



CNR: KAHC010270962019

NC: 2026:KHC:54445-DB
CRL.A No. 1599 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 1599 OF 2019 (C)

BETWEEN:

SRI PANIYERAVARA SHANKARA
AGED ABOUT 40 YEARS,
COOLI,
RESIDING IN THE LINE HOUSE OF
AMMATANDA MUTHAPPA,
HAKATHUR VILLAGE, MADIKERI TALUK,
KODAGU DISTRICT-571 201.

...APPELLANT

(BY SRI. NAGARAJA REDDY D.,ADVOCATE)

AND:

STATE OF KARNATAKA
BY MADIKERI RURAL CIRCLE, MADIKERI,
REP BY SPP HIGH COURT BUILDING,
BANGALORE-560 001.

...RESPONDENT

(BY SRI. VIJAYKUMAR MAJAGE, SPP-II,)

THIS CRL.A IS FILED U/S.374(2) OF CR.P.C PRAYING TO
SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION
DATED 10.01.2019 AND SENTENCE DATED 11.01.2019 PASSED
BY THE PRL.SSESSIONS JUDGE, KODAGU, MADIKERI IN
SPL.CASE NO.142/2018, CONVICTING THE



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APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376(2)(i) AND (n) AND 354-(A)(1)(i) OF IPC AND SECTION 4, 6, 8 OF POCSO ACT.

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

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

ORAL JUDGMENT

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

This appeal is preferred by the accused against judgment and order of conviction and sentence passed against him by the Court of the Sessions Judge, Kodagu @ Madikeri, in Special Case No.142/2018.

2. The learned Trial Court has convicted the accused for the offences punishable under Section 376(2)(i) & (n) and Section 354-A(1)(i) of IPC and Section 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act, 2012', for short).



3. For the offence punishable under Section 376(2)(i) & (n) of IPC, the accused is sentenced to undergo imprisonment for life i.e., imprisonment for remainder of life and to pay fine of Rs.25,000/-, in default, to undergo imprisonment for three years; for the offence punishable under Section 8 of the POCSO Act, 2012, accused is sentenced to undergo imprisonment for 4 years and to pay fine of Rs.10,000/-, in default, to undergo imprisonment for 6 months.

4. We have heard learned counsel Sri. Nagaraja Reddy D. appearing for the appellant, Sri. Vijayakumar Majage, learned SPP-II for the State and perused the evidence and material on record.

5. PW.5, Smt. Sujatha is the wife of the accused. Victims PWs.2 and 3 are the daughters of PW.5, born through her first husband. PW.4 is the daughter of PW.5, born through the accused. All of them were residing in a single house at Hakathur village.



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6. It is the case of the prosecution that prior to 13.02.2018, the accused had committed penetrative sexual assault on PW.2, a minor, aged about thirteen years, on several occasions and also committed sexual assault on PW.3, aged eight years and PW.4, aged six years, and thereby committed the charged offences.

7. PW.8, the teacher of the school, where PWs.2 to 4 were studying, on enquiry with them, came to know about the sexual act committed by the accused. She informed the matter to the Head Master - PW.11, of the school. On the information furnished by them, the persons from Rakshana Samithi got the victims admitted at Balamandir, Madikeri. PW.1 lodged a complaint as per Ex.P1, based on which, a case was registered against the accused and upon completion of investigation, charge sheet was filed.

8. It is the case of the prosecution that the accused being the stepfather of PW.2, committed



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penetrative sexual assault on her, on several times during night hours and also molested his two daughters. As per prosecution, the accused and his wife used to take liquor in the night and the children used to sleep in the same room. When the wife of the accused was under intoxication, the accused committed penetrative sexual assault on PW.2 and also committed sexual assault on PWs.3 and 4.

9. Ex.P14 to 16 are the study certificates of PWs.2 to 4. The Trial court relying on the evidences of PWs.2 to 6 coupled with the evidence of PW.8, the teacher of the school, and study certificate marked as Ex.P14 to Ex.P16, held that PWs.2 to 4 were minors and they were below the age of 12 years as on the date of incident.

10. Learned counsel for appellant has not disputed that PWs.3 and 4 are below twelve years. However, he contended that as per the study certificate, Ex.P14, issued



in respect of PW.2, her date of birth is 28.04.2004 and therefore, she was not under 12 years of age.

11. We have perused Ex.P14, the study certificate in respect of PW.2, wherein, her date of birth is mentioned as 28.04.2004. The incident as per the FIR, took place during 01.01.2018 to 12.02.2018. Hence, PW.2 was above the age of 12 years. However, the fact that she was a minor at the time of incident is not in dispute.

12. The entire case of the prosecution is based on the evidence of the victims, coupled with the medical evidence. The fact that a complaint was registered against the accused by PW.1, on the basis of the information furnished by the minor victims, is not seriously disputed. The contention of the learned counsel for the appellant is that, the victims were tutored by their mother, to give false evidence, in view of the quarrel which used take place between the couple and therefore, the victims' evidence is not trustworthy. He has further contended that



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according to the prosecution, accused has committed penetrative sexual assault on PW.2 on several occasions and also molested PWs.3 and 4, however, the medical evidence does not support the prosecution case to establish that either PW.2 was subjected to penetrative sexual assault or PW.3 and PW.4 were molested.

13. Learned SPP II has contended that the complaint-Ex.P1 was lodged by PW.1, on the basis of the statements of the victims and their statements are recorded under Section 164 of Cr.P.C., by the learned Magistrate. As per the said statements, marked as Ex.P5 to P7, the accused has committed penetrative sexual assault on PW.2 and he has molested PWs.3 and 4 by touching their private parts. He contended that PWs.2 to 4 have supported the case of the prosecution and the medical reports issued by PW.15 corroborates the evidence of the victims. He further contended that Ex.P4 (a to c) are the statements of the victims, which is in their hand writings and therefore, the trial Court based on the



said material on record, has rightly convicted and sentenced the accused.

13. The trial Court placing reliance on the evidence of PW2 to PW4 has held that, 'they are residing in the line house situated in the coffee Estate of PW6. Their evidence clearly establishes that they used to sleep in a hall together. The evidence of PW5 shows that she being the wife of the accused, used to sleep by the side of the accused and PW2 to PW4 used to sleep by her side. The victims have given evidence that accused and PW5 used to take alcohol daily during night. Even PW5 has admitted that she and accused were in the habit of taking alcohol in the night. Further, PW2 has given evidence in respect of intercourse made by the accused with her during night several times'. The trial Court has further held that 'there is nothing elicited in the cross-examination of PW2, to show that why she was deposing against the accused'.



14. Similarly, appreciating the evidence of PW3 and PW4, the trial Court has held that 'their evidence shows that the accused used to touch their private parts and chest and there is nothing elicited to disbelieve their evidence'.

15. We have carefully examined the evidence of PW2 to PW.4. The contention of the learned counsel for the appellant that the victims are tutored to give false evidence by their mother, cannot be accepted. The mother who is examined as PW5 has not supported case of the prosecution. Considering that the victims have given their statements in writing as per Exhibit P4(a) to (c) and also considering the evidence of PW1, PW8 and PW11, it cannot be said that the victims were tutored by their mother, to give false evidence. Further, there is nothing elicited in the cross-examination of PW1, PW8 and PW9 to disbelieve their evidence with regard to the victims informing them about the incident, insofar as the sexual assault committed against them by the accused.



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16. As per prosecution, on several occasions, the accused committed penetrative sexual assault on PW2, his step daughter, who was aged about 13 years at the time of incident. In her evidence, PW2 has deposed that during night hours when her mother was under intoxication and all were sleeping, the accused used to come near her and touch her chest and her private part. He would sleep near her and put his private part into her private part. She used to cry due to pain. She has stated that the accused has repeated such acts for about 8 times and due to the said acts of the accused, she was having pain in her private part. She has also deposed about informing the matter to her teacher and thereafter, her teacher sending her to Balamandira along with PW3 and PW4.

17. The complaint was lodged on 13.02.2018. On the same day, PW2 was taken before PW15 for medical examination. As per the evidence of PW15, the victim girl gave the history that since she was in fifth standard, her father used to sexually abuse her in the early morning



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hours at home and the last episode was two weeks ago. On examination, she found that the hymen perineum was not intact. She collected the samples for FSL examination. She has given her opinion stating that there is no evidence to rule out sexual assault and there are no evidence of recent injuries over the body of the victim girl. The Medico Legal Certificate pending final opinion is marked as Exhibit P2. PW15 has collected the vaginal swab and smear for FSL examination.

18. After perusal of the FSL report, PW15 has given her final opinion stating that, as per FSL report, there are no signs suggestive of penetration of vagina/anal intercourse. The said final opinion is marked as Exhibit P21. She has stated that because last episode was 2 weeks prior to her examination and the victim girl had changed the clothes and washed, bathed, after the incident, as such FSL report does not indicate the same. PW15 has also examined PW3 and PW4 on 13.02.2018, she has stated that there was no evidence of recent



injuries on the body. She has issued a certificate to that effect, marked as Exhibit P22.

19. Admittedly, PW2 was aged about 13 years at the time of incident. If there was any penetrative sexual assault committed for 8 times, as alleged, she would have certainly sustained injuries on her private part. On her examination, PW15 has found the hymen perineum not intact. However, she has not observed any injuries either on the internal or external part of the vagina. In Exhibit P2 issued by PW15, it is mentioned that the hymen was intact. It is also mentioned that there are no evidence of recent injuries over the body. On the basis of the FSL report, PW15 has given her final opinion, stating that there are no signs suggestive of penetration of vagina/anal intercourse.

20. Hence, the evidence of PW2 is not fully corroborated by the medical evidence, to conclusively hold that PW2 was subjected to penetrative sexual assault by



the accused. However, the evidence of PW2, coupled with the medical evidence clearly establishes that the accused has committed aggravated sexual assault against PW.2, attracting the ingredients of Section 5(l) of the POCSO Act.

21. For committing sexual assault on PW3 and PW4, the trial Court has convicted the accused under Section 8 of the POCSO Act, 2012. Both PW3 and PW4 are aged below 12 years. Hence, the offence committed by the accused against PW3 and PW4 would attract Section 9 (m) of POCSO Act, punishable under Section 10 of the said Act. Hence, the trial Court was not proper in convicting the accused under Section 8 of the POCSO Act. The findings recorded by the trial Court to convict the accused for the offence punishable under Section 376(2) (i) & (n) and Section 4, 6 and 8 of POCSO Act, are therefore, not sustainable in law and liable to be set aside. The accused is liable to be convicted for the offence under Section 9 (l) and (m) punishable under Section 10 of the POCSO Act, 2012.



22. For the foregoing reasons, we proceed to pass the following:

ORDER

- i) The appeal is **allowed-in-part**.
- ii) The Judgment of conviction dated 10.01.2019 and Order on sentence dated 11.01.2019 passed by the Court of the Sessions Judge, Kodagu-Madikeri, in Special Case No.142/2018, insofar as convicting and sentencing the appellant/accused for the offence punishable under Section 376(2)(i) & (n) of IPC and Section 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 is set aside.
- iii) The conviction under Section 354-A(1)(i) of IPC is confirmed.



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- iv) The appellant/accused is convicted under Section 9(l) and (m) punishable under Section 10 of the POCSO Act, 2012.
- v) The appellant/accused is sentenced to undergo Rigorous Imprisonment for a period of 7 years. He is sentenced to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand) and in default of payment of fine, shall undergo S.I. for a period of one year.
- vi) The entire fine amount shall be paid as compensation to PW.2.
- vii) The order passed by the trial Court directing the District Legal Services Authority to consider grant of compensation to PWs.2, 3 and 4 shall be intact.



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viii) The appellant/accused is entitled to the benefit of set-off as contemplated under Section 428 of Cr.PC.

The copies of the operative portion of the order shall be communicated to the concerned Jail authority and the District Legal Services Authority, Madikeri.

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

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

LDC, MKM
List No.: 1 Sl No.: 6