HC-KAR

NC: 2026:KHC:61382
CRL.A No. 1852 of 2016

CNR: KAHC010449642016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1852 OF 2016 (A)

BETWEEN:

1. THE STATE BY WOMEN POLICE STATION
SHIVAMOGGA
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING,
BANGALORE - 01.

...APPELLANT

(BY SRI. K. NAGESHWARAPPA, HCGP.)

AND:

1. SRI PRABHAKAR
S/O HANUMANTHAPPA T
AGED ABOUT 38 YEARS,
ATTENDER,
CADA COLONY QUARTERS, MALAVAGOPPA, SHIVAMOGGA
- 577 201.

...RESPONDENT

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

(V/O DATED: 05/10/2026 SRI. SRINIVAS, AMICUS CURIAE FOR RESPONDENT.)

CRL.A. FILED U/S.378(1) AND (3) CR.P.C BY THE S.P.P. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO APPEAL AGAINST THE JUDGEMENT AND ORDER OF ACQUITAL DATED 22.07.2016 PASSED BY THE I ADDL. S.J., SHIVAMOGGA IN S.C.NO.10/2014 THEREBY ACQUITTING THE ACCUSED/RESPONDENT OF THE OFFENCES P/U/S 354,506 OF IPC AND SEC.8 OF POCSO ACT.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CNR: KAHC010449642016

ORAL JUDGMENT

1. The State has preferred this appeal against the judgment of Acquittal dated 22.07.2016 passed in SC.No.10/2014 by the I Addl. Sessions Judge and Special Judge, Shivamogga (for short, 'the trial Court').

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

3. Brief facts leading to this appeal are that, the victim PW1 is a minor girl aged about 11 years. On 08.02.2013 mother of the victim was hospitalized. When CW2 told victim to inform the nurse to change the glucose and when victim told to the accused about that, the accused dragged her hands and thereafter hugged her and misbehaved with her. Accused also threatened her and this fact was informed by the neighbouring patient to victim's father. Thus, the accused has committed the offence punishable under Sections 354, 506 of IPC and Section 8 of POCSO Act, 2012.

4. Upon issuance of summons, the accused appeared before the trial Court and enlarged on bail. On hearing, the

trial Court framed the charges and same were read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, the prosecution has examined 6 witnesses as PWs.1 to 6, 6 documents were marked as Exs.P1 to P6. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C was recorded. Accused has totally denied the evidence of prosecution witnesses. However, he did not choose to lead any defence evidence on his behalf. Having heard the arguments on both sides, the trial Court has acquitted the accused. Being aggrieved by the judgment of acquittal, the State has preferred this appeal.

6. The learned HCGP Sri Nageshwarappa K appearing for the appellant-State, would submit that the impugned Judgment and Order of acquittal passed by the Court below by acquitting the Accused of the charged offences punishable under Sections 354 and 506 of IPC and under Section 8 of POCSO Act, 2012, is contrary to evidence and materials on record and the same is liable to be set aside. He would submit

that PW1 is the victim/minor girl and she has categorically stated about the incident, wherein the Accused dragged her hands and thereafter hugged her and misbehaved with her. Accused also threatened her and this fact was informed by the neighbouring patient to her father. It is after identifying the accused the person who committed the said heinous Act, a complaint came to be lodged as per Exhibit P1. There is nothing elicited in the cross-examination of the said PW1 so as to disbelieve her evidence. Hence, the Court below has committed a grave error in acquitting the Accused thereby ignoring the said evidence of the material witness who is the victim in this case.

7. He would further submit that evidence of PW1 has been corroborated by PW3, father of the victim. He has also stated that the victim showed accused to him and thereafter complaint came to be lodged. There is no animosity for to the said witnesses to falsely depose against the Accused.

8. PW5 is the P.S.I. who registered the case and issued FIR Exhibit P4 to the Court. PW2 is the witness to the spot mahazar-Ex.P2.

9. Though, the evidence of PWs.1 and 3 are sufficient to hold the guilt of the accused, however, the Court below, without appreciating their evidence in the proper perspective, has acquitted the Accused which has resulted in miscarriage of justice.

10. The reasons assigned by the Court below that PW.6 has turned hostile and there is no Test Identification Parade conducted etc. to disbelieve the evidence of the victim girl, is not legal and proper inasmuch as the victim has identified the Accused in the Court which is sufficient to prove the case of the prosecution.

11. The Court below is not justified in holding that no employer or staff of the hospital has been examined to prove that Accused was on duty on the date of the incident, when the victim and PW1 has clearly deposed regarding the presence of the Accused in the hospital and there is no plea of alibi taken by the Accused.

12. The Court below was not proper in holding that defence has rebutted presumption under Section 29 of POCSO

Act, when such presumption available under Section 29 of the Act, has not been satisfactory rebutted or contrary is proved by examining any witnesses by the Accused.

13. The Court below ought to have appreciated the evidence of PWs1 and 3 in proper perspective and ought to have convicted the Accused in accordance with law. On all these grounds, it is sought to allow the appeal.

14. Despite service of notice, the respondent remained absent and unrepresented. Hence, Sri N Srinivas, Advocate is appointed as Amicus Curiae for respondent. The Amicus Curiae Sri N. Srinivas would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts and also submit as to the scope of Appellate Court in acquittal cases.

15. To substantiate his argument, the learned Amicus Curiae relied on the following judgments:

1. CONSTABLE 907 SURENDRA SINGH AND ANOTHER v. STATE OF UTTARAKHAND - (2025)5 SCC 433;

2. BABU SAHEBGOUDA RUDRAGOUDAR AND OTHERS v. STATE OF KARNATAKA - (2024)8 SCC 149;

3. CHANDRAPPA v. STATE OF KARNATAKA - (2007)4 SCC 415; and

4. H.D. SUNDARA v. STATE OF KARNATAKA - (2023)9 SCC 581.

16. Having heard the arguments on both sides and on perusal of records, the following points for my consideration:

1. Whether the state has made out grounds to interfere with the impugned judgement of Acquittal?

2. What order?

17. My answer to the above points are:

Point No.1: in the negative;
Point No.2: As per final order.

Regarding Point No.1:

18. I have examined the materials placed before this Court. To prove the guilt of the accused, the prosecution has examined six witnesses as PWs1 to 6 and marked 6 documents as Exs.P1 to P6.

19. PW1 is the victim. She has deposed that PW5 is her father and Shobha is her mother. She has filed complaint about 2½ years ago, her mother was admitted to the hospital, she was sitting by the side of her mother. The neighbouring patient requested her to call nurse. So, she went out of the room. She saw the accused and requested to change the drips. At that time, accused had dragged the victim by holding her hand. He hugged her and kept her hands on his private part. Some how, the victim escaped and came near her mother. Even after this, accused came to the door and called her by making sign. This incident has been informed to her father by the neighbouring lady. This was also informed to the doctor and the name was given as Prabhakar and he is the Ward-boy. The spot has been shown to the police.

20. PW2 Manjunath is the attester to mahazar at McGann Hospital.

21. PW3, father of the victim, has deposed that his wife was admitted to the Hospital and she was in the ICU. On the date of incident, he had returned home from the Hospital and received a phone call wherein he was informed that a person

has dragged his daughter and misbehaved with her. He immediately came and enquired with the staff. It was revealed that the accused name is Prabhakar. Then on the next day, victim has shown the accused.

22. PW4-Veerappa, has deposed that the accused was near the compound and he was taken to the custody and was produced before the investigating officer.

23. PW5 is the Police sub Inspector. He has deposed as to his part of investigation.

24. PW6-Savita has deposed that about three years ago a woman was admitted to the hospital. A girl was also there by the side of that lady. The victim came weeping, and when she was questioned, she informed that somebody has threatened her and that person was wearing white dress. She further stated that she did not tell what happened and she could not make out what happened. She is treated as hostile by the prosecution and was cross examined by Public Prosecutor.

25. The alleged incident took place on 8.02.2013 at 2:30 pm and the complaint was lodged on 9.02.2013 at

2:15 pm. FIR was submitted to the Court on 9.02.2013 at 23.00 hours. The prosecution has not explained anything as to the delay in filing the complaint and also delay in dispatching FIR to the Court. It is the case of the prosecution that the accused is working as Ward-boy in the hospital. To substantiate this, the investigating officer has not produced any document to show that on the date of commission of offence, accused was working as Ward-boy in the said Hospital. PW6 said to be an inpatient in the hospital, has not supported the case of the prosecution. The investigating officer has not examined the RMO or the HOD or the Head Nurse of the hospital.

26. It is the case of the prosecution that the victim or her parents do not know about the name of the accused and on what basis the name of the accused was inserted as Prabhakar in the FIR has not been disclosed by the prosecution. The trial Court has observed that the spot where the accused committed the alleged offence and the narration of the victim as to the spot, are quite contrary. Further, the trial Court has observed that the prosecution has not conducted test identification parade and there is no evidence to show that the

accused was employed in the hospital. Considering all these lapses committed by the prosecution, the trial court has acquitted the accused. On appreciation and re-examination of the entire evidence on record, I do not find any legal or factual error in the judgment of acquittal. In the facts and circumstances of the case and also keeping in mind the judgements relied upon by the learned Amicus Curiae for the respondent, I answer Point No.1, in the Negative.

Regarding Point No.2:

27. For the reasons afore, I proceed to pass the following:

O R D E R

i. Appeal is **dismissed**;

ii. Registry is directed to pay an amount of Rs.10,000/- to Amicus Curiae Sri N Srinivas, for the valuable services rendered by him in disposing of this case.

Sd/-
(G BASAVARAJA)
JUDGE

DHA,LNN
List No.: 1 Sl No.: 72