



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 1660 OF 2023 (C)

BETWEEN:

NADIM BENGALORI,
S/O ANWAR,
AGED ABOUT 23 YEARS,
R/AT: 10TH CROSS,
2ND MAIN DAVANAGERE,
DAVANAGERE DISTRICT - 577 001.

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Location: High
Court of
Karnataka

...APPELLANT

(BY SRI. LETHIF B., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY DAVANGERE WOMEN POLICE STATION,
DAVANAGERE DISTRICT,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT COMPLEX BUILDING,



BANGALORE – 560 001.

2. ROSHAN ALI
S/O NABISAB,
AGED ABOUT 46 YEARS,
R/AT CHAMARAJPETE MAIN ROAD,
DAVANGERE - 577 001.

...RESPONDENTS

(BY SRI. M. V. ANOOPKUMAR., HCGP FOR R1;
R2 IS SERVED AND UNREPRESENTED)

THIS CRL.A FILED U/S 374(2) CR.PC BY THE ADVOCATE
FOR THE APPELLANT PRAYING THAT THIS HONOURABLE
COURT MAY BE PLEASED TO SET ASIDE THE ORDER PASSED
BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I,
DAVANAGERE DATED 11.04.2023 AND 12.04.2023 IN
S.C.NO.21/2021, CONVICTING THE APPELLANT/ACCUSED FOR
THE OFFENCE P/U/S 363, 376, 376(2)(n) OF IPC AND SEC.6 OF
POSCO ACT.

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

CORAM: HON'BLE MR. JUSTICE S RACHAIAH



ORAL JUDGMENT

1. This appeal has been filed by the appellant / accused, being aggrieved by the judgment of conviction and order on sentence dated 11.04.2023 in S.C.No.21/2021 on the file of the learned Addl. District and Sessions Judge, FTSC-I, Davanagere, wherein the Trial Court convicted the appellant for the offences under Sections 363 and 376(2)(n) of Indian Penal Code (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act').
2. The ranks of the parties before the Trial Court will be considered henceforth for convenience.

Brief facts of the case:

3. The case of the prosecution is that the victim has been examined as P.W.1 and she was aged about 16 years and was studying in SSLC. It is alleged that she was being stalked by the appellant when she was going to school. He used to express that he was loving her and wanted to marry her.



4. On 14.12.2020, when the victim went to her school, the accused had also gone there and abducted her from her school and confined her in his friend's house at Ashraya Colony, Gokak, for some days. During the said period, it is alleged that he committed sexual assault on her. A complaint came to be registered by P.W.2. Based on the said complaint, the respondent - police have registered a case, conducted the investigation and submitted the charge sheet.
5. In order to prove the case, the prosecution has examined 15 witnesses as PWs.1 to 15 and got marked 37 documents as Exs.P1 to P37 and also identified material objects as M.Os.1 to 7. The Trial Court, after appreciating both oral and documentary evidence on record, convicted the accused for the above said offences.
6. Heard Mr. B. Lethif, learned counsel for the appellant and Mr. M.V. Anoopkumar, learned High Court Government Pleader for respondent No.1. Respondent No.2 is served and unrepresented.



7. The learned counsel for the appellant submitted that the findings of the Trial Court in recording the conviction are contrary to the evidence and law. Therefore, the same is liable to be set aside.
8. It is further submitted that the victim, who is examined as P.W.2, has stated in her evidence that, she voluntarily approached the accused and she traveled along with him from Davanagere to Gokak in a bus. Both of them were staying in Gokak for four days.
9. It is further submitted that P.W.6, who is the Vice Principal, has stated in his evidence that he had issued Ex.P8, which is the certificate that would indicate the age of the victim. According to the said report, her date of birth was 29.07.2004. The said certificate ought not to have been considered as it is against the settled principle of law.
10. It is further stated that the medical report does not support the case of the victim. However, the Trial Court, despite considering these two aspects, recorded the



conviction, which is unsustainable in law and the same is liable to be set aside. Making such submissions, the learned counsel for the appellant prays to allow the appeal.

11. *Per contra*, learned High Court Government Pleader for respondent No.1 - State vehemently submitted that the evidence of all the witnesses is consistent, and in particular, the evidence of PWs.1 to 3 is relevant. The Trial Court, after appreciating their respective evidence, passed the judgment, which is appropriate and unbiased.
12. It is further submitted that the victim, who is aged about 16 years, has been induced, taking advantage of her innocence. The victim, soon after she was traced, gave her statement against the appellant / accused and the investigation was carried out in that direction. When such being the fact, it is not appropriate to set aside the order passed by the Trial Court. Making such submissions, learned High Court Government Pleader for respondent No.1 – State prays to reject the appeal.



13. Having heard learned counsel for the respective parties and on perusal of the findings of the Trial Court, it appears that the victim was studying in SSLC and she is aged about 16 years. It is alleged that both accused and victim were loving each other; consequently, she had been kidnapped and subjected to penetrative sexual assault.
14. Be that as it may, in order to re-appreciate the facts and circumstances of the case, it is necessary to go through the evidence of material witnesses.
15. P.W.1 is the father of the victim. He lodged a complaint on 15.12.2020 regarding missing of his daughter stating that his daughter was found missing since yesterday. He supported his case by reiterating the statement made before the police.
16. P.W.2 is the victim. She has stated in her evidence that she had voluntarily gone along with the accused to Gokak, where both of them stayed in the house of P.W.14. She further stated that the accused had



committed rape on her. In her statement recorded under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C.'), she disclosed that she had been raped by the accused.

17. Evidence of P.W.14 would indicate that both the victim and the accused had been to her house and stayed there for two days. She has not stated as to whether the victim had been subjected to rape or not in the said house. However, she stated that the victim had informed her that she was aged about 20 years.
18. Having analyzed the evidence of the material witnesses and also Exs.P7 and P8, which are stated to be birth certificate and school certificate respectively, it is not in dispute that the victim was a minor as on the date when the alleged incident occurred. However, the evidence of P.W.1 appears to be unnatural for the reason that there are inconsistencies in her evidence in respect of the alleged incident of rape. According to her statement made under Section 164 of Cr.P.C., she has stated that the accused had raped her. However, in the medical



report, she gave the history of the incident where she disclosed that she had been subjected to rape for five times. However, in her evidence, she has stated that she had been raped for two to three times. Further, she stated that she along with accused stayed in the house of P.W.14 for four days. However, P.W.14 says that, both the victim and the accused were there for two days. The respondent - police immediately after securing the victim, had not taken the initiative to subject her to medical examination. These are all the points that ought to have been considered by the Trial Court for proper analysis. However, the Trial Court failed to consider and analyze the evidence properly.

19. On going through the documentary evidence on record, no doubt, it is difficult to accept that the evidence of the victim is reliable and acceptable in respect of the alleged rape. However, the evidence of PWs.1, 2 and 14 regarding abduction or kidnapping can be accepted. Having considered the evidence of these material witnesses, I am of the considered opinion that the



findings of the Trial Court in respect of offences under Section 376(2)(n) of IPC and Section 6 of the POCSO Act are not proper and relevant. Therefore, the judgment of conviction passed by the Trial Court is liable to be set aside in respect of the offences under Section 376(2)(n) of IPC and Section 6 of the POCSO Act.

20. However, as regards the offence under Section 363 of IPC, the accused has not made out a ground to interfere with the said findings of the Trial Court.

21. In the light of the observations made above, I proceed to pass the following:-

ORDER

i) Criminal Appeal is *allowed in part*.

ii) The order passed by the Additional District and Sessions Judge, FTSC-I, Davanagere dated 11.04.2023 and 12.04.2023 in S.C.No.21/2021 is modified in such a way that the appellant has been acquitted for the offence under Section 376(2)(n) of IPC and Section 6 of POCSO Act.



iii) The appellant is convicted for the offence punishable under Section 363 of IPC. The punishment imposed by the Trial Court is held to be unaltered.

iv) The learned counsel for the appellant submitted that the accused has been in judicial custody since 5½ years. The maximum punishment imposed by the Trial Court is 5 years in respect of Section 363 of IPC. Having considered the said submission, the following order is passed.

v) The jail authority is directed to release the appellant forthwith, if he is not required in any other case.

vi) The Registry is directed to send copy of this judgment to the concerned jail authority forthwith, in order to comply this order.

In view of the disposal of the appeal, pending I.A., if any, does not survive for consideration and the same is also disposed of.

Sd/-
(S RACHAIAH)
JUDGE