

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1584 OF 2025 (A)

BETWEEN:

AKBAR ALI KHAN
S/O. LATE MAHAMOOD KHAN
AGED ABOUT 51 YEARS
R/AT TEACHERS COLONY
MADDUR TOWN, MADDUR TALUK
MANDYA-571 428

...APPELLANT

(BY SRI TIGADI VEERANNA GADIGEPPA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY MADDUR P.S.
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001
2. SACHIN @ CHORA @ SACHIN U. GOWDA
S/O. LATE UMESHA
AGED ABOUT 26 YEARS
R/O. 1ST CROSS
CHANNEGOWDA BADAVANE
MADDUR TOWN-571 428

...RESPONDENTS

(BY SRI CHENNAPPA ERAPPA, H.C.G.P., FOR R-1;
SRI HAREESH BHANDARY T., ADVOCATE FOR R-2)

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Location: HIGH
COURT OF
KARNATAKA

THIS CRL.A. IS FILED U/S.378(4) CR.P.C (U/S 419(4) BNSS) BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER OF ACQUITTAL DATED 07.07.2025 PASSED IN SPL.C.NO.47/2022 REGISTERED BY THE MADDUR POLICE IN CR.NO.359/2021, ON THE FILE OF THE HON'BLE ADDITIONAL SESSIONS JUDGE, FTSC-II, AT MANDYA, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 354(D), 363, 366, 376(2)(n) OF IPC, UNDER SECTIONS 6 AND 12 OF POCSO ACT, 2012, CONSEQUENTLY THE ACCUSED/RESPONDENTS NO.2 MAY BE CONVICTED FROM ALL THE CHARGES LEVELLED AGAINST HIM.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE B.PRAMOD)

The present appeal is filed by the de facto complainant against the judgment and order of acquittal dated 07.07.2025 in SPL. C. No. 47/2022, on the file of the Additional Sessions Judge, FTSC-II, at Mandya, for the offences punishable under Sections 354(D), 363, 366, 376(2)(n) of the Indian Penal Code and Sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short) and prays for conviction and sentence.

2. Heard Sri. Tigadi Veeranna Gadigeppa, learned counsel for the appellant; Sri. Chennappa Erappa, learned High Court Government Pleader for respondent No. 1 – State; and Sri. Hareesh Bhandary T., learned counsel appearing for respondent No. 2 – accused.

3. The factual matrix of the prosecution is that, prior to 2021, at Teachers Colony of Maddur, the accused befriended the victim, who was aged about 16 years, through Facebook and repeatedly forced her into personal interaction in order to make her love him. In the month of May 2021, the accused kidnapped the victim in a car bearing No. KA-09-C-1590, without the knowledge or consent of her parents, in order to seduce her into illicit sexual intercourse. After kidnapping the victim, the accused took her to the house of CW-4 at Antharahalli Village and had sexual intercourse with her against her will. Again, on separate days in the months of November and December 2021, and on 14.12.2021, the accused, by enticing the victim, took her to the houses of CWs.4 and 5

respectively and had sexual intercourse with her repeatedly. Consequent to this, she became pregnant.

4. Based on the complaint, a case was registered for the offences punishable under Sections 363 and 376 of the Indian Penal Code and Sections 6 and 12 of the POCSO Act. The accused did not plead guilty and claimed trial. Hence, the prosecution examined 14 witnesses as PWs. 1 to 14 and got 54 documents marked as Exhibits P1 to P54. In support of the defence, the accused got documents marked as Exhibits D1 to D5 – photographs – through cross-examination of PW-1. The accused was subjected to 313 Cr.P.c., statement and he has not laid any defence evidence. The trial court, after considering the oral and documentary evidence available on record, has come to the conclusion that the prosecution has proved that the age of the victim is 16 years and, in support of the said finding, has noted Exhibit P54 – Birth Certificate of the victim – and Exhibit P20 – SSLC marks card – both showing the date of birth of the victim as 15.09.2005. Further, the trial court has held that the prosecution has

failed to prove the ingredients of Sections 354(b), 363, 366, and 376(2)(n) of the Indian Penal Code and Sections 6 and 12 of the POCSO Act.

5. Against this, the appellant – de facto complainant – has filed the present appeal, contending that the age of the victim has been proved as contemplated under the provisions of the POCSO Act, 2012, and that the consent of the victim does not arise when the victim is a minor girl.

6. Learned counsel for the appellant further contends that the accused is a habitual offender involved in five cases. In one of these cases, Crime No. 266/2017, a case was registered under Sections 354(a)(1), 506, and 504 of the Indian Penal Code, read with Section 8 of the POCSO Act. Learned counsel would vehemently contend that Exhibit P52, the DNA test report, shows that the accused is the biological father and the victim is the biological mother of the product of conception. The doctor has opined that the victim has been used for sexual intercourse. The statement recorded under Section 164 of

the Code of Criminal Procedure, the oral evidence, and Exhibit P1 corroborate that the accused has committed the said offences. He prays that the appeal may be allowed.

7. Learned counsel appearing for the respondent – accused contends that the victim, in her cross-examination, has clearly stated that she met the accused through Facebook by posing different names and being a minor, she could not have had a Facebook account. She has also given a statement before the police on different occasions that they were in love and that she had given consent to the accused. The trial court has noted contradictions, admissions, or material omissions from the testimony of the victim and has found that the prosecution has failed to place credible evidence.

8. Apart from the above, it is the contention of the learned counsel for the respondent – accused – that the victim was of an age to understand the consequences of the act, that there was non-compliance with Section 53-A of the Code of Criminal Procedure, and that Exhibit P54 was not produced along with the charge sheet but was

produced at a later stage. In support of this contention, he relies upon the following decisions:

1. ***State of Uttar Pradesh vs. Anurudh***, reported in ***AIR 2026 SC 105***, contending there is misuse of the provisions. The question before the Hon'ble Supreme Court was the bail application is the nature of the legal duty cast on the police to draw up a medical report determining the age of the victim while investigating POCSO Act offences.
2. ***Prakash Nishad alias Kewat Zinak Nishad vs. State of Maharashtra***, reported in ***AIR 2023 (Supreme Court) 2938***, contending that the DNA test may not be infallible.
3. ***Nivrutti Nagorao Hange vs. State of Maharashtra***, reported in ***AIR 2024 (Bom.) 2229***, in contending that chain of custody of foetus and reliability of DNA evidence.
4. ***Mukesh Kumar vs. State of H.P.***, reported in ***AIR 2022 (HP) 696***, contending that the DNA report cannot be relied as the manner of collected is not correct.
5. ***P. Yuvaprakash vs. State, Rep. by Inspector of Police***, reported in ***Criminal Appeal No. 1898 of 2023*** dated 18.07.2023, contending that an ossification test should be conducted, and,
6. ***Manjunatha vs. The State of Karnataka***, reported in ***Criminal Appeal No. 2184 of 2018*** dated 22.10.2024

contending that date of birth is not proved as required under law.

9. In reply argument, the appellant contends that the order dated 17.02.2022 of the trial court clearly shows that, on an application filed by the prosecution, the blood of the appellant and the accused was taken, and it was also noted that the accused had no objection in this regard.

10. It is also contended that on 17.02.2022, a request was made to examine the samples (Exhibit P48), and the report (Exhibit P49) was dated 18.02.2022. The case file, filed along with the samples, was accepted for examination, and its report, Exhibit P52, was issued, opining as under:

"From the DNA profile results of the samples sent in item nos. 1, 2, and 3, it is found that:

- 1. The product of conception sent in item no. 1 is of human origin and of female sex.*
- 2. The DNA profile result of the product of conception sent in item no. 1 is matching with the DNA profile results of Sachin alias Chora, son of Umesh (sample blood sent in item no. 2), and the victim, daughter of*

Akbar Alikhan (sample blood sent in item no. 3), respectively.

Therefore, Sachin alias Chora, son of Umesh, sample blood sent in item no. 2 is included as being that of the biological father, and the victim, daughter of Akbar Alikhan, sample blood sent in item no. 3 is included as being that of the biological mother of the product of conception sent in item no. 1."

11. Further, it is submitted that PW-12 speaks about the pregnancy of the victim, that the termination of pregnancy did not require any order as such, based on the consent of the victim it can be done.

12. Having heard the learned counsel for the parties and having perused the entire material on record, the contentions of the parties herein, the following questions would arise for the consideration of this Court:

"i) Whether the trial court committed an error in acquitting the accused for the offence punishable under Section 354(D), 363, 366, 376(2)(n) of IPC and Sections 6, 12 of POSCO Act, and whether it requires to be interfered with by this Court?

ii) What order?"

13. This Court in **Crl.A.No.569/2019** in the case of **SRI. NANJAPPA v. MYNA @ MYNAVATHI AND**

OTHERS, in its judgment dated 11.08.2026 at paragraph no.13 has observed as under:

"13. It is settled law that in case of acquittal while reversing the judgment of Apex Court has taken note of certain principles like our Criminal Jurisprudence is essentially based on the premise that no innocent shall be convicted as guilty. All the safeguards and the jurisdictional values of criminal law, are intended to prevent any failure of justice and the said aspect is discussed in the case of Mallappa and Others versus State of Karnataka reported in (2024) 3 Supreme Court Cases 544, the Apex Court while dealing with acquittal cases are concerned relied upon 6 principles i.e. the principles which come into play while deciding an appeal from acquittal could be summarized in paragraph No.42 of the Judgment which reads as under:

"42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court."

Having considered the said principles, it is very clear that the Court has to appreciate that evidence is the core element of a criminal trial and such appreciation must be comprehensive, inclusive of all evidence, oral or documentary or partial or selective appreciation of evidence may result in a miscarriage of justice and that itself a ground of challenge. If the Court, after appreciation of evidence, finds that two views are plausible, the one in favour of accused shall ordinarily be followed and in view of the trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of the acquittal and the appellate Court is inclined to reverse the acquittal in appeal on a re-

appreciation of evidence and it must specifically address all the reasons given by the trial Court for acquittal and must cover all the facts and reversal of acquittal to conviction. The appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial Court.

14. Section 2(d) of the POCSO Act defines child as under:

"Any person below the age of eighteen years."

The Apex Court in ***P. YUVAPRAKASH vs STATE, REP. BY INSPECTOR OF POLICE***, reported in ***2023 INSC 676***, has held that to determine a victim's age under Section 34 of the POCSO Act as well as Section 94 of the Juvenile Justice Act, 2015. Wherein it has held that the same is relevant and applicable to consider the age of the victim. It comes to the conclusion that the document of Matriculation or Date of Birth Certificate or Equivalent Certificate from the relevant examination are relevant for consideration.

15. In the present case, Ex. P54 (birth certificate) clearly shows the date of birth as 15.9.2005. Ex. P20 (SSLC mark card) also bears the same date of birth. In view of these documents, ossification test is not required. In view of these exhibits, it is clear that the victim was 16 years of age on the date of the incident and therefore falls within the purview of Section 2(d) of the POSCO Act. Accordingly, the conclusion arrived at by the trial court, as stated in paragraphs 22 and 23, that the prosecution proved the age of the victim, is in accordance with law. The same is also accepted by the Trial Court that the victim was minor.

16. The contention put forward by the accused, that the victim had consented to the sexual act and therefore no offence was committed, is untenable in light of the Hon'ble Supreme Court's ruling on the matter about right to privacy of adolescents in its *suo moto* writ petition No.1351/2024 reported in 2024 (15) SCC 788 at paragraph No.13 has held that:

"13. Under Section 375IPC, having penetrative intercourse with a victim who is under 18 years of age with or without her consent becomes an offence of rape. As the offence was repeatedly committed on the victim, clause (n) of sub-section (2) of Section 376IPC is attracted. Therefore, the accused was liable to be punished in accordance with Section 376(2)(n) IPC. Sub-section (3) of Section 376 provides for a minimum punishment of twenty years for the offence of rape when the victim is less than sixteen years of age."

17. The contention of the accused that Sec.53(A) of Cr.P.C., was not followed in the present case is untenable inasmuch as, on application filed by the prosecution and on no objection of the accused, blood was drawn and it was forwarded to the concerned for examination and it is evident from Exs.P48 and 49 and the DNA result was given pointing out that the accused was biological father and the victim was the biological mother of the child. The Order sheet of the trial Court dated 17.02.2022 reads as under:

"The accused Sachin produced from jail through ASI Malegowda. The victim Kulsum Unnisa, daughter of Akbar Alikhan, aged about 16 years (as submitted by the victim). As submitted by the said victim.

The investigating officer Harish, Police Inspector, Maddur, is present. He has already filed an application dated 10.02.2022 before this Court and

also obtained an order on the same date. Today, the investigating officer has kept Dr. Vasanth Kumar N., Civil Surgeon, District Hospital, Mandya, for taking blood samples of the accused and also the victim. The said doctor has also kept his staff Male Nurse Madesha along with the necessary medical kit for taking blood samples accordingly.

The investigating officer has also produced two panchayat members by names Sri Rizwan Ali, son of Hyder Ali, aged 28 years, resident of RR Nagar, Maddur, and Sri Zeesaan Pasha, son of Mohammed Mustaf, aged about 26 years, resident of RR Nagar, Maddur.

Heard the accused and also the learned prosecutor on the application filed by the investigating officer. On hearing the accused, he submits that he has no objection to the taking of his blood sample. Acting under Section 53-A of the Code of Criminal Procedure, the investigating officer is permitted to take the blood sample of the accused and the victim. Accordingly, as per the procedure under law, before this Court at 11:25 a.m., the procedure was conducted for taking blood samples in the open court.

After sending the accused outside the court hall, the victim Kulsum Unnisa, daughter of Akbar Alikhan, present before the court with her mother, consented for the taking of the blood sample.

Hence, accordingly, as per the procedure under law, before this Court at 11:40 a.m., the procedure was conducted for taking blood samples in the open court in the presence of witnesses.

After that, both blood samples were kept in two separate flasks. Both flasks were separately packed in white cloth and sealed. The procedure was completed at 11:50 a.m. I have put signature on two forwarding notes.

Later, both sealed containers were given into the possession of the investigating officer, Harish, Police Inspector, Maddur, for further steps on FSL and DNA test examination.

Jail custody of the accused is extended till 03.03.2022.

Called on by 03.03.2022."

As per the trial court order, blood was drawn. Exhibit P-48 is the requisition to the FSL dated 17.02.2022. Exhibit P-49 is the acknowledgement dated 18.02.2022 for having received the article for examination. Exhibit P-52 is the test report opining that the accused is the biological father and the victim is the biological mother. In the present case DNA test is done in accordance with law.

18. The Apex Court in the case of **VEERENDRA V. STATE OF MADHYA PRADESH.**, reported in **2022(8) SCC 668** in paragraph No.53 has observed thus:

"53. In view of the nature of the provision under Section 53-ACrPC and the decisions referred to, we are also of the considered view that the lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fatal of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the cause of

criminal justice would become the victim. The upshot of this discussion is that even if such a flaw had occurred in the investigation in a given case, the court has still a duty to consider whether the materials and evidence available on record before it, are enough and cogent to prove the case of the prosecution. In a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances form a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour."

In view of the above, in case of any lapse or omission to carry out DNA profiling, by itself, cannot be permitted to be fatal of a trial for the offence of rape.

19. It is to be noted that where the pregnancy of the victim-minor is about 24 weeks, in view of Section 3(2)(a) and 3 (2)(b) of the Medical Termination of Pregnancy Act, 1971, the judicial proceedings are not required and the present case on hand. That apart, it is to be noted that the legislative intent of the MTP Act which is to protect the health of a pregnant person and facility safe, hygienic, and legal abortion. The right to abortion is a concomitant right of dignity, autonomy and reproductive

choice. This right is guaranteed under Article 21 of the Constitution.

20. The custody of the foetus was established, the foetus was collected and sent to the FSL. Ex. P-41 is dated 13.01.2022. Ex. P-42 is the acknowledgment dated 14.01.2022. Ex. P-49 is the acknowledgment dated 18.02.2022 for having received the EDTA tube from the accused and the victim. Ex. P-52 is the DNA report. These evidence are sufficient to prove that the chain of custody of foetus and reliability of the DNA report.

21. From the material available on record it is clear that:

I. The Age of the Victim Has Been Properly Established:

The trial court itself found that the prosecution proved the victim was 16 years of age, relying on the Birth Certificate (Exhibit P54) and the SSLC Marks Card (Exhibit P20), both bearing the same date of birth. The appellant has rightly pointed out that the victim falls within the definition of a "child" under the POCSO Act. The age

determination is settled and is not in dispute before this Court.

II. The Consent of a Minor is Legally Irrelevant:

When the victim is below the age of eighteen, the law does not recognize her consent as a defence to the offences charged. The fact that the victim was a minor renders any claim of voluntary consent legally insufficient to negate the criminal liability of the accused. This is a well-settled principle of criminal law enacted for the protection of children from sexual exploitation.

III. The DNA Evidence Supports the Prosecution's Case:

The DNA test report (Exhibit P52) establishes that the accused is the biological father and the victim is the biological mother of the product of conception. The procedure for drawing blood samples was conducted in open court, with the accused present and having raised no objection. The chain of custody — from the requisition (Exhibit P48), to the acknowledgement (Exhibit P49), to

the final report (Exhibit P52) — is unbroken and in accordance with the requirements of law. The contention that Section 53-A of the Code of Criminal Procedure was not complied with is squarely refuted by the trial court's own order dated 17.02.2022. The trial court, while accepting that the victim was 16 years of age, proceeded to acquit the accused of all charges. This conclusion is perverse. If the victim was a minor, the law does not permit consent to serve as a defence. The trial court failed to reckon with this cardinal principle. Furthermore, the trial court did not meaningfully address the DNA evidence that directly links the accused to the act. The acquittal rests on an erroneous appreciation of evidence — giving weight to the inconsistencies in the testimony of the victim while overlooking the value of the DNA report and the established age of the victim. When a trial court acquits an accused despite evidence that, if believed, would clearly establish the guilt of the accused, and when the acquittal is based on an error of law or a selective appreciation of evidence, the appellate court is called upon

to interfere. The present case presents precisely such a situation. The evidence on record — the age of the victim, the DNA report establishing biological parentage, and the corroborative testimony — collectively paints a picture that the trial court ought to have convicted the accused for the offences under the POCSO Act and the Indian Penal Code. The failure to do so amounts to a miscarriage of justice.

CONCLUSION:

22. The law was set in motion by registering the case against the accused as he had subjected minor girl who is aged about 16 years to sexual act, which resulted in the victim becoming pregnant. The documents of Exs.P.20 and 54 are very clear that the victim girl is aged about 16 years and her date of birth in terms of the birth certificate issued by Government of Karnataka, is 21.08.2025 and so also the matriculation certificate discloses the very same date of birth. The document of birth certificate is marked through P.W.2 by making further examination consequent upon allowing of the

application filed under Section 91 of Cr.P.C. When the birth certificate is marked through P.W.2 by way of further examination, not disputed the very registration of the date of birth in the competent authority and the same was registered in Mandya Municipality. During the course of cross-examination, it is elicited that he had obtained the same on 12.02.2025 and application was given on 12.02.2025 and it was not there prior to 12.02.2025. It is elicited that now they are residing in Maddur. A suggestion was made that Ex.P.54 was created subsequently and the same was denied, but not disputed the fact that it was not registered in Mandya Municipality. Except the suggestion that it is created recently, nothing is elicited

23. P.W.10 who gave the matriculation certificate when the Investigating Officer sought the document, categorically deposed that he has issued the matriculation certificate in terms of Ex.P.20 and it contains the signature of the Principal of R.K. PU College. In the cross-examination of P.W.10 also, except eliciting that they have not received the birth certificate, nothing is elicited and

even not disputed with regard to the matriculation certificate. In view of the same, the judgment of the Apex Court in the case of **P. YUVAPRAKASH v. STATE REP. BY INSPECTOR OF POLICE** passed in **Crl.A.No.1898/2023**, is aptly applicable to the case on hand and it is proved that she was a minor.

24. The other material available before the Court is that the victim girl was subjected to sexual act, as a result she became pregnant and the document of Ex.P.52 is very clear that she was pregnant. FSL report is very clear that the DNA profile result of product of conception sent in item No.1 is matching with the DNA profile results of Sachin @ Chora i.e., accused and victim and he is the biological father and victim is the biological mother. When the learned counsel for the accused contended that Section 53A of Cr.P.C. is not complied, in reply to this argument, the learned counsel for the appellant would contend that a requisition was made on 17.02.2022 for drawal of blood of the appellant and the victim based on the request made to examine the samples as per Ex.P.48 and the report

Ex.P.49 is dated 18.02.2022. The case file filed along with the samples was accepted for examination and its report was given as per Ex.P.52. It has to be noted that the very accused/respondent has said no objection to draw the blood sample and accordingly, blood sample was drawn and sent to the FSL. It has to be noted that P.W.2 speaks about the pregnancy of the victim and also termination of pregnancy. The doctor who has been examined as P.W.12 has categorically deposed that on requisition, pregnancy test was conducted and preserved the fetus while conducting the medical termination of pregnancy and the fetus was sent for examination through the Investigating Officer and medical termination was done at the request of the Investigating Officer and also the victim. Ex.P.52 is marked through the Investigating Officer, who has been examined as P.W.14, and while marking not disputed the same and the PSI has obtained the FSL report and the same is also produced before the Court while filing the additional charge-sheet. During the course of cross-examination, except the suggestion that same was created

subsequently, nothing is elicited. In the cross-examination of P.W.14, it is elicited that the annexure to Ex.P.52 does not contain the date, time and seal. Having perused the document, there is a seal and signature of the person who conducted the DNA test and when no such dispute is made even without examining the author of DNA test, the Court can rely upon the same, as there is no serious dispute with regard to the report, except suggestion that it was created subsequent to the investigation.

25. This Court would like to rely upon the judgment of the Apex Court in the case of **SHYAM NARAYAN RAM v. STATE OF U.P AND ANOTHER** reported in **2024 SCC Online SC 2988**, wherein in paragraph No.14 considered Section 294 of Cr.P.C., particularly sub-section (3), which says that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. Provided that the Court may, in its discretion, require such signature to be proved.

26. In the case on hand, signature is not disputed. Only dispute is made with regard to the seal, date and time is concerned. No suggestion is made to the witness that expert who conducted the FSL test has not signed the document.

27. The Apex Court in paragraph No.15 of the said judgment held that, a bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the authors or such documents does not enter the witness box to prove their signatures, the said documents could still be read in evidence. The evidence of the prosecutrix is consistent with regard to the act of the accused and her side evidence itself is enough to accept the case of the prosecution.

28. Considering the material available on record, the law was set in motion based on the complaint that the accused has taken the victim girl without the consent of her lawful guardianship as she was the minor. The accused not only took the minor girl, but subjected her for sexual act as against her wish and enticed her for consent, which has resulted in she becoming pregnant and FSL report also confirms the same.

29. The Trial Court has committed an error in coming to the conclusion in paragraph No.66 that the victim's testimony clearly shows that she has suppressed her identity and made friendship with number of persons. She has created false documents in order to make friendship. Her own admission is that she was loving the accused and when her father denied for marriage, she has turned hostile towards the accused. It is also observed that the testimony of witnesses is consisting of number of contradictions and omissions. But an erroneous approach is made by the Trial Court that there is no clear cut evidence against the accused to hold that he has

committed the offence as alleged in the charge-sheet. It is unfortunate that this observation is made by the Trial Court in spite of the medical evidence discloses that the victim girl was subjected to sexual act and her evidence is consistent that the accused took her to different places and subjected her for sexual act, which has resulted in her becoming pregnant. Ex.P.52 is also very clear that the accused is the biological father and victim is the biological mother of the fetus. The very finding of the Trial Court is erroneous. No doubt, the Trial Court in paragraph No.67 made an observation that it is open to the Court to convict the accused on the basis of evidence of a single witness, though it is open to the Court to look for corroboration. But proceeded in an erroneous approach that her testimony clearly shows that she has suppressed her identity and that she was loving the accused and when her father denied for marriage, she has turned hostile. But the fact is that she was a victim and she was subjected to sexual act by the accused, as a result she became pregnant and the same also corroborates with the medical

evidence and FSL and the medical evidence and DNA test was not taken note of by the Trial Court. The Trial Court relied upon the Apex Court judgments of 1957, 1962, 1996, 2002 and 2005 and fails to take note of the very object of bringing the special enactment of POCSO Act in 2012 and none of the judgments are discussed subsequent to the above judgments and subsequent to the bringing of new enactment of POCSO Act to protect the children, who are below the age of 18 years.

30. This Court would like to rely upon the judgment of the Apex Court in the case of **INDEPENDENT THOUGHT v. UNION OF INDIA AND ANOTHER** reported in **(2017) 10 SCC 800**, wherein discussion was made with regard to Section 375 Exception 2 of IPC, Sections 5 and 41 of POCSO Act. It is held that age of consent for sexual intercourse raised to 18 years under Section 375 sixthly to bring it on a par with evolving laws under the Prohibition of Child Marriage Act and Juvenile Justice (Care and Protection of Children). The Apex Court in detail discussed the IPC provisions as well as special

enactment keeping in view Section 375 Exception 2 of IPC and also the special enactment of POCSO Act and held that there is a plethora of material to clearly indicate that sexual intercourse with a girl child below the age of 18 years (even within marriage) is not at all advisable for her for a variety of reasons, including her physical and mental well being and her social standing – all of which should ordinarily be of paramount importance to everybody, particularly the State. While considering Article 14 of the Constitution also, the Apex Court held that a child is and remains a child regardless of the description or nomenclature given to the child and a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated child or a widowed child. The age of consent for sexual intercourse is definitely 18 years and there is no dispute about this. Therefore, under no circumstances can a child below 18 years of age give consent, express or implied, for sexual intercourse.

31. It is also held in this judgment that however, of much greater importance and significance is Section 42A

of the POCSO Act. This section provides that the provisions of the POCSO Act are in addition to and not in derogation of the provisions of any other law in force which includes IPC. Moreover, the section provides that in the event of any inconsistency between the provisions of the POCSO Act and any other law, the provisions of the POCSO Act shall have overriding effect. It follows from this that even though IPC decriminalises the marital rape of a girl child, the husband of the girl child would nevertheless be liable for punishment under the provisions of POCSO Act for aggravated penetrative sexual assault. The Apex Court concluded making detailed discussion that sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. Section 42A of the POCSO Act has two parts. The first part of the section provides that the Act is in addition to and not in derogation of any other law. Therefore, the provisions of the POCSO Act are in addition to and not above any other law. However, the second part of Section 42A provides that in case of any inconsistency between the provisions of

POCSO Act and any other law, then it is the provisions of the POCSO Act, which will have an overriding effect to the extent of inconsistency. The Court also to take note of that the POCSO Act defines a child to be a person below the age of 18 years. The definition of penetrative sexual assault and aggravated penetrative sexual assault have been defined in Sections 3 and 5 of the POCSO Act. The provisions of Sections 3 and 5 are by and large similar to Section 375 and Section 376 of IPC. Section 3 of the POCSO Act is identical to the opening portion of Section 375 of IPC, whereas Section 5 of the POCSO Act is similar to Section 376(2) of IPC. Exception 2 to Section 375 of IPC, which makes sexual intercourse or acts of consensual sex of a man with his own wife not being under 15 years of age, not an offence is not found in any provisions of the POCSO Act.

32. Now the question before this Court is with regard to imposing of sentence is concerned, whether an opportunity has to be given to the accused to hear on sentence. No doubt, the Apex Court, in the earlier

judgments and in the recent judgment has held that, if it is first time convicting, an opportunity has to be given. But in the case on hand, the victim was a minor and she was enticed and subjected to sexual act and her evidence is conclusive. As a result, she became pregnant and the FSL report is also clear that the accused is the biological father and the genuineness of the report is not challenged even for procedure.

33. The Apex Court in the case of **WAHID KHAN v. STATE OF MADHYA PRADESH** reported in **(2010) 2 SCC 9**, in paragraph No.18 held that, in a case of rape, the testimony of a prosecutrix stands on a par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible. Even in the absence of the evidence of the doctor can accept the evidence of the prosecution witness i.e., victim which is fully trustworthy and there is no reason to doubt genuineness thereof. In addition, the prosecution also relies upon the DNA test report which is positive. In the

absence of examination of the person who conducted the DNA, the Court can consider the conclusive evidence of the victim, which is trustworthy.

34. The Court has to take note of the very statute which provides punishment for aggravated penetrative sexual assault. This Court would like to extract Section 6 of the POCSO Act, which reads as follows:

"6. Punishment for aggravated penetrative sexual assault.—

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

35. Having read this punitive provisions and keeping in view the definition of Sections 3 and 5 of the POCSO Act in respect of penetrative sexual assault as well as aggravated penetrative sexual assault, it is very clear that whoever commits aggravated penetrative sexual assault shall be punished 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 natural life of that person, and shall also be liable to fine, or with death. Having taken note of the very statutory penal provision, there is no need to give an opportunity to the accused to hear regarding sentence in view of the statutory punishment of minimum sentence of 20 years.

36. In view of the discussions made above, we pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment of acquittal dated 07.07.2025 passed in Spl.C.No.47/2022, is set aside.

- (iii) The accused is convicted for the offences punishable under Sections 363 and 376 of IPC and Section 6 of POCSO Act.
- (iv) The accused is sentenced for a period of 20 years for the offence punishable under Section 376 of IPC and Section 6 of the POCSO Act and also fine of Rs.1,00,000/-. In default of payment of fine, to further undergo sentence for a period of 6 months.
- (v) The accused is also sentenced for a period of 3 years in respect of the offence punishable under Section 363 of IPC and the fine of Rs.5,000/-. In default of payment of fine, to further undergo sentence for a period of 2 months.
- (vi) The fine amount is payable within four weeks from today.
- (vii) On deposit of the fine amount of Rs.1,05,000/-, an amount of Rs.90,000/- shall be paid to the victim, on proper identification. The remaining amount of Rs.15,000/- shall vest with the State.
- (viii) The accused is directed to surrender before the Trial Court within one week from today.

- (ix) If the accused fails to surrender before the Trial Court, the Trial Judge is directed to secure the accused and send him to prison by issuing the conviction warrant to undergo sentence as imposed above.
- (x) The Registry is directed to furnish a copy of this judgment to Sri Hareesh Bhandary T, the learned counsel for respondent No.2/accused, forthwith.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

BSV/MD