



CNR: KAHC010274352019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1629 OF 2019 (A)

BETWEEN:

STATE OF KARNATAKA
BY CIRCLE INSPECTOR OF POLICE
KUTTA CIRCLE
REPRESENTED BY STATE
PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01

...APPELLANT

(BY SRI SUHAS GOWDA M., H.C.G.P.)

AND:

1. PANIYERAVARA MANJU
SON OF PANIYERAVARA
AGED ABOUT 27 YEARS
COOLIE
C/O. KADAYAMADA AIYAPPA
@ PRASANNA, KOTHURU VILLAGE
VIRAJPET TALUK
KODAGU DISTRICT-571 218
2. PANIYARAVARA BOLKA
S/O. BALLI
AGED ABOUT 50 YEARS

Digitally signed
by
SHARADAVANI
B
Location: HIGH
COURT OF
KARNATAKA





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CRL.A No. 1629 of 2019

R/AT LINE HOUSE
BELONGING TO THIMMAIAH
NALKERI VILLAGE, VIRAJPET TALUK
KODAGU DISTRICT

AMENDMENT CARRIED OUT
AS PER THE ORDER DATED 06/01/2022

...RESPONDENTS

(BY SRI N. S. SAMPANGI RAMAIAH, ADVOCATE)

THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 30.03.2019 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU-MADIKERI SITTING AT VIRAJPET IN SPECIAL CASE NO.140/2017, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 376 OF IPC AND SECTION 4 OF POCSO ACT AND SET ASIDE THE AFORESAID JUDGMENT AND ORDER DATED 30.03.2019 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU-MADIKERI SITTING AT VIRAJPET IN SPECIAL CASE NO.140/2017, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 376 OF IPC AND SECTION 4 OF POCSO ACT AND ALSO CONVICT AND SENTENCE THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 376 OF THE IPC AND SECTION 4 OF POCSO ACT.

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)

Heard Sri. Suhas Gowda M, learned HCGP appearing for the State and Sri. N.S.Sampangi Ramaiah learned *amicus curiae* who was appointed by this Court to assist this Court on behalf of the respondents - accused, remained absent.

2. This appeal is filed by the State against the judgment and order of acquittal dated 30.03.2019 for the offences punishable under Section 376 of IPC and Section 4 of POCSO Act, 2012 passed in S.C. No.140/2017 by the learned by the II Additional District and Sessions Judge, Kodagu-Madikeri, sitting at Virajpet, seeking to convict the accused.

3. The factual matrix of the case of prosecution is that:

a) On 09.08.2017 at about 06.00 p.m. when the victim and the CW.2 after purchasing the eatables from the shop of CW.9 situated at Nalkery Village when they



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were proceeding towards their line house situated in the estate of CW.10, accused who was standing near the shop of CW.9 followed CW.2 and caught hold of the hand of the victim from behind. The accused tied her hands with the veil of chudidar and when the victim shouted, the accused closed her mouth. Although CW.2 requested the accused to leave the victim, the accused dragged the victim to the neighbouring coffee estate belonging to CW.10 situated in Sy.No.20/29P2 and CW.2 ran towards line house and accused by dragging the victim to the coffee estate, CW.2 made her to lie on the ground and by removing her clothes, sexually abused the victim and CW.2 who has gone to the line house of the victim, brought the CWs.3 to 7 and when they were searching for the victim, accused ran away by hearing their noise.

b) Based on the complaint, police have registered the case and investigated the matter and filed the charge sheet and accused is secured before the trial Court. The accused did not plead guilty and claimed to be tried.



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Hence, prosecution relies upon the evidence of PWs.1 to 18, got marked the documents as per Exs.P1 to P31 and also material objects as MOs.1 to 12. On closure of the evidence of prosecution case examined the accused under Section 313 of Cr.P.C., and accused did not choose to lead any defence evidence. The trial Court having appreciated the evidence on record comes to the conclusion that the very evidence of prosecution is not trustworthy and there is inconsistency in the complaint, wherein allegation is made against two persons and it does not inspire the confidence of the Court. The trial Court also comes to the conclusion that both PWs.1 and 2 have categorically admitted that accused persons were shown in the police station prior to the identification parade conducted in the prison by the Tahsildar. It also does not come to the aid of the prosecution.

c) Even PW.1 - the victim has conceded that she has lodged the complaint against two persons but she has deposed before the Court that she has wrongly stated in



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the complaint that two persons dragged her because she was in a shock. In her evidence, she says that only the accused subjected her for sexual act and the same has not been proved. The PW.1 has also given an explanation that before being declared that the parents did not require her regarding the incident. The trial court having considered the material comes to the conclusion that there is no corroborated medical evidence. As the doctor who is examined the victim as PW.16, has deposed before the Court that there were no injuries in the genital organ and there were no traces of recent sexual intercourse. PW.16 has deposed before the Court that she has examined the victim on 11.08.2017 i.e., about 48 hours after the incident and did not find any traces of recent sexual intercourse. Having considered the evidence of PW.16, trial Court comes to the conclusion that, hymen was not intact, but there is a tare of hymen as only is put before hymen, column perennial. Though PW.16 has deposed before the Court as hymen was not intact and it is evident



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that victim was subjected to sexual intercourse, but, she has admitted that she has not mentioned in her report that victim is subjected to sexual abuse. The trial Court having taken note of the judgment in the case of **RAJESH GOVIND JAGESHA VS STATE OF MAHARASHTRA**, reported in **1999(8)SCC 428** and so also the judgment in the case of **MEKA RAMASWAMY v. DASARI MOHAN AND OTHERS**, reported in **1998 SCC 604**, wherein it is held that the school register and secondary school examination records have no evidentiary value to prove the age of a candidate and overall considering the evidence on record, acquitted the accused.

4. Learned HCGP appearing for the State in his arguments would vehemently contend that trial Court failed to take note of the evidence led by the prosecution. It is admitted that PW.2 is an eyewitness, who accompanied the victim when incident took place, she witnessed the same. The said eyewitness although has turned partly hostile, and specifically stated in her cross-



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examination that she has seen the accused earlier, but the trial Court fails to consider the evidence of the victim in consonance with the evidence of PW.2 and the evidence of PW.2 is very clear in identifying the accused. The Study Certificate at Ex.P23 is also produced to show that she is a minor and PW.9-Headmaster, who has issued the Study Certificate and victim was aged about 15 years as on the date of lodging the complaint and trial Court has failed to consider this document. Learned HCGP argues that the trial Court ought to have legally presumed under Sections 29 and 30 of the POCSO Act and it is very clear that Court shall presume that accused has committed the said offence. Hence, prays this Court to convict the accused.

5. Learned *amicus curiae* remains absent.

6. Having heard the learned HCGP appearing for the appellant-State and also on perusal of both oral and documentary evidence on record and so also on re-appraisal of the evidence, the points that would arise for consideration of this Court are:



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"i) Whether the trial Court has committed an error in acquitting the accused and, whether it requires interference of this Court to convert the acquittal into conviction and sentence the accused for the offences punishable under Section 376 of IPC and Section 4 of POCSO Act, 2012?

ii) What order?"

Point No.(i):

7. Having heard the learned HCGP appearing for the appellant-State and also on perusal of material on record as well as charges which are levelled against the accused for the offences punishable under Section 376 of IPC and Section 4 of POCSO Act, 2012. Though it is narrated in the case of prosecution that the victim was subjected to sexual act and material available before the Court particularly the Ex.P2 is very clear that victim was subjected to examination on 09.08.2017 and alleged history of rape was stated in the history that it was on 09.08.2017 and on medical examination, the report is very clear that there is no recent evidence of sexual intercourse and the said final opinion is also given based on the aforesaid report. The PW.16-doctor's evidence, who



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examined the victim, is also not positive and trial Court taken note of the same while discussing to whether the victim was subjected to sexual act or not and no ingredients are found to invoke Section 4 of POCSO Act as well as Section 376 of IPC.

8. Now, coming to the evidence of PWs. 1 and 2 both depose before the Court that before identifying the accused person in the jail, accused person was shown in the police station itself and hence the trial Court took note of the said fact into consideration and question of identifying the accused in the prison while conducting the identification parade does not arise when accused was shown in the police station itself to the respective witnesses. These circumstances also will not help the case of the prosecution.

9. The prosecution also relies upon the date of birth of the victim as 12.04.2004 relying upon the document at Ex.P.23 and the same is a Transfer Certificate



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and not the first admission record as well as no Matriculation Certificate is produced and Birth Certificate is produced and the Apex Court in the case of ***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. No such material is placed before the Court. It has further held in paragraph No.22 that the provisions of POCSO Act will not be applicable in this case. In absence of those particular documents is concerned the charges leveled against the accused under Section 6 of POCSO Act as well as Section 10 of the Prohibition of Child Marriage Act



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cannot be sustained. The age of the victim girl is also not proved.

10. Therefore, we are of the view that the aforesaid documents are required to prove the age of the victim and the same is also not proved. The document which is produced before the Court must be an authenticated document. The headmaster has been examined before the Court. But this is not the document of first standard and in order to even make the entry in the first standard also, there must be a document to prove the same and there must be a basis for entering the date of birth in the school records and except the Study Certificate, nothing is produced and with regard to the age also there is no age proof record.

11. It is further observed that FSL Report is also negative and the PW.2 partly turned hostile and also taking note of inconsistencies in the complaint at Ex.P1 and no doubt the explanation given by victim that she



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did not narrate the incident to her parents as well as in giving complaint a discrepancy is found in the complaint and evidence of PW.1 that only one person was there while committing the offence but while narrating incident before the Magistrate, the very presence of the victim and also her relative Sangeetha was also stated. Having taken note of the evidence of this witness as well as medical evidence and the FSL report, the same not suggest that victim was subjected to sexual assault.

12. Under the circumstances, we do not find any error on the part of trial Court in considering the evidence available on record and there is no any consistent evidence with regard to subjecting her for sexual act when the victim examined within 2 days of the alleged sexual act, i.e., forcible sexual act, there are no injuries and also no sign of the sexual act. Only because hymen was not intact, the Court cannot come to the conclusion that accused subjected her for sexual act and hence, the trial Court rightly considered the material available on record in



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respect of the offence punishable under Section 376 of IPC as well as Section 4 of POCSO Act. We do not find any perversity and miscarriage of justice in appreciating the evidence and hence, answer the point as ***Negative***.

Point No.(ii):

In view of the discussions made hereinabove, we pass the following:

ORDER

The appeal is ***dismissed***.

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

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

BSV
List No.: 1 Sl No.: 13