



CNR: KAHC010380402015

NC: 2026:KHC:52215
CRL.A No. 1029 of 2015

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 21ST DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 1029 OF 2015 (C)**

BETWEEN:

SRI C RAMESHA
S/O LATE CHINNAPPA,
AGED: 23 YEARS,
OCC:PETTY BUSINESS
R/AT HASANDAHALLI VILLAGE,
TALUK: MALUR, DISTRICT KOLAR- 563160

...APPELLANT

(BY SRI. VEERANNA G. TIGADI.,ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY THE
INSPECTOR OF POLICE,
MASTHI POLICE STATION,
TALUK: MALUR, DISTRICT: KOLAR - 563160

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

CRL.A. FILED U/S 374(2) CR.P.C BY THE ADV. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED:20.8.2015 AND SENTENCE DATED 21.8.2015, PASSED BY THE I ADDL. DIST. & SESSIONS JUDGE, KOLAR, IN S.C.NO.9/2013- CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/S 363,376 & 506 OF IPC.

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



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CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. This appeal by the appellant is against the judgement of conviction and order on sentence dated 20.08.2015 passed in SC No.9 of 2013 by the I Additional District and Sessions Judge at Kolar (for short 'the trial Court').

2. For the sake of convenience, the parties herein are referred to as per their status and rank before the trial court.

3. Brief facts leading to this appeal are that Masthi Police filed charge-sheet against the accused for the offences punishable under Sections 366-A, 376 and 506 of Indian Penal Code. It is alleged by the prosecution that on 11.08.2012 at about 7:30 am, CW1/PW4-Puttamma filed written complaint stating that on 09.08.2012 at 7.00 am she and her husband-CW7 had gone to their lands for work and her daughter aged about 16 years remained in the house. When CW1 returned home after work, she found her daughter was not in the house and she searched for her at the places nearby, but could not find her. At that time, Lakshmamma-CW3, informed her that at about 9.00 am, she saw her daughter going with accused on a



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two-wheeler and thereafter, the complainant and her husband have searched her at Bangarapet and Kolar. Believing that the victim might be found at her sister's place at Kolar, and on visiting the place, accused, on seeing them, ran away from the spot, and upon asking the victim as to what had happened, the victim informed them that the accused had forcefully lured to accompany him and took her to his sister's house and on that night, the accused forcefully raped her by telling her that if she resisted, he would kill her. Thereafter, the complainant lodged a complaint. On the basis of the complaint, case was registered in Crime No.77 of 2012 and FIR was submitted to the Court. During the course of investigation, investigating officer arrested the accused and produced him before the Court on 11.08.2012 and accused was remanded to custody and till the impugned judgement, accused was in custody. After suspension of sentence by this Court, accused was released on bail on 08.12.2015.

4. After investigation, the investigating officer submitted charge-sheet against the accused for the offence punishable under Sections 376, 366-A and 506 of Indian penal code and



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the same was registered in CC No.462 of 2012. The case was committed to the Court of Sessions, where it was registered as SC No.9 of 2013. On hearing, learned Session Judge has framed the charges for the aforesaid offences. The same was read over and explained to the accused in the language known to him. Having understood the same, accused pleaded, not guilty and claimed to be tried.

5. To prove the guilt of the accused, in all 20 witnesses were examined as PWs1 to 20, 20 documents were marked as Ex.P1 to 20 and 10 material objects were marked as MO1 to 10. On closure of prosecution side evidence, statement of the accused under Section 313 of Cr.PC was recorded. Accused has totally denied the incriminating evidence appearing against him. However, he did not lead any defence evidence on his behalf. Having heard the arguments on both sides, the trial Court convicted the accused for offences under Sections 363, 376 and 506 of Indian Penal Code and passed sentence to undergo rigorous imprisonment for 3 years and to pay fine of Rs.3,000/- for offence punishable under Section 363 of Indian Penal Code. Accused was sentenced to undergo rigorous imprisonment for 7



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years and to pay fine of Rs.5,000/- for the offence punishable under Section 376 and accused was also sentenced to undergo simple imprisonment for a period of 3 years and to pay fine of Rs.2,000/- for offence punishable under Section 506 of Indian Penal Code. Being agreed by the said judgement of conviction and sentence, accused is before this court in this appeal.

6. Sri Veeranna G Tigadi, learned Counsel appearing for the appellant would submit the judgement of conviction and sentence passed by the trial Court is against law, facts, and circumstances of the case and is liable to be set aside. He would submit that the trial court has committed gross error in not considering the very essence of law and the requirement of evidence in adjudicating the case with regard to alleged offences. Learned counsel would further submit that the trial court has failed to scrutinise the documents and only relied on the evidence of PWs1 to 20 and the documents Exhibits P1 and P2. The trial Court has grossly erred in coming to the conclusion that PW2 was below 16 years as on the date of alleged offence. The investigating officer has not produced any legally acceptable document before the Court to prove the age



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of the victim. The trial court has ignored the evidence and opinion of PW3-Dr. K.P. Shashikala, Exhibit P9 Forensic Science Laboratory Report and Exhibit P10-opinion of the Doctor that there is nothing suggestive that the victim had forcible intercourse. He would further submit that the trial Court has erred in not considering the evidence of PW13-Smt. Munirathnamma, Women Police Constable that on 10.08.2012 itself PW2-victim was in police station. There is an inordinate and unexplained delay in lodging complaint as also submission of FIR to the Court. On all these grounds, it is sought to allow the appeal.

7. To substantiate his submissions, the learned Counsel has relied on the decision of Hon'ble Apex court in the case of JARNAIL SINGH v. STATE OF HARYANA reported in (2013)7 SCC 263.

8. As against this, Sri K. Nageshwarappa, learned High Court Government Pleader, would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts and absolutely there are no grounds to interfere with the impugned judgement of conviction and



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sentence passed by the trial Court. Accordingly, it is sought for dismissal of the appeal.

9. Having heard the arguments on both sides and on perusal of material placed before this court, the following points would arise for consideration:

- i) Whether the prosecution has proved beyond reasonable doubt that the age of victim was below 16 years as on the date of alleged offence?
- ii) Whether the appellant has made out Ground to interfere with the impugned judgement of conviction and passed by the trial court?
- iii) What order?

10. My answer to the above points are:

Regarding Point No.1:

11. I have examined the materials placed before this Court. It is the case of the prosecution that Masthi Police filed charge-



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sheet against the accused for the offences punishable under Sections 366-A, 376 and 506 of Indian Penal Code. It is alleged by the prosecution that on 11.08.2012 at about 7:30 am, CW1/PW4-Puttamma find written complaint stating that on 09.08.2012 at 7.00 am she and her husband-CW7 had gone to their lands for work and her daughter aged about 16 years remained in the house. When CW1 returned home after work, she found her daughter was not in the house and she searched for her at the places nearby, but could not find her. At that time, Lakshmmamma-CW3, informed her that at about 9.00 am, she saw her daughter going with accused on a two-wheeler and thereafter, the complainant and her husband have searched her at Bangarapet and Kolar. Believing that the victim might be found at her sister's place at Kolar, and on visiting the place, accused, on seeing them, ran away from the spot, and upon asking the victim as to what had happened, the victim informed them that the accused had forcefully lured to accompany him and took her to his sister's house and on that night, the accused forcefully raped her by telling her that if she resisted, he would kill her.



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12. To prove the guilt of the accused, in all 20 witnesses were examined as PWs1 to 20, 20 documents were marked as Ex.P1 to 20 and 10 material objects were marked as MO1 to 10.

13. This case arise out of the complaint made by PW4- Puttamma, mother of the victim. In the complaint, it is stated as under:

"ವಿಷಯ: "ಅಪ್ರಾಪ್ತ ವಯಸ್ಸಿನ ನನ್ನ ಮಗಳನ್ನು ಪುಸಲಾಯಿಸಿಕೊಂಡು ಹೋಗಿ ಅತ್ಯಾಚಾರ ಮಾಡಿರುವ ಕುರಿತು"

ಮಾನ್ಯರೇ:- ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮಾಸ್ತಿ ಹೋಬಳಿ ಹಸಾಂಡಹಳ್ಳಿ ಗ್ರಾಮದ ವಾಸಿ ಪರಿಶಿಷ್ಟ ಜಾತಿಗೆ ಸೇರಿರುವ ವೆಂಕಟಸ್ವಾಮಿಯವರ ಹೆಂಡತಿಯಾದ ಸುಮಾರು 35 ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ಶ್ರೀಮತಿ ಪುಟ್ಟಮ್ಮ ಆದ ನಾನು ಕೊಡುವ ದೂರು ಏನೆಂದರೆ, ದಿನಾಂಕ 9-8-2012 ರಂದು ಬೆಳಿಗ್ಗೆ 7:00 ಗಂಟೆಗೆ ತೋಟದ ಕೆಲಸದ ನಿಮಿತ್ತ ನಾನು ನನ್ನ ಗಂಡ ತೋಟಕ್ಕೆ ಹೋಗಿದ್ದು ಮನೆಯಲ್ಲಿ ಸುಮಾರು 16 ವರ್ಷದ ವಯಸ್ಸುಳ್ಳ ರಮ್ಯ ರವರು ಮನೆಯಲ್ಲಿದ್ದು ನಾವು ತೋಟದಲ್ಲಿ ಕೆಲಸ ಮುಗಿಸಿಕೊಂಡು ಸುಮಾರು 10 ಗಂಟೆಗೆ ಮನೆಗೆ ಬಂದಾಗ ನನ್ನ ಮಗಳು ಮನೆಯಲ್ಲಿ ಇರುವುದಿಲ್ಲ ಗ್ರಾಮದಲ್ಲಿ ಹುಡುಕಾಡಿದರೂ ಕಂಡು ಬಂದಿರುವುದಿಲ್ಲ ಈ ಸಮಯದಲ್ಲಿ ಇದೇ ಗ್ರಾಮದ ಪರಿಶಿಷ್ಟ ಜಾತಿಗೆ ಸೇರಿದ ಲಕ್ಷ್ಮಮ್ಮ W/O ಬಜ್ಜಪ್ಪ ಪರಿಶಿಷ್ಟ ಜಾತಿಗೆ ಸೇರಿದ ರವರ ನಿನ್ನ ಮಗಳಾದ ರಮ್ಯಾಳನ್ನು ಇದೇ ಗ್ರಾಮದ ಪರಿಶಿಷ್ಟ ಪಂಗಡಕ್ಕೆ ಸೇರಿರುವ



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ಜಿನ್ನಪ್ಪನವರ ಮಗನಾದ ಸುಮಾರು 22 ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ರಮೇಶ ಎಂಬುವವನು ಇಬೀಗ ಬಿನಾಂಕ 9-8-12 ಸಮಯ 9 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ನಿಮ್ಮ ಮಗಳಾದ ರಮ್ಯ ಎಂಬುವವರನ್ನು ಟ್ವಿಚಕ್ರ ವಾಹನದಲ್ಲಿ ಕರೆದುಕೊಂಡು ಬಂಗಾರಪೇಟೆ ರಸ್ತೆಯಲ್ಲಿ ಹೋಗಿರುತ್ತಾನೆ ಎಂದು ತಿಳಿಸಿರುತ್ತಾಳೆ.

ಹಾಗೆಯೇ ನಾವು ಬಂಗಾರಪೇಟೆ ಮತ್ತು ಕೋಲಾರದ ಕಡೆ ಹುಡುಕಲು ಹೋದವು ಕೊನೆಗೆ ಕೋಲಾರದಲ್ಲಿ ರಮೇಶನ ಅಕ್ಕನ ಮನೆ ಇದ್ದು ಅಲ್ಲಿ ಇರಬಹುದು ಎಂದು ಅಲ್ಲಿಗೆ ಹೋದಾಗ ರಮೇಶ ನಮ್ಮನ್ನು ನೋಡಿ ಅಲ್ಲಿಂದ ಓಡಿ ಹೋಗಿರುತ್ತಾನೆ. ಅಲ್ಲಿ ನಮ್ಮ ಮಗಳಾದ ರಮ್ಯ ಇದ್ದು ಅವಳನ್ನು ವಿಚಾರಿಸಲಾಗಿ ಅವಳು ರಮೇಶ ಎಂಬುವವನು ನನ್ನನ್ನು ಬಲವಂತವಾಗಿ ಪುಸಲಾಯಿಸಿ ಟ್ವಿಚಕ್ರ ವಾಹನದಲ್ಲಿ ಕೂಲಿಸಿಕೊಂಡು ನೇರವಾಗಿ ಬಂಗಾರಪೇಟೆ ರಸ್ತೆಯಲ್ಲಿ ನೇರ ಕೋಲಾರಕ್ಕೆ ಹೋಗಿ ಅಲ್ಲಿ ಅವರ ಅಕ್ಕನ ಮನೆಯಲ್ಲಿ ಬಿಟ್ಟು ಅವರ ಅಕ್ಕನು ಮನೆಯಲ್ಲಿ ಇರುವುದಿಲ್ಲ ರಮೇಶನು ನನ್ನ ಮೇಲೆ ಆ ದಿನ ರಾತ್ರಿ ಪೂರ್ತಿ ನನ್ನ ಮೇಲೆ ಅತ್ಯಾಚಾರ ವೆಸಗಿರುತ್ತಾನೆ. ನಾನು ಅದನ್ನು ವಿರೋಧಿಸಲಾಗಿ ಅವನು ಸುಮ್ಮನಿದ್ದರೆ ಸರಿ ಇಲ್ಲದೇ ಹೋದರೆ ನಿನ್ನನ್ನು ಸಾಯಿಸಿ ಬಿಡುತ್ತೇನೆ ಎಂದು ಹೆದರಿಸಿರುತ್ತಾನೆ ಎಂದು ನನ್ನ ಬಳಿ ತಿಳಿಸಿರುತ್ತಾಳೆ.

ಆದ್ದರಿಂದ ತಾವು ದಯವಿಟ್ಟು ನನ್ನ ಮಗಳಾದ ರಮ್ಯ ಅಪ್ಪಾಪ್ಪ ವಯಸ್ಕಳಾಗಿದ್ದು ಅವಳನ್ನು ಪುಸಲಾಯಿಸಿ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಅವಳ ಮೇಲೆ ಬಲಾತ್ಕಾರವಾಗಿ ಅತ್ಯಾಚಾರ ಮಾಡಿ ಅವಳು



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ವಿರೋಧಿಸಿದಾಗ ಪ್ರಾಣ ಬೆದಲಿಕೆ ಹಾಕಿರುವ ರಮೇಶನ ಮೇಲೆ
ಕಾನೂನು ಲೇಖ್ಯಾ ಕ್ರಮ ಜರುಗಿಸಿ ನಮಗೆ ನ್ಯಾಯ ದೊರಕಿಸಿಕೊಡಲು
ವಿನಂತಿ ಇರುತ್ತದೆ."

14. As per this complaint, the incident took place on 09.08.2012 at 7.00 am. Complaint came to be filed by PW4 on 11.08.2012 at 7:30 am. FIR reached the Court on 11.08.2012 at 4:30 pm though it was dispatched on 11.08.2012 at 9.00 hours. The delay in filing the complaint and delay in submitting the FIR to the court has not been properly explained by the prosecution.

15. As per the averments of the complaint, age of victim is above 16 years. PW2 has stated that her date of birth is 22.08.1997. PW4-Puttamma has deposed that her daughter was aged 15 years, which is not consistent with the averments made in the complaint. Prosecution has also produced Exhibit P13-certificate issued by the Headmaster of Government High School, Hosandahalli, Malur Taluk, Kolar District. This Certificate is based on the admission register. But the admission register extract is not produced by the investigating officer. The investigating officer has not explained anything as



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to non-production of admission register extract. To prove Exhibit P13, prosecution has examined PW1-M.Krishnappa, the Headmaster of the School. He has deposed as to the contents of Exhibit P13. During the course of cross-examination, he has clearly admitted that he was in that School at the time of admission of victim to the school. Further, he has deposed that he do not know who has admitted the child to the school. He has not obtained the birth certificate of the victim or the affidavit of the guardians. If really, the Headmaster of the School had maintained the Admission Register, he could have produced the same before the investigating officer. The investigating officer has not explained anything as to non-collection of this material piece of evidence to place before the court.

16. It is well-settled principle that where the best evidence is available but is withheld by the investigating agency, an adverse inference is liable to be drawn against the prosecution under Illustration (g) to Section 114 of the Indian Evidence Act, 1872, whereunder the Court may presume that evidence which could be, and is not,



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produced would, if produced, be unfavourable to the person withholding it. The investigating officer has not submitted as to upon which document, the Headmaster of the School has entered the date of birth of the victim in the School Register.

17. In the case of JARNAIL SINGH (supra), at paragraphs 22 to 24 of the judgement, the Supreme Court has observed as under:

"22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

"12. Procedure to be followed in determination of Age- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or



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otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may



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be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, Section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the



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sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by



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the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW - PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3.



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Satpal (PW4) had proved the certificate Exhibit-PG, as having been made on the basis of the school records indicating, that the prosecutrix VW - PW6, was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view, that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW - PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpal-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW - PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor."



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18. In the case on hand, the investigating officer has failed to comply with Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007, which is framed under Section 68(1) of Juvenile Justice (Caste and Protection of Children) Act, 2000 before amendment of Juvenile Justice (Care and Protection of Children) Amendment Act, 2015. Viewed from any angle, I do not find any legal evidence to show the that the victim was aged below 16 years as on the date of commission of offence. Accordingly, I answer Point No.1 in the negative.

Regarding Point No.2:

19. With regard to the alleged commission of kidnap, rape and criminal intimidation are concerned, though the trial Court has framed charges against the accused for commission of offence under Section 366-A of Indian Penal Code, but the trial court has not convicted the accused for the said section. However, the trial Court has convicted the accused for offence under section 363 of Indian Penal Code.

20. The offence under Section 363 of Indian penal code, contemplates punishment for kidnapping. The essential



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ingredients to prove the offence under the said Section, are as under:

"Essential ingredients: An offence under Section 363 has following essentials:

(i) That the accused did:

(a) Forceful compulsion or inducement by deceitful means;

(b) The object of such compulsion or inducement must be the going of a person from any place;

(ii) That such kidnapping of any person was done from India or from the lawful guardianship.

(b) Evidence.- To bring home an offence, under Section 363, IPC the prosecution is to establish (a) the accused conveyed the victim beyond the limits of India; (b) that this removal was without the consent of the victim or of any person legally authorised to consent removal.

(a) the accused has either taken or enticed away (voluntary accompaniment excepted) a minor; (b) the said minor if a male was under 16 years of age or if a female was under 18 years of age on the date of taking or enticing; (c) that the said taking or enticing has been made out of the keeping of a lawful guardian or a de facto guardian lawfully entrusted with the keeping of the mionor without the consent of such guardian.



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or

(a) the accused has either takes or enticed away a person of unsound mind; (b) this taking or enticing has been made out of the keeping of lawful guardian or de facto guardian lawfully entrusted with the keeping of the person of unsound mind; (c) that this removal of a person of unsound mind has been effected without the consent of such guardian."

21. In the case on hand, on a careful examination of the entire evidence on record, there are no sufficient evidence to prove the ingredients for the offence under Section 363 of Indian Penal Code. Accordingly, the prosecution has failed to prove the guilt of the accused under the said Section.

22. With regard to offence under Sections 376 and 506 of Indian Penal Code are concerned, it is a case of the prosecution that the accused had forcible intercourse with victim. PW2-victim has deposed in her evidence that on the date of incident, during night time, accused raped her. It is stated that the accused threatened her that if she opposed, he would kill her. But during the cross-examination of PW2, she has clearly admitted that she has not lodged any complaint to the police and the accused has not kidnapped or committed rape. After



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cross-examination of PW2-victim him by accused counsel, again the learned Public Prosecutor has cross-examined the victim without the permission of the Court. When the PW2-victim has deposed in different versions during her cross-examination and in examination-in-chief, the only course open to the prosecution is to re-examine, if there is any ambiguity between depositions made in the cross-examination and examination-in-chief. However, the trial Court has not followed the procedure known to law. Instead of that, the trial Court has permitted the prosecution, without their being any request, to cross-examine PW2-victim after cross-examination by the Counsel for the accused. At the time of cross-examination of PW2-victim, the accused was in judicial custody. Therefore, the question of influencing or inducing PW2-victim, does not arise.

23. PW2-victim has voluntarily deposed on oath before the court that accused has not kidnapped or committed rape.

24. PWs4 and 6 who are the mother and father of the victim, have also clearly admitted in their cross-examination that they did not file any complaint before the Police Station stating that the accused has taken away PW2-victim.



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25. PWs7 to 10 and PWs13 and 14 have not supported the case of prosecution.

26. PW3-Dr. K.P. Shashikala, has clearly deposed in her evidence that she has examined PW2 on 11.08.2012. Further, she has deposed that there was no external injury found on the person. She has also noted down the details in the case sheet. She has collected, perennial swab, pubic hair, vaginal swab, vaginal smear on slides, cervical swab, nail bed scrapping, and also collected her clothes MOs1 to 4. She had sent the articles to the Forensic Science Laboratory, Bangalore. She has further deposed that as per FSL report, there is nothing to suggest that the victim had forcible intercourse. She has given her opinion as per Exhibit P10 which reveals that on clinical examination and official report, nothing is suggestive as to victim having forcible intercourse by the said person. However, no evidence is found in FSL report for article sent for chemical analysis.

27. Viewed from any angle, I do not find any material evidence constituting the offence punishable under Sections 376 and 506 of Indian Penal Code. Prosecution has failed to elicit any favourable answers from the material witnesses to



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discord their admission. I do not find any material to convict the accused for the said offences. The trial Court has not properly appreciated the evidence in accordance with law and fact. Thus, the judgement of conviction and order on sentence passed by the trial Court warrants interference. Accordingly, I answer Point No.2, in the affirmative.

Regarding Point No.3:

28. For the reasons aforestated and discussions. I proceed to pass the following:

ORDER

- i) Appeal is allowed;
- ii) Judgement of conviction and order on sentence dated 20.08.2015, passed in SC No.9 of 2013 by the I Additional District & Sessions Judge at Kolar, is set aside;
- iii) Accused is acquitted of the offence punishable under Sections 363, 376 and 506 of Indian Penal Code;
- iv) Bail bond executed by the accused shall stand cancelled;



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- v) The trial Court is directed to refund the fine amount if any deposited by him;

Registry shall transmit the trial Court records along with the copy of this judgment to the concerned court.

Sd/-
(G BASAVARAJA)
JUDGE

LNN
LIST NO.: 1 SL NO.: 68