



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 2524 OF 2025 (A)

BETWEEN:

STATE OF KARNATAKA
BY POLICE INSPECTOR,
BHADRAVATHI RURAL POLICE STATION,
BHADRAVATHI
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...APPELLANT

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

AND:

1. MOHAMMED TOUHID
S/O. MOHAMMED RAFIQ,
AGED ABOUT 20 YEARS,
R/AT MAKKA MOHALLA,
DONABHAGHATTA VILLAGE,
BHADRAVATHI TALUK - 577301
2. SMT. ABRIYA BANU,
W/O. AASIF,
AGED ABOUT 27 YEARS,
R/AT BABALLI VILLAGE,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577201.

...RESPONDENTS



(BY SRI. SANDESH P. NADIGER, ADV. FOR R1,
SRI. SUMANTH ULLOD, ADV. FOR R2.)

THIS CRL.A IS FILED U/S 378(1)(3) CR.PC (FILED U/S 419(1)(3) BNSS) BY THE ADVOCATE FOR THE APPELLANT-STATE AND STATE PP PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 15.04.2025 PASSED IN SPL.CASE NO.329/2023 BY LEARNED ADDL. DISTRICT AND SESSIONS JUDGE FTSC-1 (POCSO) AT SHIVAMOGGA DISTRICT THEREBY ACQUITTING THE ACCUSED/ RESPONDENT FOR THE OFFENCE P/U/S 366 AND 376(3) OF IPC AND SEC.4 OF POCSO ACT 20122 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 G BASAVARAJA

ORAL JUDGMENT

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

The State, being aggrieved by the judgment of acquittal passed by the trial Court, has preferred this appeal.

2. Vide impugned judgment, the Trial Court has acquitted respondent No.1 / accused of the offences punishable under Sections 366 and 376(3) of IPC and Section 4 of the POCSO Act.



3. Heard both sides and perused the material on record.

4. It is the case of the prosecution that accused is the elder brother of minor victim's friend, by name Misba. When the victim used to visit her friend's house, he got acquainted with her and developed a close friendship. When their love affair came to the knowledge of victim's mother, she advised the victim to discontinue the relationship with the accused. On 15.08.2023 at about 08:00 a.m., the accused enticed the victim on the pretext of marrying her, kidnapped her from the KSRTC bus stand, Bhadravathi and took her to Bangalore, and from there to Ooty, wherein, he booked Room No.202 in a hotel, confined her in the said room and committed forcible penetrative sexual assault on her.

5. The learned trial Court, based on the evidence and material on record, came to the conclusion that there are discrepancies in the evidence of the victim and her evidence do not inspire the confidence of the Court to rely



upon and to convict the accused regarding the alleged kidnap and sexual assault. Further, the evidence of the victim is also not corroborated with the medical evidence and FSL report. The trial Court further held that, the prosecution has also failed to prove the age of the victim and to establish that she was a minor as on the date of incident.

6. The learned High Court Government Pleader contended that, the prosecution has got marked the study certificate and the school admission register and also examined the school teacher as PW.8. The material on record clearly shows that the date of birth of the victim is 07.09.2007 and therefore, she was aged about 16 years as on the date of incident i.e., on 15.08.2023. He further contended that the victim has supported the case of prosecution and the medical report also shows that there was a fresh rupture and abrasion present in the genital organ. The evidence of the doctor and the document at Ex.P19 clearly shows that there was recent sign of vaginal



penetration and therefore, contended that the trial Court was not justified in recording an order of acquittal.

7. Learned counsel for respondent No.1 contended that the trial Court has given valid reasons for acquitting the accused. The prosecution has failed to prove that the victim was a minor as on the date of offence, by adducing acceptable and convincing evidence. The victim, in her cross-examination has clearly stated that she accompanied the accused and there was no force or kidnap as alleged. He contended that this being an appeal preferred against the judgment of acquittal, there are no compelling grounds to reverse the judgement and accordingly sought to dismiss the appeal.

8. When the prosecution alleges that the accused has committed an offence under the provisions of the POCSO Act, it is *sine equo non* to establish, by adducing cogent evidence, that the victim was a minor, i.e., below 18 years, at the time of the incident. The burden lies squarely on the prosecution to prove the age beyond



reasonable doubt. In order to establish that the victim was a minor, the prosecution has got examined PW.8, the teacher of the school where the victim was studying. Ex.P20, is the Admission extract and Ex.P21, the admission register.

9. The victim in her cross-examination admitted that, her parents are illiterate and approximate date of birth was given while admitting her to the school. When there is a specific admission by the victim that her approximate date of birth was given by her parents, a reasonable doubt arises as to the exact date of birth of the victim. Admittedly, the prosecution has not examined the victim's parents. Hence, the trial Court came to the conclusion that, it cannot accept the date of birth mentioned in Ex.P20 and Ex.P21. When there is a doubt regarding the date of birth, the prosecution is required to furnish either the birth certificate or if the same was not available, then should have ascertained the age of the victim by conducting medical examination. In the case on



hand, no such attempts were made. Hence, the findings recorded by the trial Court that the prosecution has failed to prove that the victim was a minor as on the date of the alleged offence, do not suffer from any illegality.

10. The prosecution has mainly relied on the evidence of PWs.1, 8 to 10 and 13, apart from the evidence of the victim-PW2, to establish that she was kidnapped by the accused and then subjected to penetrative sexual assault against her will.

11. According to the witnesses, it was the victim who informed them about the kidnap and the alleged commission of penetrative sexual assault by the accused. However, when the victim was cross examined, she admitted that after returning to her house, she did not disclose anything to her family members. Further, she admitted that on her own will and wish, she went with the accused and the accused did not give any trouble to her and they were like friends. Hence, the learned trial Court proceeded to seek corroboration to the evidence of the



victim. As per medical evidence, the hymen was ruptured and abrasions were present, however, the victim admitted that no injuries were caused. Therefore, there are discrepancies between the medical evidence and the evidence of the victim. In other words, oral testimony of the victim is inconsistent with the medical evidence. Further, the doctor-PW.7 who examined the victim has admitted that the hymen may rupture for various reasons i.e., if she had involved in sports activity etc. She has also admitted that she has not given any opinion regarding the age of the child.

12. As per FSL report-Ex.P18, vaginal epithelial cells, seminal stains, spermatozoa, and skin tissue were not detected in any of the specimens collected from the victim and the accused. The victim has categorically stated in her cross-examination that, she voluntarily went with the accused. The same is the statement made before the learned Magistrate, under Section 164 of Cr.P.C., marked as Ex.P16. Appreciating the entire evidence and material



on record, the trial Court has come to the conclusion that the prosecution has failed to prove the charges levelled against the accused. The reasons assigned by the trial Court cannot be held to be either perverse or illegal. This being an appeal preferred against the judgment of acquittal, the presumption of innocence in favour of the accused stands reinforced. There are no compelling reasons to interfere with or reverse the judgment of acquittal passed by the trial Court. Accordingly, the following:

ORDER

Appeal is ***dismissed***.

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

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