



CNR: KAHC010238712019

NC: 2026:KHC:47413-DB
CRL.A No. 1475 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1475 OF 2019

BETWEEN:

THE STATE OF KARNATAKA
BY MYSURU SOUTH
POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE-01

...APPELLANT

Digitally signed (BY SRI. MOHAMMED AYUB ALI, ADDL. SPP)

by DEVIKA M

Location: HIGH
COURT OF
KARNATAKA

AND:

1. KARTHIK
SON OF PRANESH
AGED ABOUT 25 YEARS
2. JAYAMMA
WIFE OF BOMMANINGAIAH
AGED ABOUT 59 YEARS

A1 AND A2 ARE
R/O KAMANAKERE HUNDI VILLAGE
MYSURU TALUK / DISTRICT-575001



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3. VENKATESHA
S/O SIPAIYI MAHADEVAPPA
AGED ABOUT 44 YEARS
R/O NO.10156/2 (1)
KANKANADI SUVARNA LANE
6TH CROSS
MANGALURU CITY-575001

...RESPONDENTS

(BY SRI B LETHIF, ADVOCATE)

THIS CRL.A. IS FILED U/S.378(1) AND (3) IS CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 22.10.2018 PASSED BY THE LEARNED VI ADDITIONAL DISTRICT AND SPECIAL JUDGE, MYSURU IN SESSIONS CASE NO.102/2015 THEREBY ACQUITTING THE RESPONDENT NO.1/ACCUSED NO.1 FOR THE OFFENCE P/U/S.366 AND 376(2) OF IPC, SEC.5(L) R/W SEC.6 OF POCSO ACT AND ALSO 9 OF THE PROHIBITION OF CHILD MARRIAGE ACT AND ALSO FOR THE OFFENCE P/U/S.109 OF IPC AND SEC.17 OF THE POCSO ACT SO FAR AS RESPONDENT NO.2 IS CONCERNED AND SEC.17 OF POCSO ACT SO FAR ACCUSED NO.3 IS CONCERNED AND ETC.

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



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ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed against the judgment and order of acquittal dated 22.10.2018 passed in S.C.No.105/2015 acquitting respondent No.1/accused No.1 for the offences punishable under Sections 366 and 376(2) of IPC, Sections 5(L) read with Section 6 of POCSO Act and also Section 9 of the Prohibition of Child Marriage Act and also for Section 109 of IPC and Section 17 of the POCSO Act so far as respondent Nos.2 and 3 is concerned and prayed this Court to convict the respondents for the aforesaid offences.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the prosecution is that the teenage girl who fell in love with accused No.1, without knowing about the consequences of future life has entered into marital life. The allegation made against the accused by the prosecution is that accused No.1 and victim



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girl who is a minor are the residents of Kamanakere Hundi village and both are in love. Accused No.1 knowing fully well that the victim girl is a minor has taken her in a motorcycle at the instance of accused No.2 on 19.11.2014 at about 07.00 p.m. and has bought the Gold Tali in Nakoda jewelers, Ashoka Road, Mysuru. On 20.11.2014, in front of temple at Dharmasthla, accused No.1 has married the victim girl and stayed there for two days. On 23.11.2014 he has taken her to the house of his brother at Lingambudi Palya and stayed there. Then accused No.1 has taken the victim to the house of accused No.3 and stayed there for 15 days along with victim. The marriage was consummated. According to the prosecution, accused No.1 married a minor girl and committed rape on her and accused No.3 has provided shelter to accused No.1 to stay in his house.

4. It is also the case of the prosecution that father of the victim girl gave a missing complaint before Mysuru South Police on 20.11.2014 suspecting the role of these accused. Based on the missing complaint, the case was registered in



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Cr.No.514/2014 for the offences punishable under Sections 363 and 506 of IPC. On securing the victim girl, recorded the statement of victim and invoked the offences under Sections 366, 376(n) of IPC, Sections 4, 6 and 17 of POCSO Act and Section 9 of the Prohibition of Child Marriage Act. The accused persons were secured and they did not plead guilty and claims the trial.

5. In order to prove the case of the prosecution, prosecution examined the witnesses as PW1 to PW16 and got marked the documents at Ex.P1 to P21 and material objects were seized and marked at MO1 to MO3. On closure of the evidence of the prosecution, accused were subjected to 313 statements and there was total denial. Accused did not choose to lead any defence evidence. The Trial Court considered the material on record and taken note of inconsistencies in the statement of victim under Section 161 of Cr.P.C. at Ex.P13 and so also statement under Section 164 of Cr.P.C. and also considered the document of Ex.P10 which discloses that when the victim was taken to the medical



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officer for the first time, she has not given consent and subsequently, she was subjected for medical examination. The Trial Court also taken note of the RFSL report which is marked as Ex.P12 and the said report is negative with respect of seizure of the cloth. The Trial Court also taken note of the second medical examination which was conducted after 14 days of Ex.P11 and comes to the conclusion that, first of all, the age of the victim was not proved. Though prosecution relied upon Ex.P5-Birst Certificate issued by school and Ex.P9- ossification test, the same are not supported the case of the prosecution since Ex.P9 says that the victim age is between 17 to 18 years.

6. Having taken note that there is no proof of age as well as inconsistent evidence, in paragraph 33, the Trial Court held that on careful analysis of the material placed on record by the prosecution, it discloses that the victim girl who was loving accused No.1 for the past two to three years went to Dharmasthala and both of them have married and medical officer who has conducted ossification test has



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testified that he cannot give the exact age of the victim, there would be possibility of 2 years variation in the age of the victim. The Trial Court also taken note of the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act. But the party may still ask the Court/authority to examine its probative value. So also in paragraph 35 taken note of the judgment reported in **2015(1) AICLR 498 (Hans Raj vs State of Haryana)** wherein held that possibility of the prosecutrix being above 18 years could not be ruled out. There can be two interpretations, one which was favourable to the accused to be accepted. The Trial Court also taken note of the evidence available in paragraph 37 and comes to the conclusion that the victim girl in her testimony in unequivocal terms has asserted that she has voluntarily accompanied the accused by leaving her parents in order to evade the marriage plan of her parents with another boy.



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7. The Trial Court also relied upon the principles laid down in the judgment of the Apex Court in the case of **Ram Suresh Singh vs Prabhat Singh (AIR 2009) SC 2805**), wherein held that the authenticity of the entry in the official record would depend as on whose instruction/information such entry stood recorded. The Trial Court relying upon this judgment held that what was the source of information with regard to the document of Ex.P5 is concerned and comes to the conclusion that prosecution has not proved the case against the accused and acquitted.

8. Being aggrieved by the judgment of acquittal, the present appeal is filed by the State before this Court.

9. The learned Additional SPP appearing for the State in his arguments would vehemently contend that the Trial Court fails to take note of the fact that victim was aged about 17 years and PW5 is also examined to prove Ex.P5. The counsel also would vehemently contend that when the first admission record is placed before the Court, in view of the judgment of **YUVAPRAKASH vs STATE rep. by**



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Inspector of Police dated **18.07.2023** ought to have been considered the same. The counsel also would vehemently contend that when the medical officer has issued the report as per Ex.P11 and her opinion that there is evidence regarding sexual assault. The evidence of PW1-victim is corroborated with the medical evidence and the same is sufficient to establish the case of prosecution. The counsel also vehemently contend that the Trial Court ought to have invoked the provisions of Section 29 of POCSO Act, wherein presumption arises when a person is prosecuted for committing or abetting to commit any offence under certain provisions of this Act, unless the contrary is proved. The counsel also in his arguments would vehemently contend that when the document of Ex.P5 i.e., first admission record is produced and so also the document of Ex.P9 - ossification test is also produced before the Court, the Trial Court ought not to have come to the conclusion that the age has not been proved. The counsel also vehemently contend that the evidence of PW1 and medical evidence corroborates with



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each other, thus, ought not to have extended the benefit of doubt in favour of the accused.

10. The counsel appearing for the State in support of his arguments relied upon the judgment of the Apex Court reported in **(2024) 15 SCC 788** in the case of **RIGHT TO PRIVACY OF ADOLESCENTS, IN RE** and brought to notice of this court paragraph 21 wherein discussion was made with regard to subjecting the minor girl who is below the age of 18 years for sexual act and held that the Court has to take note of that the persons below 18 years without considering their developing sexuality, evolving capacity and the impact of such criminalization on their best interests. It held that instead of protecting the adolescents from abuse, the law exposes them in factually consensual and non-exploitative relationships to the risk of criminal prosecution. In this judgment, the Apex Court discussed with regard to the observations made by the High Court where discussion was made with regard to the same. The counsel referring this judgment would vehemently contend that the very approach



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of the Trial Court is erroneous which leads to perverse finding and also it leads to miscarriage of justice in acquitting the accused. Hence, it requires interference of this Court.

11. Per contra, the learned counsel appearing for the respondents/accused in his arguments would vehemently contend that missing complaint was given on the very same day i.e., on 19.11.2014 by the father. The counsel would vehemently contend that the victim was traced after 20 days i.e., on 09.12.2014. The counsel brought to notice of this Court the very statement made by the victim girl before the police under Section 161 at Ex.P13 wherein it is very clear that she has passed out the 2nd PUC by correspondence. The counsel would submit that having taken note of the fact that once she has completed PUC, she is not a minor. The counsel also brought to notice of this Court Ex.P1, which is the statement of the victim before the learned Magistrate under Section 164 of Cr.P.C. wherein she categorically deposed that the accused not subjected her for sexual assault, but both of them, with consent, have the sexual intercourse and



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stated that she is not married. But her statement before the doctor is very clear that on the next day itself, they got married at Dharmasthala and thereafter, they had the sexual intercourse. The counsel also vehemently contend that Ex.P10 is very clear that she has not given consent for examination of her private part except seizure of her cloth. The counsel would contend that the report at Ex.P12 is also very clear that semen stains was not found when the cloth was subjected to examination. The counsel also would vehemently contend that after 14 days of Ex.P11, she was subjected to medical examination and also in her first statement on 10.12.2014, she stated that no history of suggestive of kidnapping and after marriage only she and accused had regular sexual intercourse with the consent. The counsel contend that the statement of victim is very clear that both of them got married and then they have to sexual intercourse. The counsel also would vehemently contend that with regard to the age is concerned, apart from 161 statement, ossification test also clear that she is aged about 17 to 18 years. But there is evidence of the doctor that it



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varies about 2 years and the same is taken note of by the Trial Court while extending the benefit in favour of the accused persons. The counsel also would vehemently contend that when the document of first admission was marked as Ex.P5 through PW5, evidence of PW5 is very clear that no basis for entry of the said date of birth in the register. The counsel would vehemently contend that when victim passed out and having a SSLC marks card, the same is concealed by the prosecution. The counsel also brought to notice of this Court the admission of PW3, the mother of the victim, wherein also she categorically says that she gave birth to this victim in the hospital and she has given the birth certificate to the IO and the same is also concealed by the prosecution. Thus, it clearly shows that she was a major and not minor. The counsel also brought to the notice of this Court the evidence of PW9 who conducted the ossification test who has categorically says that when the report was considered, the age would be difference of 2 years. When suggestion was made that she was aged about 18 years, the doctor says that she cannot tell the exact age of the victim.



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Hence, the Trial Court rightly disbelieved the case of prosecution. Hence, it does not require any interference.

12. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record and also on re-appreciation of both oral and documentary evidence available on record, the point that would arise for the consideration of this appeal is:

1. Whether the Trial Court committed an error in acquitting the accused extending the benefit of doubt with regard to considering the age as well as the inconsistent evidence and whether the judgment of the Trial Court amounts to perversity which leads to miscarriage of justice as contented by the learned Addl. SPP?
2. What order?

Point No.1:

13. Having heard the learned counsel appearing for the respective parties and also on perusal of material on



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record, it discloses that Ex.P5 is the first admission record and no doubt, the counsel appearing for the State relies upon this document. The counsel for the State would contend that in view of the judgment of **YUVAPRAKASH** referred supra, three documents are required to determine the age of the victim i.e., birth certificate, SSLC marks card and also the first admission record. But the same has to be proved and mere marking of the same is not enough to prove the case. The witness who examined before the Trial Court as PW5 says that based on the document he is giving evidence and also he categorically says that there is no any document before the school on what basis the said date of birth is entered in the register. Under such circumstances, the case of the prosecution cannot be accepted. No doubt, the counsel for the State also relies upon the document of Ex.P9-Ossification test and evidence of PW9-doctor who examined the victim but he categorically says that he cannot tell the exact age of the victim and also he categorically deposes that there would be a difference of 2 years and



hence, there is no positive evidence before the Court with regard to the age of the victim is concerned.

14. The father, in the missing complaint, categorically says that victim is aged about 17 years 8 months. In order to prove accurate date of birth, not produced the birth certificate. PW3 who is the mother of the victim categorically says that victim was born in Mission Hospital at Mysuru and she has got a birth certificate. But the same is not produced but says that she has given the same to the police and there is no explanation by the police also why birth certificate is not produced before the Court. The other circumstances is that when she has passed out the SSLC, there would be a matriculation certificate also and the same is also not produced before the Court in order to prove the same. Having considered the statement made by the victim under Section 161 which is marked as Ex.P13, wherein she categorically says that she has passed out the PUC in correspondence. But there is no actual date of birth proof



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document before the Court and hence, the Trial Court rightly comes to the conclusion that age is not proved.

15. The second aspect is concerned, when victim was taken to the Magistrate, her statement was recorded and the same is marked as Ex.P1 wherein, she says that with the consent, they had sexual intercourse. No doubt, in 164 statement, she says that both of them are not married, but the very statement made before the doctor while conducting the second medical examination in terms of Ex.P11, she categorically says that she got married on the very next day i.e., on 20.11.2014 at Dharmasthala and thereafter both of them had sexual intercourse. On perusal of record, it discloses that there was no documentary proof to show that she was a minor and both of them had sexual intercourse with consent. It has to be noted that there is inconsistency in the statement of the victim girl since in one breath at 161 statement, she says that already they are married, but in another breath in 164 statement, she says that she has not married. 164 statement was made on 10.12.2014 i.e., on the



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very next day of securing the victim and there is an inconsistent evidence before the court. The Trial Court also taken note that Ex.P10 is very clear that she categorically stated that both of them have married and such statement was made on 10.12.2014 itself i.e., on the next day of securing the victim. She also categorically stated that no kidnap and both have sexual intercourse with consent but subsequently, a different version was given in terms of Ex.P11 and there is an inconsistent material before the Court. The Trial Court in paragraph 33, detail discussion was made taking note of the evidence of PW9 who conducted ossification test and medical officer who has conducted ossification test has testified that he cannot give the exact age of victim and there would be possibility of 2 years variation in the age of victim and detailed order has been passed considering the material on record and held that there was no any such inducement and she voluntarily accompanied the accused and also her evidence is very clear that when parents were making an arrangement to perform the marriage with another boy, at that juncture, she went



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along with the accused and both of them married at Dharmasthala.

16. Having taken note of the reasoning given by the Trial Court and also taken note of judgment of Apex Court in the case of **Hans Raj vs State of Haryana** referred by the Trial Court wherein also with regard to the ossification test is concerned held that possibility of the prosecutrix being above 18 years could not be ruled out where there can be two interpretations, one which was favourable to the accused to be accepted and so also taken note of the judgment of **Subeg Singh and others vs State of Punjab** reported in **2015(1) AICLR 490** referred by the Trial Court. The Trial Court having considered the evidence available on record, in paragraphs 33, 35 and 37 discussed in detail and also taken note of principles laid down in the judgments referred supra. When such reasoned order has been passed considering the principles laid down in the judgments of the Apex Court as well as the material available on record, we are on the opinion that the judgment relied upon by the counsel for the



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State will not come to the aid of the prosecution. Hence, we answer the above point as negative.

Point No.2:

17. In view of the discussions made above, we passed the following:

ORDER

The appeal is dismissed.

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

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

SN