



CNR: KAHC010209512019

NC: 2026:KHC:48212-DB
CRL.A No. 168 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.168 OF 2019 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY POLICE INSPECTOR
MAYAKONDA POLICE STATION
DAVANAGERE
REPRESENTED BY
PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01

...APPELLANT

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

AND:

ANJANI @ ANJINAPPA
S/O. REVANNA
AGED ABOUT 21 YEARS
NARAGANAHALLI
DAVANAGERE TALUK-577 001

...RESPONDENT

(BY SRI P. C. NARASIMAHAIH, ADVOCATE)

Digitally signed
by
SHARADAVANI
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 OF ACQUITTAL DATED 25.01.2018 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE, DAVANAGERE IN S.C.NO.81/2016, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 342, 326 AND 506 OF IPC AND SECTION 6 OF POCSO ACT, 2012 AND SET ASIDE THE AFORESAID JUDGMENT AND ORDER DATED 25.01.2018 PASSED IN S.C.NO.81/2016 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE, DAVANAGERE, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 342, 326 AND 506 OF IPC AND SECTION 6 OF POCSO ACT AND ALSO CONVICT AND SENTENCE THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 342, 326 AND 506 OF IPC AND SECTION 6 OF POCSO ACT.

THIS APPEAL, COMING ON FOR ORDERS, 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)

Heard Sri. Chennappa Erappa, learned HCGP appearing for the appellant - State and Sri. P C. Narasimhaiah, appearing for the accused-respondent.

2. This appeal is filed against the judgment and order of acquittal dated 25.01.2018 passed by the II Additional District and Sessions Judge and Special Judge, Davanagere, for the offences punishable under Sections 342, 326 and 506 of IPC and Section 6 of POCSO Act, 2012, praying to set aside the judgment of acquittal and convict the accused.

3. The factual matrix of the case of prosecution is that:

a) On 28.02.2016 when the victim boy was playing with another boy in the vacant place, besides the house of CW.1, situated at Nagaranahalli Village, Davanagere Taluk. The accused No.1 abused both of them and sent



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the CW.3 to his house and took CW.2-victim saying that he would give him tamarind, took him behind house of CW.12 to a toilet and locked the door and wrongfully confined CW.2 and by closing his mouth and with a sexual intention, accused by biting on his face and body took off his pant and thereafter he took a stick and inserted the same into the anus of CW.2 and pushed it in and out of the anus and as a result, the victim suffered profuse bleeding and grievous injury. Thereafter the accused has threatened the victim that he would kill him if he reveals this incident to anybody and he went away from the spot. When the same was disclosed by the victim with his parents, complaint was lodged and accused was arrested. The police have investigated the matter and filed charge sheet against the accused for the offences punishable under Section 342, 326 and 506 of IPC and Sections 6 and 8 of POCSO Act, 2012. The accused did not plead guilty and claimed to be tried.



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b) The prosecution in order to prove the case, has examined witnesses as PWs.1 to 23, got marked documents as per Exhibits. P1 to 20 and material objects as MOs. 1 and 2. On closure or prosecution evidence, the statement of accused was recorded under Section 313 of Cr.P.C. The accused did not chose to lead any defence evidence.

c) The trial Court having considered the evidence available on record found the contradictions in the Section 164 Cr.P.C. statement as well as oral evidence before the Court and apart from that, the evidence of the victim as well as the parents is also not consistent. The trial Court also made an observation that even the opinion was obtained from the doctor-PW.18 and not from the doctor-PW.10 who actually treated the victim. The evidence of PW.6-mother is contrary to the evidence of doctor - PW.10 who treated the victim. The trial Court also taken note of the FSL Report wherein, it is stated that there are blood stains in the stick but the doctor who examined the stick,



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has stated that he did not find any blood stains on the stick and the same is also contrary to the evidence of the doctor who examined the stick and FSL Report. Having considered all these materials, the trial Court comes to the conclusion that case of the prosecution is not trust worthy and not proved and even considered the evidence of a boy who was playing along with the victim also not supported the case of the prosecution. Being aggrieved by the acquittal order, the present appeal is field by the State.

4. Learned HCGP appearing for the State would vehemently contend that the material is very clear that injuries on the anus and also he was immediately taken to the hospital and treatment was given and though minor discrepancies, the same is magnified be the trial Court while acquitting the accused. Learned HCGP also would contend that the very inconsistent will not go to the very root of the case of the prosecution and the trial Court committed an error.



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5. Per contra, learned counsel appearing for the accused-respondent would submit that trial Court rightly appreciated the evidence available on record, particularly, taking note of the evidence of the victim and mother PW.6. The very evidence of PW.6-mother of victim and PW.18 -doctor who examined the victim is contrary and apart from that opinion given by the doctors is different. The same was also taken note of. The boy playing along with the victim has also not supported the case of the prosecution. But, the case of the prosecution is that the accused came and abused and sent the boy who was playing along with the is victim but the same is not corroborated by the prosecution.

6. Having heard the learned counsel appearing for both the parties and on reappraisal of both oral and documentary evidence, the points that would arise for consideration of this Court are:



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i) Whether the trial Court committed an error in extending the benefit of doubt in favour of the accused in acquitting the accused and, whether it requires interference of this Court to prove the guilt of the accused for the offences punishable under Sections 342, 326 and 506 of IPC and Section 6 of POCSO Act, 2012?

ii) What order? "

Point No.(i):

7. Having heard the respective counsel and also on perusal of material available on record, it is the case of the prosecution is that incident took place on 28.02.2016. The age of the victim is also not proved except marking of School Certificate as per Ex.P13, it goes to show that victim boy is a student of Government Primary School and his date of birth as per the school records is 30.10.2019 and the same is not proved, but only the trial Court has given the finding that the accused has not disputed the age of the victim seriously. However, taking note of the factual aspects of the case is concerned, though victim had sustained injuries, but the evidence of prosecution does not inspire the confidence of the Court.



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8. Upon considering the evidence of the boy-PW.5. According to the prosecution, he was playing along with the victim, but the very boy who has been examined as PW.5, his evidence does not support the case of the prosecution. The very case of the prosecution is that accused came to the spot where the victim boy was playing with another boy i.e., PW.5, abused and scolded him and made PW.5 to leave the place but the same is not spoken by PW.5. The other evidence available before the Court is that the accused inserted the stick on the anus of the victim and stick was also seized. What is stated in FSL Report is otherwise different that there were blood stains, but the doctor-PW.20 had given opinion that there were no such blood stains when such being the case and therefore FSL Report is against the same. It is also important note that trial Court taking note of opinion of PW.18 who is not the treated doctor, PW.10 who has treated the victim, from whom opinion was not taken.



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9. The trial Court also taken note of the evidence of PW.6-mother and her evidence is contrary to the evidence of PW.10-doctor. PW.10 has also not spoken about the nature of treatment given to the victim and both the evidences is inconsistent. So also in paragraph No.78, the trial Court has observed that in FSL Report, PW.20-FSL expert he has stated that there were blood stains on both MOs. 1 and 2 and when he examined and accordingly, he has issued as per Ex.P15. So, by looking to the evidence of PWs.20 and 18, there is clear contradiction regarding MO.2 and blood stains found on it. Therefore, the very seizure of MO.2 and voluntary statement of the accused recorded at the time of recovery of MO.2 as per Ex.P19 would also become doubtful. It appears that MO.2 which was sent to the doctor-PW.18 to give his opinion was not the stick, MO.2 which was sent to the FSL for chemical text because the presence of blood stains on MO.2 is not spoken by PW.18 but it is spoken by PW.20. Both the witnesses refers to MO.2 and give their



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evidence which are contradictory to each other. So the evidence of PW.20- FSL Expert also does not help the case of the prosecution. The trial Court also taken note of inconsistency in the evidence of PW.2-victim and also his mother-PW.6 and the same has been considered and in detail discussed the material available on record and so also on the admission on the part of the PW.1 is also extracted in paragraph nos.22 and 25 and so also taken note of 164 statement in paragraph no.23, wherein a statement was made regarding the act of the accused is concerned, but victim has not even stated that accused caught hold of him and by biting on his face and body, caused sexual assault to the victim. Though the complaint is given to that effect, but the victim has not whispered single act of the accused like biting on his face or body, though that has been stated in his evidence before the Court on 20.10.2016 and the same is contrary to each other.



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10. The trial Court in detail considered the evidence of PW.1 as well as statement recorded under Section 164 of Cr.P.C., statement as well as evidence of PW.6 and medical evidence also does not support the case of prosecution. Even the FSL Report also does not come to the aid of the prosecution. Under the circumstances we do not find any ground to come to the conclusion that the trial Court committed an error in discarding the evidence of the prosecution.

11. While convicting the accused, prosecution has to prove the case beyond reasonable doubt and even take on note of the very seizure of MO.2 is doubtful. Considering the RFSL and also the evidence given by PW.23, who the Investigating Officer who has deposed that on taking up the further investigation of the case he has recorded the statement of the witnesses and got the hand sketch prepared by PWD engineer.



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12. Learned HCGP appearing for the State though vehemently contend that the trial Court ought to have invoked the presumption under Section 29 of the POCSO Act and no dispute with regard to the presumption is concerned, but the evidence of victim and also the PW.6, is nothing but an exaggeration. In the complaint, it is mentioned that PW.1 was unconscious and when the doctor has not mentioned the same in the Wound Certificate or in his evidence that victim was unconscious when he examined him. The evidence of PW.6-mother and contents of Ex.P1 is contrary to each other and there are inconsistencies found in the evidence would definitely raise doubt about the case of prosecution and hence, extended the benefit of doubt.

13. The Hon'ble Supreme Court in the case of **RAJESH PRASAD V. STATE OF BIHAR**, reported in **2022 (3) SCC 471**, while considering the material and approach or reasoning of the High Court, if it is perverse, where incontrovertible evidence has been rejected by the



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High Court, based on suspicion and surmises which are rather unrealistic, at paragraph 31.2.1 of the judgment, has observed thus:

"31.2.1. Where the approach or reasoning of the High Court is perverse:

- (a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393 : 1983 SCC (Cri) 213 : AIR 1984 SC 207]] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. v. Shanker 1980 Supp SCC 489 : 1981 SCC (Cri) 428]]*
- (b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh [State of U.P. v. Hakim Singh, (1980) 3 SCC 55 : 1980 SCC (Cri) 534 : AIR 1980 SC 184]]*
- (c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393 : 1983 SCC (Cri) 213 : AIR 1984 SC 207]]*
- (d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons*



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*present at the site of occurrence of the crime.
[Arunachalam v. P.S.R. Sadhanantham]
(1979) 2 SCC 297 : 1979 SCC (Cri) 454]]*

- (e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram, (1986) 4 SCC 99 : 1986 SCC (Cri) 374]]*
- (f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610 : 1981 SCC (Cri) 762]] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445 : 1990 SCC (Cri) 151]]*
- (g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah, (1986) 3 SCC 637 : 1986 SCC (Cri) 357 : AIR 1986 SC 1899] "*

14. In the light of above discussion, the question of converting the acquittal to a conviction does not arise. The principles laid down by the Hon'ble Apex Court in the case referred *supra*, it is very clear that if any perversity is



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found and also the evidence of the prosecution witnesses are not considered in a proper perspective, which has resulted in miscarriage of justice, then only this Court can reverse the finding of the trial Court and such circumstance is not warranted in the case on hand in view of the evidence available on record. Hence, we answer the point as ***negative***.

Point No.(ii):

15. In view of the discussions made hereinabove, we pass the following:

ORDER

The appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE