



NC: 2026:KHC:39510-DB
CRL.A No. 1329 of 2020

CNR: KAHC010405282020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1329 OF 2020 (C)

BETWEEN:

DENNIESON @ DENNISH @
IMMANUEL DENNIES @ TENNISH
S/O D. J. LOKANATHAN
NOW AGED ABOUT 26 YEARS
(AGE SHOWN IN CAUSE TITLE 22 YEARS)
R/AT NO.28, 3RD CROSS,
MASJID ROAD, BASAVANNA NAGAR
HOODI, BANGALORE-560048.

...APPELLANT

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

AND:

1. THE STATE OF KARNATAKA
BY MAHADEVAPURA POLICE STATION,
BENGALURU-560048.
BY SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA, BANGALORE-560001.

2. BHIMANNA
S/O HANUMANTH
AGED ABOUT 48 YEARS,
R/OF HIREBUDUR, DEVADURGA TALUK,
RAICHUR DISTRICT, KARNATAKA - 584126.

...RESPONDENTS

(BY SRI. RAHUL RAI K., HCGP FOR R1,
RESPONDENT NO.2 SERVED AND UNREPRESENTED.)

[CAUSE TITLE AMENDED VIDE COURT ORDER DATED:05.10.2023]



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THIS CRL.A IS FILED U/S 374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT, CONVICTION DATED 27.08.2019 AND SENTENCE DATED 30.08.2019, PASSED BY THE LIII ADDITIONAL CITY CIVIL AND SESSIONS SPL.JUDGE, BENGALURU IN SPL.C.C.NO.413/2016, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376 OF IPC AND SECTION 3 R/W 4 OF POCSO ACT.

THIS APPEAL, COMING ON FOR FINAL 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)

1. This appeal preferred by the convict is against the Judgment dated 27.08.2019 and Order on sentence dated 30.08.2019 passed by the Court of the LIII Additional City Civil and Sessions Special Judge, Bengaluru in Spl.C.C.No.413/2016.

2. Vide impugned judgment and order, the learned Trial Judge has convicted the appellant/accused for the offences punishable under Section 376 of IPC and Section 3 r/w Section 4 of the POCSO Act, 2012.



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3. The Trial Court has sentenced the accused to undergo Rigorous Imprisonment for life and to pay fine of Rs.10,000/- for the offence under Section 376 of IPC, in default, to further undergo RI for 2 years and to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- for the offence under Section 3 r/w Section 4 of the POCSO Act, 2012, in default, to further undergo RI for 2 years.

4. We have heard Sri Veeranna G Tigadi, the learned counsel appearing for the appellant and Sri Rahul Rai K, the learned HCGP for the State and perused the evidence and material on record.

5. It is the case of the prosecution that, the accused used to follow the victim girl, a minor aged about 14 years, whenever she was going to shop and he was expressing his love and desire to marry her. On 17.06.2016 at about 04.30 pm when she had been to wash the clothes near the Tank, he followed her and by



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inducing and enticing, took her to a dilapidated shed situated by the side of the tank and with an assurance of marriage, had penetrative sexual assault on her, in spite of her refusal and resistance.

6. The FIR came to be registered against the accused on 18.06.2016 at about 09.30 pm, based on a typed complaint/Ex.P7 given by the victim girl. She was subjected to medical examination and her statement under Section 164 of Cr.P.C was recorded by the Learned Magistrate. The accused was arrested and his medical examination was conducted. The articles seized were sent to FSL. The Investigating Officer collected the Age certificate of the victim from the Government Lower Primary School, Siddaramapalya, Bengaluru, wherein the victim studied. On completion of the investigation, charge sheet was filed against the accused for the aforementioned offences.



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7. The learned Trial Judge framed the charges against the accused, for which he pleaded not guilty. In order to establish its case, the prosecution got examined 10 witnesses and got marked 11 documents and 5 material objects.

8. The Trial Court convicted and sentenced the accused for the charges levelled against him, vide impugned judgment, as noted supra, which is under challenge in this appeal preferred by the accused.

9. It is vehemently contended by the learned counsel for the appellant that, the victim girl has given two different versions in her complaint and the deposition before the Court and her evidence clearly shows that she is a tutored witness. The medical evidence does not corroborate the evidence of the victim and the place of incident is also not proved. He contended that, the Trial Court has recorded the conviction against the accused only on the basis of the averments made in the



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complaint/Ex.P7 and the same has resulted in miscarriage of justice. He contended that, the reasons assigned by the trial Court to hold the accused guilty of the charges levelled against him, are not in accordance with law and therefore, sought to allow the appeal by setting aside the impugned judgment and order of conviction and sentence passed by the trial Court.

10. *Per contra*, the learned HCGP contended that, the victim in her complaint/Ex.P7 has narrated the entire incident, wherein she has clearly stated that the accused took her to a dilapidated shed and committed penetrative sexual assault on her in spite of her resistance. He contended that the victim has supported the case of the prosecution and as per medical evidence, the victim's hymen was ruptured. Hence, contended that, the trial Court has rightly convicted and sentenced the accused for the charges levelled against him.



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11. According to the prosecution, the incident took place on 17.06.2016 at about 4.30-5.00 pm. It is alleged that the accused used to follow the victim girl stating that he is in love with her and he would marry her. On 17.06.2016 at about 4.30 pm, when she had gone near the Tank at Basavanagara, the accused followed her and stating that he loves her, took her to a dilapidated shed situated nearby and in spite of her resistance, he committed penetrative sexual assault on her.

12. The complaint is lodged on 18.06.2016 at about 9.30 pm. In the complaint/Ex.P7, it is stated that after the incident, accused brought the victim near the Tank and thereafter, she went home and slept. The next day morning, when she woke up, she felt very tired and started weeping. At that time, her brother enquired with her as to why she was weeping and she narrated the entire incident to her brother.



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13. The victim girl is examined as PW6. Strangely, she has given an entirely different story in her evidence before the Court. She has stated that, on 17.06.2016, she sold some scrap items and earned Rs.50/-. After having some snacks, while she was returning home, a Tata Ace vehicle came and waylaid her. In the said vehicle, there were four persons namely Denny, Saddam, Vinod and Manja. Saddam lifted and put her inside the vehicle and all of them took her near the dilapidated house situated near the tank, wherein they committed penetrative sexual assault on her. She has further stated that they tied her hands, forced her to smoke cigarette and consume drinks, assaulted her etc. She has further stated that, on the said night, she remained at Kariyappa Temple and on the next day, she narrated the incident to an auto driver, a friend of her brother. He telephoned to the Police, who came to the spot and showed the photographs of the accused. She has stated that the said auto driver, lodged the complaint.



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14. According to PW1, the doctor who examined the victim, the history furnished by the victim to her was that, when the victim had gone near the Tank for washing the clothes on 17.06.2016 at 4.30 pm, the accused who was consuming drinks near the Tank, committed forcible sexual intercourse on her. She has stated that she stayed that night, in a Temple and on the next day she went to the Police Station and lodged the complaint. Whereas, in Ex.P7, it is stated that the victim went home and slept after the incident and on the next day, noticing her weeping, her brother enquired with her and therefore, she revealed the incident to her brother and thereafter, lodged the complaint. Contrary to the same, the victim/PW6, in her evidence, has stated that an Auto Driver took her to the Police Station on the next day and lodged the complaint. The prosecution has not examined the auto driver. He was not even cited as a witness in the charge sheet.



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15. The Victim's brother, in whose house she was staying, has been examined as PW7. However, he has not supported the case of prosecution. He has denied having given statement to the Police, as per Ex.P8 that the victim had narrated the incident to him.

16. PW1, the Medical Officer who examined the victim girl and issued Ex.P1, in her chief examination, has stated that she did not notice any external injuries on the victim's private part. She noticed discharge of blood, but it was not due to sexual assault. Though she has stated that the hymen was not intact, she opined that, there was no signs of recent sexual intercourse.

17. The prosecution has also got marked FSL report/Ex.P10 with regard to the examination of the articles sent. As per the said report, the seminal stain and spermatozoa were not detected.

18. The statement of the victim/PW6 recorded under Section 164 of Cr.P.C was not marked since there



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was no signature on the said statement. In the cross examination, the victim has stated that she was not taken to the spot and she did not give any statement to the Doctor. She has further stated that no such incident had taken place and the statement under Section 164 of Cr.P.C was given by her as per the say of a person from an Organization. In her evidence she has stated that, the Police had threatened her to give the statement before the Learned Magistrate naming the accused and as per the instruction of the Police, she gave the statement.

19. The testimony of the victim is contrary to the complaint averments. In her deposition, she has categorically stated that, she was not taken to the place of incident and she did not show the spot. The prosecution has examined PWs.3 and 4, panch witnesses to the spot mahazar at Ex.P3. Both the said witnesses have turned hostile and not supported the case of the prosecution. On an overall appreciation of the evidence and material on record, we are of the considered view that the victim's sole



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testimony, which suffers from legal infirmities, is not sufficient to establish the charges levelled against the accused. The Trial Court was therefore, not justified in accepting her testimony to convict the accused. The impugned judgment is not sustainable in law and accordingly, it is liable to be set aside. Hence, the following:

O R D E R

- i. Appeal is **allowed**.
- ii. The Judgment dated 27.08.2019 and Order on sentence dated 30.08.2019, passed by the Court of LIII Additional City Civil and Sessions Special Judge, Bengaluru in Spl.C.C.No.413/2016, convicting and sentencing the appellant/accused for the offence punishable under Section 376 of IPC and Section 3 r/w section 4 of POCSO Act, 2012, are **set aside**.



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- iii. Appellant/accused is acquitted of the charges levelled against him.
- iv. He shall be set at liberty forthwith, if not required in any other case;
- v. The Registry shall communicate this Order to the concerned Jail authority.

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

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

DHA
List No.: 1 Sl No.: 24