HC-KAR

NC: 2026:KHC:62698-DB
CRL.A No. 1530 of 2019

CNR: KAHC010416312019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 1530 OF 2019 (C)

BETWEEN:

THIPPESWAMY
S/O. BASAVARAJAPPA,
AGED ABOUT 26 YEARS,
R/AT BASAVANASHIVANAKERE VILLAGE,
CHITRADURGA TALUK AND DISTRICT,
PIN-577 501.

...APPELLANT

(BY SRI. SUBRAHMANYA P.D.,ADVOCATE)

AND:

Digitally signed by SHARADAVANI B
Location: HIGH COURT OF KARNATAKA

THE STATE OF KARNATAKA
BY THE STATION HOUSE OFFICE,
WOMAN POLICE STATION,
CHITRADURGA TOWN CIRCLE,
CHITRADURGA TALUK AND DISTRICT,
PIN-577 501,

NOW REPRESENTED BY
THE STATE P.P.,
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU-560 001.

...RESPONDENT

(BY SMT. SOWMYA R., HCGP)

CNR: KAHC010416312019

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 12.03.2019 AND ORDER OF SENTENCE DATED 13.03.2019, PASSED BY THE SPECIAL 2nd ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN SPL.C.(POCSO) NO.162/2018, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S. 366, 376(2) (n) AND SEC.4 AND 8 POCSO ACT 2012.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE B.PRAMOD

ORAL JUDGMENT

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

This appeal is directed against the judgment and order delivered by the Special, Second Additional District and Sessions Judge, Chitradurga, in Special Case (POCSO) No.162/2018. Vide,the impugned judgment and order, the learned Special Court has convicted the accused/appellant for the offences punishable under Sections 366,376(2)(n) of Indian Penal Code (for short "IPC"),Sections 4 and 8 of

the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act, 2012").

2. For the offence punishable under Section 376(2)(n) of IPC, the accused was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.30,000, in default, to undergo simple imprisonment for a period of 1 year.

3. For the offence punishable under Section 366 of IPC, the accused was sentenced to undergo imprisonment for a period of 10 years and to pay a fine of Rs.20,000/-, in default, to undergo simple imprisonment for a period of 1 year.

4. For the offence punishable under Section 4 of the POCSO Act, 2012, the accused was sentenced to undergo imprisonment for a period of 7 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of 1 year.

5. For the offence punishable under Section 8 of the POCSO Act, 2012, the accused was sentenced to undergo imprisonment for a period of 5 years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of 1 year.

6. Heard the arguments of the learned counsel Sri. Subramanya P.D., appearing for the appellant, Smt. Sowmya, R., learned HCGP for the State and perused the evidence and material on record.

7. Briefly stated, the case of the prosecution is that, the accused was in love with the minor victim, a flower vendor. On 21.01.2018 at about 02.30 p.m. he went to the place where the victim was vending flowers and induced her to accompany him, with a promise of marriage. He took her in a KSRTC bus to Bengaluru and confined her in a rented house situated at Kaggalipura, Anekal Taluku, wherein he repeatedly committed aggravated penetrative sexual assault on her, against her

will. Thereafter, on 19.03.2018, during Ugadi festival, the accused brought the victim to Chithradurga and left her at the KSRTC Bus stand.

8. The law was set into motion by the victim's mother. She lodged a complaint on 22.01.2018 at the Women Police Station, Chithradurga, as per Ex.P7. Based on the said complaint, a case was registered against the accused for the offence punishable under Section 366 of IPC.

9. After the victim was secured, her statement was recorded as per Ex.-P1 and her medical examination was conducted. Her statement was also recorded by the learned Magistrate, under Section 164 of Cr.P.C. The accused was arrested on 21.03.2018. On completion of the investigation, charge sheet was filed.

10. The accused was charged for the offences punishable under Sections 366, 376(2)(n) of IPC and Sections 4 and 8 of the POCSO Act, 2012. To establish the

charges, the prosecution got examined PWs.1 to 12 and got marked Exhibits P1 to P16 and MOs.1 to 9. The accused denied all the incriminating evidence appearing against him, while he was examined under Section 313 Cr.P.C.

11. The learned trial Court, on appreciation of the oral and documentary evidence on record, held that the prosecution has established the charges levelled against the accused beyond reasonable doubt.

12. Assailing the impugned judgment, the learned counsel for the appellant vehemently contended that the prosecution has failed to establish by adducing cogent and acceptable evidence that the victim was a minor as on the date of incident. Further contended that, victim's evidence and other materials on record clearly establish that she voluntarily accompanied the accused and stayed with him for a period of 2 months and while giving history before the doctor, she has categorically stated that she had

married the accused, which shows that the charges against the accused are false and it is a concocted story. The learned counsel contended that in her evidence, the victim girl has made several improvements and there are several contradictions. It is contended that the trial Court has committed a grave error in convicting the accused for the charged offences. He has accordingly sought to allow the appeal and acquit the accused.

13. Per contra, the learned HCGP, Smt. Sowmya contended that the victim's mother lodged a complaint alleging that her daughter was kidnapped by the accused. After securing the victim, her statement was recorded by the police as well as by the learned Magistrate. The victim has supported the case of the prosecution, wherein she has categorically stated that the accused had forced her to accompany him and he had threatened her that if she had not accompanied, he would consume poison. She further contended that the victim's evidence is corroborated by the evidence of her mother-PW.2, elder sister-PW.4 and

uncle-PW.5 and further corroborated by the evidence of PW.3, who had seen the accused kidnapping the victim girl.

14. The learned HCGP further contended that the prosecution has got marked Ex.P10, the Date of Birth Certificate issued by the Headmaster–PW.7 in proof of the age of the victim. As per the said document, the victim's date of birth is 10.11.2000 and therefore, she was a minor as on the date of incident. Hence, she contended that the trial Court based on the above evidence and material on record has rightly convicted the accused for the charged offences and sought to dismiss the appeal.

15. It is the case of the prosecution that the victim, a minor girl aged below 18 years, was kidnapped by the accused on 20.01.2018 from Chithradurga and was taken to Kaggalipura in Anekal Taluk, Bengaluru Rural District, wherein she was confined in a rented house belonging to one Gurappa and subjected to aggravated penetrative

sexual assault. Thereafter, on 19.03.2018, during Ugadi festival, she was brought back and left at KSRTC Bus stand, Chitradurga.

16. Ex.P7 is the complaint lodged by the victim's mother. The said complaint reveals that the victim had studied up to 8th standard. She was vending flowers at Gandhi Circle, Chitradurga. On 20.01.2018, as usual, she went to vend flowers, but did not return home till 06.00 p.m. Therefore, the complainant enquired about her daughter with the relatives etc. On 21.01.2018, again she went to Gandhi Circle to enquire about her daughter and at that time, she came to know that the accused had kidnapped her daughter. In Ex.P7, it is stated that she made a call to the phone number given by some auto drivers and the accused who picked the call told her that he was willing to marry her daughter and to leave them alone. The victim was secured on 20.03.2018. Her statement was recorded as per Exhibit P1. Her statement was also recorded by the learned Magistrate under Section

164 Cr.P.C., marked as Ex.P6. Her medical examination was conducted by PW.9.

17. In the evidence before the Court, the victim girl examined as PW.1 has deposed that she was selling flowers along with her mother at Gandhi Circle, opposite Deepa Hotel, Chithradurga. On 20.01.2018 at about 02.30 p.m., the accused stating that he would marry her and threatening that if she did not accompany him, he would consume poison, took her to Kaggalipura and secured a house on rent, from one Gurappa Reddy. She has stated that in the said house, the accused committed penetrative sexual assault on her inspite of her resistance and on 19.03.2018, when she insisted that she should be sent back to her house, the accused brought her from Kaggalipura to Chithradurga in a bus and left her at the KSRTC bus stand.

18. It is the specific case of the prosecution that the victim girl, a minor, was kidnapped by the accused from

Chithradurga and taken her to Kaggalipura and she was confined in the house of one Gurappa Reddy till 19.03.2018, during which time, she was subjected to forcible penetrative sexual assault.

19. In order to establish the age of the victim, the prosecution is relying on Ex.P10, the school Certificate issued by the Head Master of one Agasanakallu Government High School. In Ex.P10, the Date of Birth of the victim girl is mentioned as 11.10.2020. If the same is taken into consideration, the victim was aged about 17 years 2 months and 10 days as on the date of incident.

20. It is the contention of the learned counsel for appellant that Ex.P10 is not an authenticated document in proof of the age of the victim. He placed reliance on the decisions of the Apex Court in i) **P.Yuvaprakash** v. **State represented by Inspector of Police (2024) 17 SCC 684** and ii)**Sunil** v. **State of Haryana (2010) 1 SCC 742.**

21. In **P.Yuvaprakash**'s case (supra), the Apex Court at paras-15 and 16 has held has under:

> *"15. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the court concerned has to determine the age by considering the following documents:*
>
> *"94. (2)(i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the absence thereof;*
>
> *(ii) The birth certificate given by a corporation or a municipal authority or a panchayat;*
>
> *(iii) And only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board."*

> *16. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the examination board concerned has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the authority concerned i.e. Committee or Board or Court."*

22. Paras-19 and 25 of the judgment in **Sunil**'s case (supra), which are relevant, are also extracted hereunder:

> ***"**19. The learned counsel for the appellant placed reliance on the judgment of this Court in Birad Mal Singhvi v. Anand Purohit [1988 Supp SCC 604 : AIR 1988 SC 1796] . In that case, the Court observed that date of birth in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The Court observed as under: (SCC p. 618, para 14)*

> *"14. … The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."*

25. The prosecution also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix. The school leaving certificate produced by the prosecution was also procured on 12-9-1996, six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle

of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by Ashok Kumar, her brother. The said Ashok Kumar was not examined. The alleged school leaving certificate on the basis of which the age was entered in the school was not produced."

23. In the case on hand, the evidence of PW1-victim and PW2-complainant shows that the victim had studied upto eighth standard. They have not stated as to when the victim discontinued her studies. Ex.P10 is the document issued by the Head Master of the school. He is examined as PW7. He has stated that at the request of the police to furnish the age certificate of the victim, he issued Ex.P10, on the basis of the entries made in the school register. In Ex.P10, the Date of Birth of the victim is mentioned as 11.10.2000. The date of entry is mentioned as 43/2014-15 and year of study is mentioned as 2014-15.

24. Except Ex.P7, the prosecution has not produced any other documents in proof of victim's age. It is not forthcoming from Ex.P10 or the evidence of PW7 as to when the victim joined the school and as to who gave the date of birth. PW7 has not stated that he had made an entry in the school register, regarding the date of birth of the victim. The school register is also not produced. The victim's mother who is examined as PW2, has deposed in her chief examination itself that she is an illiterate and she cannot tell the date of birth of her daughter. She has only stated that her daughter has studied up to eighth standard and left the school. In **P.Yuaprakash**'s case (supra), the Apex Court has held that 'wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The Court concerned has to determine the age by considering the following documents:

(i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the absence thereof;

(ii) The birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) And only in the absence of (i) and (ii), age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.'

25. In **Rishipal Singh Solanki v. State of U.P. (2022) 8 SCC 602** at para-22, the Apex Court has held as under:

"22. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court

or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

26. In the above decision, the Apex Court relying on *Rule 12 of the JJ Rules, 2007,* has made it clear that the Date of Birth Certificate from the school (other than a play school) first attended should be given preference.

27. In **Abuzar Hossain** v. **State of West Bengal**, the Apex Court has held that the burden of proving that if someone is a juvenile (or below the prescribed age) is upon the person claiming it.

28. In the case on hand, admittedly the prosecution has not produced the victim's birth certificate. It has not determined the age of the victim by an ossification test or any other medical age determination test. It is only relying on Ex.P10, the certificate issued by PW7. The said certificate neither indicates as to when the victim first attended the school nor it indicates as to in which standard the victim studied at the Government High School, Agasanakallu. The person who made the entry in the school register has not been examined. Further, the school register on the basis of which Ex.P10 was issued, was also not produced. Hence, in our considered view, the prosecution has failed to establish that the victim girl was a minor below 18 years as on the date of incident.

29. According to the prosecution, the victim was kidnapped by the accused on 20.01.2018 and she was confined in the house of one Gurappa Reddy in Kaggalipura till 19.03.2018. The victim has stated that she was forced to accompany the accused and was confined in

the said house and subjected to aggravated penetrative sexual assault, inspite of her resistance. In her deposition, she has stated that the accused showed a bottle and threatened that he would consume poison, if she raises hue and cry. She admitted that she gave statement to the police as per Ex.P1 and also admitted her signature in Ex.P1. In the said statement, she has not stated that the accused had threatened her showing a bottle, that he would consume poison if she did not accompany him. Admittedly, she was residing with the accused for 2 months. She had an ample opportunity to escape from his clutches or to inform others including the owner of the house. It is pertinent to mention that the owner of the house Gurappa Reddy was not examined by the prosecution. In Ex.P6, the statement of the victim recorded by the learned Magistrate, the victim has stated that she was in love with the accused for the past one year. The said statement reveals that she willingly accompanied the accused on 20.01.2018 and went to

Kaggalipura and stayed with him in a rented house. She has stated that on 19.03.2018 both of them returned to Chithradurga, for Ugadi festival. From Chithradurga bus stand, the accused sent her to the house stating that he would return on the next day, but he did not return. Therefore, she went to the police station and gave her statement on 20.03.2018.

30. We have also perused Ex.P12-medical examination report pertaining to the victim, wherein the doctor has recorded the history given by the victim. She has stated that she got married on 24.01.2018 at Shiva Temple, Yeshawanthapura, Bangalore, with Thippesh (accused). The doctor who issued Ex.P12 is examined as PW9. She has deposed about the history given by the victim as recorded in Ex.P12. She has furnished her final opinion stating that on examination of the victim, she did not find any external injuries and did not find bloodstains on the victim's clothes. She has further stated that as per clinical examination and RFSL report, there is no evidence

of recent sexual intercourse, but, however, she would have had sexual act in the past or an act similar to that.

31. PW11, the Investigation Officer has stated in her evidence that after medical examination, the victim was produced before her. The victim refused to go with her parents and therefore, she was provided shelter at one Makkala Kalyana Samithi.

32. We have re-appreciated the entire evidence and material on record. The facts proved in this case clearly indicate that the victim willingly accompanied the accused from Chithradurga to Kagglipura and stayed with him in a rented house for a period of 2 months. She did not complain to anyone including the owner of the house alleging any threat or force by the accused. In her statement recorded under Section 164 Cr.P.C. she has clearly stated that she was in love with the accused and went along with him and stayed together. The prosecution has failed to establish by adducing cogent and acceptable

evidence that the victim was a minor as on the date of incident. Hence, the charges levelled against the accused are not proved beyond all reasonable doubt. The Judgment and Order of conviction and sentence passed by the trial Court is therefore, not sustainable in law and liable to be set aside. Accordingly, the following:

ORDER

i. Appeal is **allowed**.

ii. The judgment dated 12.03.2019 and the order on sentence dated 13.03.2019 passed by the Special II Additional District and Sessions Judge, Chitradurga, in Spl.C (POCSO) No.162/2018 is **set aside.**

iii. The accused is **acquitted** of the charged offences. He is ordered to be released, if not required in any other case.

iv. The direction issued by the trial Court to the District Legal Services Authority, Chitradurga, to consider

victim's compensation and to award compensation suitably to the victim-PW1, shall be intact.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

BSV/TL
List No.: 1 Sl No.: 10