HC-KAR

NC: 2026:KHC:62210
CRL.A No. 847 of 2017

CNR: KAHC010302192017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 847 OF 2017 (C)

BETWEEN:

E M IBRAHIM
S/O LATE MOIDEEN
AGED ABOUT 42 YEARS,
COOLIE
R/O ODEYANAPURA VILLAGE
SOMWARPET TALUK
KODAGU DISTRICT-574134

...APPELLANT

(BY SRI. LETHIF B., ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH CPI SOMAWARPET CIRCLE
SHANIVARASANTHE P.S.
KODAGU DISTRICT
REP BY SPECIAL PUBLIC PROSECUTOR
HIGH COURT COMPLEX BUILDING
BANGALORE-560 001

...RESPONDENT

(BY SRI. K NAGESHWARAPPA, HCGP)

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

THIS CRL.A. IS FILED U/S.374(2) CR.P.C BY THE ADVOCATE FOR THE APPELLANT/ACCUSED PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 8.12.2016 AND 9.12.2016 PASSED BY THE PRINCIPAL SESSIONS AND SPECIAL JUDGE, KODAGU, MADIKERI IN SPL.C.(POCSO) NO.43/2013 - CONVICTING THE

APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376(1),506 OF IPC AND SEC.6 OF POCSO ACT, 2012.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction dated 08.12.2016 and order on sentence dated 09.12.2016 passed in Special Case [POCSO] No.43/2013 by the Principal District and Sessions Judge, Kodagu, Madikeri (for short, 'the trial Court').

2. For the sake of convenience, the parties herein are referred as per the status before the trial Court.

3. Brief facts leading to this appeal are that, the Circle Inspector of Police, Somwarpet Circle, Shanivarasanthe Police Station, Kodagu filed charge sheet against the accused for the offence under Sections 376, 506 IPC and Section 6 of POCSO Act, 2012. It is alleged by the prosecution that in the first week of February 2013

at Odeyanapura, Shanivarasanthe Hobli, Somwarpet Taluk, when CW1-Kum. Ayisha was in her house at about 11.00 am, the accused entered the house from the back door and closed the mouth of CW1 tightly with hands and pulled her to a bedroom and removed the clothes worn by the CW1 and had sexual intercourse with her. Subsequently on 4 or 5 occasions also, he had sexual intercourse with her by going to her house, who being a girl under age of 18 years and committed an offence of aggravated penetrative sexual assault. The accused also gave life threat to her stating that if she discloses the incident to anybody he will kill her and on 24.06.2013, when she was examined in Lakshmi Nursing Home, Hassan, she came to know that she was pregnant of 18-19 weeks and same had got aborted. Thus, the accused has committed the alleged offence.

4. Accused was arrested on 26.06.2013 and was remanded to judicial custody. The judgment was delivered

on 09.12.2016 and he was remanded to judicial custody. The accused has preferred this appeal before this Court on 18.05.2017. This Court has passed an order on IA.No.I/2020 on 18.11.2020 suspending the sentence and accordingly accused was released on bail. The accused was in judicial custody for a period of 7 years, 4 months and 22 days.

5. On hearing, the trial Court has framed the charges against accused for the commission of alleged offence. Same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, the prosecution has examined 17 witnesses as PWs.1 to 17; 15 documents were marked as Exs.P1 to P15. No material objects marked on behalf of the prosecution. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C. was recorded. However, the accused did not

choose to lead any defence evidence on his behalf. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence under Sections 376(1) & 506 of IPC and Section 6 of POCSO Act, 2012 and passed a sentence to undergo rigorous imprisonment for a term of 12 years and to pay fine of Rs.5000/- for the offence under Section 376(1) of IPC. Further, sentenced to undergo rigorous imprisonment for a term of 12 years and to pay fine of Rs.5,000/- for offence under Section 6 of POCSO Act, 2012. Further, sentenced to undergo imprisonment for a period of 7 years and to pay fine of Rs.1,000/- for offence under Section 506 of IPC and all the sentences shall run concurrently. Being aggrieved by the said judgment, the appellant has preferred this appeal.

7. Learned counsel for the appellant Sri Lethif B, would submit that, though he has urged several grounds in the memorandum of appeal, he is not going to press the judgment of conviction for the offence under Sections

376(1) and 506 of IPC. However, he has challenged the conviction for the offence under Section 6 of POCSO Act 2012, as the prosecution has not placed any cogent and convincing legal evidence before the Court to prove the offence under Section 6 of POCSO Act. Further, he would submit that the trial Court has passed a sentence for the offence under Section 376(1) of IPC for a period of 12 years and to pay fine of Rs.5,000/-. The accused has already undergone the sentence for a period of 7 years, 4 months, 22 days. Now, the age of the accused is 55 years and the victim has already married and has a child and is leading a settled life with her husband. The alleged incident took place in the year 2013. Now, 13 years have already elapsed. The appellant is married and having children and he is the only earning member and he has to maintain his family. Hence, it is sought for reducing the sentence for the period already undergone by the accused, which is more than 7 years. To substantiate his argument, the learned counsel for the appellant relied on the decision

of the Hon'ble Supreme Court in the case of P. YUVAPRAKASH vs. STATE REPRESENTED BY INSPECTOR OF POLICE reported in (2024) 17 SCC 684 decided on 18.07.2023.

8. As against this, the learned High Court Government Pleader Sri Nageshwarappa K, would submit that the trial Court has properly appreciated the evidence in accordance with law and facts. Absolutely, there are no grounds to interfere with the impugned judgment of conviction and order on sentence and sought for dismissal of the appeal.

9. Having heard the arguments on both sides and on perusal of materials placed before this Court, the following points would arise for my consideration:

(1) Whether the prosecution proves beyond all reasonable doubt that the victim was a "child" as defined under Section 2(d) of POCSO Act, 2012, as on the date of commission of offence?

(2) Whether the prosecution proves beyond all reasonable doubt that the accused has committed the offence punishable under Section 6 of POCSO Act, 2012?

(3) Whether the trial Court is justified in convicting the accused for the offence under Sections 376(1) and 506 of IPC?

(4) Whether the appellant has made out grounds for modification of sentence?

(5) What order?

10. My answers to the above points are as under:

Point No.1 in the Negative.
Point No.2 in the Negative.
Point No.3 in the Affirmative.
Point No.4 in the Affirmative.
Point No.5 as per final order.

Reasons to Point No.1

11. I have examined the materials placed before this Court. It is the case of the prosecution that as on the date of commission of offence, the age of the victim was, 17 years and 10 months. To prove the age of the victim, the prosecution has produced Ex.P10-Date of Birth

Certificate issued by the Vice Principal, Pre-University College, Shanivarasanthe, Kodagu District, in which the date of birth of the victim is shown as 07.03.1995. To prove this document, Vice Principal, Pre-University College, Shanivarasanthe who is examined PW12, has deposed in her evidence that the date of birth of the victim was 07.03.1995. On what basis PW12 has issued Ex.P10, has not been disclosed by the prosecution. The Investigating Officer has not whispered anything as to non-production of Admission Register extract maintained by the concerned School, at the time of admission of victim to 1st Standard. The IO has not explained anything as to non-production of Birth Certificate or SSLC Marks Card of the victim. Accordingly, the prosecution has failed to place relevant documents as required under Section 94 of Juvenile Justice [Care and Protection of Children) Act, 2015.

12. In Paragraphs 22 and 23 of the judgment in the case of P. YUVAPRAKASH vs. STATE REPRESENTED BY INSPECTOR OF POLICE reported in (2024) 17 SCC 684, the Hon'ble Supreme Court has observed as under:

> *"22. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate from the examination board concerned or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW 9, Dr Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the x-ray reports and deposed that in terms of the examination of 'M', a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the*

medical expert cannot be the determining factor". This finding is, in this Court's considered view, incorrect and erroneous.

23. As held earlier, the documents produced i.e. a transfer certificate and extracts of the admission register, are not what Section 94(2)(1) mandates; nor are they in accord with Section 94(2)(ii) because DW1 clearly deposed that there were no records relating to the birth of the victim, 'M'. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several x-rays of the victim, and on the basis of which PW9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this Court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor PW9."

13. Keeping in mind the aforesaid decision of the Hon'ble Supreme Court, since the IO has not produced legally acceptable evidence before the Court to

substantiate the age of victim, I am of the considered opinion that the prosecution has failed to prove that the age of the victim was below 18 years, as defined under Section 2(d) of POCSO Act, 2012. Accordingly, I answer Point No.1 in the Negative.

Reasons to Point No.2

14. Since the prosecution has failed to prove that the victim had come under the definition of "child" as defined under Section 2(d) of POCSO Act, 2012 the question of commission of offence under the penal provisions under Section 6 of POCSO Act, 2012 does not arise. Accordingly, the prosecution has failed to prove that the accused has committed the offence under Section 6 of POCSO Act, 2012. Hence, I answer Point No.2 in the Negative.

Reasons to Point No.3

15. On careful examination of the entire evidence on record, the trial Court has come to the conclusion that

the accused has committed the offence punishable under Sections 376(1) and 506 of IPC. In this regard, the learned counsel for the appellant fairly submits that the appellant is not going to press as to the judgment of conviction passed by the trial Court for the offence under Sections 376(1) and 506 of IPC. However, I have carefully examined the entire evidence on record. On careful examination of the entire evidence, I do not find any legal or factual error in the judgment passed by the trial Court for the conviction under Sections 376(1) and 506 of IPC. Accordingly, I answer Point No.3 in the Affirmative.

Reasons to Point No.4

16. With regard to the modification of sentence is concerned, the trial Court has passed sentence for the offence under Section 376(1) of IPC to undergo rigorous imprisonment for a term of 12 years and to pay fine of Rs.5,000/-. Further, accused shall undergo imprisonment for a period of 7 years and shall also pay fine of

Rs.1,000/- for the offence under Section 506 of IPC. Section 376(1) of IPC reads as under:

> *376(1): Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with Rigorous Imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine."*

17. The accused has already undergone in judicial custody for a period of 7 years, 4 months and 22 days and he has already deposited the fine amount. The learned counsel for the appellant would submit that, the age of the accused is 55 years now and the victim is already married and having a child and is leading a settled life with her husband. The alleged incident took place in the year 2013. Now, 13 years have already elapsed. The appellant is also married and having children and he is the only earning member and he has to maintain his family. Hence, it is sought for reducing the sentence for the period already undergone by the accused, which is more than 7 years.

This Court has already held while answering point No.1 that the prosecution has failed to prove the guilt of the accused for the offence under Section 6 of the POCSO Act, as on the date of commission of offence, the victim had attained majority. Considering the nature and gravity of offence and previous antecedent of the accused/appellant and submission of the learned counsel for the appellant, it is just and proper to reduce the sentence to the extent of 7 years, 4 months, 22 days as already undergone by the appellant/accused. Accordingly, I answer Point No.4 in the Affirmative.

Reasons to Point No.5

18. For the aforestated reasons and discussions, I proceed to pass the following:

O R D E R

(i) Appeal is **partly allowed**;

(ii) The judgment of conviction dated 08.12.2016 and order on sentence dated 09.12.2016 passed in Special Case [POCSO]

No.43/2013 by the Principal District and Sessions Judge, Kodagu, Madikeri, for the offence under Section 6 of POCSO Act, 2012, is hereby **set aside**; Accused is acquitted of the offence under Section 6 of POCSO Act, 2012;

(iii) The judgment of conviction dated 08.12.2016 and order on sentence dated 09.12.2016 passed in Special Case [POCSO] No.43/2013 by the Principal District and Sessions Judge, Kodagu, Madikeri, for the offence under Sections 376(1) and 506 of IPC, is confirmed; and the sentence passed by the trial Court is **modified** as under:

a) The Appellant/accused shall undergo rigorous imprisonment for a period of 7 years, 4 months, 22 days for the offence under Section 376(1) of IPC. Further, accused shall undergo imprisonment for a period of 7 years for the offence under Section 506 of IPC;

b) The above said sentences shall run concurrently;

c) It is submitted that the fine amount is already deposited. The same shall be forfeited to the Government;

d) The period of sentence already undergone by the accused shall be **set-off** as contemplated under Section 428 of the Code of Criminal Procedure, 1973.

The Registry is directed to send copy of the judgment along with Trial Court Records to the concerned Court.

Sd/-
(G BASAVARAJA)
JUDGE

DHA
List No.: 1 Sl No.: 63