the prosecution mainly relies upon the document at Ex.P12 which is a Study Certificate of victim which is nothing but an Age Estimation Certificate. Learned 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. This document also will not come to the aid of the prosecution. When such materials were assessed by the Trial Court by considering the same, rightly comes to the conclusion that the evidence of the prosecution witnesses not corroborates with each other and there are inconsistencies in the evidence of prosecution witnesses.



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11. Under the circumstances, we do not find any ground to interfere with the findings of the Trial Court and the same not comes within the principles of the judgment of the Apex Court in the case of **MALLPPA AND OTHERS V. STATE OF KARNATAKA** reported in **(2024) 3 SCC 544** and while reversing the judgment of acquittal into conviction, there must be cogent and convincing evidence and only if perversity is found, the Court can reverse the same. Hence, we answer the point No.(i) in the negative.

Regarding Point No.(ii):

12. In view of the discussions made above, we pass the following.

ORDER

The appeal is **dismissed**.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE