



CNR: KAHC010262102024

NC: 2026:KHC:51082-DB
CRL.A No. 821 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.821 OF 2024 (C)

BETWEEN:

MANJUNATH CHOUHAN @ MANJA
S/O. RAMACHANDRA CHOWHAN
AGED ABOUT 27 YEARS
R/AT KUVEMPU NAGARA
BANGARAPPA EXTENSION
SHIVAMOGGA TALUK-577 042

...APPELLANT

(BY SMT. VIDYA S., ADVOCATE)

AND:

Digitally signed
by
SHARADAVANI
B
Location: HIGH
COURT OF
KARNATAKA

1. THE STATE OF KARNATAKA
BY RURAL POLICE STATION
SHIVAMOGGA
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001
2. XXXX
AGED ABOUT 9 YEARS
REP. BY HER FATHER AND NATURAL GUARDIAN
SUBRAMANYA (PW1)
AGED ABOUT 36 YEARS
BANGARAPPA LAYOUT
KUVEMPUNAGARA



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NEAR RAGIGUDDA NATIVE PLACE
BELALAKATTE, VILLAGE BHOVI COLONY
SHIVAMOGGA TALUK
SHIVAMOGGA-577 201

...RESPONDENTS

(BY SRI VIJAYKUMAR MAJAGE, S.P.P.-II A/W
SRI RANGASWAMY R., H.C.G.P., FOR R-1;
SMT. ARCHANA K. M., AMICUS CURIAE FOR R-2)

THIS CRL.A. IS FILED U/S. 374(2) CR.PC BY THE
ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE
CONVICTION DATED 02.08.2023 AND SENTENCE DATED
04.08.2023 ON THE FILE OF THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, FTSC-II (POCSO) SHIVAMOGGA IN
SPL.C.NO.524/2022, CONVICTING THE APPELLANT/ACCUSED
FOR THE OFFENCES PUNISHABLE UNDER SECTION 376AB OF
IPC AND SECTION 6 OF POCSO ACT AND SECTION 3(2)(v) OF
SC/ST (POA) ACT, 1989.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE B.PRAMOD



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ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

The accused has preferred this appeal, feeling aggrieved by the impugned judgment passed by the trial Court, convicting and sentencing him for the offence punishable under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST (POA) Act').

2. The accused was charged for the offences punishable under Section 366, 376(2)(n), 376 AB of IPC, Section 6 of the POCSO Act, 2012, Section 3(1)(w)(i) and 3(2)(v) of the SC/ST (POA) Act.

3. The trial Court has found the accused guilty of the offences punishable under Section 376 AB of IPC, Section 6 of the POCSO Act and Section 3(2)(v) of SC/ST (POA) Act. He was acquitted of the offence punishable under Section 366 of IPC. No separate sentence was passed for the offence



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under Section 376 AB of IPC in view of the provisions under Section 42 of the POCSO Act, Section 71 of IPC and Section 26 of General Clauses Act.

4. Insofar as the charges under Sections 3(1)(w)(i) and 3(2)(v) of the SC/ST (POA) Act, the trial Court has come to the conclusion that the act of accused causing sexual assault on the victim on several occasions, is punishable under Section 376 AB of IPC. When repeated sexual assault is committed on the victim belonging to Scheduled Caste by the accused who does not belong to Scheduled Castes or Scheduled Tribes, the said offence is punishable with more than 10 years under the provisions of IPC, the said act is also an offence under Section 3(2)(v) of SC/ST (POA) Act, which is an aggravated form. The offence under Section 3(1)(w)(i) is a minor offence than the offence under Section 3(2)(v) of the said Act, which is covered under Section 3(2)(v) of the Atrocities Act. Hence, when the accused is liable to be punished for a major offence, he cannot be punished for the minor offence of similar nature, as the



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minor offence merges with the major offence as contemplated under Section 71 of IPC. Hence, the trial Court has not convicted the accused for the offence under Section 3(1)(w)(i) of the SC/ST (POA) Act.

5. Insofar as the acquittal of the accused for the offence punishable under Section 366 of IPC, the findings recorded by the trial Court has attained finality.

6. The case of the prosecution in brief is that, the victim girl is aged about 7 years 7 months and she belongs to 'Bhovi' by caste, which comes under the Scheduled Caste Category. The accused belongs to 'Ravala caste', which does not belong to Scheduled Castes or Scheduled Tribes. The brother of the accused was residing near the house of the victim. The accused was residing in his brother's house for the past four months. During such time, he became acquainted with the victim. On 27.05.2022 and for the past three days prior to the said date, between 12.00 p.m. to 01.30 p.m., the accused, in the guise of bringing grass to the rabbit, took the victim to a deserted house, situated near a



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Bricklin, and with a promise of giving fruits, inserted his finger in her private part and also put his private part in her private part and thereby committed the charged offences.

7. Insofar as the age of the victim is concerned, there is no serious dispute raised by the defense. The first informant namely the victim's father has deposed that the victim was born in the year 2014. He has stated that, his daughter was aged about 8 years and she was studying in III Standard. The prosecution has got examined PW7, the teacher of the school. The School Admission Register Extract and the Study Certificate are marked through PW7, as Exs.P15 and P16, wherein, the victim's date of birth is mentioned as "27.04.2014". It is stated that the victim studied in the school in I and II standard.

8. The trial Court, based on the above evidence, held that 'the School Admission Register is a public document maintained by the Government School, in which the victim had studied during undisputed point of time. The said Register was maintained by the teacher in discharge of



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official duty during undisputed point of time, hence, it can be rightly presumed that the said document is duly prepared by the Public Servant as contemplated under Illustration (e) to Section 114 of Evidence Act. Hence, held Exs.P15 and P16 are duly proved by examining the author of the said document i.e. PW7, who in his cross-examination has stated that the victim was admitted to school by producing her birth certificate and there is nothing on record to disbelieve his evidence or to discard Exs.P15 and P16, which are relevant documents to prove the age of the victim, in view of Section 35 of the Evidence Act.'

9. The reasons assigned by the learned trial Court to come to the conclusion that the victim was a minor below 18 years and she was aged about 8 years and she is a child within the meaning of Section 2(d) of the POCSO Act, are sound and proper.

10. The learned counsel for the appellant would contend that there are several discrepancies in the evidence of the prosecution witnesses namely PW1, the complainant,



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PW2, the victim and PW3 and PW4, neighbors. She contended that the evidence of the victim is not corroborated with the evidence of other witnesses and not supported by the medical evidence. She further contended that the medical evidence does not suggest that there was penetrative sexual assault as alleged by the prosecution and in view of the inordinate delay in lodging the complaint and the discrepancies and contradictions in the evidence of the prosecution witnesses and unsupportive medical evidence, the trial Court has committed an error in convicting the accused. She contended that the trial Court has also erred in applying Section 29 of the POCSO Act, to draw a presumption that the accused has committed the offence.

11. Per contra, the learned SPP-II appearing for the State and the learned Amicus Curiae for respondent No.2, vehemently contended that the prosecution has established that the victim was a minor aged about 8 years and she was subjected to penetrative sexual assault by the accused continuously for three days. They contended that in a case of



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this nature, delay if any in reporting the matter to the police is understandable and not fatal to the prosecution. They further contended that minor discrepancies in the evidence of the prosecution witnesses, which do not go to the root of the prosecution case, is also not fatal to the prosecution. They contended that the victim has withstood the cross-examination and her evidence is corroborated by medical evidence. Hence, they sought to dismiss the appeal.

12. The trial Court has found the accused guilty of the offences punishable under Section 376 AB and Section 6 of the POCSO Act. Since the punishment prescribed for Section 376 AB of IPC is more than 10 years, the accused was convicted for the offence under Section 3(2)(v) of the SC/ST (POA) Act. Separate sentence was not passed for the offence under Section 376 AB of IPC, as the accused was sentenced for the offence under Section 6 of the POCSO Act, in view of the provisions under Section 42 of the POCSO Act, Section 71 of IPC and Section 26 of General Clauses Act.

13. Section 375 of IPC reads as under:



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"375.**Rape.**-A man is said to commit "rape" if he-

- a) *penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- b) *inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- c) *manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
- d) *applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*

under the circumstances falling under any of the following seven descriptions:-

Firstly.-Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.-With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.-With or without her consent, when she is under eighteen years of age.

Seventhly.-When she is unable to communicate consent."



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"Penetrative Sexual Assault" is defined under Section 3 of the POCSO Act, 2012 which reads as under:

"Penetrative sexual assault involves penile, object, or body part insertion into specified orifices, body manipulation causing penetration, or oral contact involving a child."

Section 3 of the POCSO Act, 2012, reads as under:

3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—

- (a) *he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*
- (b) *he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or*
- (c) *he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or*
- (d) *he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.*

14. According to the prosecution, the incident took place continuously for three days prior to 27.05.2022. The complaint was lodged on 27.05.2022. The first incident, therefore took place on 24.05.2022. As per Exhibit P1, the complaint lodged by the father of the victim, the accused



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used to take his minor daughter to bring grass to the rabbit for the past three days between 12.00 - 1.30 p.m. On 27.05.2022 at about 11.30 a.m. he was informed over phone by someone to come near the dilapidated house near the Bricklin. When he went there, the accused and his daughter were present. He then came to know that the accused by enticing his daughter, had brought her to the dilapidated house and sexually assaulted her. When he enquired with his daughter, she revealed the incident. In Ex.P1, he has not stated as to the specific act committed by the accused except stating that the accused had sexually assaulted his daughter for three days.

15. The complainant is examined as PW1, wherein he has given an elaborated version of the incident. He has stated that CW3 (PW.3) telephoned to him, stating that the accused had committed rape on his daughter. Therefore, he went near the Bricklin wherein, several people had gathered. His daughter was present there and on enquiry, she revealed to him that the accused in the guise of bringing grass to the



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rabbit and also stating that he will give gooseberries, took her to the dilapidated house near the Bricklin and committed rape. She complained of irritation in her private part and he observed some discharge from her private part. He has stated that, he took the victim to Shimoga Rural Police Station and lodged a complaint, as per Ex.P1.

16. PW3 has not deposed in her evidence, that she had informed the matter to victim's father, on the other hand, she has stated that when the victim complained to her about the burning sensation in her private part, she told her that she has some urine infection and asked her to drink sugar water. The victim then went to her home. When she examined her private part, she noticed certain white discharge and therefore, she applied some ointment. Thereafter, she informed the matter to CW6-Hemanna (PW.4) and when he enquired, the victim revealed about the act committed by the accused. She has deposed that when they enquired with the victim as to whether the accused has committed rape and when they asked as to how many times,



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she said he had committed rape thrice. Then she called the accused, reprimanded him and informed the police, and thereafter the police came and enquired with them.

17. Even though the above discrepancies are pointed out by the learned counsel for the appellant, they are not so material to discredit the evidence of the victim, in its entirety. However, in view of the discrepancies pointed out, the evidence of the victim has to be scrutinized carefully.

18. In this case, the victim is examined as PW2. A careful examination of her evidence do not indicate that the accused has committed rape/penetrative sexual assault on her, as defined either under Section 375 of IPC or Section 3 of the POCSO Act. She has stated that the accused took her to the dilapidated house, removed her panty, slept on her and pressed her private part with his hand. She has stated about the white discharge in her private part.

19. The trial Court relying on a decision of the Hon'ble Apex Court in the case of ***Ganeshan v. State represented by its Inspector of Police*** reported in **2020 (10) SCC**



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573, wherein it is held that 'the sole testimony of the victim is sufficient to convict the accused, if her evidence inspires the confidence of the Court and if it is truthful and fully reliable', accepted the evidence of the victim, observing that 'the victim has specifically named the accused making allegation of sexual assault on her on multiple times for past three days and her evidence is corroborated by PW3 and PW8 circumstantial witnesses and independent witnesses'. Further, trial Court placed reliance on Section 29 of the POCSO Act, 'which envisages that when a person is prosecuted for committing any offence under Sections 3, 5, 7 and 9 of the POCSO Act, the Court shall presume that such person has committed the offence, unless, the contrary is proved'.

20. In the case on hand, the prosecution seeks corroboration from the medical evidence to support the testimonies of PW1 to PW4. PW8 is the Doctor, who examined the victim on 27.05.2022. He has deposed that the victim girl was brought with the history of sexual assault,



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accompanied by her grandmother. He obtained the consent of the victim and her grandmother for medical examination. The victim gave history that a person by name Manja aged 30 years called her to his house and removed her clothes and under garments, he touched her genitals and rubbed her genitals against her causing pain. He has done this for past three days and last episode was on 25.05.2022. PW8 has stated that on physical examination of the victim girl, she did not find any external injuries. On genital examination, there was white discharge, hymen was intact and vulva shows white discharge. She collected specimens (i) vulvul swab, (ii) vulvul smear from the victim and same were packed, sealed and handed over to concerned police for FSL examination.

21. PW8 has further deposed that after the medical examination was conducted, she gave the medical report with a provisional opinion that 'signs suggestive of struggle are absent and final opinion pending for FSL report'. The said report submitted by PW8, is marked as Ex.P.2. She has further deposed that on 29.02.2022 she received the FSL



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report and after perusal of the FSL report, she gave the final medical opinion on the basis of FSL report and examination report that 'there were no evidence of recent sexual intercourse'. The FSL report is marked as Ex.P17 and the final medical opinion issued by PW8 is marked as Ex.P18.

22. PW8 has further deposed that on 31.07.2022, she received a requisition from the Police Inspector, Rural Police Station, Shimoga, asking her for an explanation for white discharge found during clinical examination in the vagina of victim, though hymen was intact. She gave the opinion that white discharge can happen due to various reasons i.e. infection of foreign body even with intact hymen. The said report is marked as Exhibit P19.

23. Upon careful examination of the testimony of the victim, it does not emerge that she was subjected to penetrative sexual assault. The medical evidence also does not indicate that the victim was subjected to penetrative sexual assault. PW8, after examining the victim and upon receipt of the FSL report, has deposed that no external



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injuries were found on the victim and the hymen was intact. She has opined that there were no signs suggestive of struggle and no evidence of recent sexual intercourse. She has given her opinion that the white discharge can be attributed to various reasons, including infection due to foreign body. In view of the same, it cannot be held conclusively that the victim was subjected to penetrative sexual assault as alleged by the prosecution, within the meaning of Section 375 of IPC or Section 3 of the POCSO Act.

24. However, on a cumulative appreciation of the entire evidence and material on record, including the evidence of the victim-PW2 and the medical evidence, we have no hesitation to hold that the accused has committed an act of aggravated sexual assault on the minor victim, aged below 12 years, within the meaning of Section 9(l and m) of the POCSO Act, 2012, punishable under Section 10 of the said Act.



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25. Learned SPP-II has contended that the offence committed by the accused would also attract the provisions of IPC and therefore, he is liable to be convicted under Section 3(2)(v) of the SC/ST (POA Act). It is also contended that even if the offence of rape or penetrative sexual assault was not proved, the act committed by the accused would amount to attempt to commit rape.

26. Having held that the ingredients of Section 375 IPC are not attracted, the accused is not liable to be convicted under Section 376 AB of IPC. We do not find sufficient material to hold that the accused had made an attempt to commit rape, from the evidence of the victim-PW2 and the medical evidence.

27. Insofar as the offence of assault or use of criminal force with intent to outrage modesty is concerned, the said act is punishable under Section 354 of IPC, with imprisonment of either description for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine. The punishment prescribed



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for the said offence being lesser than the punishment prescribed for the offence under Section 10 of the POCSO Act, we deem it appropriate to convict the accused for the offence punishable under Section 10 of the POCSO Act. Further, the maximum sentence prescribed for the offence under Section 354 of IPC is being 5 years, the accused can not be convicted under Section 3(2)(v) of the SC/ST (POA) Act. Hence, the Judgment and Order of conviction and sentence passed against the accused by the trial Court for the offence punishable under Section 6 of the POCSO Act and Section 3(2)(v) of the SC/ST (POA) Act, is liable to be set aside.

28. Learned counsel for the appellant submits that the incident took place in the year 2022, the accused was aged about 27 years at the time of incident. He is in custody from the date of his arrest i.e. from 27.05.2022. She submitted that the accused was eking out his livelihood by doing coolie work. He has an aged mother to look after. He has no criminal antecedents. Hence, prays to take a lenient view.



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29. For the foregoing reasons, we proceed to pass the following order.

ORDER

(i) The appeal is **partly allowed**.

(ii) The Judgment of conviction dated 02.08.2023 and the Order on sentence dated 04.08.2023, passed by the Court of Additional District and Sessions Judge, FTSC-II (POCSO), Shimoga, in Special C.No.524 of 2022, convicting the accused/appellant for the offences punishable under Section 376 AB of IPC, Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, are set aside.

(iii) The accused/appellant is convicted for the offence under Section 9(l and m) of the POSCO



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Act, 2012 punishable under Section 10 of the said Act. He is sentenced to undergo R.I. for a period of five years and to pay fine of Rs.1,00,000/- (Rupees One Lakh only) and in default of payment of fine, he shall undergo SI for a period of one year.

(iv) If the fine amount is deposited, the same shall be paid to the victim, as compensation, within a period of 30 days.

(v) The rest of the order passed by the trial Court, awarding compensation to the victim under the Karnataka Victim Compensation Scheme 2011, is not disturbed.

(vi) The copy of the order shall be forwarded to the Member Secretary, DLSA, Shimoga.

(vii) Smt.Archana K.M., learned Amicus Curiae shall be entitled to Rs.10,000/-(Rupees Ten Thousand only) as honorarium, payable by the



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High Court Legal Services Committee,
Bengaluru.

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

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

MKM
List No.: 1 Sl No.: 9