



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1626 OF 2025 (A)

BETWEEN:

THE STATE BY
GANGAMMAGUDI POLICE STATION,
BENGALURU
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560 001.

...APPELLANT

(BY SRI. RAHUL RAI K., HCGP (PH))

AND:

1. SHIVAKUMAR A.
S/O. ARMUGAM,
AGED 31 YEARS,
RESIDING AT
C/O. RAMAKRISHNA HOUSE,
SHIMADRI LAYOUT,
SINGAPURA LAYOUT,
VIDYARANYAPURA,
BENGALURU
PERMANENT ADDRESS:
PARAMANDANDAL VILLAGE,
CHANJAM TALUK,
THIRUVANNAMALAI,
TAMIL NADU-606 601.



2. GANGAMMA
W/O. SUBHASH R.,
AGED ABOUT 50 YEARS,
R/O. C/O. MURGESH BUILDING,
3RD CROSS, RAGHAVENDRA NAGAR,
KAMMAGONDANAHALLI,
BENGALURU CITY-560 045.

...RESPONDENTS

(BY SRI. PRABHAKAR L. SHETTY, ADVOCATE FOR R1 (PH);
SRI. N.S. SAMPANGI RAMAIAH, AMICUS CURIAE FOR R2)

THIS CRL.A. IS FILED U/S.378(1) (3) CR.P.C., PRAYING TO: (A) GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 25.11.2023 IN SPL.C.C.SNO.306/2020 PASSED BY THE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, FTSC-II (POCSO), AT BENGALURU ACQUITTING THE RESPONDENT NO.1/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 376 OF IPC., AND SECTION 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT); (B) SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 25.11.2023 IN SPL.C.NO.306/2020 PASSED BY THE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE/FTSC II (POCSO), AT BENGALURU ACQUITTING THE RESPONDENT NO.1/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 376 OF IPC., AND SECTION 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT); (C) CONVICT AND SENTENCE THE RESPONDENT - ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 376 OF IPC., AND SECTION 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT).

THIS APPEAL, COMING ON FOR ORDERS, 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 State is in appeal against the Judgment and order dated 25.11.2023, passed by the Court of Additional City Civil and Sessions Judge, FTSC-I, Bengaluru in Spl.C.C.No.306/2020, acquitting accused / respondent No.1 for the offences punishable under Section 376 of IPC and Section 6 of the POCSO Act, 2012.

2. There is a delay of 512 days in preferring the appeal. I.A.No.1/2026 is filed to condone the delay.

3. We have heard the learned High Court Government Pleader for the State, learned counsel appearing for the respondent No.1 / accused and the learned amicus curiae for respondent No.2 / defacto complainant and perused the material on record, including the impugned judgment passed by the Trial Court.



4. The brief facts of the prosecution case are that, the victim girl is the minor daughter of the complainant. They are residents of a house in Murugesh Building, situated in 11th Main, 3rd Cross, Ragavendra Layout, K.G.Halli, Bengaluru City. The victim girl was doing part time work in the provision store of one Sri. Sashidara, PW.4, situated in Pipeline road, Abbigere. The accused was also working in the same provision store. He developed a close intimacy with the victim and started visiting her house when she was alone. During such time, he had forcible sexual intercourse with her repeatedly without her consent, as a result of which she became pregnant and gave birth to a female baby, on 10.02.2020.

5. The accused was charged for the offence punishable under Section 376 of IPC and Section 6 of POCSO Act, 2012. Before the trial court, the prosecution got examined PWs.1 to 9 and got marked documents Exs.P1 to P.32 to establish the charges levelled against the accused.



6. The Trial Court, vide impugned judgment acquitted the accused mainly on two grounds. Firstly, the trial Court held that the prosecution has miserably failed to prove that the victim girl was a child as defined under Section 2(d) of the POCSO Act, 2012, as on the date of occurrence of the alleged incident. Secondly, it was held that there was an inordinate delay in lodging the complaint and no satisfactory, convincing and acceptable reasons are forthcoming as to why such an inordinate delay was caused. Further, the trial Court has also held that the evidence of PW.1 to PW.3, none other than the victim girl, her mother and her elder sister, is unnatural and in the said circumstances, the DNA report would play a vital role, but the prosecution has not chosen to produce the DNA report for the reasons best known.

7. Assailing the impugned Judgment, learned High Court Government Pleader contended that the victim girl has delivered a child and she has supported the case of prosecution and her evidence is further supported by the



testimony of her mother and sister and therefore, the trial Court was not justified in acquitting the accused. He contended that the prosecution has produced Exs.P12 and 13, copy of the school admission register extract (9th std.) and a letter written by the school authority to the police inspector-PW.8, wherein, the date of birth of the victim girl is mentioned as 04.10.2002 and therefore, it is established that she was a minor as on the date of commission of the offence.

8. In the documents, Exs.P12 and 13, relied upon by the prosecution, the date of birth of the victim is mentioned as 04.10.2002. The prosecution relies on these two documents to prove that the victim girl was a minor and she was a child as defined under Section 2(d) of the POCSO Act, 2012. The trial Court has noticed that PW.8, the Police Inspector in his evidence has specifically stated that he has not made any efforts to collect the date of birth certificate of the victim girl.



9. The victim girl examined as PW.1, in her evidence has stated that she was born in Sumathi Hospital and she studied up to 9th standard. Both her mother as well as her sister corroborated the said evidence of PW.1. Hence, the Investigation Officer could have collected the date of birth of the victim girl, but the same was not collected. This assumes importance, since the defence has seriously disputed the age of the victim girl. In a case of this nature, it is the primary duty of the prosecution to establish that the victim was a child, by producing acceptable and convincing documents.

10. The learned trial judge by referring to Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, observed that the prosecution is required to prove the age of the victim girl by producing the date of birth certificate issued by the school or the Matriculation or Equivalent certificate issued by the consent Examination Board and in the absence of which, the prosecution has to rely upon the ossification test



report or any other latest medical age determination test. In the instant case, the prosecution has not produced the above documents to prove the age of the victim girl. The findings recorded by the learned Trial Judge, in this regard, cannot be held to be perverse or illegal.

11. The victim girl gave birth to a female baby on 10.02.2020. The complaint was lodged after the delivery, i.e., on 11.02.2020. The police intimation dated 10.02.2020 is marked as Ex.P.29. The said document establishes that the Medical Officer of the hospital where the victim girl gave birth, intimated to the police about unmarried minor female with pregnancy admitted to their hospital. The discharge summary relating to the victim girl is marked as Ex.P15, which shows that she was admitted to the hospital on 10.02.2020. In Ex.P15, it is seen that the patient has denied any history of sexual intercourse and she was discharged against medical advice. The same is the evidence of the doctor-PW9. The learned trial judge has also considered the evidence of PW.8, the Police



Inspector, wherein, he has stated that in Ex.P15, it is mentioned to the effect that there is no sexual assault on the victim girl. Hence the trial Court held that if really the accused had committed penetrative sexual assault on the victim girl, she would have disclosed this fact to the doctor and the doctor ought to have mentioned the same in Ex.15. However, no satisfactory, convincing or acceptable reason is forthcoming as to why the victim girl did not disclose this fact to the doctor, which creates a strong doubt in the mind of the Court, which has remained unexplained.

12. The trial Court also taken into consideration that the victim girl and her mother were residing in a same house under the common roof. Victim's mother was regularly observing her daughter's health condition. When her mother was constantly observing her health condition, it cannot be believed that she was not aware about her daughter's pregnancy till she delivered a child.



13. Further, Exs.P21 to Ex.P23 are the notices issued to the mother requesting to give consent for medical examination of the victim girl, but she refused to give consent. Hence, there is no DNA examination conducted to establish that the accused is the biological father of the child born to the victim girl. The trial Court has also found several contradictions in the evidence of PWs.1 to 3, which goes to the root of the prosecution case. For all these reasons, the trial Court has acquitted the accused of the charges levelled against him.

14. Having perused the entire material on record, we find that the reasons assigned by the trial Court to hold that the charges against the accused are not proved, are in accordance with law and therefore, no interference is called for. Appeal is ***dismissed***. Consequently, I.A.No.1/2026 is ***dismissed***.



15. Learned Amicus Curia is entitled to an honourarium of Rs.6,000/- payable by the High Court Legal Services Committee.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

LDC
List No.: 1 Sl No.: 4