



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 2252 OF 2025

BETWEEN:

THE STATE THROUGH
PADUBIDRI POLICE STATION
BY C.P.I., KAPU CIRCLE,
UDUPI,
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDL. SPP FOR STATE)

AND:

1. YASEEN AKRAM
S/O. ABDUL REHAMAN
AGED ABOUT 23 YEARS,
FLAT NO.3-12T, 2ND FLOOR,
BRAHMA BAIDER APARTMENT,
HEJAMADI, KAPU TALUK, UDUPI.
PERMANENT ADDRESS H.NO.8-160,
DILSHAD MANZIL BRAHMASTHAN ROAD,
PADUBIDRI POST, NADSAL VILLAGE,
KAPU, UDUPI DISTRICT - 576 101.
2. GANESH ACHARYA,
S/O LATE. KALINGA ACHARYA,
AGED ABOUT 53 YEARS,
DURGALAKSHMI NIVASA,



SALVADI, KALAVALA VILLAGE,
KUNDAPURA TALUK, UDUPI - 576 101,
KARNATAKA 576 101.

...RESPONDENTS

(BY SRI. K. PRASANNA SHETTY, ADVOCATE FOR R1
SMT. ARCHANA K.M., ADVOCATE FOR R2
(VIDE COURT ORDER DATED 16.03.2026,
HIGH COURT LEGAL SERVICES COMMITTEE APPOINTED))

THIS CRL.A IS FILED U/S 378(1)(3) CR.P.C. (FILED U/S 419(1 AND 3)) BNSS) PRAYING TO 1.GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 07.06.2024 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-1 UDUPI IN SPL.CASE NO.106/2022 ACQUITTING THE RESPONDENT - ACCUSED FOR THE OFFENCE P/U/S 363, 376(2)(n), 377, 506 OF IPC AND 3(a)(b), 4, 5(1), 6, 15 OF POCSO ACT AND SECTION 67B OF I.T. ACT AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION, 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)

Appeal is preferred by the State against the judgment dated 07.06.2024, passed by the Court of the Additional District and Session Judge, FTSC-1, Udupi in Special Case No.106/2022, wherein the learned Sessions Judge has acquitted the accused of the offences under Section 363,



376(2)(n), 377, 506 of IPC and Section 3(a)(b), 4, 5(l), 6, 15 of the POCSO Act and Section 67B of the Information Technology Act.

2. There is a delay of 425 days in preferring the appeal. IA No.1/2025 is filed to condone the said delay.

3. On merits, it is the case of the prosecution that the accused became acquainted with the victim girl through Instagram and both of them were contacting each other through WhatsApp messages and calls. Accused promised to love her and sent some indecent videos and photos to the victim, insisting her to do the acts as in those photos and videos. He recorded certain acts in his mobile, and threatening that he will make the videos viral, called the victim to Udupi on 05.05.2022, took her in a bike bearing registration number KA-20-S-352 to a vacant house at Alangaru in Nadsalu Village of Kapu Taluk, disrobed her, touched her private part and committed forcible sexual intercourse and unnatural sex. He repeated such acts in the month of May, 2022 and June, 2022 and recorded the video. Further, he kidnapped her with the help of a child in conflict with law, in a Maruthi Swift car



bearing registration number KA-20-MC-4310 and took her to the second floor of an apartment in Hejamadi Village and committed forcible sexual intercourse and unnatural sex. He repeated the act on 19.07.2022 and 6 to 7 times thereafter in the same place. Again on 27.07.2022 at about 11:00 a.m., he took the victim to the same place in an Autorikshaw bearing number KA-20-C-8952 and thereby, committed the charged offences.

4. In order to establish the charges leveled against the accused, the prosecution in all examined 21 witnesses and got marked 52 documents and MOs.1 to 5. The defence of the accused was one of total denial.

5. The learned Sessions Judge vide impugned judgment, on appreciation of the oral and documentary evidence on record, came to the conclusion that the prosecution has failed to prove the age of the victim girl; the evidence on record goes to show that there was a love affair between the accused and the victim girl since one year and she had voluntarily gone to Hari Om House, Alangaru and Brahmabaidar Apartment at Hejamadi; The medical report does



not support the case of the prosecution; the relatives of PWs.1 and 2, namely PWs.3 to 6, have not supported the case of prosecution and the evidence of the victim girl is not trustworthy and reliable.

6. The trial Court, after assigning reasons, has held that there is no evidence to show that the accused has kidnapped the victim by threatening her and the prosecution has not produced cogent and convincing evidence and therefore, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt.

7. We have heard the learned Additional SPP for the State, learned counsel for the respondent No.1 and the learned Amicus curiae for respondent No.2 / defacto-complainant. Perused the evidence and material on the record.

8. In this case, the complainant is the victim's father. He has been examined as PW.1. Though in the chief examination, he has stated about lodging of the complaint and the incident narrated to him by his daughter, in the cross-examination conducted by the defence, he admitted that he has not given any mobile phone to his daughter, his daughter has



not narrated any incident to him and he is not aware as to who wrote the complaint at Ex.P1 and he do not know the contents of Ex.P1. He has further stated in the cross-examination that he has not given any statement to the police and he is unaware as to any sexual assault committed against his daughter.

9. The victim / PW.2, supported the case of prosecution in her chief examination, however, in the cross examination conducted by the defence, she has stated that she has not informed the police about the incident and not given any statement. She has further stated that at the time of incident, she was aged above 18 years and she has not stated anything before the doctor. She has further stated that she gave the statement before the court, as per the instruction of police.

10. In light of the above inconsistent evidence of PW.1 and PW.2, it is necessary to seek corroboration, to ascertain the truth in the charges levelled against the accused.

11. PWs.3 to 5 are the close relatives of PW.1 and PW.2. However, they have not supported the case of prosecution. Their evidence is not helpful to the prosecution



and therefore, the testimony of PW.1 and PW.2 in the chief examination is not supported by PW.3 to PW.5, examined by the prosecution.

12. PW.6 and PW.9 are the owners of the house at Alangaru and Hejamadi. PW.6 in his cross examination has stated that he does not know whether the accused took the key of the house. PW.9 has stated that he came to know about the accused through police and prior to that he was not acquainted with the accused. Hence, the evidence of PW.6 and PW.9 is also not helpful to the prosecution.

13. In proof of victim's age, the prosecution has relied on the document at Ex.P32, her birth certificate. PW.15, is the Deputy Tahsildar through whom Ex.P32 was marked. While appreciating the said document at Ex.P32 and the evidence of PW.15, the learned Sessions Judge has observed that in the cross examination, PW.15 has admitted that the handwriting in Ex.P32 is not his handwriting, hence, PW.15 is not the author of Ex.P32. Further, PW.15 has also stated that he has not entered the date of birth of the victim girl in the original birth register.



14. According to the prosecution the date of birth of the victim is 19.07.2007. However, PW.2 in her cross examination has stated that she was born in the year 2004. She has categorically stated that she was aged more than 18 years at the time of incident. In view of the same, it is difficult to accept that the victim was a minor, aged below 18 years, at the time of incident.

15. The prosecution is also relying on Ex.P30, victim's medical report. She was examined by the medical officer on 28.07.2022, in respect of the incident which took place in the month of May, 2022.

16. As per Ex.P30, the hymen was intact and there were no injuries on the private part of the victim. The Learned Sessions Judge on appreciation of the medical evidence, has rightly observed that in view of the medical report and evidence of the medical officer, the allegation that the accused has committed forcible sexual intercourse on the victim girl does not sustain.

17. According to prosecution, the accused committed forcible sexual intercourse and forcible carnal intercourse. The



Learned Sessions Judge has observed that if at all the accused has committed such an act as alleged by the prosecution, the Medical Officer would have noted some injuries on the private part of the victim girl. PW14, the Medical Officer, has stated in the examination chief that there was no sign of any sexual intercourse committed. Hence the medical evidence also does not support the case of prosecution.

18. In the cross-examination, PW.2 has stated that the police came to Hejamadi apartment and took her to the police station. The victim girl and accused were apprehended together, near Brahmabaidar apartment and thereafter, they were taken to the police station. Hence, the learned Sessions Judge has come to the conclusion that the said aspect shows that victim girl has voluntarily accompanied the accused to Hejamadi. Further, she has gone to Nadsal and Hejamadi several times with the accused in a bike as well as in a car. When she has voluntarily gone to the house without any resistance, Section 363 of IPC also does not attract. Hence, the allegations of kidnapping are also not proved.



19. In **Vadivelu Thevar V/s. The State Of Madras** reported in **AIR 1957 SC 614**, it is held by the Apex Court that there are three types of witnesses, namely witnesses who are i) wholly reliable, ii) wholly unreliable and iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, there is no difficulty inasmuch as relying even on the solitary testimony of such a witness, conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses, inasmuch as his / her testimony can be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the court faces the difficulty. In such a scenario, the Court is required to separate the chaff from the grain to find out the true genesis of the incident.

20. In **Krishan Kumar Malik v. State of Haryana** in **(2011) 7 SCC 130**, the Apex Court has held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae.



21. In **Rai Sandeep v. State (NCT Delhi), (2012) 8 SCC 21**, the Apex Court noticing conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before the Court, resulting in material inconsistencies, held that:

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against



him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

22. In this case, having re-appreciated the material on the record, we find that the evidence of PW.2, is not trustworthy. She cannot be termed as a sterling witness. In chief examination, though she supported the prosecution case, under cross-examination, she has resiled from earlier statement. Further, we find that the evidence of PW.2 is not corroborated with any other convincing and acceptable evidence including the medical evidence. The case of prosecution that the victim was a minor as on the date of incident is also not proved beyond reasonable doubt, as the victim herself has admitted that she was aged above 18 years at the time of incident.



23. This is an appeal preferred against the judgment of acquittal. In view of the acquittal of the accused by the trial Court, the presumption of innocence in his favour gets reinforced and further bolstered. The Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -vs- State of Karnataka***, reported in ***(2007) 4 Supreme Court Cases 415***, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph 42(4) and paragraph 42(5) as below:

"42(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the trial Court.

42(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate



Court should not disturb the finding of acquittal recorded by the trial Court.”

24. For the aforesaid reasons and discussion, we proceed to pass the following:

ORDER

Appeal is ***dismissed***.

I.A.No.1/2025 is dismissed.

Learned counsel, Smt. Archana K. M. appearing for respondent No.2, is entitled for a honorarium of Rs.10,000/- (Rupees Ten Thousand only) payable by the High Court Legal Services Committee.

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

**Sd/-
(VENKATESH NAIK T)
JUDGE**

LDC
List No.: 1 Sl No.: 17