



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 957 OF 2022 (C)

BETWEEN:

SRI. MADHU V.
S/O LATE VENKATESH,
AGED ABOUT 27 YEARS,
R/O ELECTRONIC CITY,
SHANTHIPURA CIRCLE,
BENGALURU.

...APPELLANT

(BY SRI. BHARATH KUMAR V., ADVOCATE (P/H))

AND:

1. STATE OF KARNATAKA
C.K. ACHHUKATTU POLICE STATION,
BENGALURU.
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560 001.
2. MR. KESHAV
S/O KRISHNAMANI,
AGED ABOUT 45 YEARS,
R/O NO.10, 3RD MAIN, SRINIVAS NAGAR,
BENGALURU, KARNATAKA.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R1 (P/H);
R2 – KESHAV SERVED AND UNREPRESENTED)



THIS CRL.A IS FILED U/S.374(2) CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND ORDER OF SENTENCE DATED 06.04.2022 PASSED BY THE FTSC-1, ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN SPL.C.C.NO.425/2017 - CONVICTING THE APPELLANT/ ACCUSED FOR THE OFFENCE P/U/S 363, 376 OF IPC AND SEC.4 OF POCSO ACT.

THIS APPEAL, COMING ON FOR ORDERS, 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 is a case wherein the accused was tried for the offence punishable under Section 363, 376 of IPC and Section 4 of the POCSO Act, 2012 before the Court of FTSC-I, Additional City Civil and Sessions Judge, Bengaluru in Spl.C.C.No.425/2017. The learned Special Judge vide Judgment and order dated 06.04.2022 found him guilty for the charged offences. He was sentenced to undergo life imprisonment till his remaining life with fine of Rs.10,000/- for the offence punishable under Section



376 IPC. Further, sentenced to undergo imprisonment for 1 year with fine of Rs.2,000/- for the offence punishable under Section 363 of IPC.

2. Learned counsel appearing for the appellant would contend that, according to the prosecution, victim girl was a minor as on the date of incident, but the prosecution has not established by adducing cogent evidence to prove that the victim was a minor. He contended, the document Ex.P7 issued by PW10 - Principal of the school, is not sufficient to prove the age of the victim.

3. Learned counsel further contended, the trial Court was not justified in imposing a sentence till remaining part of life as such power is not vested with the learned Sessions Judge.

4. Learned counsel also contended that the accused was represented by an Advocate appointed by the DLSA. There was no proper opportunity given to the



defense to examine the material witnesses and infact, there is no cross-examination of PWs.1 to 5 and also PWs.9 to 11. The right of cross-examination was denied, hence, the accused could not put forth his defence properly, resulting in mis-carriage of justice.

5. Learned High Court Government Pleader contented that in spite of granting sufficient opportunity, the accused failed to cross-examine the witnesses, hence, the trial Court based on the evidence adduced, has rightly held the accused guilty for the offence punishable under Section 376, 363 of IPC. She further contented that document at Ex.P7 has not been disputed by the defence, hence, the prosecution has proved that the date of birth of the victim is 14.12.2001 and she was a minor as on the date of commission of the offence. She therefore, sought to dismiss the appeal.

6. At the outset, we find that the accused has been tried for a serious offence under the IPC as well as under the POCSO, 2012. However, out of 11 witnesses



examined by the prosecution, PWs.1 to 5 and PWs.9 to 11 are not at all cross examined by the defence. PW2 is the victim and PW1 and PW3 are her parents. PW5 is an independent witness. PW9 is the Medical Officer who examined the victim. PW10 is the Principal who issued Ex.P7-certificate regarding the date of birth of the victim and PW11 is the I.O., who conducted investigation and filed charge sheet.

7. The right to cross-examine is a fundamental component of a fair trial. If a party is denied this opportunity regarding a material witness, thus the appellate Court can remand the matter back to the trial Court to rectify the procedural lapse. Further, if the lack of cross-examination causes significant prejudice to the defense or the other parties ability to prove their case, remand is a standard remedy.

8. The Hon'ble Apex Court in ***Asim Akhtar v. The State of West Bengal and another*** in ***Criminal Appeal No.12292/2022*** disposed on 18.10.2024 (***2024 INSC***



794), held that if material witnesses are not cross examined, the appellate Court can remand the matter for curing the defects.

9. The accused has been sentenced to life imprisonment for the offence punishable under Section 376 IPC. We are of the considered view that accused having been tried for serious charges, an opportunity ought to be given to him to cross-examine the material witnesses noted supra.

10. In this case, victim, her parents and even the doctor who examined her are not cross examined. Further, the age of the victim is also disputed by the defence. Hence, this is a fit case wherein an opportunity has to be given to the accused to cross-examine the above witnesses.

11. The material on record would reveal that the accused was arrested on 03.07.2017 and he was enlarged on bail on 06.03.2018. Since he absconded, he was



arrested and produced before the trial Court under NBW on 12.03.2020. Until the date of judgment he was in custody. In view of the same, we are not inclined to enlarge the accused on bail at this stage. Considering that the accused is in custody, the trial Court may be directed to dispose of the case after giving reasonable opportunity to the accused to cross-examine the witnesses who are not cross-examined by him, within a time frame. We make it clear that no opinion is expressed on the merits of the case. Accordingly, the following:

ORDER

- (i) Appeal is ***allowed***.
- (ii) The judgment and order dated 06.04.2022 passed by the Court of FTSC-1 Additional City Civil and Sessions Judge, Bengaluru in Spl.C.C.No.425/2017 convicting the accused/appellant for the offence punishable



under Section 363, 376 of IPC and Section 4 of POCSO Act, 2012, is hereby set aside.

- (iii) The matter is remanded to the trial Court with a direction to afford an opportunity to the accused to cross-examine PWs.1 to 5 and PWs.9 to 11.
- (iv) The trial Court shall give an opportunity to the accused, by securing his presence before it, to cross-examine the above witnesses and the State shall also be given opportunity for further examination/cross-examination of the said witnesses, if need arise.
- (v) The trial Court is directed to dispose of the case as far as possible on or before 30.04.2026, subject to cooperation by both the parties.

12. In view of the disposal of the appeal, I.A.No.1/2025, is disposed of.



**NC: 2026:KHC:12451-DB
CRL.A No. 957 of 2022**

A copy of this order shall be communicated to the trial Court forthwith, along with trial Court records, by the Registry.

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

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

HB
List No.: 1 Sl No.: 1