



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.599 OF 2021 (C)

BETWEEN:

JAGADEESH BABU @ BABU
S/O. LATE RAJANNA
AGED ABOUT 34 YEARS
RESIDING AT ANTHARAGANGEPALYA
KUDURU HOBLI, MAGADI TALUK
RAMANAGARA DISTRICT-561 101.

...APPELLANT

(BY SRI N.R. KRISHNAPPA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY KUDUR POLICE STATION
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX
BENGALURU-560 001.
2. SRI VENKATESH
S/O. HUCHAIAH
AGED ABOUT 61 YEARS
OCCUPATION: COOLIE
RESIDING AT ANTHARAGANGEPALYA
KUDURU HOBLI, MAGADI TALUK
RAMANAGARA DISTRICT-561 101.

...RESPONDENTS

(BY SRI RAHUL RAI K., H.C.G.P. FOR R-1;
SRI V.S. VINAYAKA, ADVOCATE, FOR R-2 (APPOINTED AS
AMICUS CURIAE VIDE ORDER DATED 20-02-2025))

* * *

Digitally
signed by
ANJALI M
Location:
High Court
of Karnataka



THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 26-02-2019 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, IN SPECIAL CASE NO.116 OF 2018, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 4 OF POCSO ACT.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

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

This appeal is preferred by the convict, challenging the judgment and order of conviction and sentence passed against him by the Court of I Additional District and Sessions Judge, Ramanagara, in Special Case No.116/2018.

2. Vide impugned judgment and order, the trial Court has convicted the appellant for the offence punishable under Section 4 of the POCSO Act, 2012, and sentenced him to undergo rigorous life imprisonment and



to pay fine of Rs.25,000/-, in default, to undergo further six months of imprisonment.

3. We have heard the learned counsel Sri N.R.Krishnappa appearing for the appellant, learned HCGP Sri Rahul Rai appearing for the State and Sri V.S. Vinayaka, learned *Amicus Curiae* appearing for respondent No.2/father of victim. Perused the evidence and material on record.

4. The case of prosecution is that, about 4-5 months prior to 13.03.2018, when there was no one present in the house, accused knowing fully well that the victim girl is a minor, misbehaved with her and committed forcible penetrative sexual assault and impregnated her and thereby committed an offence under Section 4 of the POCSO Act, 2012.

5. Law was set into motion on a complaint lodged by the victim herself, marked as Ex.P1. It is stated that the victim is a resident of Antaragange palya, Kuduru



Hobli, Magadi Taluk, Ramanagara District. Her mother is no more. She is residing along with her father and brother. Her father had left the house about 8 to 10 months prior, after quarrelling with the neighbours and he was living in the house of their relatives in Gunnagere Village. Hence, victim and her brother were residing in the house. About 4-5 months prior, victim's cousin sister's husband, Babu, i.e., the accused, started visiting the house when there was no one present and he developed a close acquaintance with her. He was misbehaving with her and in spite of her resistance, committed forcible sexual intercourse on her. He told he would marry her and not to disclose the incident to others. Hence, she did not reveal the incident to others. About one and half months prior, her sister, Jyothi, informed one Gangamma, a Anganvadi Teacher, noticing her fat stomach. The said Gangamma took her to Government Hospital, Kuduru, wherein the doctor who examined her told that she is 3 months



pregnant. The matter was then informed to victim's brother and after 3 days, she was taken to Balamandira.

6. In Ex.P1, victim has stated that the accused is responsible for her to become pregnant and sought to take action against him.

7. The SHO of Kuduru Police Station - PW9, on receiving the complaint, registered a case against the accused and forwarded the FIR-Ex.P8 to the concerned Court.

8. PW10 - C.P.I. took up further investigation, he arrested the accused on 15.03.2018, sent him for medical examination and also sent the victim girl to Government Hospital, Ramanagara, for medical examination. The victim's statement was recorded by the learned JMFC under 164 Cr.P.C. The spot mahazar - Ex.P3 was prepared in the house of the victim. The age proof certificate - Ex.P5 of victim was collected from Kuduru Government School, where she was studying and the



documents from Vandaraguppe Girl's School pertaining to the victim, marked as Ex.P14, were also collected and on completion of investigation, charge sheet was filed.

9. Before the trial Court, prosecution got examined PWs.1 to 10 and got marked Exs.P1 to P14 to establish the charge against the accused. The defence of the accused was one of total denial. However, the accused did not choose to lead any evidence on his behalf.

10. The learned Sessions Judge came to the conclusion that the victim was a minor as on the date of registration of the case and this fact was known to the accused, he being a relative. Further, when the victim's father and her elder brother were away from their home and when the victim was alone at home, accused being the relative and husband of her cousin sister, knowing fully well that she was a minor, induced her and promising that he would marry her, committed penetrative sexual assault.



11. The learned Sessions Judge observed that when such being the fact, the burden lies upon the accused as provided under Section 29 of the POCSO Act to prove his innocence, as the prosecution has discharged its burden by placing consistent and corroborative evidence.

12. The learned Sessions Judge has relied on the evidence of victim as well as evidence of PW2 to PW4 and the medical evidence. Further, to ascertain the age of the victim, the learned Sessions Judge relied on Ex.P5 - School Certificate marked through the IO, wherein the date of birth of the victim is mentioned as 09.07.2002.

13. Assailing the impugned judgment, learned counsel for the appellant, Sri N.R.Krishnappa, vehemently contended that there is an inordinate delay in lodging the complaint and the said delay has not been properly explained. The victim's acquaintance with other persons is not ruled out and that she became pregnant due to the act committed by the accused is not established beyond



reasonable doubt. He contended that there is no DNA examination conducted to show that the accused is responsible for victim's pregnancy. He further contended that the prosecution has not established that the victim was a minor as on the date of offence, by placing convincing material. Ex.P5 is only a Certificate issued by the Headmaster of the school, which cannot be relied upon, as the said document is not an authentic document to prove the age. Further, the Headmaster of the school is also not examined to speak in support of Ex.P5. He further contended that as per PW8, it is clear that even prior to lodging of the complaint, victim was examined by a doctor and Ex.P7 is the scanning report, which shows that victim was examined by the doctor earlier, however, the same has been suppressed, which gives rise to the genuineness of the prosecution case. He further contended that if the evidence of the victim and her statement recorded under 164 Cr.P.C. marked as Ex.P2 are perused, then it cannot be said that she was subjected to forcible



sexual act. Hence, in the absence of any convincing proof regarding the age of the victim, the charges levelled against the accused cannot be said to have been established and therefore, sought to allow the appeal and set aside the judgment of conviction and sentence passed by the trial Court.

14. The learned counsel also contended that the complaint was not made by the victim, but some official have intentionally involved the appellant/accused in this case. He contended that since the accused and his wife have advised the victim girl that she should not move with boys, as such, she became enraged and created a false story against the accused.

15. *Per contra*, the learned HCGP contended that the victim is a close relative of the accused. By taking advantage of her close acquaintance, the accused committed a heinous act, due to which, she became pregnant. In Ex.P1 itself, the victim has categorically



stated that it was the accused who committed the offence, and responsible for her pregnancy. Her evidence is further corroborated by the evidence of PW2 to PW4 as well as medical evidence. Hence, presumption under Section 29 of the POCSO Act, 2012, operates against the accused. He contended that Ex.P5 - Age Certificate issued by the School, has been marked with consent and therefore, now the accused cannot raise a contention that the date of birth of the victim is not as mentioned in Ex.P5 and she is not a minor. He contended that the learned Sessions Judge having appreciated the entire evidence and material on record and assigning reasons, has rightly convicted the accused.

16. Learned *Amicus Curiae* appearing for respondent No.2, contended that in a case of this nature, victim's evidence itself is sufficient to prove the guilt of the accused and in this case, the victim has categorically stated in her evidence that accused was responsible for her to become pregnant. There is nothing elicited in her



cross-examination to disbelieve her evidence. Further, age of the victim has not been disputed by the accused, as Ex.P5 was marked in evidence with consent. Accordingly, learned *Amicus Curiae* sought to dismiss the appeal.

17. It is an undisputed fact that victim girl-PW1 was of tender age when the alleged incident took place and also when her evidence was recorded in the Court. As per prosecution, she was a minor when the incident took place. Being a child witness of tender age and sole direct witness in support of the prosecution case, evidence of PW1 has to be evaluated with great care and caution. In this context, judgment of Hon'ble Apex Court in case of ***Radheshyam v. State of Rajasthan*** reported in **(2014) 5 SCC 389** can be noted with benefit whereunder it has been held as follows:

"In Panchhi, (1998 SCC (cri) 1561) after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with



greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation"

18. Keeping in mind that the victim is the sole material witness and she is a child, it will have to be first



examined as to which category the testimony of PW1 (victim) would fall in the present case. If the testimony is found to be wholly reliable, there would be no necessity of corroboration and if it was found to be wholly unreliable, it would have to be discarded. But, if it is found neither wholly reliable nor wholly unreliable, it would definitely require corroboration. According to prosecution, the evidence of victim (PW1) is corroborated by the evidence of PWs.2 to 4 and 6 and medical evidence.

19. In cases concerning the offences under POCSO Act, sheet anchor of the arguments made on behalf of State is presumption that operates against accused under Section 29 of the POCSO Act. It is also contended that in cases pertaining to POCSO Act, as contended in the present case by learned High Court Government Pleader on behalf of the State, court has to presume that accused has committed the alleged offence for which he is charged under the said Act, unless contrary is proved. On this basis, it was submitted on behalf of the State that Court



has to presume that accused has committed the offence for which he is charged under the said Act, unless the contrary is proved. On this analysis, it is contended on behalf of the State that it is for accused to have proved contrary and burden was entirely upon him to prove his innocence, which he had failed to discharge.

20. In light of the contention raised by the State, it is necessary to examine the effect of presumption arising under Section 29 of POCSO Act and the manner in which accused can rebut such presumption. Section 29 of the POCSO Act reads as follows:

"Section 29 - Presumption as to certain offences
- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."



21. Perusal of the above provision does indicate that it is for the accused to prove the contrary namely, he has not committed or abetted the commission of an offence under section 3, 5, 7 and 9 of the POCSO Act and in case he fails to do so, presumption would operate against him leading to his conviction under the provisions of the Act. It cannot be disputed that no presumption is absolute and every presumption is rebuttable. It cannot be countenanced that presumption under Section 29 of the Act is absolute. It would come into operation only when prosecution is first able to establish the fact and that would form the foundation for presumption under Section 29 of the Act to operate. Otherwise, all that the prosecution would be required to do, is to file a charge-sheet against the accused under the provisions of the said Act and then claim that evidence of prosecution witness would have to be accepted as gospel truth and entire burden would be on the accused to prove to the contrary. Such a position of law or interpretation of the



presumption under Section 29 of the Act cannot be accepted as it would clearly violate the constitutional mandate and no person can be deprived of liberty, except in accordance with the procedure established by law. Keeping this in mind, the oral and documentary evidence placed by the prosecution have to be examined.

22. As per Ex.P1, about 4-5 months prior to lodging of the complaint, the accused was visiting the house of the victim girl when there was no one present and he committed forcible penetrative sexual assault inspite of her resistance. About one and half month prior, one Jyothi informed an Anganavadi Teacher, by name of Gangamma, after noticing the fat stomach of the victim, who took her to Kuduru Government Hospital, wherein the doctor informed that victim was three months pregnant. It is stated that thereafter, the victim was taken to Balamandira. It is also stated in Ex.P1 that the accused is none other than the husband of victim's paternal uncle's



daughter and he had developed an acquaintance with the victim and he used to misbehave with her, etc.

23. Victim is examined as PW1. She has stated that Gangamma, Anganavadi worker, took her to the hospital for medical examination, wherein they told that she was three months pregnant. Thereafter, she was sent to Vandaraguppe and from there she was taken to the hospital and once again examined. She has stated that the accused is responsible for her pregnancy. She has further stated that, whenever she was going to school, the accused used to talk to her and tell her that he will marry her and took her to the farm house and removed her clothes and also his clothes and committed penetrative sexual assault and continued the same for 2-3 months. When she became pregnant, he told her that he will give Rs.1,000/- to terminate the pregnancy and not to disclose the incident to others. She then informed the matter to Jyothi, who in turn informed the Anganawadi worker.



24. PW2 is the brother of the victim girl. His evidence corroborates the evidence of PW1. He has also deposed about victim's pregnancy and she informing him that the accused is responsible for her pregnancy.

25. PW3 is the Anganawadi teacher, who took the victim to the hospital. She has also corroborated the testimony of PW1. She has stated that she took the victim to Kudur Government Hospital wherein the Doctor after examination told that victim was three months pregnant. She later informed the matter to the CDPO. The victim was then admitted at the State Girls Home in Vandaraguppe. Even PW3 has stated that on enquiry, the victim informed them that the accused is responsible for her pregnancy.

26. PW4-Jyothi, is the relative of the victim. She has also supported the case of prosecution and deposed about the victim informing her that the accused is responsible for her pregnancy.



27. PW6 is the victim's father. His evidence reveals that he was not present in the village, as he had left the village about six months back. When he returned to the village, he was informed by his sister Lakshmamma about the incident. He has stated that he went and enquired with his daughter and his daughter told him that the accused was responsible for her to become pregnant.

28. PW5 is the medical officer, who examined the accused and issued medical report marked as Ex.P4. He has opined that there is nothing to suggest that accused was incapable for performing sexual intercourse.

29. PW8 is the medical officer, who conducted victim's medical examination. She has stated that on 16.3.2018, the victim was brought to the hospital for medical examination and she was immediately examined. During examination, she did not find any external injuries. The genitalia hymen was ruptured. Pregnancy test was conducted based on urine test and it was tested positive. According to the scan report, victim was 12 to 13 weeks



pregnant. She has opined that the victim was pregnant and it was confirmed by USG. The report is marked as Ex.P6. PW8 has further stated that even prior, victim was brought by the State Girls Home, Vandaraguppe, for examination and during that time a scan report was obtained, which revealed that the victim was 12-13 weeks pregnant. The said report is marked as Ex.P7.

30. From the above evidence on record, we have no hesitation to hold that the victim was subjected to penetrative sexual assault by the accused, due to which, she became pregnant and at the time of lodging of the complaint, she was 12-13 weeks pregnant. There is nothing elicited in the cross-examination of the above witnesses to disbelieve their testimony.

31. The defense tried to elicit from the victim girl that she had acquaintance with other persons. The said suggestion has been out rightly denied by the victim.



32. The contention of the learned counsel for appellant that since there was no DNA report, it cannot be said that the accused is responsible for the pregnancy, cannot be accepted. In this case, the fact that the victim has become pregnant is not disputed. The victim has categorically stated that the accused has committed the act due to which she became pregnant. The victim has stated that the accused used to come to her house when there was no one present and used to misbehave with her. Further, she has stated that the accused by removing her clothes and his clothes, committed penetrative sexual assault and repeated the said act for 2-3 months. The victim's evidence is believable and trustworthy.

33. The learned counsel for appellant has contended that the prosecution has failed to prove that the victim was minor as on the date of incident and no authentic documents are obtained in proof of her age. He contended that the Head Master who issued Ex.P5 is also



not examined and therefore, the prosecution has not proved that the victim was a minor at the time of incident.

34. The prosecution is relying on Ex.P5-certificate, issued by the School, where the victim studied, in proof of her date of birth and to show that the victim was a minor as on the date of incident.

35. We have perused the said certificate marked as Ex.P5. In the said certificate, date of birth of the victim is mentioned as 09.07.2002. If that is taken into consideration, as on the date of commission of the offence, the victim was a minor. It is no doubt true that the Head Master of the said Government Higher Primary School, Kudur, has not been examined by the prosecution. Ex.P5 is the School Admission extract pertaining to the victim girl when she joined I standard. The date of admission is given as 16.06.2008. Date of birth is mentioned as 09.07.2002. It is not disputed by the learned counsel for the appellant that the said certificate was marked with consent. His contention is that the Head



Master ought to have been examined to prove the contents of Ex.P5. When the said certificate was marked with consent, the trial Court had no occasion for summoning the Head Master. There was no objection raised while marking Ex.P5.

36. The learned counsel for appellant has placed reliance on a decision of the Apex Court in the case of **P.Yuvaprakash v. State represented by Inspector of Police** reported in **(2024) 17 SCC 684** to contend that school certificate cannot be relied upon to prove the age of the victim.

37. To prove the age of the victim, the burden is always on the prosecution. In the instant case, Ex.P5 is the School Admission extract which shows the victim joined I standard on 16.6.2008 and her date of birth is 09.07.2002.

38. In the judgment referred supra, the Apex Court has held that as per Section 94(2)(iii) of the Juvenile



Justice Act, the date of birth certificate from the school or matriculation or equivalent certificate by the examination board concerned has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayath and it is only thereafter, in the absence of these documents that the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the authority concerned i.e., Committee or Board or Court.

39. In the case on hand, the certificate is issued by the school where the victim studied at the first instance and the said certificate is marked with consent. Only in the absence of such certificate, the prosecution is expected to furnish either the matriculation certificate or the medical test in proof of the age of the victim. We find that Ex.P5 is reliable and acceptable in the facts and circumstances of the present case and can be relied in proof of the date of birth of the victim. As per the said



Certificate/School Admission extract, the date of birth was 09.07.2002. Therefore, victim was a minor at the time of incident.

40. The learned counsel contended that the prosecution has suppressed the medical examination of the victim conducted prior to lodging of the complaint. Drawing the attention of the Court to the evidence of PW8, the learned counsel contended that, as per her evidence, the victim was examined by one Dr.Chandrakala, who issued Ex.P7 marked through PW8, which shows that the said document is dated 08.02.2018, which is prior to lodging of complaint. He further contended that non-examination of Dr.Chandrakala is therefore, fatal to the prosecution.

41. We are unable to accept the contention of the learned counsel. In this case, the fact remains that the victim was 12-13 weeks pregnant when she was examined by PW8. Even accepting the contention that prior to lodging of the complaint the victim was examined by one



Dr.Chandrakala, that itself will not disprove the prosecution case, since even as per Ex.P7, the victim was carrying pregnancy of 12-13 weeks.

42. The incident took place about 4 to 5 months prior to lodging of the complaint. The complaint is lodged on 13.03.2018. The contention of the learned counsel for appellant that delay in lodging complaint is fatal to the prosecution cannot be accepted. In a case of this nature, normally, the victim or her parents will hesitate to reveal the matter to others. Further, in the complaint as well as in the evidence of the victim, it is stated that the accused told her not to disclose the incident to others. Admittedly, the accused is a close relative of the victim. Hence, the delay if any, in lodging the complaint is not fatal to the prosecution.

43. The accused was arrested on 14.03.2018. He is in custody since then i.e., for about 8 years. The incident is of the year 2017. The trial Court has sentenced the accused to undergo life imprisonment for the offence



punishable under Section 4 of POCSO Act, 2012 and to pay fine of Rs.25,000/-, in default, to undergo further six months imprisonment.

44. It is submitted that the accused is married and having two children. He has no criminal antecedents. Under Section 4 of the POCSO Act, prior to amendment, whoever commits penetrative sexual assault shall be punished with imprisonment of either description 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. Having regard to the entire facts and circumstances of the case, we are of the view that the sentence of life imprisonment imposed against the accused can be reduced to rigorous imprisonment for 10 years. Accordingly, we pass the following:

ORDER

- i. Appeal is **allowed-in-part**.



- ii. The Judgment and Order dated 26.02.2019 passed by the Court of I Additional District and Sessions Judge/Spl. Judge, Ramanagara in Spl.C.No.116/2018, convicting the accused/appellant for the offence punishable under Section 4 of the POCSO Act 2012, is hereby **confirmed**.
- iii. The sentence imposed against the appellant/accused is **modified** as under:
 - a. The accused is sentenced to undergo rigorous imprisonment for 10 years.
 - b. The imposition of fine amount of Rs.25,000/- is confirmed. In default of payment of fine, the accused shall undergo simple imprisonment for a period of six months.
 - c. If the fine amount is deposited, the same shall be paid to the victim (PW1).
 - d. The accused is entitled to benefit of set off.



- e. The rest of the order passed by the trial Court shall be intact.

45. The learned Amicus Curiae Sri V.S.Vinayaka, is entitled to a Honorarium of Rs.10,000/- (Rupees ten thousand only), payable by the High Court Legal Services Committee.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

AM/TL
List No.: 2 Sl No.: 4