



CNR: KAHC010220782019

NC: 2026:KHC:42553-DB
CRL.A No. 927 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.927 OF 2019

BETWEEN:

1. THE STATE OF KARNATAKA,
BY POLICE INSPECTOR,
GUNDLUPETE POLICE STATION,
CHAMARAJANAGAR DISTRICT.
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...APPELLANT

(BY SRI. SUHAS GOWDA M., HCGP)

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. SHIVAKUMAR,
S/O. NINGAIAH,
AGED ABOUT 29 YEARS,
NENEKATTE GRAMA,
GUNDLUPETE TALUK-571111.

...RESPONDENT

(BY SRI. SYED AKBAR PASHA, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 05.10.2018 ON THE FILE OF THE PRINCIPAL DISTRICT



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AND SESSIONS JUDGE, CHAMARAJANAGARA IN S.C.NO.14/2014, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366(A), 342, 376, 506 OF IPC AND SECTIONS 3 AND 4 OF POCSO ACT.

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)

Heard the learned High Court Government Pleader appearing for the appellant/State and the learned counsel for the respondent/accused.

2. The factual matrix of the case of the prosecution is that the accused being the neighbour of the victim girl P.W.1, forcibly took her and subjected her for sexual act and left her in the said place. After the incident, the victim girl, who is aged about 14 years, went to the house of her grandmother. It is an allegation that the accused has criminally intimidated P.W.1 and P.W.2 by threatening to kill them if they disclose the said incident to anybody. A complaint came to be lodged by P.W.2 mother of the victim girl almost after 16 days and hence,



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invoked the offences under Sections 366A, 342, 376 and 506 of IPC read with Sections 3 and 4 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short). Based on the complaint of the mother, police registered the case and investigated the matter and filed the charge-sheet against the accused.

3. The prosecution in order to prove the charges levelled against the accused, examined P.W.1 to P.W.19 and got marked the documents at Exs.P.1 to 17(c). The accused also examined himself as D.W.1 and examined two witnesses as D.W.2 and D.W.3 and got marked the documents at Exs.D.1 to 4. The Court also examined additional witnesses P.W.18 and P.W.19. The Trial Court having considered both oral and documentary evidence, comes to the conclusion that the evidence of P.W.1 and P.W.2 is contradictory to each other and not inspires the confidence of the Court. The Court also comes to the conclusion that there was a delay of 16 days in lodging the complaint and also taken note of the attendance register maintained in the hostel and also in the school and also considered the evidence of additional witness warden, who



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deposed before the Court that even after the alleged incident, the victim girl was very much present in the hostel. The school attendance register also discloses that nothing is mentioned in the register from 06.09.2013 to 12.09.2013. The Trial Court also taken note of with regard to the seizure of M.O. and drawing of mahazar Exs.P.1 and 2. P.W.5 categorically deposes that they were cordial. He says that he do not know M.O.1 belongs to whom and also categorical admission is given that he was instructed to give evidence what he has deposed before the Court and for the first time he is seeing M.O.1. The Trial Court also taken note of medical evidence of P.W.15 doctor. No doubt, the doctor who gave the medical report says that there were no injuries, but the hymen was ruptured and it was an old tear.

4. The very evidence of P.W.1 is that she came to the house and on that day, the incident was taken place. After the incident, she did not go to her house, but she had been to the house of her grandmother. Later she came and informed about the incident on the very next morning to the mother and thereafter, the mother took her to her maternal uncle's house



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and they advised to lodge a complaint. There is a delay of 16 days in lodging the complaint. The evidence of P.W.2 is contrary to the evidence of P.W.1. She says that she was not aware of when the victim girl came to her house on the date of the incident and she was not aware of this incident also. The Trial Court having considered all these materials, comes to the conclusion that the very incident itself is doubtful and also the allegation is that the accused forcibly lifted the victim girl and subjected her for sexual act, but there are no injuries. Even though the victim girl says that she had suffered injuries on her face, but to evidence the said fact also nothing is placed before the Court. P.W.1 says that whatever clothes she was wearing on that day was not produced and even the same was not collected and why she has not produced those documents before the police also no explanation. The Trial Court taking note of delay of 16 days in lodging the complaint and also the evidence of P.W.1, P.W.2 and P.W.14 not corroborates each other, extended the benefit of doubt in favour of the accused and acquitted him.



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5. Being aggrieved by the acquittal judgment, the present appeal is filed before this Court.

6. The main contention of the learned High Court Government Pleader appearing for the appellant/State is that the Trial Court committed an error in appreciating the evidence. The non-appreciation of evidence and material on record in its proper perspective has resulted in miscarriage of justice. The counsel would submit that the victim girl was examined by the medical officer, who has given her evidence as P.W.15 and she has given her report as per Ex.P.14. The same would indicate that the victim girl was subjected to sexual act. The learned counsel would contend that the Trial Court has acquitted the accused on the ground that the victim girl did not have any injuries on her body and that she has consented to the act. The said reasoning of the Trial Court cannot be accepted, as the victim girl was a minor as on the date of the incident and her consent would be no consequence. The learned counsel also vehemently contend that there is a presumption under Sections 29 and 30 of POCSO Act. The Court shall presume that the accused has committed the said offence, unless the



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contrary is proved. The learned counsel also vehemently contend that the victim was minor as on the date of the incident and her school certificate is marked as Ex.P.9 and the school headmaster is also examined in support of the said document as P.W.18. This coupled with medical evidence would clearly indicate that the offence under the POCSO Act clearly attracts, but the Trial Court committed an error in acquitting the accused.

7. Per contra, the learned counsel for the respondent/accused would vehemently contend that there was a civil dispute between P.W.2 and the accused and the same is suggested to P.W.2 during the course of cross-examination and though she denied, D.W.1 accused has categorically stated the same. The learned counsel would contend that there are material contradictions in the evidence of P.W.1 and P.W.2 with regard to the very alleged incident is concerned. The counsel would contend that when the victim girl deposes before the Court that she was forcibly subjected to sexual act at 08.00 p.m., she would have informed the same to her mother on the very same day and instead of that, she had been to the house



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of her grandmother, according to the victim. The victim also did not disclose the same to her grandmother, but she claims that she came and informed the same to her mother P.W.2. P.W.2 in her cross-examination admits that she was not aware of the very arrival of the victim to the house on the date of the incident. When P.W.1 informed her mother about the incident, she did not take P.W.1 to any hospital or anybody's house for a period of 10 days and the same is admitted in the cross-examination of P.W.2. But the contra evidence of P.W.1 is that on the very next day, she was taken to the house of her maternal uncle and they advised to lodge a complaint. This inconsistent evidence of P.W.1 and P.W.2 with regard to the very incident is concerned, not inspires the confidence of the Court and hence, the Trial Court taken note of the same. The counsel would submit that even the clothes of the victim girl were also not seized and there is no explanation on the part of P.W.1 and P.W.2 as well as the Investigating Officer with regard to the same. There is no any FSL report with regard to she was subjected to sexual act. The learned counsel would submit that merely because there is a medical evidence that



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her hymen was ruptured, the same cannot be a ground to convict the accused. The learned counsel also would submit that Ex.P.9 document of school admission is produced and the same is not corroborated. The age of the victim girl is not proved and there is no any medical evidence before the Court with regard to the proving of age and hence, it does not require any interference of this Court.

8. Having heard the learned High Court Government Pleader appearing for the appellant/State and the learned counsel for the respondent/accused and considering the grounds which have been urged in the appeal memo and also the oral submissions, the points that would arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in acquitting the accused for the offences alleged against him and whether it requires interference of this Court reversing the acquittal and whether it is a case for converting the acquittal order for conviction?
- (ii) What order?



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Point No.(i):

9. Having perused the material available on record, it is the case of the prosecution that the victim girl was subjected to sexual act by the accused. The accused forcibly lifted her when she came out from the house and subjected her for sexual act in a lonely place and thereafter he left the place. In order to substantiate the same, a complaint was given after 16 days of the incident. The incident was taken place on 05.09.2013 and complaint was given on 21.09.2013. The Court has to take note of whether the complaint averments inspires the confidence of the Court and whether the evidence of P.W.1, P.W.2 and P.W.14 is credible to consider the same. The Court has to take note of the principles laid in the judgment of the Apex Court in a case of reversing the finding of the Trial Court. The Apex Court in the judgment in the case of **MALLAPPA AND OTHERS v. STATE OF KARNATAKA** reported in **(2024) 3 SCC 544**, in paragraph No.42, taken note of that while deciding an appeal from acquittal, appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all



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evidence, oral or documentary. If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed. Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge. If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal. If the Appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts. In a case of reversal from acquittal to conviction, the Appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

10. Having considered the principles laid down in the judgment referred supra and also considering the material available on record, first of all there is a delay in lodging the complaint. It is the case of the complainant while lodging the complaint that the accused subjected the victim girl for sexual act. With regard to she was subjected to sexual act is concerned, there is no medical evidence before the Court, since



there was a delay of 16 days in lodging the complaint. Now this Court has to consider the evidence of P.W.1 and P.W.2 whether the same inspires the confidence of the Court and whether the evidence of P.W.1 and P.W.2 is consistent with each other.

11. P.W.1 victim girl in her evidence deposes that she was subjected to sexual act by the accused at 08.00 p.m. She says that she was in the house when a person came and knocked the door and she went and opened the door and when she came out from the house, she was forcibly lifted to a lonely place and subjected for sexual act. The Court has to take note of evidence of P.W.1 that she did not go to the house immediately after the alleged incident of committing the rape on her, but instead she went to the house of her grandmother. She did not disclose the same in the house of grandmother. She says that she came in the morning and informed the same to her mother. It is also her evidence that on revealing the same, the mother took her to her maternal uncle's house and informed the same in the village and they advised them to lodge a complaint.



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12. The evidence of P.W.2 mother is contrary to the evidence of P.W.1. P.W.2 though says that the daughter came and informed about the incident, but she did not take any action for a period of 10 days. The very evidence of P.W.2 is contrary to the evidence of P.W.1. It is also important to note that P.W.1 says that immediately she was taken to her maternal uncle's house and all of them advised to lodge a complaint. But the very evidence given by P.W.2 in the cross-examination is contrary to the evidence of P.W.1. There are material contradictions in the evidence of P.W.1 and P.W.2 with regard to the very incident is concerned. P.W.2 says that on the very next day, she came to know about the incident and she being a prudent mother could have lodged the complaint immediately and the same is not done and delay in lodging the complaint is also not properly explained.

13. It is also important to note that the victim girl was in the hostel even after the alleged incident. The school records is silent from 06.09.2013 to 12.09.2013 as there were holidays and hence, there are no entries. But the warden of the hostel was also examined before the Court as additional



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witness as P.W.19 and she deposes that the victim girl was in the hostel after the incident also. The document at Ex.P.16 school attendance register is marked. No doubt, no classes were held from 06.09.2013 to 12.09.2013. But the material available on record is contrary to each other and the evidence of additional witness warden is also clear that the victim girl was in the hostel. The document Ex.D.1, which is produced through the additional witness warden is very clear that she put her initial in Ex.D.1. With regard to the mahazar and seizure of the cloth is concerned, the same are very doubtful. The Trial Court taken note of the same in paragraph No.25 in not accepting the case of the prosecution even with regard to the seizure of the cloth. It is the evidence of the prosecution that P.W.2 produced M.O.1 lungi. P.W.5 says that in respect of the mahazar is concerned, he was instructed to depose before the Court as advised and for the first time he is witnessing M.O.1. Having taken note of the evidence of P.W.2 and P.W.5, it is clear that P.W.2 produced M.O.1 lungi. If really the accused had inserted the said cloth in the mouth of the victim, the same would have been stated in the statement made by the witness



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under Section 164(5) of Cr.P.C. and the same was not stated before the learned Magistrate while recording her statement. P.W.1 in her statement says that after committing the sexual act for a period of 10 minutes, she left the house. But she categorically says that he took his lungi along with him. But while seizing the same, it is stated that the same was there at the spot and the same was not found in the statement of victim girl in Ex.P.4. These material contradictions were taken note of by the Trial Court while considering and assessing the evidence available on record.

14. The Trial Court in paragraph No.24 discussed with regard to the medical evidence that there were no other injuries except the hymen was ruptured and there are many reasons for rupturing of the hymen. In order to connect this accused that he only committed the sexual act, except the evidence of P.W.1, nothing is placed on record and her evidence is also not consistent. The evidence of P.W.1 and P.W.2 is contrary to each other and there is no any correlation to the evidence of P.W.1, P.W.2 and P.W.14 and there are inconsistencies with regard to subjecting her for sexual act.



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Having taken note of the reasoning given by the Trial Court, the very contention of the learned High Court Government Pleader appearing for the appellant/State that the Trial Court committed an error in appreciating the evidence cannot be accepted. There are material contradictions in the evidence of P.W.1 and P.W.2 particularly with regard to the incident is concerned. P.W.1 claims that she came to the house from the hostel on the said day and her mother was also there in the house and she was taking rest since she was not well. But P.W.2 says that she was not aware of arrival of the victim girl to her house. All these materials are taken note of by the Trial Court. When such being the case, we do not find any error on the part of the Trial Court in appreciating the evidence.

15. With regard to the age proof is concerned that she was aged about 14 years, the document of Ex.P.9 is relied upon and no other documents are placed before the Court. When there is no material to believe the case of the prosecution with regard to the very act of sexual act by the accused, even Ex.P.9 is immaterial for consideration of the same that she was a minor and hence, we do not find any ground to reverse the



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finding of the Trial Court in view of the principles laid down in the judgment referred supra for re-appreciation of evidence and this Court cannot come to a other conclusion and even if two views are possible, it should go in favour of the accused and benefit of doubt should be given to the accused only. In view of the said principles laid down in the judgment, no grounds are made out by the State to reverse the judgment of the Trial Court and hence, we answer the point in the negative.

Point No.(ii):

16. 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**

MD
List No.: 1 Sl No.: 19