

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.821 OF 2022

BETWEEN:

SRI VENKATARAVANA
S/O NARAYANASWAMY
AGED ABOUT 30 YEARS
R/O KOPPAVALIPALLI VILLAGE
NALAVANKI HOBLI
SRINIVASAPURA TALUK
KOLAR DISTRICT 563 135

...APPELLANT

(BY SRI. GIRISH R., ADV.)

AND:

STATE OF KARNATAKA
REPRESENTED BY
CIRCLE INSPECTOR OF POLICE,
SRINIVASAPURA CIRCLE
SRINIVASAPURA TALUUK, KOLAR DISTRICT
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU - 560 001

...RESPONDENT

(BY SRI. M. DIWAKAR MADDUR, HCGP)

THIS CRL.A IS FILED U/S 374(2) OF CODE OF
CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE
JUDGMENT OF CONVICTION AND ORDER ON SENTENCE

DATED 15.02.2022 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1 (POCSO), KOLAR IN SPL.C.(P) no.21/2020 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 363, 506, 324, 376(2)(N) OF IPC AND SEC.6 OF POCSO ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.01.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction and order on sentence dated 15.02.2022 passed in Spl.C.(P) No.21 of 2020 by the Additional District and Sessions Judge FTSC-I (POCSO) at Kolar (for short "the trial Court").
2. Parties herein are referred to as per their status and rank before the trial Court.
3. The brief facts leading to the present appeal are that the Circle Inspector of Police, Srinivasapura Circle, Srinivasapura Taluk filed a charge sheet against the accused for the offence punishable under Sections 363, 376, 506 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012

(POCSO Act). It is alleged by the prosecution that on 12.05.2020 at about 09.00 pm, when the victim girl had gone to backyard of her house to attend to nature call, the accused came there, gagged her and dragged her to the eucalyptus grove of Venkatanarasimha Bhattachar, adjacent to the land of Yakashi Byreddy in Koppavaripalli Village. It is further alleged that the accused removed her clothes, and when she opposed, he bit her cheeks and committed rape on her repeatedly till about 04.00 am. At about 04.00 am, the victim girl escaped from the accused, returned to her house and informed her parents about the incident.

4. On 15.05.2020, victim girl filed a complaint before the police based on which, the case was registered in Crime No.33/2020 of Gownipalli Police Station. The Investigating Officer arrested the accused and recorded the statements of the witnesses and statement of victim under Section 164 of the Cr.PC through Magistrate, subjected the victim and accused to medical examination, conducted mahazars, collected the school documents regarding date of birth of

victim, collected the FSL report and after completion of investigation, filed the charge sheet.

5. Since the date of arrest, accused is in judicial custody. Upon hearing on charges, the trial Court framed the charges for the commission of offences, which were read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

6. To prove the case of the prosecution, in all seven witnesses were examined as PWs1 to PW7, 19 documents were marked as Exs.P1 to P19 and 19 material objects were marked as MO1 to 19. On closure of prosecution's evidence, statement of the accused under Section 313 of Cr.PC was recorded. The accused denied the evidence of prosecution witnesses. However, did not choose to adduce any defence evidence on his behalf.

7. Having heard the arguments on both sides, the trial Court has convicted the accused for the commission of offence under Sections 363, 506, 324, 376(2)(n) of IPC and Section 6 of POCSO Act. The accused was sentenced to undergo

rigorous imprisonment for a period of five years with fine of Rs.5,000/- for the offence under Section 363 IPC. Further, sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs.2,000/- for the offence under Section 506 IPC and sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs.3,000/- for the offence under Section 324 IPC. For the offence under Section 6 of the POCSO Act, the accused was sentenced to undergo simple imprisonment for a period of 25 years with fine of Rs.20,000/-. Being aggrieved by the judgment of conviction and order of sentence, the appellant has preferred this appeal.

8. Learned counsel for the appellant would submit that the impugned judgment of conviction and order on sentence passed by the trial Court is highly illegal, arbitrary and unreasonable. The trial Court has committed serious material irregularities and illegalities in appreciating the material evidence available on record, which has resulted in conviction of the accused. The trial Court has failed to appreciate the oral evidence of the victim and her admissions. In her cross-

examination, she has improved her version and has given false evidence before the Court. During the cross-examination of PW1, she has specifically and unequivocally admitted that accused had not misbehaved with her while she was studying in high school and that she had not at all interacted with him. She further admitted that accused neither visited her house nor misbehaved with her. These statements clearly proves that the appellant is not the person who committed the alleged heinous offence.

9. During the cross-examination, PW1 clearly admitted that she had not identified the accused. She specifically admitted that it was not possible for her to identify any person during the dark hours of the night. She admitted that she did not know who had gagged her and dragged to the eucalyptus grove.

10. It is further submitted that the house of the appellant is situated adjacent to the house of the victim and that the appellant is her neighbor. The appellant was working as a driver and the school was situated about 20 kilometers away from the village. The appellant used to pick up and drop the

victim along with other students studying in the same school on a daily basis. The appellant never misbehaved with the victim or with any other student. This fact was also admitted by the victim herself.

11. Learned Counsel would submit that the appellant is having a good attitude and a law abiding citizen and has never committed any such heinous offence. He has been falsely implicated in the present case. It is further submitted that there was a dispute between the parents of the victim and appellant with regard to the use of the road, and due to the vengeance, the appellant has been falsely implicated.

12. The alleged incident is stated to have occurred on 12.05.2020 at about 09.00 p.m. However, the complaint came to be filed only on 15.05.2020. Therefore, there is an inordinate delay of three days in lodging the complaint before the police, which has not been properly and satisfactorily explained by the prosecution.

13. In cases of rape, medical evidence is very important. PW4-Doctor who examined the victim, in her cross-

examination, specifically and unequivocally admitted that there was no sexual assault on the victim. Therefore, from this evidence itself, it is clear that no sexual assault had taken place and that a false and frivolous complaint has been filed against the appellant.

14. The FSL report specifically records that the presence of seminal stains were not detected in Item Nos.1 to 17 and 19. In particular, item No.8-dupatta of the victim, item No.9-top of the victim, item No.10-leggings of the victim and item No.11-underwear of the victim were examined and the FSL report has clearly states that there are no seminal stains were detected on any of these items. Therefore, it is clear that the appellant has not committed the alleged offence.

15. PWs2 and 3 are hearsay witnesses and their evidence has no much importance. However, the trial Court has erroneously gave so much importance to the evidence of PWs2 and 3. The prosecution has utterly failed to prove the spot mahazar and seizure mahazar beyond all reasonable doubt.

16. Further, it is submitted that Investigating Officer has not produced any acceptable and legally admissible evidence to prove the age of the victim. The school certificate alone is not sufficient to prove the age of the victim in view of the law laid down by the Hon'ble Apex Court. The Investigating Officer has not collected the birth certificate or ossification certificate of the victim. The age of the victim was more than 18 years at the time of commission of alleged offence. Viewed from any angle, the prosecution has failed to place cogent, convincing, clinching, and corroborative evidence to prove the guilt of the accused. On all these grounds, he sought for allowing the appeal.

17. As against this, the learned High Court government pleader would submit that the trial court has properly appreciated the material and record in accordance with Law and facts and there are no grounds to interfere with the impugned judgement of conviction and order on sentence passed by the trial court. Accordingly, he has sought for dismissal of the appeal.

18. Having heard the arguments on both sides and perusal of materials placed before this court, the following points for my consideration:

- 1) Whether the prosecution has proved beyond all reasonable doubt that the victim was a child as defined intersection 2(d) Of POCSO act as on the date of commission of offence?
- 2) Whether the trial Court is justified in convicting the accused for the intersection six of POCSO Act?
- 3) Whether trial court is justified in convicting the accused for the offence under section 363, 506, 376(2)(n) and 324 of Indian Penal Code?
- 4) What order?

19. My answer to the above points are:

Point No.1: in the negative;

Point No.2: in the negative;

Point No.3: in the negative;

Point No.4: as per final order

Regarding Point No.1:

20. The Circle Inspector of Police, Srinivasapura Circle has filed charge-sheet against the accused for the offence under

Sections 363, 376, 506 of Indian Penal Code and Section 6 of POCSO Act. It is the case of the prosecution that on 12th May 2020 at about 9.00 pm when the victim had gone to the backyard of their house for attending nature call, at that time, accused Came there, gagged her and dragged her to the eucalyptus grove of one Venkatanarasimha Bhattachar adjacent to the land of Yakashi Byreddy in Koppavaripalli Village. There accused removed her clothes when she opposed accused, bite her cheeks and committed sexual assault on her repeatedly till early morning and at about 4.00 am, the victim girl escaped from the accused, went to her house and informed about the incident to her parents. Thus, accused has committed the alleged offences.

21. It is the case of the prosecution that victim-PW1 was born on 27.5.2003. To substantiate this, the prosecution has produced documents Exhibit P9-School Admission extract issued by Government Higher Primary School, Koppavarapalli, Srinivasapura Taluk. It reveals the date of birth of the victim girl as 27th May 2003. Exhibit P10 is the School Admission Register Extract issued by the Headmaster of Government

Higher Primary School, Koppavarapalli, which reveals the date of birth and age of the victim, wherein the date of birth is shown as 27th May, 2003. In addition, the prosecution has adduced the evidence of victim, wherein she has deposed that she is aged 18 years.

22. PW2-Narasimhaa, the father of victim has not deposed as to the date of birth of the victim.

23. PW5-Dr. Gousia Banu has not deposed as to the age of the victim.

24. PW6-S.V.Anjanappa, Headmaster of Government Higher Primary School, Koppavarapalli has deposed that on 1st June 2020, at the request of Police, he has furnished documents Exhibits P9 and P10 wherein the date of birth of victim girl is shown as 27th May 2003.

25. A perusal of the material placed before this court makes it crystal clear that the Investigating Officer has not collected and produced the birth certificate of the victim. The investigating officer has also not obtained the birth certificate or the SSLC marks-card or Ossification test certificate from

the concerned medical Board. The medical officer has expressed his opinion in Exhibit P5 that the victim was aged 17 to 18 years. Medical officer has not complied with the mandatory provisions of section 164A of CRPC. The investigating officer has also not complied with the mandatory provisions of Section 34 of POCSO Act. The investigating officer has not whispered anything as to non-compliance of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015.

26. During the course of cross-examination of PW6-Anjanappa, he has clearly admitted that police have not enquired him as to the birth certificate of the victim. PW6 has not whispered anything as to on what basis the School authorities have entered the date of birth of the victim. The medical certificate itself reveals the age of the victim was between 17 to 18 years. PW1 has deposed that she was studying in I Year PUC. However, the investigating officer has not collected the SSLC marks card of the victim. In the absence of the aforesaid material piece of evidence, it is not safe to come to the conclusion that the prosecution has

proved beyond all reasonable doubt that the victim was a child as defined under Section 2(d) POCSO Act. Accordingly, I answer Point No.1 in the negative.

Regarding Point No.2:

27. With regard to the offence under section 6 of POCSO Act is concerned, when the prosecution has failed to prove that the victim was a child as defined under section 2(d) of POCSO Act as on the date of commission of allege offence, the question of commission of offence under the penal provisions of POCSO Act does not rise. Accordingly, the prosecution has failed to prove the guilt of the accused under Section 6 of POCSO Act. Hence I answer Point No.2 two in the negative.

Regarding Point No.3:

28. With regard to offence under Section 376(2)(n) of IPC is concerned, in the complaint exhibit P1, the victim has stated that on 12th May, 2020, she, her parents and elder brother were about to sleep in their house after having dinner, and before going to bed, she went to attend the nature call in the backyard of the house. At that time, the accused came from

backside, gagged her and dragged to the eucalyptus grove adjacent to the land of Yakashi Byreddy and removed her clothes and committed rape on her. When she objected accused bite her cheeks. Then she informed to her parents at about 4.00 am.

29. The alleged incident took place on 12th May 2020. The complaint came to be filed on 15th May 2020, complaint was filed at 10 am. On the basis of the complaint case came to be registered in Crime No.33 of 2020 against the accused for offence under Section 6 of POCSO Act and Sections 376, 324 of Indian Penal Code and submitted FIR as per Exhibit P19 on 15th May 2010 at 5.00 pm. After lapse of 52 days from the date of commission of offence, the investigating officer had produced the victim before the Civil Judge and JMFC, Srinivasapura, in Crime number 33 of 2020 and that the Magistrate has recorded the statement of the victim under Section 164 of Cr.PC on 7th July 2020 in which the victim has not stated as to the alleged rape said to have been committed by the accused. However, she has deposed that on 12th May 2020 at 9 PM when she went to attend the nature call in the

backyard of their House, the accused came gagged her and dragged her to the eucalypts grove, removed her clothes and committed sexual assault on her and bite her cheeks. Her clothes were stained with semen. She told to accused that she will inform the same to her parents, to which accused threatened that he will kill her. Then she escaped from him and came to the house and informed the same to her parents. Thereafter, she and her parents went to the police station and lodged complaint.

30. The Police have conducted mahazar in the place of incident on 17th May 2020 as per Exhibit P4. On 17th May 2020, victim was examined by the medical officer and after examination, she has issued certificate as per Exhibits P5 and 7. In Exhibit P5 history given by the victim it is shown as under:

"Victim says she had gone to toilet at around 9.00 pm on 12.05.2020 in the back of her house, when she was taken by the accused Venkataramana forcefully, against her consent to the Neeligiri grove where he sexually assaulted her and bite her on her face. She gives h/o vaginal intercourse and she came by herself at around 4.00 am on 13.05.2020."

31. The external injuries are as under:

*"Circular abrasion over right side of the cheek
bluish in color (2 bite mark).*

*No injuries seen over breasts, thigh, arm, or neck
or to the private parts."*

The doctor has opened that there is a possibility of sexual assault, and the final opinion is kept pending for want of FSL report.

32. Exhibit P6 is the FSL report in which it is shown as under:

*"1. Presence of seminal stains were detected in
item No.18.*

*2. Presence of seminal stains were not detected in
item Nos.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16,
17 and 19.*

*3. Presence of blood stains were not detected in
item No.13."*

33. There is a delay of three days in filing the complaint. In Exhibit P1-complaint, it is stated that due to lockdown because of COVID-19 pandemic, she could not file the complaint. Item No.18 is the underwear to be of accused.

The presence of seminal stains were not detected on items 1 to 12, 14 to 17 and 19, which belongs to the victim.

34. Exhibit P7 is the letter addressed by the medical officer to the General Hospital, Srinivaspura to the Sub-Inspector of Police, in which the result of examination is shown as under:

"Presence of seminal stains were not detected in item Nos.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12."

The final opinion is also given that there is no medical evidence as to suggest sexual assault.

35. A perusal of the materials placed before this court makes it crystal clear that there is no consistency in the evidence of PW1 statement under section 164(5) of Cr.PC and the medical evidence. The evidence of PW1 has also not been supported with evidence of PW2-father of victim. The father of victim has not deposed as to the alleged commission of rape said to have been committed by the accused. However, he has deposed that on the date of incident victim had been to attend the nature call and at that time, accused gagged her from the backside and dragged her to eucalyptus grove and

removed her clothes. This witness was partly treated as hostile witness and was cross-examined by the Public Prosecutor with the permission of the court. Only when the learned Public prosecutor suggested him that the accused has committed rape, he stated before the police that accused has committed rape. Admittedly, PW2 is not an eye-witness. It is the case of the prosecution that victim PW1 has informed the incident to her parents on the very day at 4 am. However, the parents of the victim have not lodged any complaint to the police till 15th May 2020. PW1 has not lodged any complaint. PW1 or her parents not produced the victim before the medical officer for examination. PW2, father of the victim, has not whispered anything as to delay in filing the complaint. Even the victim also has not whispered as to delay in filing the complaint. During the course of cross-examination of PW1, she admitted that she has not identified the accused at the relevant point of time, and she specifically admitted that it is not possible to tell as to who has dragged her to the eucalyptus grove. Further, she has deposed that even after taking to the grove when she objected and when accused bite her cheeks, she do not know as to who

was the accused. It is not the case of the prosecution that there no are houses nearby. It is also not the case of the prosecution that the house of the victim was in an isolated place. If the incident had occurred and the victim had cried, then people would have assembled to rescue the victim. The victim specifically deposed that even after being gagged and dragged and bitten her cheeks, she has not known the person. It is evident from the evidence of the victim that parents and brother of the victim were in the House. However, they have not taken any steps to search the victim or filed complaint.

36. Medical Certificate-Exhibit P5 reveals that victim visited the hospital on 16th May 2020 along with her mother. The Medical Officer has not disclosed the history of the victim as also the delay in coming to the hospital for examination. The age of the injury or the bite marks of the cheeks is not disclosed in Exhibit P5. Since there is no proper explanation as the delay in filing the complaint, the evidence of PW1 will create reasonable doubt as to the alleged incident. The admission made by PW1 during the cross-examination, delay

of three days in filing the complaint and also delay in examination of the victim by the medical officer and the evidence of PW2-father of the victim, and the evidence of PW1 and 2 are not of the ordinary prudent man. Evidence of PW1 and 2 appears to be unnatural. If really, the accused had committed the alleged incident, the victim would have informed about the same to her parents and the parents would not have waited for three days to lodge the complaint. It is only as an afterthought that the PW1 has lodged the complaint to the police.

37. As already discussed above evidence of PW1 is not consistent to the statement under Section 164 of Cr.PC and the medical evidence and even the forensic science laboratory report is also not in favour of the prosecution. No seminal stains have been found on items 1 to 17 and 19, which belong to the victim.

38. Viewed from any angle, I do not find any cogent, convincing, corroborative, credible and legal evidence before the Court to come to the conclusion that the accused has committed offence punishable under Sections 363, 506,

376(2)(n) and 324 of IPC. Hence, I answer Point No.3 in the negative.

Regarding Point No.4:

39. For the aforestated reasons and discussions, I proceed to pass the following:

O R D E R

- i) Appeal is allowed;
- ii) Judgment of conviction and order on sentence dated 15th February, 2022 passed in Spl.C. (P) No.21 of 2020 by the Additional District and Sessions Judge FTSC-I (POCSO) at Kolar, is set aside;
- iii) Accused is acquitted of the offence punishable under Sections 363, 506, 324 and 376(2)(n) of Indian Penal Code and Section 6 of POCSO Act;
- iv) The trial Court is directed to refund the fine amount, if any deposited by the accused;

- v) Registrar (Judicial) to communicate this Judgment to the concerned jail authority to release the appellant/accused forthwith, if he is not involved in any other case;
- vi) Registry is also directed to send the trial Court records along with copy of this judgment, to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn