



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1056 OF 2019 (C)

BETWEEN:

SRI. SHIVAKUMAR B.R.
S/O RAMACHANDRAPPA,
AGED ABOUT 36 YEARS,
R/A NALKUDURE VILLAGE,
TYAVANIGI HOBLI,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT.

...APPELLANT

(BY SRI. P.D. SUBRAMANYA, ADVOCATE (PH))

AND:

STATE OF KARNATAKA
BY DAVANAGERE WOMEN
POLICE STATION
NOW REPRESENTED
BY S.P.P.,
HIGH COURT OF KARNATAKA,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. RAHUL RAI K., HCGP (PH))

THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO
CALL FOR RECORDS IN S.C.NO.33/2016 WHICH WAS
DISPOSED OFF ON 13.04.2017 BY THE II ADDITIONAL



DISTRICT AND SESSIONS JUDGE, AND SPECIAL JUDGE, DAVANAGERE AND FURTHER BE PLEASED TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 13.04.2017 AND THE ORDER OF SENTENCE DATED 15.04.2017 IN S.C.NO.33/2016 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AND SPECIAL JUDGE, DAVANAGERE AND SET HIM AT LIBERTY/ACQUIT FOR THE OFFENCES PUNISHABLE U/SEC.366 OF IPC, SEC.4 OF POCSO ACT, 2012 AND SEC.3 (1) (xi) AND 3 (2) (v) OF THE SC/ST (PA) ACT.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

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

In this appeal, the appellant/accused has assailed his conviction and sentence passed by the trial Court for the offences punishable under Section 366 of IPC, Section 4 of POCSO Act, 2012 and Section 3(1)(xi) and 3(2)(v) of SC/ST (POA) Act, 1989.

2. We have heard the learned counsel for appellant, learned High Court Government Pleader for the State and perused the evidence and material on record.



3. It is the case of the prosecution that on 03.12.2015 at about 04.30 p.m., the accused, by enticing the minor daughter of the complainant belonging to scheduled caste, with a promise of marriage, kidnapped her from the lawful custody of her parents without their knowledge and consent, from Davangere and took her to Ranebennur and then at about 10.30 p.m., came to Harihara and stayed in Room No.9 of Panchavathi Lodge, wherein he committed penetrative sexual assault on her against her will and consent.

4. A missing complaint-Ex.P1 was lodged by victim's father (PW.1) on 04.12.2015, on the basis of which PW14-ASI registered a case in Crime No.123/2015 at Women Police Station, Davangere under Section 363 IPC. On the following day, i.e. on 05.12.2015, the victim was traced and brought to the police station. Her statement was recorded in the presence of PW11. Her medical examination was conducted by the doctor-PW9, who issued the medical report-Ex.P7. The victim's



statement was also recorded under Section 164 Cr.P.C., as per ExP.17.

5. PW13-Dy.SP., who took over the investigation on 12.12.2015, filed the charge sheet against the accused for the offences punishable under Section 363(A) of IPC, Section 4 of the POCSO Act, 2012 and Section 3(1)(xi) and 3(2)(v) of SC/ST (POA) Act.

6. The accused pleaded not guilty to the charges and claimed to be tried. Before the trial Court, the prosecution got examined PW1 to PW14 and got marked Exs.P1 to P17 and MO.1 to MO.3.

7. The trial Court, vide impugned judgment and order, convicted and sentenced the accused for the charged offences.

8. At the outset, it is pertinent to mention that in this case, the accused is in custody throughout. None of the witnesses except PW12 were cross-examined by the defence. The material on record reveals that accused was



present before the Court on the date of examination of the prosecution witnesses and on some occasions, the defence counsel was absent. When time was sought for cross-examination, the trial Court refused to grant time. Applications filed under Section 311 Cr.P.C., were also rejected by the trial Court.

9. We are constrained to observe that the procedure followed by the learned Special Judge in not giving an opportunity to the defence to cross-examine the witnesses was not proper, considering the nature of the offence alleged against the accused and the punishment prescribed. When the trial Court was of the opinion that the defence counsel is not cross-examining the witnesses and since the accused was in custody, ought to have provided proper legal aid to the accused.

10. The trial Court while convicting and sentencing the accused for the charged offences has come to the conclusion that the sole testimony of the prosecutrix clearly goes to show that there are no any reason for her



to depose against the accused, if he has not committed any offence. Based on the evidence of the prosecutrix and holding that the evidence of PW1 to PW11 corroborates with the evidence of I.Os. PW13 and PW14, the trial Court held that the prosecution has proved its case against the accused beyond all reasonable doubt.

11. It is the specific case of the prosecution that the victim belonged to Lambani Community coming under scheduled caste and the accused having knowledge that she belonged to scheduled caste and she was a minor, Kidnapped her from the lawful custody of her parents and took her to a lodge in Harihara wherein, he committed forcible penetrative sexual assault on her.

12. When charges are framed under the Provisions of the POCSO Act 2012, it is the primary duty of the prosecution to establish that the victim was a minor as on the date of commission of the offence. In the case on hand, in the missing complaint lodged by victim's father (PW1) he has mentioned the date of birth of the victim as



07.08.1999. The prosecution has examined PW12, the in-charge principle of one Morarji Desai School and got marked Ex.P10-study certificate issued by him. As per the said document, date of birth of the victim is 25.07.1999.

13. It is the contention of the learned High Court Government Pleader that taking into consideration the above evidence on record, the prosecution has established that the victim was a minor aged below 16 years at the time of incident. He would also draw the attention of the Court to Ex.P7, Medical Examination Report pertaining to victim issued by PW9, wherein the age of the victim is estimated as between 16-17 years, on the basis of dental examination.

14. Firstly, the date of birth mentioned in Ex.P1, by victim's father and the date of birth found in Ex.P10 issued by PW12 varies. Even if those dates are accepted, victim would still be a minor as on the date of incident. However, PW12 in his chief examination has stated that the victim girl was admitted to 6th standard in their school in the year



2010-2011 and on the basis of the transfer certificate, they mentioned her date of birth in the school register. Neither the transfer certificate nor the school register has been produced and marked. Ex.P10 is the Study certificate issued by PW12. The date of birth mentioned in the said study certificate is on the basis of the transfer certificate. Further, the study certificate shows that the victim girl studied from 2010 to 2014 in the said school, i.e., from 6th Standard to 10th Standard. No document regarding the date of birth has been produced from the school where the victim took admission for the first time in 1st Standard.

15. Ex.P7 is the medical report pertaining to the victim girl issued by PW9. wherein, it is mentioned that, as per dental opinion of one Dr.Tippeswami, the individual age is estimated between 16 and 17 years.

16. Admittedly, PW9 who issued Ex.P7 has not conducted the examination to estimate the age of the victim girl. The doctor Tippeswami who is said to have



opined on the basis of dental examination that the victim was aged between 16 and 17 years, has not been examined. It is not forthcoming as to what was the procedure followed to estimate victim's age. Hence, merely mentioning that as per dental opinion, age of the victim is between 16 and 17 years itself is not sufficient to come to a conclusion that the victim was a minor at the time of incident.

17. Apart from the above documents, there are no other acceptable evidence produced by the prosecution to prove the age of the victim. A reasonable doubt arises in the mind of the Court regarding the correct age of the victim. Hence, in our considered opinion, the prosecution has not established beyond reasonable doubt that the victim was a minor as on the date of commission of the offence.

18. According to the prosecution, the victim was kidnapped by the accused and then taken to a lodge



where he committed forcible penetrative sexual assault on her, against her consent.

19. The contention of the Learned High Court Government Pleader is that on tracing the victim, she has given her statement before the police in the presence of PW11, wherein she has categorically stated that she was kidnapped by the accused and taken to a lodge at Harihara wherein in a room, he subjected her to forcible penetrative sexual assault. He contended that PW11 has confirmed recording of victim's statement and the lodge owner and the manager are also examined and their evidence confirm that the accused had visited the lodge along with the victim and stayed in a room. He further contended that the victim (PW.2) has supported the case of prosecution and her evidence is further corroborated by the evidence of her parents, PW1 and PW5 and also her brother-in-law PW6.

20. In Exhibit P1, the missing complaint, Victim's father-PW1 has stated that on 03.12.2015 at about



03.30 p.m., his daughter left the house carrying a mobile phone with her, stating that she is going to medical shop and thereafter did not return. They enquired with their relatives and searched for her. The missing complaint was lodged on the following day, i.e., on 04.12.2015. The victim was traced on 05.12.2015. Her medical examination was conducted by PW9. The victim in her testimony has stated that the accused was working in a private bus as an agent and she came in contact with him as she used to go to Ukkadagatri in the said bus. Her evidence further shows that the accused gave his phone number and they used to have conversation with each other. She has stated that on 03.12.2015 the accused called her stating that they will go to Harihara and therefore, she accompanied him. The accused then took her in a bus to Ranebennur and from there to Harihara and booked a room wherein, he committed forcible sexual intercourse and on the next day at 12 noon, he brought her back to Davanagere in a bus and left her at the railway station.



21. Ex.P7 is the Medical Examination Report of the victim. She was examined by the doctor - PW9 at CJ Hospital, Davanagere.

22. PW9 has stated that the victim has furnished the history and upon examination she issued the report- Ex,P7. We have perused Ex.P7, wherein, the victim has given history that she had friendship with a person by name Shivakumar (accused) from Thyavangi. She went along with him willingly on 03.12.2015. Both of them stayed in Harihara lodge, had physical contact. As per Ex.P7, no external injuries were found over the body and vulva. There was no discharge/no bleeding/no bruise. Hymen was not intact. Based on the clinical examination and FSL report, PW9 has furnished her final opinion stating that there is no evidence suggestive of recent sexual intercourse. As per Ex.P8, the FSL report, seminal stains were not detected in the items collected from victim and accused.



23. From the above material on record, it is clear that the victim was not taken forcibly, but she voluntarily left her house carrying a mobile phone and went along with the accused. Her medical report does not show any external injuries on her body and vulva.

24. In this case after recording the statement of the victim by the police, her statement was also recorded under Section 164 Cr.P.C., by the learned Magistrate. The said statement is marked as Ex.P17 through the IO-PW13. We have perused the contents of Ex.P17, wherein, the victim has stated that she has not gone anywhere, but she was with her parents. In Ex.P17, victim girl has not made any allegation against the accused that she was either kidnapped or subjected to forcible penetrative sexual assault by him.

25. Insofar as the conviction recorded under SC/ST (POA) Act, when this Court is of the opinion that the prosecution has not proved the charges levelled against the accused for the offences under the provisions of IPC



and POCSO Act, question of convicting him under the SC/ST Act will not arise.

26. However, it is necessary to mention that the incident took place prior to the Amendment brought to Section 3(2)(v) of the Act and therefore, the prosecution has to establish that the accused committed the offence on the victim on the ground that she belonged to a member of Scheduled caste or scheduled tribe, which is *sine qua non* for the application of Section 3 (2)(v) of the Act. In the instant case, no such evidence has been adduced to establish the said requirement. It is not the case of the prosecution that the victim was kidnapped and subjected to penetrative sexual assault, on the ground that she was a member of scheduled caste or scheduled tribe. In the absence of evidence to that effect, Section 3 (2)(v) has no application.

27. In the case on hand, the defence has not cross-examined the material witnesses. However, on re-appreciation of the entire evidence and material on record,



we find that the prosecution has not established the charges levelled against the accused beyond all reasonable doubt. The judgment and order of conviction and sentence passed by the trial Court is therefore, not sustainable in law and requires interference at the hands of this Court. Accordingly, the following:

ORDER

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

(ii) The judgment dated 13.04.2017 and the order on sentence dated 15.04.2017 passed by the Court of II Additional District and Sessions Judge and Special Judge at Davangere in SC No.33/2016 is hereby ***set aside***.

(iii) Appellant/accused is acquitted of the offences punishable under Section 366 IPC, Section 4 of the POCSO Act, 2012 and Section 3(1)(xi) and 3(2)(v) of SC/ST (POA) Act.

(iv) Appellant/accused shall be set at liberty, if he is not required in any other case.



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(v) Registry shall communicate the operative portion of this order to the concerned jail authority, forthwith.

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

**Sd/-
(G BASAVARAJA)
JUDGE**

HB
List No.: 1 Sl No.: 12