



CNR: KAHC010166662019

NC: 2026:KHC:44039-DB
CRL.A No. 1118 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.1118 OF 2019

BETWEEN:

THE STATE OF KARNATAKA
BY POLICE INSPECTOR
ULLAL (KONAJE) POLICE STATION
MANGALURU
REP. BY PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01

...APPELLANT

(BY SRI MOHAMMED AYUB ALI, ADDL. SPP)

AND:

ABDUL KHADER YAMANI
S/O ABUBAKKER
AGED ABOUT 29 YEARS
R/O KINYAJE HOUSE
POYYATHBAIL HOUSE
KODLAMONGARU POST & VILLAGE
VIA MAJESHWAR
KASARAGOD TALUK & DISTRICT
KERALA STATE-671121

...RESPONDENT

(BY SRI JEEVAN K, ADVOCATE)

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



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THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 19.11.2018 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS (SPECIAL) JUDGE, D.K., MANGALURU IN S.C.NO.16/2015 FOR THE OFFENCE P/U/S 376(2)(F) AND 506 OF IPC AND ETC.

THIS APPEAL, COMING ON FOR FINAL 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 challenging the judgment and order of acquittal dated 19.11.2018 passed in S.C.No.16/2015 by the II Additional District and Sessions (Special) Judge, D.K., Mangaluru for the offences punishable under Sections 376(2)(1)(f) and 506 of IPC and Section 10 of POCSO Act.

2. This matter is listed for final hearing. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the prosecution is that the minor victim girl aged about 6½ years was studying



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Quran at Madarasa situated at Boliyar Village before 25.08.2013 and accused being the teacher of Madarasa, forcibly committed rape on the victim girl. Hence, invoked the offence punishable under Section 376(2)(f) of IPC. So also, it is the allegation that after committing the sexual assault on the minor victim girl, gave life threat that if she discloses this matter to anybody, he will put the victim girl and her mother to jail and invoked Section 506 of IPC and also the allegation that accused knowing fully well that the victim girl was a minor, she was subjected to sexual harassment and committed sexual assault on her and hence, invoked Section 10 of the Protection of Children from Sexual Offences Act, 2012.

4. The prosecution in order to prove the charges levelled against the accused relies upon the evidence of PW1 to PW16 and also the documentary evidence of Ex.P1 to 12. No material objects are seized and defence also not led any evidence. The Trial Court considered that PW1 is the mother of the victim girl and she is the complainant also. PW2 and PW3 are stated to be the attesting witnesses to the spot mahazar at Ex.P4; PW4 is the father of the complainant and he is stated to



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be the attesting witness to the spot mahazar. PW5 and PW6 are the school teachers of victim girl; PW7 was the President of Child Welfare Committee at the relevant point of time, who has recorded the statement of the victim girl as per Ex.P6. PW8 is a Coordinator, Child Line, Mangalore, who went along with the complainant-PW1 to Konaje Police Station to lodge the complaint and thereafter, she has produced the victim girl before the Child Welfare Committee, Mangalore to record statement of the victim. PW9 is the ASI; PW10 is the Medical Officer and PW11 is the victim girl. PW12 is the Police Constable who has carried original complaint and FIR to the Court. PW13 is the then Head Constable who has received the complaint and PW14 is the then Police Sub-Inspector, who has apprehended the accused and produced him before PW15 along with the report at Ex.P10. PW15 is the then Investigating Officer, who has conducted the major portion of the investigation and PW16 is the Police Inspector, who after completion of investigation has filed the charge sheet.

5. The Trial Court taken note of evidence of PW11- victim girl who did not depose before the Court, though, she



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made the statement before the learned Magistrate under Section 164 of Cr.P.C and so also the mother of the victim girl has not supported the case of the prosecution who has been examined as PW1. The best witness for evidence is PW4, who is the maternal grandfather of the victim. PW4 has stated that the victim is his granddaughter and she was studying in Boliyar Higher Primary School and victim would go to learn Arabic in Madarasa in the morning from 06.30 a.m. to 07.30 a.m. He had identified the accused and stated that he was teaching Arabic language to the students. PW4 other than deposing these facts has turned hostile.

6. The Trial Court having considered the evidence of PW1, PW11 as well as PW4, comes to the conclusion that no material is produced by the prosecution to prove its case. The Trial Court has taken note of the statement of victim girl made before the learned Magistrate under Section 164 of Cr.P.C which is marked as Ex.P2 wherein narrated about the incident. However, surprisingly she kept quiet before the Court without narrating the same. The Trial Court also taken note of evidence of PW5 and PW6 which clearly shows that the minor girl victim



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was a student of the said school. The Trial Court taken note of the evidence of the doctor who examined the victim girl wherein he has opined that there was no sign of subjected the victim girl for sexual act and no medical evidence before the Court to show that victim girl was subjected to sexual act. Hence, the Trial Court acquitted the accused.

7. Being aggrieved by the judgment of the Trial Court, the present appeal is filed before this Court by the State.

8. The main contention of the learned Additional SPP before this Court is that Trial Court fails to take note of the fact that it is an heinous offence against the child who is aged about 6½ years and she has stated before the learned Magistrate under 164 statement that she was subjected to sexual act. Trial Court failed to take note of the fact that witnesses PW1, PW4 and PW11 had been won over by the accused and ought to have appreciated the same considering the material on record. Her school certificate is marked as Ex.P7 and her school teacher was also examined in support of the said document as PW6 and this coupled with medical evidence which clearly indicate that the offence under POCSO Act clearly attracts.



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Thus, the Trial Court fails to consider the same in a proper perspective.

9. Per contra, the counsel appearing for the respondent would submit that there is no material before the Court to prove that the respondent has committed the alleged offence since the very victim girl as well as mother and grandfather have not supported the case of prosecution. The counsel also vehemently contend that except proving of document of Ex.P7, there is no any other document or material before the Court to show that victim was subjected to sexual act. The doctor's evidence is also silent about the fact that victim was subjected to sexual act and there is no medical evidence before the Court. The same is taken note of by the Trial Court. The Trial Court having considered the material on record, detail discussion was made in paragraphs 13 to 25. Hence, it does not requires any interference.

10. Having heard the learned counsel appearing for the respective parties and also on perusal of the material available on record, the point that would arise for the consideration of this matter before the Court is:



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1. Whether the Trial Court committed an error in acquitting the accused for the offences invoked against him and whether this Court can on re-appreciation, convert the acquittal appeal into conviction appeal for the offences invoked against him on the ground of perversity in appreciating the evidence by the Trial Court as contended?
2. What order?

11. Having heard the respective counsel for the parties and also on perusal of material on record, this Court taken note of the allegations made against the accused invoking the offence of 376 for subjecting the victim girl for sexual act and also causing life threat under Section 506 of IPC and also invoking Section 10 of the POCSO Act. The main evidence before the Court is PW1, PW11 and PW4. Both PW1 and PW4, who are the mother and grandfather of the victim girl have not supported the case of prosecution and victim girl was also very silent before the Court even though she made the statement under Section 164 of Cr.P.C as per Ex.P2 before the learned Magistrate but not deposed the same before the Court. The Trial Court also taken note of demeanor of the witness while



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recording the evidence of victim girl-PW11 and surprisingly, she was very silent before the Court when the oath was taken has not narrated the same. Ex.P2 is not the substantive piece of evidence since the statement which was recorded before the learned Magistrate is not corroborated by supporting the case of prosecution by PW11. PW1 and PW4 i.e., the mother and grandfather have also not supported the case of prosecution. Hence, there is no any iota of evidence before the Court to show that victim minor girl was subjected to sexual act. If Ex.P2 is appreciated by the Trial Court, but the opinion of the doctor that there was no sexual intercourse, thus, the same also would not help the case of the prosecution. In Ex.P1 also there is no allegation of sexual intercourse, but there was an allegation of touching the private parts of the victim girl and the same is taken note of by the Trial Court in paragraph 23 that touching the private parts of the victim girl and causing pain to the private part, Ex.P8 will not help the defence of the accused that there was no sexual intercourse on minor victim girl.



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12. The defence of the accused is also that in the Jumma Masjid of Boliyar, there was a clash between S.K.S.S.F and S.S.F with regard to administration matters of the Masjid. It is also the defence that accused was teaching Arabic from the books approved by S.K.S.S.F. The people of S.S.F had ill-will on accused, because he was teaching from those particular books. When the accused was examined under Section 313 of Cr.P.C, he has stated that the persons of S.S.F had hoisted this false case against him and explanation also given by the accused with regard to the enmity is concerned. When such material is also taken note of by the Trial Court, the other evidence of PW5 and PW6 cannot be relied upon because whatever they have stated before the Court is not the direct evidence since they narrated the facts which they have heard from PW11-victim girl. When the victim girl herself has not deposed before the Court in terms of the contents of Ex.P2 and there is not medical evidence in this regard, the very charges levelled against the accused is not proved. Hence, the question of reversing the judgment of the Trial Court does not arise. If the cogent evidence is not properly appreciated and if any



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miscarriage of justice in view of non-appreciation, then only the Appellate Court can reverse the order of acquittal into a conviction. The said circumstances are not warranted in the case on hand. Hence, we do not find any ground to come to other conclusion in view of the principles laid down in the judgment reported in **(2024) 3 SCC 544** in a case of **MALLAPPA AND OTHERS vs STATE OF KARNATAKA** and in the case of **P. YUVAPRAKASH vs STATE rep. by Inspector of Police** dated **18.07.2023**. Hence, we answer the above point as negative.

13. 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**

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