



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1897 OF 2018 (C)

BETWEEN:

VEERABHADRA
S/O. SADASHIVAYYA
AGED ABOUT 20 YEARS
RESIDING AT DEVARAJ URS QUARTERS
BETHUR ROAD
DAVANAGERE CITY AND DISTRICT-577 001.

...APPELLANT

(BY SRI GOPALAKRISHNAMURTHY C., ADVOCATE)

AND:

1. STATE BY WOMEN POLICE STATION
DAVANAGERE
REPRESENTED BY ITS SPP
HIGH COURT OF KARNATAKA AT
BENGALURU-560 001.
2. HALAMMA H.
W/O. HANUMANTHAPPA
AGED ABOUT 36 YEARS
HOUSEWIFE
RESIDING AT SHIBARA KONDAJJI ROAD
VINAYAKA NAGARA
DAVANAGERE-577 006
(AMENDMENT CARRIED OUT VIDE
COURT ORDER DATED 7-7-2025)

...RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDITIONAL SPP FOR R-1;
SMT. PARINEETHA S. CHANAL, ADVOCATE FOR R-2)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 16-10-2018 AND SENTENCE DATED 17-10-2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE, DAVANAGERE IN SESSIONS CASE NO.1 OF 2018 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 376 OF IPC AND SECTION 6 OF POCSO ACT.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

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

This appeal is preferred by the accused against the Judgment and Order dated 16/17.10.2018 passed by the Court of II Additional District and Sessions Judge & Special Judge at Davanagere in SC No.1/2018, wherein, the learned Sessions Judge has found him guilty for the offences punishable under Section 376 of IPC and Section 6 of POCSO Act, 2012.

2. The accused has been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.40,000/- and in default of payment of fine, to undergo



simple imprisonment for two years, for the offence punishable under Section 6 of the POCSO Act.

3. Heard the learned counsel for appellant, learned Addl. SPP for the State and learned counsel appearing for the victim. Perused the evidence and material on record.

4. The case of the prosecution is that on 05.10.2017 at about 7.30 a.m., the accused, an Archak in one Ganesha temple situated on Shibara Kondajji road in Davanagere, committed aggravated penetrative sexual assault on the victim girl, aged about 6 years and thereby committed offences under Section 376 of IPC and Section 6 of POCSO Act.

5. Initially charges were framed for the offence under section 376 of IPC and Section 4 of POCSO Act. When the matter was posted for arguments, the learned Special PP filed an application under Section 216 of Cr.P.C for alteration of charge. The said application was opposed by the accused. However, on hearing the parties, charge



under Section 4 of POCSO Act was altered to Section 6 of POCSO Act. The material on record reveals that the altered charge was read over and explained to the accused, for which, he pleaded not guilty. No further evidence on the altered charge was adduced by the prosecution.

6. Before the trial court, the prosecution got examined 20 witnesses and got marked 16 documents and 9 material objects. The accused denied all the incriminating evidence appeared against him, while he was examined under Section 313 Cr.P.C, however, he did not choose to lead any defence evidence.

7. The learned Sessions Judge on appreciation of the oral and documentary evidence on record came to the conclusion that the presence of accused at the place of occurrence has been proved and there is no material to show that there was ill will or enmity between the complainant and the family of the accused. The age of the



victim and the nature of offence committed by the accused is also proved beyond all reasonable doubt. Not a single witness turned hostile and in the absence of enmity against the accused, there was no reason why the complainant would file a complaint against a stranger for a serious offence and there was no reason for the complainant to implicate the accused falsely.

8. The learned Sessions Judge has found the accused guilty and convicted him for the offence punishable under Section 376 of IPC as well as Section 6 of the POCSO Act. In view of Section 42 of the POCSO Act, the accused was sentenced under Section 6 of the POCSO Act.

9. Assailing the impugned judgment, the learned counsel for the appellant contended that the prosecution has failed to place any material to show that the accused was working as an Archak in the temple at the relevant point of time. The victim is admittedly a tender aged girl and she has been tutored to give false evidence in view of



some dispute in respect of performing pooja in the temple by the father of the accused. He contended that the victim's evidence is not corroborated by medical evidence and there is discrepancy and contradictions in the evidence of the victim and other prosecution witnesses. The injury, if any, sustained by the victim, could be self-inflicted injury and in view of the contradictions in the evidence of the prosecution witnesses, the charges levelled against the accused are not proved beyond reasonable doubt.

10. Per-contra, learned Addl. SPP and learned counsel appearing for the victim contended that a prompt complaint was lodged without any delay. The complaint averments are reiterated by PW.1, victim's mother. The victim's evidence is corroborated by the evidence of her mother as well as her father. PW.6 and PW.7 are the independent witnesses, who have also corroborated the evidence of the victim. Further, the medical evidence and the report of the doctors at Ex.P6 and Ex.P7 supports the



case of prosecution. The prosecution has proved that the accused was the Archak of the temple at the time of incident and the victim has identified the accused. There are no vital contradictions in the evidence of the victim, which will take away the prosecution case. Hence, they sought to dismiss the appeal and confirm the judgment and conviction passed by the trial Court.

11. The law was set into motion by PW.1, victim's mother. Ex.P1 is the complaint, wherein it is stated that on 05.10.2017 at about 7.30 a.m., when complainant's daughter, aged about 6 years, had been to Ganesha Temple, the accused who was a pujari, took her to a room situated beside the temple, removed her clothes and committed rape on her. It is further stated that the victim came home weeping and informed the matter and also complained of some pain in her private part. The complainant then went to the temple, but the accused escaped. Thereafter, she returned home, informed the



matter to her husband and took the victim to CG Hospital for treatment.

12. PW.20 is the Woman PI of Davangere Women Police Station. She has deposed in her evidence that on 05.10.2017 at about 9.30 a.m., she received the intimation from CG Hospital Outpost and accordingly, she went to the hospital and received the written complaint from the complainant, as per Ex.P1 and returned to the police station and registered a case in Crime No.150/2017. Later, the accused was arrested and sent for medical examination. The statement of the victim was recorded by the learned Magistrate under Section 164 Cr.P.C. The spot panchanama was prepared as per Ex.P3. The articles collected during medical examination were sent for FSL examination. After receipt of the medical reports and collecting the birth certificate of the victim etc., filed the charge sheet.



13. In this case, the defence has not seriously disputed the age of the victim. According to the prosecution, the victim was aged about 6 years at the time of incident.

14. PW.12 Doctor in her evidence has deposed that as per dentist, the age of the victim was 5 to 6 years. In Ex.P7, it is stated that the age of the individual(victim) is estimated between 5 and 6 years. Ex.P9 is the age certificate issued by the Primary School, Davanagere, wherein the date of birth of the victim is mentioned as 30.03.2012. Further, the prosecution has got marked Ex.P15, the birth certificate, pertaining to the victim, wherein her date of birth is mentioned as 30.03.2012. These documents are not seriously disputed by the defence.

15. From the above material on record, we have no hesitation to hold that the victim was aged about 6 years at the time of incident.



16. It is contended by learned counsel for the appellant that the accused was not at all working as an Archak(pujari) in the temple and a false case was registered against him due to some dispute. However, the evidence of PW.1, PW.2(victim), PW.10 and PW.11, clearly goes to show that the accused was an Archak in the temple at the relevant point of time. PW.1 in Ex-P1 has stated that after her daughter complained to her about the sexual act committed by the accused, she went to the temple, at that time, the accused ran away. The victim-PW.2 has clearly stated that it was the accused, who was the pujari at the time when she went to the temple. She has identified him in the Court.

17. PW.10 is a treasurer of Vinayaka Temple Committee. He has deposed in his evidence that in the year 2015, one Veerashaiah was the Archaka in the temple and since he stopped coming to the temple, Sadashivaiah was given in-charge. He has deposed that the accused is the son of Sadashivaiah and he used to



come to the temple for performing pooja. Similarly, PW.11 has also deposed in his evidence that one Sadashivaiah was the Archak in the temple and the accused is the son of said Sadashivaiah.

18. Though the defence tried to elicit from the above witnesses that the accused was not at all the Archak of the temple, the same has been denied by them. Defence has also failed to elicit about any enmity or any dispute with regard to the said temple between the accused or his father and complainant or PW.10 or PW.11.

19. In this case, material witness is the victim. She is examined as PW.2. The other witnesses including the complainant are hearsay witnesses. According to prosecution, on 05.10.2017 at about 7.30 a.m., the victim had been to the temple. At that time, the accused, who was a pujari of the temple, took her to a room situated beside the temple, disrobed her and committed aggravated penetrative sexual assault. The victim returned



home and informed the matter to her mother(PW.1), who in turn, informed the matter to her husband(PW.8). The victim was then taken to the hospital for treatment, wherein the police arrived on receiving the intimation and recorded the statement of PW.1 as per Ex.P1.

20. As per Ex.P1, the victim informed her mother that the accused dragged her by hand to a nearby room, removed her panty and did something to her. She complained of pain in her private part. In her evidence, PW.1 has deposed that the accused took her daughter to the room situated beside the temple, removed her clothes, slept on her and then removed her panty and committed sexual act and thereafter put her the clothes and sent her home. Her daughter came weeping and when she enquired with her, she informed that the accused committed the above act.

21. The victim is examined as PW.2. She has deposed that when she went to the temple,



pujari(accused) took her to a room, removed her clothes and committed the act. When she was questioned by the Court as to what the accused did, she did not give any answer. She has stated that thereafter the accused put her clothes on her and sent her home and she informed the matter to her mother.

22. PW.8 is the victim's father. He has deposed that at about 7.30 a.m., the victim had gone to Ganesha Temple and after returning from the temple, she complained that the pujari(accused), removed her panty and did something to her. The same was informed to him by his wife. His wife went to the temple and his daughter showed the accused. Similarly, PW.4 victim's grandmother has deposed about victim complaining about the act committed by the accused.

23. PW.2 being a material witness in this case, her evidence assumes importance to ascertain as to whether the prosecution has proved the charges against the



accused beyond all reasonable doubts. The evidence of PW.2 does not show as to what was the exact act committed by the accused. Her evidence does not indicate that the accused has committed penetrative sexual assault on her. As we have already observed, PW.1 and PW.8, namely, the parents and PW.4, grandmother of the victim are hearsay witnesses.

24. The victim being a tender aged girl and in view of her unclear evidence with regard to the actual act committed by the accused, it is necessary for the Court to seek corroboration to her evidence.

25. The prosecution has got examined PW.6 and PW.7, independent witnesses as well as the medical evidence pertaining to the victim.

26. According to prosecution when the victim was returning home from the temple, on the way she met PW.6 and PW.7, who after noticing her weeping, enquired



with her. The victim informed them what happened and they advised her to inform the matter to her mother.

27. The learned counsel for the appellant contended that neither in Ex.P1 nor in the evidence of PW.1 or PW.2, the presence of PW.6 and PW.7 is mentioned. He contended that if the victim had met PW.6 or PW.7 on the way back home and informed about the incident to them, certainly she would have informed the same to her mother and the names of PW.6 and PW.7 would have been mentioned in Ex.P1 as well as in the evidence of PW.1 and PW.2.

28. PW.6 has deposed in his evidence that he was drinking tea in a hotel situated near the temple and at that time he saw the victim returning from the temple weeping. When he enquired her, she informed that 'the Pujari of the temple removed her panty'. He then advised her to inform the matter to her mother. He has stated that he has given the statement to the police. He has identified the accused.



Similarly, PW.7 has deposed that the victim informed him that 'the accused removed her panty'.

29. Admittedly, complaint is lodged by PW.1 i.e., victim's mother and not by the victim. Hence, non-mentioning the names of PW.6 and PW.7 in Ex.P1 is not fatal to the prosecution. However, it is relevant to see that both PW.6 and PW.7 have deposed in their chief examination that when they enquired with the victim, she informed them that the accused removed her panty. They have not stated about the victim informing them about the accused committing any such act which amounts to penetrative sexual assault.

30. Learned Addl. SPP contended that as per cross examination of PW.7, when he enquired with the victim, she has stated that the accused removed her panty and committed rape on her. However, the victim herself has not stated in clear words about the accused committing penetrative sexual assault on her. In fact, PW.6 and PW.7 were not at all treated hostile by the prosecution when



they stated in the chief examination as to what the victim told them. If the chief examination of PW.6 and PW.7 is perused, then it cannot be said that there was penetrative sexual assault committed on the victim.

31. Coming to the medical evidence, which the prosecution places strong reliance in corroboration to the evidence of the victim-PW.2, PW.12 is the medical officer who has treated the victim and issued the reports as per Ex.P6 and Ex.P7. She has deposed that on 05.10.2017 at about 10.00 a.m., the victim was brought by the police with a history of sexual assault. The victim's mother had accompanied her and the history was given by her mother that on 05.10.2017 at 07.30 a.m. there was sexual assault on the victim near Ganesh Temple by the Pujari of the temple. After the pooja, Pujari took her to a room adjacent to the temple and sexually assaulted the victim.

32. PW.12 has deposed that when she examined the victim she found no injuries on her body but the victim complained of pain in the abdomen and burning



micturition (burning urine). There was bruise over the inner side of external genitalia, mild swelling over the Labia Majora. Hymen was intact. The preliminary report given by PW.12 is marked as Ex.P6. On getting the FSL report, PW.12 gave the final opinion as per Ex.P7 stating that there were no seminal stains on Item No.1 and 2 and no signs suggestive of vaginal intercourse, but there is evidence of genital assault.

33. In the cross-examination, PW.12 has stated that if there is any bacterial infection, there is possibility of the person having itching and scratching the infected part. Burning urine is not an injury but it is a symptom of touching the urethra. Bruise cannot be caused due to infection on scratching but it is swelling due to pressure or force. If a person falls on a sharp object there may be an injury which may be called genital injury but not genital assault. The injury certificate issued describing the genital assault are detected by clinical examination as they were seen externally. PW.12 has admitted that she is not a



gynecologist but denied the suggestion that she is not a competent expert to give evidence.

34. As per Ex.P6, preliminary report issued by PW.12, the victim was brought to the hospital with a history furnished by her mother that she was subjected to sexual assault at 07.30 a.m. on 05.10.2017 in Ganesha Temple. The victim was brought complaining pain in the abdomen and burning micturition. No external injuries were seen over the body, external genitalia and over the vulva. There was no discharge of bleeding. A bruise over the inner side of external genitalia and mild swelling over the Labia Majora was seen, however, the hymen was intact. Neither in Ex.P1 nor in the evidence of PW1, PW2, PW.4 or PW.8, it is stated that when the victim came home, there was any injury as mentioned in Ex.P6 i.e., a bruise over the inner side of external genitalia or swelling over the Labia Majora. The age of the injury is not mentioned in the reports. PW.2 has not specifically deposed that she was subjected to penetrative sexual



assault. As per Ex.P7, final opinion, after receipt of the FSL report, PW12 has opined that there are no signs suggestive of vaginal intercourse, but there is evidence of genital assault. Admittedly, the hymen was intact. PW12 has deposed in her cross-examination that the burning urine is not an injury but it is a symptom of touching the urethra and bruise cannot be caused due to infection on scratching but it is swelling due to pressure or force.

35. The articles collected during the course of investigation at Sl.Nos.1 to 9 shown in the FSL report were sent for examination. The FSL report does not indicate that there were seminal stains or blood stains on those articles.

36. The accused, after his arrest was examined by PW.9 at CG Hospital, Davangere. PW.9 has deposed that on 05.10.2017 at about 12.46 p.m., the accused was brought by the police with a history of sexual assault committed on the female, aged 06 years. The accused told that the public assaulted him. PW9 has noticed



multiple abrasions and fracture in the ring finger of the left hand of the accused. She has stated that the specimens were collected and sent to FSL. Seminal stains were not detected on Item Nos.1, 2, 4, 5, 6, 7, 8 and 9, skin tissue and blood stains not detected on Item No.3. She has issued examination Certificate marked as Ex.P5.

37. Statement of the victim recorded under Section 164 Cr.P.C. has been marked as Ex.P2 wherein, the victim has stated that the accused took her outside the sanctum, removed her clothes, made her to lie down and slept on her abdomen. She suffered pain in the abdomen and burning sensation in her private part.

38. The learned counsel for appellant contended that PW.1 has given contradictory statements with regard to the apprehension of the accused. In her complaint, it is stated that when she went to the temple, the accused ran away, on the other hand, in the evidence she has stated that the accused was caught and confined in the temple and thereafter, the police came and arrested him.



Whereas, PW.3-ASI has stated that the accused was arrested when he was near Bethur road.

39. The above discrepancy pointed by the learned counsel about the arrest of the accused is not fatal to the prosecution, so as to disbelieve the entire case of prosecution. The prosecution case to prove the charges is based mainly on the evidence of the victim, medical evidence of PW.12 and the evidence of PWs.1, 4, 6 to 9. If the entire evidence and material on record including the medical reports pertaining to the victim are appreciated, then it cannot be said that there was penetrative sexual assault committed by the accused on the victim. However, the material on record is sufficient to hold that the accused has committed aggravated sexual assault on the victim, a tender aged girl of about 6 years. The offence committed by the accused therefore would attract the ingredients of Section 9(m) of the POCSO Act.

40. Learned counsel for the appellant submits that accused was aged about 19 years at the time of incident.



He is the only son to his parents. He has spent nearly 05 years in custody. He, therefore, prays to take a lenient view.

41. Learned Addl. SPP contended that the accused being a Archak (pujari) of the temple has committed a heinous act against a tender aged girl and therefore, maximum sentence has to be imposed against him.

42. As per the trial Court records, the accused was arrested on 06.10.2017 and he was released on bail on 16.04.2018. After the judgment of conviction was passed on 16.10.2018, the accused was taken into custody and in this appeal the sentence was suspended on 06.06.2022.

43. Offence under Section 9(m) of the POCSO is punishable under Section 10 of the POCSO Act, which is imprisonment of either description for a term which shall not be less than 05 years but which may extend to 07 years, and shall also be liable to fine.



44. Considering the facts and circumstances of the case and the mitigating circumstances putforth by the learned counsel for the appellant, we impose sentence of 05 years imprisonment with fine. Accordingly, we pass the following:

ORDER

- i. The appeal is **partly allowed**.
- ii. The Judgment and Order dated 16/17.10.2018 passed by the Court of II Additional District and Sessions Judge and Special Judge at Davanagere in SC No.1/2018, convicting the appellant/accused for the offence punishable under Section 376 of IPC and Section 6 of the POCSO Act and sentencing him under Section 6 of the POCSO Act, is hereby **set aside**.
- iii. The accused is convicted for the offence under Section 9(m) of the POCSO Act, punishable under Section 10 of the POCSO Act. He is sentenced to undergo R.I. for



05 years and to pay a fine of ₹40,000/- and in default of payment of fine, he shall undergo S.I. for 01 year.

iv. The accused is entitled to set off for the period of imprisonment already undergone by him.

v. Accused shall appear before the trial Court within a period of **three weeks** to undergo the remaining part of the sentence.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE