

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF AUGUST, 2026**

PRESENT
THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B.PRAMOD
CRIMINAL APPEAL NO.604 OF 2026 (A)

BETWEEN:

XXX VICTIM GIRL
AGED ABOUT 17 YEARS
AS ON DATE OF INCIDENCE
PRESENTLY AGED ABOUT 20 YEARS
D/O. RAVIKUMAR
R/O. NO.28, 3RD CROSS
CANARA BANK COLONY
UTTARAHALLI MAIN ROAD
CHIKKALLASANDRA
BENGALURU-560 061

...APPELLANT

(BY SRI VENKATESH S., ADVOCATE)

AND:

Digitally signed
by
SHARAD
B
Location: HIGH
COURT OF
KARNATAKA

1. ANIL PRASAD
AGED ABOUT 33 YEARS
S/O. VENKATESH
R/AT 20, SIPLA FACTORY
VEERENAHALLI, VIGRONAGARA
RAMANAGARA-562 159

PERMANENT
R/O. NO.14, NEAR MILD DAIRY
KURUBARAHALLI
RAMANAGARA-562 159

2. THE STATE OF KARNATAKA
BY SUBRAMANYAPURA P.S.
BENGALURU
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001

...RESPONDENTS

(BY SRI M. R. HIEMATHAD, ADVOCATE FOR R-1;
SRI CHENNAPPA ERAPPA, H.C.G.P., FOR R-2)

THIS CRL.A. IS FILED U/S.372 (FILED BY 413 OF BNSS 2023) BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL PASSED AGAINST RESPONDENT NO.1/ACCUSED DATED 09.01.2026 BY HON'BLE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, FTSC-III, AT BENGALURU IN SPL.C.C.NO.2361/2023 AND ALLOW THE APPEAL BY CONVICTING THE RESPONDENT NO.1/ACCUSED REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376(3), 354(A)(1)(ii), 354(D), 504 AND 506 OF IPC AND UNDER SECTIONS 5(p), 6, 11(iv), 12 OF POCSO ACT, 2012 AND SECTION 67 OF IT ACT 2000, BY SUBRAMANYAPURA P.S., BENGALURU IN CR.NO.337/2023.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE B.PRAMOD)

The appeal is listed for admission.

2. The informant, being aggrieved by the judgment of acquittal dated 09.01.2026 passed in SPL.C.C.No.2361/2023, by the learned Additional City Civil and Sessions Judge - FTSC-III, at Bengaluru City, has presented this appeal under Section 413 of Bharatiya Nagarik Suraksha Sanhita, 2023 for the offences punishable under Sections 376(3),354(A)(1)(ii),354(D), 504,506 of IPC, Sections 5(P), 6, 11(iv), and 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012 (for short, "POCSO Act") and Section 67 of Information Technology Act, 2000 (for short, "IT Act").

3. Heard Sri.Venkatesh S., learned counsel appearing for the appellant, Sri. M.R. Hiremathad, learned counsel appearing for respondent No.1 and Sri. Chennappa Erappa, learned High Court Government Pleader appearing for respondent No.2-State.

4. It is the case of the prosecution that, CW1 who is aged less than 18 years is the victim and she is the daughter of CW.2. The CWs. 2 and 3 are known to each other. Accused is the brother-in-law of CW.3. During the year 2020, due to the lockdown due to Covid-09 Pandemic, the CW.2 had allowed the CW.1 to stay in the house of CW3 at R.R.Nagar. The accused was also staying in the house of CW.3. He used to touch the breast and other private parts of the victim girl while offering tuition. He threatened the victim girl saying that he will inform her mother of her spending much time in social media platform. He committed sexual intercourse with the victim girl on many occasions in the guise of love with a promise of marriage.

5. It is further stated that on 07.11.2020 at about 12.30 pm, the accused came to the house of the victim girl in the guise of providing tuition, accompanied her to the room and did sexual intercourse against her will. The CW.2-mother of the victim girl who went to bring groceries, returned home and witnessed the incident. He

abused both victim girl and her mother with filthy words and threatened them with dire consequences. The accused with sexual intent, used to follow the victim girl - CW.1 when she used to attend practice session. He had also forwarded the pornographic images and photos through whatsapp to the victim's mobile phone. Based on the complaint, the police registered the case and set law in motion issuing FIR and forwarded the same to the Court. Thereafter the police investigated, filed charge sheet against the accused for the offences u/s 376(3), 354(A)(1)(ii), 354(D), 504, 506 of IPC, Sections 5(P), 6, 11(iv), and 12 of POCSO Act, 2012 and Section 67 IT Act. The accused did not plead guilty and claims to be tried.

6. The prosecution in order to prove the case, examined ten witnesses i.e., PWs.1 to 10 and got marked documents as per exhibits from Ex.P1 to P35(a). Further, got identified material objects as MOs.1 to 6. During cross-examination of PWs. 2 and 3, documents from Exs.D1 to D6 came to be marked. Thereafter, the

statement of accused was recorded under Section 313 Cr.P.C. and he denied all incriminating evidence and claimed that he has been falsely implicated as a counter to the criminal proceedings initiated by his sister.

7. Having heard the learned counsel appearing for both the sides and on due consideration of both oral and documentary evidence on record, the trial Court raised the following points for its consideration:

"1. Whether the prosecution proves beyond reasonable doubt that the victim girl was a child as on the date of commission of the offence:

2. Whether the prosecution proves beyond all reasonable doubt that he accused has committed the offences punishable U/s 354(d), 354(a)(1)(ii), 376(3), 504 and 506 of IPC, Sec. 66(c) and 67 of Information Technology act, 2000, and also Sec.5(p), 6, 11(iv) and 12 of POCSO Act, 2012?

3. What order?"

The trial Court answered point Nos.1 and 2 in the "negative" and acquitted the accused for the above offences. Being aggrieved by the judgment of the trial Court, the informant is challenging the validity of the judgment in the present appeal.

8. Learned counsel for the appellant contends that the trial Court erred in acquitting the accused for the offences mentioned supra, though there being legally acceptable material on record to convict the accused, the trial Court did not properly appreciate the evidence of PWs.1 to 3 in not accepting the age of the victim girl though School Transfer Certificate at Ex.P10 was produced. The evidence of PW.5 - Principal of the School wherein victim girl was studying and as per the school records, victim's date of birth was 14.09.2005 and in not accepting the evidence of PW.3 who had deposed that due to Covid-19 Pandemic, as PW.1-victim girl was studying 10th standard and she was practicing volleyball at Sports Authority of India, she was staying in the house of PW.3. During that period, accused was preparing UPSC exam and studying in the house of PW3. The accused at that time was assisting/helping the victim girl to prepare for SSLC exam and during that time, has molested her and subjected her to sexual act against her will by threatening her.

9. Learned counsel appearing for the first respondent-accused submits that the age of the victim was not proved as per law and there was a delay in lodging the complaint and supports the judgment. The prosecution does not dispute that the age of the victim girl was not proved as required under the POCSO Act.

10. Having considered the contentions of the parties to the present case, it has to be noted that Section 2(d) of the Act defines child means below the age of 18 years. The Hon'ble Supreme Court in the case of **JARNAIL SINGH v. STATE OF HARYANA**, reported in **(2013) 7 SCC 216**, at paragraph no.6, it has observed that:

"xxx The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a

corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."

In the absence of above documents, the reliance may be placed over the medical information as contemplated in the Rule 12(3)(b) of Juvenile Justice Act, 2015. PWs.1 and 2 state that date of birth of the victim girl is 14.09.2005 and PW5-principal of the school has deposed that the victim girl was admitted in the Academic Year 2015-16 and she had issued Ex.P9-letter along with Transfer Certificate Of the victim girl.

11. That apart, the Apex Court in P. **YUVAPRAKASH v STATE, REP. BY INSPECTOR OF POLICE**, reported in **2023 INSC 676**, has held that to determine a victim's age under Section 34 of the POCSO Act as well as Section 94 of the Juvenile Justice Act, 2015. Wherein it has held that the same is relevant and applicable to consider the age of the victim. It comes to

the conclusion that the document of Matriculation or Date of Birth Certificate or Equivalent Certificate from the relevant examination are relevant for consideration.

12. In support of the contention that the PW1 is minor at the time of alleged incident, no relevant documents are produced by PWs.1 and 2 to the investigating agency regarding the date of birth of the victim girl. The Investigating Officer has made no efforts to collect any documents from the custody of PWs. 1 and 2 regarding the age. Ex.P9 does not bear the admission number, name of the parents, date of birth of the victim girl. In the absence of this material information, Ex.P9 was not considered by the trial Court rightly. No plausible explanation offered for what had prevented the prosecution to produce the relevant documents/material evidence in respect of date of birth of the victim girl and the trial Court considering all these aspects had rightly come to the conclusion that the prosecution failed to prove age of the victim girl in paragraph 20.

13. As per Ex. P1 - first information statement of the victim girl reported on 09.09.2023, wherein, it is mentioned that the incident of penetrative sexual assault occurred lastly on 07.11.2020 and the first information was lodged on 09.09.2023. There is a delay of two years 10 months 2 days in reporting the incident with the jurisdictional police. There is no reasonable explanation offered for delay in lodging the first information. Further, no CDR is collected. Exhibit P.29 is the FSL Report pertaining to the articles collected from victim girl. As per Exhibit 29 seminal stains not detected in item No.1, 2, 4 and 5 and spermatozoa not detected in item No.3, this report not brought to the notice of PW6, final opinion is taken from PW-6 based on FSL report. As such, no worth/legal sanctity is attached to the opinion expressed in Ex.P3. For the said reasons the evidence of PW-6 does not help the prosecution to prove the allegations of penetrative sexual assault.

14. The trial court in paragraph No.102 has noted that the victim girl claims to be a national level sports player, the photographs produced establish close intimacy between the victim and accused and that her testimony in the present case does not inspire the confidence, rather influenced by her mother and P.W.3. No fault can be found with the victim child. As the testimony is influenced, tutored and guided it is rejected. In respect of Ex.7 there is no consistency between the testimony of PW1, PW2 and PW7, regarding source of Ex.7. The mobile phone of PW.2 is not seized during investigation.

15. That apart, victim's mother is well educated, city-based citizen and has not taken any action of approaching the authorities. It the case of prosecution that on 07.11.2020 @ about 12.30 noon, accused had come to the house of the victim girl in the guise of providing tuition, accompanied her to the room and committed sexual act against her will. P.W.2-the mother of the victim girl who went to bring the groceries witnessed the incident on 07.11.2020. Though it is

alleged that the incident had occurred on 07.11.2020, the mother has not taken any action in the matter for the reasons best known to her for a period of 2 years 10 months. No proper, prudent and legally acceptable reasons either explained or established by the prosecution in respect of the delay.

16. In view of the above discussions, it is clear that the age of the victim girl is not proved as per law in the present case and there is enormous unexplained delay of 2 years 10 months constitute serious lacuna on the part of prosecution. The prosecution in the present case failed to prove the ingredients of the provisions beyond reasonable doubt and the trial Court after appreciating the material available on record, including the medical evidence, it had rightly dismissed the case of the prosecution and we do not find any grounds to admit the appeal filed by the de-facto complainant since there is no error in the judgment of the trial Court in appreciating the evidence on record.

Under the circumstances, we do not find any grounds to admit this appeal for reconsideration. Hence, the appeal is ***dismissed***.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

BSV