



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1054 OF 2018 (C)

BETWEEN:

H THIPPESWAMY
S/O K H HANUMANTHAPPA
AGED ABOUT 24 YEARS,
R/AT MEDHEHALLY VILLAGE,
CHITRADURGA TALUK, CHITRADURGA-573201.

...APPELLANT

(BY SRI. N.B. GADEKAR, ADV. A/W
SRI. K. B. K. SWAMY., ADV.)

AND:

1. THE STATE BY IMANGALA POLICE,
CHITRADURGA DISTRICT-573201,
REPRESENTED BY:
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING, BANGALORE-560001.

2. NARASIMHAPPA
S/O KARIYANNA
45 YEARS, KOOLI WORK, HIRIYUR TALUK,
CHITRADURGA DISTRICT.

...RESPONDENTS

(BY VIJAY KUMAR MAJAGE, SPP II A/W
SRI. RAHUL RAI K., HCGP FOR R1,
SRI. HARSHA D. JOSHI, ADV. FOR R2.)

[R2 IMPEADED, VIDE COURT ORDER DATED:16.01.2023.]



THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE ORDER OF CONVICTION DATED 05.05.2018 AND SENTENCE DATED 07.05.2018 PASSED BY THE SPECIAL II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN SPL.C.(POCSO)NO.78/2017 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 306,366 AND 376 OF IPC AND SECTION 4,8 AND 12 OF POCSO ACT AND ETC.

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 G BASAVARAJA

ORAL JUDGMENT

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

The judgment and order of the trial Court, convicting and sentencing the accused for the offences punishable under sections 306, 366, 376 of IPC; sections 4, 8 and 12 of the POCSO Act, 2012, is under challenge in this appeal.

2. The trial Court has sentenced the accused to undergo imprisonment for life i.e. imprisonment for the remainder of his natural life and to pay a fine of Rs.30,000/- (Rupees thirty thousand only) for the offence punishable under Section 376 of IPC, in default of payment of fine, to further undergo simple imprisonment



for one year. Further, to undergo imprisonment for a period of ten years and to pay a fine of Rs.20,000/- for the offence punishable under Section 306 of IPC, in default of payment of fine, to undergo SI for a period of one year; to undergo imprisonment for a period of ten years and to pay a fine of Rs.20,000/- for the offence punishable under Section 366 of IPC, in default of payment of fine, to undergo SI for a period of one year; to undergo imprisonment for a period of seven years and to pay a fine of Rs.10,000/- for the offence punishable under Section 4 of the POCSO Act, 2012, in default of payment of fine, to undergo SI for a period of one year; to undergo imprisonment for a period of five years and to pay a fine of Rs.10,000/- for the offence punishable under Section 8 of the POCSO Act, 2012, in default of payment of fine, to undergo SI for a period of one year; to undergo imprisonment for a period of three years and to pay a fine of Rs.10,000/- for the offence punishable under Section 12 of the POCSO Act, 2012, in default of payment of fine, to undergo SI for a period of one year.



3. We have heard learned counsel Sri N.B.Gadekar and Sri K.B.K Swamy for the appellant and learned SPP-II Sri Vijay Kumar Majage along with learned HCGP, Sri Rahul Rai.K for respondent-State and perused the evidence and material on record.

4. Briefly stated, the case of the prosecution is that, on 07.11.2016 at about 2.00 p.m., the accused came to Basappanamalige village from Chitradurga in a car bearing registration No.KA-16/C-3412 and kidnapped complainant's minor daughter in the said car, and took her towards Vaddikere village and on the way, he stopped the car and committed sexual assault and forcible sexual intercourse on her. Further, when the victim started bleeding from her private part, he gave a white cloth to wipe the blood and then stating that he has to drop his friend at Chitradurga and take his mother to the hospital, left the victim at the spot and did not return. Hence, the victim, being dejected, committed suicide by hanging to



the branch of a tamarind tree, situated in the land of one Krishna Reddy.

5. The charges were framed against the accused for the aforementioned offences, for which the accused pleaded not guilty and claimed to be tried.

6. In order to establish the charges, the prosecution examined PWs.1 to 20, got marked Exhibits P1 to 29 and MOs.1 to 25.

7. The learned Sessions Judge, vide impugned judgment and order, convicted and sentenced the accused as stated *supra*.

8. Assailing the impugned judgment, the learned counsel appearing for the appellant vehemently contented that, the prosecution case rests on circumstantial evidence and none of the incriminating circumstances put against the accused are proved. Initially, FIR was registered against one Manjunatha and his father Kariyanna and the Investigation Officer has not explained or clarified as to



why those two persons were not charge sheeted. No investigation was conducted against the said two persons named in the FIR and only on suspicion, the appellant was arraigned as an accused.

9. The learned counsel further contented that, none of the circumstances relied on by the prosecution viz., 'the last seen theory', 'recovery of blood stained cloth', 'mobile phone with SIMs', 'car' are proved beyond reasonable doubt and even the FSL report does not incriminate the accused with the crime in question.

10. The learned counsel further contended that there is no iota of evidence to show that the accused has either kidnapped the victim or committed rape on her. He contended, the reasons assigned by the learned Sessions Judge are based on assumption and presumption and on surmises and there is no legal evidence to convict the accused. Accordingly, sought to allow the appeal and acquit the accused of the charges levelled against him.



11. *Per contra*, learned SPP-II contended that, though there are no eye-witnesses, the prosecution has been able to establish the charges levelled against the accused through various circumstances that unerringly point to the guilt of the accused. He contended that, PW1- the complainant, has categorically stated in his evidence that prior to the incident, he received a call from the accused from SIM No.9740060204 and on the very next day, the victim was missing and she was seen in the company of the accused by PW8. He contended that after the arrest of the accused, a mobile phone with the above SIM number, car, as well as the blood stained cloth-MO.6 were seized at his instance, and PW3 who is witness to the mahazars Exhibits P6 and P8, has supported the case of prosecution. He contented that, the trial Court on a careful appreciation of the entire evidence and material on record and after giving cogent and valid reasons, has convicted the accused.



12. The learned SPP-II further contented that, the offence committed by the accused is heinous in nature, wherein he has committed rape on a minor girl, consequent to which she has put an end to her life and therefore, the trial Court has rightly sentenced the accused to undergo imprisonment for life i.e., for the remainder of his natural life. He has, accordingly, sought to dismiss the appeal.

13. At the outset, we are constrained to observe that the learned Sessions Judge was not proper in sentencing the accused to the remainder of his natural life, for the offence under Section 376 of IPC, since, the alleged offence took place on 07.11.2016, whereas the amendment to Section 376(3) of IPC, wherein the punishment for committing rape on a woman under 16 years of age was made punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life,



which shall mean imprisonment for the remainder of that person's natural life, has come into effect on 21.04.2018.

14. The Apex Court in the case of **KIRAN vs. THE STATE OF KARNATAKA** reported in **2025 LIVE LAW (SC 1231)**, referring to the Constitution Bench Judgment in **UNION OF INDIA vs. SHREEHARAN @ MURUGAN AND OTHERS** reported in **2016 (7) SCC 1**, has held that the life imprisonment awarded would be for the rest of the life, the power to grant remission and commutation under Sections 432 to 435 of Cr.P.C. cannot be curtailed by the Sessions Court. The power of alternate sentencing to cover the hiatus between 14 years and death, cannot be applied by the Sessions Courts. Hence, the sentence of life imprisonment cannot be directed till the end of natural life, by the Sessions Court, which direction would be in conflict with the provisions of the Cr.P.C.

15. Undisputedly, the prosecution case rests on circumstantial evidence. The circumstances relied on by the prosecution, are as under:



- (i) The victim seen in the company of the accused before the incident.
- (ii) Calls made by the accused to the victim's father namely the complainant/PW1.
- (iii) Recovery of the mobile phone with SIM number 9740060204.
- (iv) Recovery of blood stained cloth/MO.6.
- (v) Recovery of car bearing registration No.KA-16/ C-3412.
- (vi) The FSL report - Ex.P21.

16. According to prosecution, the victim girl was a minor aged about 14 years. The accused got acquainted with her and he used to call her from his mobile phone Sim No.9740060204. On 07.11.2016, at about 2.00 p.m., he came to Basappanamalige village from Chitradurga in a car bearing registration No.KA-16/C-3412 and kidnapped her in the said car, and took her towards Vaddikere village and on the way, he touched her body inappropriately and committed



penetrative sexual assault on her. Further, when the victim started bleeding from her private part, he gave a white cloth to wipe the blood and then stating that he has to drop his friend at Chitradurga and take his mother to the hospital, left the victim in Basappanamalige village. Since the accused did not come back, the victim committed suicide by hanging to the branch of a tamarind tree situated in the land of one Krishna Reddy.

17. As per post mortem report-Ex.P22 and the final opinion furnished by the doctor after receiving the FSL report, the victim appears to have died on account of cardio respiratory failure due to mechanical asphyxia caused by complete hanging. It is stated that there are signs of recent vaginal penetration, signs of recent sexual intercourse with signs of general physical injuries, but there is no evidence (absence of semen in the vagina) for recent sexual intercourse. The signs are consistent with the history given, the approximate time of death is 24 to 36 hours.



18. The victim is alleged to have committed suicide between 3.00 pm and 5.00 pm on 07.11.2016. The dead body was found in a hanging position on 08.11.2016. Based on the complaint lodged by the victim's father Sri Narasimhappa (PW1), FIR was registered. The body was subjected to autopsy between 3.00 p.m. and 5.00 p.m. on 08.11.2016.

19. Autopsy was conducted by PW15 and PW16. PW15 has deposed in his evidence about conducting autopsy over the dead body and the opinion furnished by him. He has stated that the victim appeared to have died because of cardio respiratory failure due to mechanical asphyxia caused by complete hanging and there are signs of recent vaginal penetration and recent sexual intercourse with signs of general physical injuries. The defence has not cross examined PW15. Even otherwise from the medical evidence, we have no hesitation to doubt the cause of death. As per medical evidence, there was recent penetrations. The Doctor has also opined that there is no



evidence (absence of semen in the vagina) for recent sexual intercourse with signs of general physical injuries. The signs are consistent with the history given.

20. The question is whether the accused has committed penetrative sexual assault on the minor victim after kidnapping her in his car, consequent to which, she committed suicide?

21. It is pertinent to mention that FIR was registered against one Manjunatha and his father Kariyanna. Complaint lodged by victim's father marked as Ex.P1, does not allege anything against the appellant. On the other hand, it is stated that the complainant's daughter (victim), aged about 14 years was studying in SSLC at Govt. High School, M.D.Kote. About two months prior when the complainant had attended a function in V.V.Pura along with his family, Manjunatha and Kariyanna had come to the said function. At that time, his daughter got acquainted with Manjunatha. About a month prior, his daughter did not return from school and she spent a day



with Manjunatha, who had taken her to Aimangala. After she returned, he did not send her to school and when he enquired with Manjunatha's father, though initially he agreed to perform the marriage of his son with the victim girl, but later refused. On 7.11.2016, in the afternoon, he received a call from a mobile number 9740060204. In the afternoon, at about 3.00 p.m., his daughter left the house stating that she is going to her brother Thippeswamy's house, but did not return. It is further stated that his daughter was sad because Manjunatha did not marry her. On 08.11.2016, while searching for his daughter, at about 7.00 a.m., they noticed her in a hanging position in the land of one Krishna Reddy.

22. From Ex.P1, it is clear that before the victim committed suicide, she had an acquaintance with a person by name Manjunatha and she had even accompanied and stayed with him. Initially, the said Manjunatha agreed to marry her, but later he refused and therefore, the victim was mentally disturbed. PW1 in his cross-examination has



admitted that his daughter had previously gone with Manjunatha to commit suicide.

23. Based on the complaint lodged by victim's father, Manjunatha and his father Kariyanna were arraigned as accused in the FIR, however, while filing charge sheet their names were dropped and they were shown as CW14 and CW15 in the charge sheet as circumstantial witnesses. The Investigation Officer has not explained as to why they were dropped while filing the charge sheet.

24. According to prosecution, the accused was using a mobile phone with SIM No.9740060204 from which he made calls to the victim and on the previous day of the incident, he made a call to the mobile number of the complainant. In his evidence, PW1 has stated that on the day he received the call i.e., at about 1.00 p.m., his daughter left the house stating that she is going to his brother Thippeswami's house to bring flower, but she did not return. Therefore, he called on the said



No.9740060204 but the accused did not receive the call. On the next day, at about 7.00 a.m., he came to know that his daughter had committed suicide by hanging. PW1 has further stated that the Aimangala Police had called him after 3-4 days and informed him that the phone number which was provided by him belongs to the accused and the said accused has committed rape and murder of his daughter.

25. According to the prosecution, accused was using the sim number 9740060204 and he had contacted the victim from that phone and also made a phone call to the mobile phone of the complainant. One of the circumstances, the prosecution is relying is the seizure of the mobile phone from the accused with the above Sim number to show that it was the accused who called the victim as well as the complainant and then kidnapped the victim and committed rape on her. A mobile phone with two sim numbers including the above sim number



was seized from the possession of the accused under Exhibit P6.

26. PW3 is the panch witness for the seizure of mobile phone. Though it is alleged that the accused was using the mobile phone with the above number, the prosecution has not collected any document to show that the accused was using the said mobile phone. Further, the Investigating Officer has not collected the call detail records to show that from the said mobile phone, calls were made to the complainant's mobile phone. Even the complainant's mobile phone was not seized. Be that as it may, the prosecution has got examined PW11 to establish that the said witness handed over the Sim to the accused. However, PW11 has turned hostile. He has deposed that Sim No.9740060204 was purchased by him about 5 to 6 years prior and a week later, he lost the said sim. Hence, the seizure of mobile phone with the above sim number from the accused will not incriminate him.



27. It is the case of prosecution that when the victim started bleeding from her private part, accused gave a white cloth (MO.6) to wipe the blood. Thereafter, the said cloth was thrown near the spot and the same was seized at the instance of the accused. Exhibit P8 is the mahazar under which the white cloth (MO6) was seized. PW3 is the panch witness to the said mahazar.

28. The Investigation Officer has sent the articles seized including the white cloth to the FSL for examination. As per FSL report-Ex.P21, the said cloth piece was stained with human blood of 'O' group and seminal stains were detected in the said cloth.

29. As per Ex.P8-mahazar and the case of prosecution, the victim, after wiping the blood from her private part, threw the cloth to the gutter. PW3-panch witness to Ex.P8 under which the said cloth was recovered, has not stated that the cloth was recovered from the gutter. On the other hand, the said mahazar, according to PW3 was drawn at Vaddikere road, near the



land of one Vinodamma and Manjunatha. The recovery of MO6-white cloth, itself will not incriminate the accused to the crime in question. As per FSL report, the blood stains found on the said cloth matched with the blood group of the deceased and it is not the case of prosecution that the seminal stains found on the said cloth was that of the accused. In Ex.P26, it is clearly stated that the seminal stains were not detected in the sample collected from Tippeswamy (accused) and there are no signs or evidence of recent forceful intercourse on the body of Tippeswamy and his clothes.

30. The prosecution has strongly relied on the last seen theory, wherein PW7 and PW8 have allegedly seen the deceased with the accused a day prior to the incident, she was found hanging, at about 2.00 p.m. near the school. The prosecution has examined PW7 and PW8 to prove the last seen theory.

31. PW7 is none other than complainant's brother. His evidence does not indicate that he had seen the victim



and the accused together. On the other hand, he has stated that he along with his brother had taken their father who had suffered paralysis, to Halaga Village in the car of the accused and on the next day they returned to their village. After about 2 days, at about 2.00 pm when he had been to the land, he saw the accused standing near the school. At about 05.30 – 6.00 p.m. when he returned home, his brother informed him about missing of his daughter. They searched for her and on the next day they found that she had committed suicide by hanging in the land of one Krishna Reddy.

32. PW7 has not at all stated that he had seen the accused and the deceased together. Hence, his evidence is not helpful to the prosecution to hold that deceased was seen in the company of the accused prior to the incident.

33. PW8 has deposed that his house is situated in front of the school in Basappana Maaligi Village. A day prior to the incident, at about 2.00 pm, he saw the accused standing in front of their house by parking his car.



The victim came near the car holding flowers and at that time the accused took her in the said car and went towards M.D Kote. In the cross examination, PW8 has stated that he cannot give the registration number of the car and his house is situated at about 100 feet from the school and he has not stated anything to the police.

34. It is contended by the learned counsel for the appellant that, PW8 is a close relative of the complainant and even though the said witness has stated that he has seen the accused and deceased together going towards M.D. Kote, he has not stated the same before the police and has not even informed the said matter to the complainant. Therefore, contended that the said witness is a highly interested witness and his evidence cannot be believable.

35. In this case, the incident took place on 07.11.2016 and the complaint came to be lodged by victim's father on 08.11.2016 at about 11.00 a.m. FIR was registered against one Manjunatha and his father



Kariyanna. Even during inquest proceedings, which was conducted on 08.11.2016, a suspicion was raised against the said two persons. The statements of the victim's mother and a villager, examined as PW5 and PW6 were recorded during inquest proceedings by the IO. Both the said witnesses have given the names of Manjunatha and Kariyanna, against whom FIR was registered. PW6 has admitted in his evidence that he has given the names of those two persons at the time of inquest proceedings.

36. Even though it is specifically stated by PW1 as well as PW8 that after the victim was found missing they went in search of her and on the next day they found the dead body, if really PW8 had seen the accused and deceased together and accused kidnapping the deceased in the car on the previous day, he would have certainly informed the same to the complainant, who is his relative.

37. The Investigation officer-PW20 has not at all whispered in his evidence as to on what basis he laid his hand on the accused. He has not stated that PW8 gave



statement before him that he had seen the accused and deceased together, a day prior to the incident. Hence, the evidence of PW8 does not inspire confidence of the Court.

38. After arrest of the accused, Tata Indica car bearing registration No.KA-16/C-3412 was seized. PW8 has not mentioned the registration number of the car in which the accused is alleged to have kidnapped the victim. He has stated in his cross-examination that he cannot give the registration number of the car. The owner of the car was examined by prosecution as PW14. The said witness has turned hostile to the prosecution. He has stated that he has not engaged the accused as driver of the car at any point of time.

39. According to prosecution, the victim was aged about 14 years at the time of incident. Even though the defence has not specifically disputed the age of the victim, as the defence of the accused is total denial, it is the primary duty of the prosecution to establish that the victim was a child as defined under Section 2(d) of the POCSO



Act, 2012 to invoke the penal provisions of the said Act. In this case, except making a bald assertion that the victim was aged 14 years and she was a minor, the investigation officer has not collected any iota of evidence to establish the age of the victim or to show that she was a minor as on the date of incident. According to PW1-complainant, his daughter was pursuing SSLC in a Government School. The investigation officer could have collected documents from the said school in proof of victim's age. Neither the school documents nor any other documents, as required under law, are collected. Hence, it cannot be said that the prosecution has established that the victim was a minor as on the date of the incident.

40. To convict the accused under Section 306 of IPC Code with the aid of Section 107 of IPC, it is required to show that the accused has intentionally aided or abetted the victim to commit suicide. However, the prosecution has failed to establish the ingredients of the said offence by leading cogent and acceptable evidence.



41. It is trite that in a case based on circumstantial evidence, the prosecution has to establish complete chain of circumstances consistent only with the guilt of the accused and inconsistent with any other hypothesis. Before a conviction can be sustained on circumstantial evidence, five conditions must be fulfilled, namely:

- i. Such circumstances, from which the conclusion of guilt is drawn, should be fully established.
- ii. The facts so established should be consistent only with the hypothesis of guilt.
- iii. They should be of a conclusive nature.
- iv. They should exclude every possible hypothesis except that of guilt and
- v. There must be a chain of evidence so complete that it leaves no reasonable ground for a conclusion consistent with the innocence of the victim.



42. It is also well settled that, if the circumstances proved are consistent either with innocence or guilt, the accused is entitled to the benefit of doubt and that where two views are possible, the one favourable to the accused must be accepted.

43. The Apex Court in the case of **Ashish Batham v. State of M.P** reported in **2002 (7) SCC 317** in para 8 has held as under:

"8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with



criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusions" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

44. In the present case, the evidence on record do not form a complete chain of circumstances pointing only towards the guilt of the accused. The trial Court has therefore committed an error in holding that the prosecution has proved the charges levelled against the accused. The impugned judgment warrants interference at the hands of this Court. Accordingly, the following:

ORDER

- i) The appeal is ***allowed***.
- ii) The judgment of conviction dated 05.05.2018 and order on sentence dated 07.05.2018 passed in Spl.C (POCSO)



No.78/2017 by the Spl. II Addl. District and Sessions Judge, Chitradurga convicting the appellant/accused for the offence punishable under Sections 306, 366, 376 of Indian Penal Code and Sections 4, 8, 12 of Protection of Children from Sexual Offences Act is hereby ***set aside.***

iii) The appellant/accused is acquitted of the charges levelled against him.

iv) The appellant/accused shall be released forthwith, if not required, in any other case.

v) Registry is directed to forward the operative portion of the order to the concerned Jail Authority.

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

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