

**IN THE COURT OF THE LIII ADDL.CITY CIVIL &
SESSIONS JUDGE, BANGALORE**

DATED THIS THE 14th DAY OF AUGUST, 2018

- : PRESENT : -

**SMT.M.LATHA KUMARI, M.A.,LL.M,
LIII ADDL.CITY CIVIL & SESSIONS JUDGE,
BANGALORE.**

SPECIAL.CC. NO. 61/2015

Complainant :

The State of Karnataka by
C.K. Achukattu Police Station, Bangalore.

[Rep. by learned Public Prosecutor,
Bangalore.]

/ VERSUS /

Accused :

Kammanna @ Ravikumar,
S/o Late Dharmaiah,
Aged about 22 years,
R/at Near Mariyamma Temple Road,
Manjunatha Colongy,
T.R. Nagar PO, BSK III Stage,
Bangalore city.

(By Sri. M.L - Advocate)

J U D G M E N T

This is a charge sheet laid down by C.K. Achukattu Police, Bangalore City against accused in Cr.No.403/2014 for offences punishable under Section 363, 366 and 376 of IPC and also Section 5(l) & 6 of Protection of Children from Sexual Offences Act 2012.

2. The brief facts of the prosecution case is that, accused being Tempo driver at Pragathi Garments situated near Lalbagh Bangalore was acquainted with victim and her mother who are also employee of said garments, persuaded minor victim girl on the guise of marrying her and abducted her on 2.12.2014 around 6.30 pm, near her house and taken her to his friend, Prakash/CW-4 house and committed forcible sexual intercourse with her and thereby alleged to have committed the offences referred supra.

3. In pursuance of the complaint lodged by complainant, complainant police registered F.I.R against accused as per Ex.P12 and CW-22 being Investigating Officer conducted necessary investigation, got recorded the statement of victim and also recorded the statement of prosecution witnesses. Victim CW-2 was sent to KIMS

Hospital for medical examination. Statement of victim u/Sec 164 of Cr.P.C got recorded before the learned Magistrate as per Ex.P8 and also recorded the statement of victim in presence of BOSCO counselors. Apprehended the accused and sent him to KIMS Hospital for medical examination. Investigating Officer collected the medical reports of accused and victim as per Ex.P5 and P6. IO has collected the FSL report and study certificate of victim from the college in which she was studied as per Ex.P1 & P2. After completion of investigation, laid charge sheet against accused before this court by opining that guilt has been established against accused.

4. This court, after hearing the learned Public Prosecutor and accused on charge, framed Charges against the accused for offences punishable under Sec.363, 366 and 376 of IPC and also Sec.3 r/w Sec.4 of POSCO Act, 2012. Since, the accused pleaded not guilty and claimed to be tried, prosecution was called upon to prove the guilt against the accused initially.

5. In its exercise, prosecution examined as many as 12 witnesses PW-1 to 12 and got marked as many as 12 documents Ex.P1 to P.12 and also material objects MO-1 to 2. After

completion of trial, accused statement under Section 313 of Cr.P.C was recorded by this court by explaining each and every incriminating evidence available against accused. Accused not only denied the incriminating evidence explained to him, but also his acquaintance with victim and asserted that he is only acquainted with victim's mother and not with the victim herein.

8. I have carefully scrutinized the entire documents produced before me. Heard arguments.

9. Now, the points that arise for my consideration are as under:

1. *Whether the prosecution has proved that, on 2.12.2014 at about 6.30 pm accused abducted CW-2 from her house No.362, situated at 5th Cross, Bhuvaneshwarinagar, BSK III Stage, Bangalore from the lawful custody of her guardian CW-1 and thereby committed an offence punishable under Sec.363 of IPC?*
2. *Whether the prosecution has proved that, on 2.12.2014 at about 6.30 pm, forcibly taken CW-2 from near to her house with an intention to seduce her to illicit intercourse with her and thereby committed an offence punishable under Sec.366 of IPC?*

3. *Whether the prosecution has proved that, on the said date, time and place, the accused after abducting the victim/CW2 took her to his friend Prakash house, committed forcible sexual intercourse with the minor victim against her will and thereby committed the offence punishable under Sec.376 of IPC?*
4. *Whether the prosecution has proved that, on the said date, time and place, the accused after abducting the victim/CW2, committed penetrative sexual assault on the minor victim and thereby committed the offence punishable under Sec.3 r/w Sec.4 of POCSO Act?*
5. *What Order?*

9. My findings on the above points are as under:-

Point No.1	:	In the affirmative
Point No.2	:	In the affirmative
Point No.3	:	In the affirmative
Point No.4	:	In the affirmative
Point No.5		As per final orders for the following

R E A S O N S

10. **Points No.1 to 4:** These four points are taken together for common discussion to avoid repetition of facts as they are interconnected to each other.

11. As per prosecution records, missing complaint came to be lodged on 3.12.2014 at about 4 pm before complainant-police by victim's father CW-1 as per Ex.P3. In this complaint it is stated that victim aged about 16 years went out from her house on 2.12.2014 around 7 pm did not return home and she was not traced in any of her friend's house and also relatives. Accordingly, complaint came to be lodged. In pursuance of this complaint, complainant-police registered crime No.400/2014 for missing of girl. Later, on 6.12.2014, the very same complainant CW-1 around 3.30 pm came to the police station and lodged another complaint as per Ex.P4. In this complaint, he has stated that complainant's wife, Smt. Shobha is garment employee. Since victim discontinued her studies after her first PUC, she also used to go to said garments factory where here mother was working. On 2.12.2014, she left the house at 7 pm and did not return home. Accordingly, CW-1 lodged missing complaint requesting the complainant-police to trace out her daughter. When such being the state of affairs, on 6.12.2014 victim herself returned to house. When they enquired victim, she informed that accused who was working as Tempo driver in the garment factory, where victim's mother is working persuaded her on the guise of marrying her and taken her forcibly to K.R. Road to his friend Prakash house, wherein, she stayed with him for 2 days. During that time accused

committed forcible sexual intercourse with her twice. Again on 3.12.2014, she was taken to Mysore, Chamundi Hills and accused married her by tying Thali. On 5.12.2014, they returned to Bangalore from Mysore and they were residing in the elder sister house of accused at Laggere and hence complainant CW-1 requested complainant-police to take action against accused asserting that he had abducted his daughter and committed forcible sexual intercourse with her on the guise of marrying her. In pursuance of this complaint as per Ex.P4, complainant-police registered F.I.R against accused in Crime No.403/2014 for offences punishable under Section 366(A), 376 of IPC and also Section 4 of POCSO Act. Both victim and accused were subjected to medical examination as per Ex.P5 and 6 at KIMS hospital and articles seized were sent to Forensic Lab, victim's statement was recorded as per provision of Section 164 of Cr.P.C by the learned Magistrate as per Ex.P8. Investigating Officer also conducted spot mahazar on 7.12.2014 in the house of said Prakash situated at Shastrinagar. With these documents in background, now let me scan through the oral testimony of prosecution witnesses. Prosecution firstly examined the Principal, CW-8 as PW-1 before this court, who has issued certificate as per Ex.P1 stating about age of victim and also enclosed copy of T.C. along with study certificate as per Ex.P2. According to these documents, the date of birth of

victim is shown as 31.3.1998. The alleged offence taken place on 2.12.2014. According to Ex.P1 and P2 as on the date of alleged offence, victim was aged about 16 years 8 months. However, the age of victim is not in dispute. In the cross-examination of PW-1 by the learned accused counsel, it is only suggested that Ex.P1 is created at the request of complainant-police. Though, this suggestion was made to PW-1, the Principal of concerned college, where victim studied her I PUC. Later, when victim and also Investigating Officer were very much present before this court on behalf of prosecution, no questions were put to these witnesses with regard to age of victim. Apart from Ex.P1, which is in the form of report PW-1 has also given certified copy of T.C received by him through concerned school which is as per Ex.P2. Even according to this document, the date of birth is shown as 31.3.1998. Accordingly victim was aged about 16 years 8 months and she was minor as per the provision of Section 2(d) of POCSO Act, 2012.

12. The complainant CW1 was examined as PW2 before this court. In his chief-examination he has stated that CW-2 victim is his daughter and CW-3 is his wife. He has also identified the accused before this court and asserted that he is acquainted with accused. During December 2014 one day around 7 pm his daughter was missing. Accordingly, he lodged missing complaint

as per Ex.P3 and later he came to know that accused being tempo driver himself abducted his daughter and taken her to his friend's house forcibly, wherein he wrongfully restrained her. Police later traced them and he also came to know that accused committed forcible sexual intercourse with her daughter in his friend's house, though he has already married having child. He has also stated that after tracing his daughter, on enquiry with his daughter he came to know about the act of accused and hence he lodged another complaint as per Ex.P4. He has categorically stated that accused forcibly taken his daughter to his friend's house situated at N.R. Colony and from there to Laggere and committed forcible sexual intercourse with her.

13. PW-3 mother of victim also supports the case of prosecution. Even this witness has identified the accused and her acquaintance with him. She has stated that accused somehow having developed acquaintance with her daughter forcebly taken her to his friend's house who is also a driver and wrongfully restrained her and committed forcible sexual intercourse with her. She has further stated that accused in the absence of herself and her husband visited her house threatened victim and persuaded her telling that he is going to marry her and take care of her and taken her to Mysore and

committed forcible sexual intercourse with her. In this regard her husband has lodged the complaint.

14. PW-4 Dr.V.T. Venkatesh, Principal and also Dean of KIMS hospital, Bangalore has stated about examination of accused and report submitted by him to complainant-police as per Ex.P5. Doctor has identified the accused before this court and voluntarily stated that in his report, he has note down the birth marks of accused and thereby he is enable to identify him before this court. He has also stated that accused given self statement before him at the time of his examination stating that, with the consent of victim he has taken the victim to his friend's house situated at Shastri nagar, wherein he had physical relationship with her. This witness was cross-examined at length by the learned counsel for accused. It is also suggested that Ex.P5 has been created at the instance of complainant-police and accused has not given any such statement before him. PW-4 has further denied these suggestions.

15. PW-5 Dr. Roopa who was then working as Medical Officer at KIMS Hospital deposed about examination of victim on 6.12.2014 and also report as per Ex.P6. Even this witness has stated that while examining the victim she has recorded history of victim, wherein victim stated that she was in love

affair with accused, who was garment factory employee, on 2.12.2014 both of them decided to left their house, accordingly accused taken her to his friend's house and later to Chamundi Hills and then to his elder sister's house. According to opinion of this doctor, hymen of victim was not intact and there was evidence of sexual activity of victim present. She has also identified the undergarment of victim collected by her at the time of her examination which is as per MO-1. Even in the cross-examination of this witness, it is only suggested that Ex.P6 is created at the instance of complainant-police.

16. Apart from these witnesses, prosecution examined another witness CW-4 who is friend of accused himself before this court as PW-6. He has stated in his chief-examination that he is acquainted with accused, himself and accused are driver by profession. He is also acquainted with victim who was working at garments. PW-6 further stated that accused came along with victim to his house one day and he scolded accused stating that accused is already married having one child and thereby locked main door of his house and went away on his duty. Next day night around 7 pm when he returned to his house, he came to know that the accused by breaking open the lock entered his house forcibly along with victim and accused was found staying in his house with the victim. Even at that

time, he scolded accused and sent both accused and victim out of his house. Later, police enquired him about the same. Accordingly, he has given his statement to the complainant-police. In his cross-examination, it is suggested that accused and PW-6 are friends. It is also elicited that when accused brought the victim to the house of PW-6, somewhere during 2014, it was 8 pm. Further it is suggested that accused and PW-6 were having some professional ill-will and thereby this witness PW-6 is deposing falsely against him. PW-6 has denied any such ill-will between himself and accused herein. Further, from the oral testimony of PW-6, more particularly from his cross-examination it is clear that accused and PW-6 are friends and this relationship has been admitted by accused herein. Whereas, when accused was questioned in this regard, while recording his statement at question No.10 accused also admits that PW-6 is his friend and stated that he is not at all aware of the house of PW-6.

16. PW-7 Smt. Kavitha, WHC speaks about accompanying the victim to KIMS hospital for medical examination and also articles collected by her pertaining to victim and further report submitted by her as per Ex.P7.

17. PW-8 is vital witness in this case. She is victim by herself. She has deposed before this court in her chief-

examination that, she is acquainted with accused. When she was about 16 years old, one day she went to shop. At that time, her parents were not at home. Accused came near the said shop and taken her forcibly by gagging her mouth with clothes in his tempo and later taken her to his another driver's house. In spite of her resistance accused committed forcible sexual intercourse with her in the house of another driver. She has also stated that somehow she managed to escape and came to her house and informed to her parents and in turn her father lodged a complaint. She has also stated that accused except taking her to his another driver's house not taken her anywhere like Mysore and he threatened victim to tell that she has been taken to Mysore. Accordingly, she has given her statement stating that she has been taken to Mysore by accused. She further deposes that she was taken to KIMS hospital for medical examination and she has given her statement before concerned doctor as per Ex.P6. She was further taken to the learned Magistrate, wherein she has given her statement as per Ex.P8. In her cross-examination, she admits that accused is married and having one child. She also admits that as on the date of recording her evidence even victim was married. It is further suggested that if there was any function in the house of victim, her parents used to invite accused to her house and they also visited the house of accused. It is also suggested

that accused and victim's father were working in the same company. It is further suggested that victim herself used to collect the salary of accused by waiting near her company on the day of his salary. It is further suggested that a false complaint has been given against accused. It is also suggested that accused parents themselves brought the accused before the complainant-police. In spite of such defence taken by accused while cross-examining victim, accused while recording his statement denied his acquaintance with victim herein at question No.5 stating that he do not know who is that girl, he has not seen her and he only knows her mother who used to come for work. He has seen only her mother. It is also suggested that when accused taken the victim along with him, she has not made any attempt to resist accused by trying to scratch her or trying to push her and this witness voluntarily stated that at that time, accused tied her hands and legs. It is further suggested that accused and victim were in live-in-relationship and victim used to collect the salary from him every month. However, victim has denied all these suggestions and stated that accused by forcibly taking her along with him to the house of another driver committed forcible sexual intercourse with her in spite of her repeated requests and resistance.

18. PW9- Jayarama Reddy Head Constable, speaks about tracing of accused and producing before concerned Investigating Officer. In his cross-examination, it is suggested that elder sister of accused and accused mother both brought the accused and produced him before complainant-police. If accused is not at all acquainted with the victim herein and he has not done any such act as contended by prosecution, what was the necessary either for accused parents or elder sister of accused to bring the accused and produced him before the complainant-police is not explained by the accused herein. However, accused admits while recording his statement that he has been brought to police station.

19. PW-10 B.K Shekar Investigating Officer speaks about investigation done by him. In his chief-examination he deposes that on 6.12.2014, he received the records pertaining to this case from CW-21 and appointed CW-16 and 17 to search and produce the accused. Later on the same day, subjected the victim for medical examination through PW-7 WHC and also received the articles through her. On the same day, CW-16 and 17 produced accused. He observing the necessary formalities recorded the statement of accused and later accused himself taken the complainant-police to the spot i.e., house of Prakash and spot mahazar was conducted in the said house where

accused committed forcible sexual intercourse on victim. PW-10 also stated that accused himself stated that he can identify the spot and accordingly taken them to the spot wherein spot mahazar came to be recorded as per Ex.P10. In the said spot mahazar accused himself has also put his LTM. According to PW-10 he has also recorded the statement of witnesses, subjected the victim and accused for medical examination, collected their report as per Ex.P5 and P6, sent the seized articles to F.S.L and also stated that on 14/12/2014 requisition given to the Learned Magistrate for recording statement of victim. On the same day, permission was obtained from the court to draw the blood sample of accused. Accordingly, accused blood sample came to be collected through Jail Superintendent and same was sent to F.S.L on the same day. Later victim statement came to be recorded by the learned 26th A.C.M.M and also collected study certificate as per Ex.P1 and also T.C. as per Ex.P2 from CW-8. By keeping the F.S.L report pending charge sheet came to be submitted against accused. On 5.8.2015, i.e, after submission of Charge sheet, F.S.L report also came to be furnished before this court as per Ex.p11. He has also identified the material objects MO-1 and 2. On that day, accused was not produced from judicial custody and the

learned counsel for accused submitted that there is no dispute with regard to identity of the accused. In his cross-examination it is suggested that a false charge sheet has been laid against accused. It is also suggested that accused and victim were only friends and there was no incident taken place between accused and victim as alleged. This suggestion made to Investigating Officer establishes that accused acquainted with victim herein. It is also clear that accused and victim were friends. In the Section 164 Cr.P.C statement of victim which is as per Ex.P8 victim has stated that she used to go to garments factory along with her mother now and then. In the said garments she met accused Ravi who was tempo driver, they were accordingly acquainted with each other for a period of 3 months. Later accused proposed to her stating that he is in love with her. Victim informed accused that she is not interested in the same. At that time, accused persuaded victim stating that he will take care very well and on 2.12.2014, when she was alone at home around 6.30 pm, accused came near her house and pressurized her to elope from the house along with him. When she refused to accompany accused, accused forcibly taken her along with him to Ashwat Katte

situated at Netkallappa circle and inspite of her resistance accused married her by tying thali. Later taken her to his friend Prakash/PW-6 house. Nobody were there in the house of Prakash. Even Prakash went to his aunt's house. In the house of Prakash accused committed forcible sexual intercourse with her inspite of her resistance. She has also stated that again on 3.12.2014, she was taken to Mysore, wherein both accused and victim roamed around Mysore and returned to Bangalore. On 5.12.2014 accused taken her to his elder sister's house situated at Laggere, wherein victim came to know that accused is already married and having one child. Accordingly, she returned to her house and informed her parents about the manner of occurrence. This version recorded by the learned Magistrate available in Ex.P8 is in accordance with complaint Ex.P4 given by victim's father. However, at the time of chief-examination of victim, she has stated that she was not taken to Mysore by accused herein and accused forced her to inform that she has been taken to Mysore since accused threatened her in this regard, she told as stated by accused, but she was not taken to Mysore. According to her oral testimony recorded on

oath, she was taken to house of accused's driver friend. Complainant-police have conducted mahazar in the house of Prakash as per Ex.P10. Prakash who was examined as PW-6 admits that police came and enquired about accused and victim. He has also stated that accused brought victim to his house one day and he scolded accused and went away, later accused managed to enter his house and stayed with victim.

20. PW-11 Kumaraswamy PSI speaks about receipt of complaint as per Ex.P4 from the complainant PW-2 and also registering F.I.R against accused as per Ex.P12. This witness has also recorded the statement of victim in presence of CW-5. In his cross-examination it is suggested that Ex.P4 has been received under the pressure from Prakash PW-2.

21. PW-12 R.Shivanna speaks about the earlier complaint Ex.P3 i.e., missing complaint of victim. In his cross-examination, it is suggested that accused name is not forthcoming in Ex.P3. It is also stated that there is no reference in Ex.P3 that accused has abducted victim on that day. No doubt, in Ex.P3 missing complaint the name of accused is not forthcoming. It is not in dispute that accused was subjected to medical examination before KIMS hospital. As per

the oral testimony of PW-4, accused at the time of his examination given his self statement stating that he accompanied victim and had physical relationship with her with consent. As I have already stated the age of victim is not seriously disputed by accused herein, so also the documents Ex.P1 and P2 pertaining to the age of victim. As on the date of occurrence, the age of victim is 16 years 8 months according to these documents Ex.P1 and P2. Since victim has not completed the age of 18 years she is considered as a child under Section 2(d) of POCSO Act, 2012 and accused has been prosecuted before this Special Court, the consent of victim in a case like this is of no consequence. Accused is a married man having child is not in dispute. If victim was not missing from her house on 2.12.2014, there was no necessary for complainant to lodge a missing complaint Ex.P3. This missing complaint is not in dispute and it is only suggested that the name of accused is not forthcoming in missing complaint. However, Ex.P3 establishes that on 2.12.2014, victim found missing. Since, she was minor at that time if victim actually accompanied the accused or accused taken her along with him is not of much relevance. At the time of recording the statement of accused, accused asserted that he has not at all in acquaintance with victim. Whereas, in the cross-examination of victim and other prosecution witnesses, it is suggested that both accused and victim and their family

members are very much acquainted with each other and they used to visit each others house during function or any occasions. It is also suggested that accused and victim's father were working under the same employer. As I have already stated apart from the offences punishable under Section 363, 366 and 376 of IPC accused has been charged for an offence under Section 3 r/w Section 4 of POCSO Act. Under such circumstances, the provision of Section 29 of POCSO Act plays vital role. As per this provision, whenever accused has been charge sheeted or prosecuted for committing or abetting or attempting to commit any offence under Sections, 3, 5, 7 and 9 of this Act, the special court shall presume that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved. Further, as per Section 42-A of the Act which states that the provision of the Act shall be in addition to and not in derogation of the provision of any other Law for the time being in force and would, in case of any inconsistency the provision of POCSO Act shall have an overriding effect over such Law to the extent of inconsistency. As per medical report, the hymen of victim is not intact and victim has been subjected to sexual activity. If accused is not committed any such sexual activity on minor victim what made the accused parents or accused elder sister to bring accused and produced him along with them before

complainant-police as suggested in the cross-examination of prosecution witnesses is not explained by the accused herein. Accused statement came to be recorded and this court put as many as 24 questions to accused. Accused while answering question No.23 only stated that it is a false case. Mere denying entire prosecution case as false by itself will not enable the accused to come out of the clutches of the law. In a case like this, where accused has denied his acquaintance with victim and asserted that it is a false case, the responsibility casted on him to explain the situation what had actually happened. Whereas accused not made any effort to give any such explanation nor examined any witnesses on his behalf. From the cross-examination of witnesses discussed supra, the defence of the accused is that he was acquainted with victim and she used to take his salary and they were in good relationship. If that being the case, there is no need to suspect the medical report of the victim, as per the self statement or the history of victim recorded by the doctor discussed supra. The learned counsel for accused asserted that in the first information report Ex.P4 lodged by victim's father and also in the statement of victim before the learned Magistrate there is reference about Mysore, whereas, the spot mahazar Ex.P10 is conducted in the house of PW-6. This doubt has been clarified by victim herself in her oral testimony before this court. She has stated that

accused threatened her and forced her to tell that she has been taken to Mysore, but she was not taken to Mysore and she was only taken to the house of his another driver friend. PW-6 is friend of accused herein. To show that the relationship between accused and PW-6 has been strained, accused has not produced any material. PW-6 deposed that he locked his house and went away and also scolded accused, who accompanied the victim stating that accused is already married man and having child. In spite of that accused managed to enter his house and he came to know that accused committed forcible sexual intercourse with victim in his house. If there was no such incident taken place in the hands of accused on victim, there was no reason for PW-6 to depose against accused herein. The Medical evidence and also oral testimony of victim establishes that accused by taking a minor girl along with him committed forcible sexual intercourse with her. As per F.S.L report Ex.P11 in vaginal smear the presence of spermatozoa was detected. This report is also not in dispute. The learned counsel for accused contended that victim was aged about 17 years capable of understanding the consequences of her act. As I have already stated according to Section 2(d) of POCSO Act any person below the age of 18 years is considered as a child. The materials on record, establishes that penetrative sexual assault has been committed by accused on victim. Even according to

medical officer PW-4, accused has given self statement before him stating that he had physical relationship with victim with consent. Only for the reason that victim was around 16 years 8 months the prosecution case could not be disbelieved. No doubt, the victim had been little careful in not placing reliance on accused person, she would not have suffered the misfortune. But, simply because victim was simple enough to report confidence on accused, the prosecution case should not be disbelieved particularly when convincing evidence about the commission of offence of rape and also abduction of minor victim was adduced. The medical report discussed supra supported the testimony of the victim that there is evidence of sexual activity on minor victim present. PW-6 deposed that accused and victim shared his house and it is nobody's case that besides victim and accused any other person stayed in the said house. As per the provisions of Section 29 of the POCSO Act, the reverse onus is on the accused to establish the contrary. Whereas, accused absolutely not produced any material before this court to establish that he was not at all acquainted with victim. There was also no reason for doctor PW-4 to create medical report of accused as per Ex.P5. Further, minor contradictions here and there with regard to taking the accused to Mysore and returning from there is not of much relevance, since in Ex.P5, there is no such reference about

accused accompanied victim to Mysore. That apart, victim has clarified before this court on oath that accused himself threatened her to state that she has been taken to Mysore. All these materials placed before this court by prosecution establishes that accused had taken minor victim from the lawful custody of her guardian and committed forcible sexual intercourse on her and thereby alleged to have committed offence charged against him. Accordingly, I hold points No.1 to 4 in the *Affirmative*.

25. POINT NO.5: In view of my above discussion and findings, I proceed to pass the following:

ORDER

Accused is found guilty of the offence punishable under Section 363, 366 and 376 of IPC and also Section 3 r/w Section 4 of POCSO Act 2012.

To hear regarding sentence.

(Dictated to the Stenographer, transcript corrected and then pronounced by me in open court on this the 14th day of August, 2018.)

(M. LATHA KUMARI)
LIII Addl.City Civil & Sessions Judge,
Bangalore.

ORDER ON SENTENCE

Heard accused and learned Public Prosecutor regarding the sentence.

2. The accused submits that he is having aged mother, wife and two children. He is the only bread earner in the family and also of young age and prays for leniency.

3. The learned Public Prosecutor has submitted that Prevention of Children from Sexual Offences Act 2012 being special enactment came into existence to protect sexual exploitation and sexual abuse of children effectively and no leniency can be shown to accused. That apart, accused being a married man having two children exploited the victim sexually and hence pray for imposing maximum punishment.

3. Accused was aged about 22 years as on the date of occurrence. He has committed heinous offences like rape on a minor victim persuading victim on the guise of marrying her and taking care of her. The mother of the victim herein is a garments employee and father is auto driver. The economical status of victim is shown as middleclass in her medical report Ex.P6. The Hon'ble Supreme Court in a citation reported in 2014 CrI. L J 3246 Sumer Sing Vs. Suraj Barsing and others observed that "it is the duty of court to impose adequate

sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principles that should be guiding laser beam is that, the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to cortile the evil while imposing the sentence it is the court's accountability to remind itself about its role and the reverence of rule of law. It must evince rationalized judicial discretion and not an individual perception or a moral propensity". Relying upon these principles laid down by the Hon'ble Supreme court and the gravity of the offences and its impact on over all development of victim, the cause of justice would be met if the accused is sentenced to undergo R.I. for 7 years apart from the fine of Rs. 20,000/- for the offences 366 of IPC and similar sentence and also fine amount for the offences punishable under Section 363 of IPC, 376 of IPC and Section 3 r/w Sec. 4 of POCSO Act 2012.

10. Considering these facts and circumstances, I proceed to pass the following

ORDER

- The accused is ordered to undergo Rigorous imprisonment for a period of 7 years and he shall also pay fine of Rs.20,000/- for

offence punishable under Section 366 of IPC.

- The accused is further ordered to undergo imprisonment for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 363 of IPC.
- The accused is further ordered to undergo R.I for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 376 of IPC.
- The accused is further ordered to undergo R.I for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 3 r/w Sec.4 of *POCSO Act 2012*.
- The above sentences shall run consequently.
- The accused is entitled to set-off under Section 428 of Cr.P.C.
- Relying upon the provisions of Rule 7(2) and Rule 7(4) of POCSO Act, considering the gravity of the offence and the severity of the mental and physical harm suffered by the victim and her family members and also economical status of the victim discussed supra, as per the notification No. **HD 1 PCB 2011 dated 22.2.2012** Rs.3,00,000/- by way of compensation to victim is awarded. The same shall be made over to the victim by the Karnataka State Legal Services Authority, (K.S.L.S.A). Assistant Registrar is hereby directed to send the copy of this judgment to the

Member Secretary, K.S.L.S.A forthwith for information and compliance.

- MO-1 and 2 shall be destroyed after appeal period is over.
- Bail bond of the accused stands cancelled.
- Free copy of this Judgment to be supplied to the accused.

(Dictated to the Stenographer, transcript computerized and print out taken by him and after correction signed and then pronounced by me in open court on this the 14th day of August, 2018.)

(M.LATHA KUMARI)

LIII Addl.City Civil & Sessions Judge,
Bangalore.

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF PROSECUTION

PW.1	B.S.. Umesh
PW.2	Raju
PW.3	Smt. Shobha
PW.4	Dr. V.T. Venkatesh
PW.5	Dr. R.Roopa
PW.6	Prakash M
PW.7	S.Kavitha
PW.8	Prosecutrix
PW.9	Jayarama Reddy

PW.10 B.K. Shekar
PW.11 S.V. Kumaraswamy
PW.12 R.Shivanna

**LIST OF DOCUMENTS MARKED ON BEHALF OF
PROSECUTION**

Ex.P1 Study certificate
Ex.P 1(a) Signature of PW-1
Ex.P 1(b) Signature of PW-10
Ex.P2 Transfer certificate
Ex.P 2(a) Signature of PW-1
Ex.P 2(b) Signature of PW-10
Ex.P3 Missing complaint
Ex.P 3(a) Signature of PW-2
Ex.P4 Complaint
Ex.P4(a) Signature of PW-2
Ex.P5 Medical report of accused
Ex.P5(a) Signature of PW4
Ex.P6 Medical report of victim
Ex.P6(a) Signature of PW-5
Ex.P7 Requisition of PW-7
Ex.P7(a) Signature of PW-7
Ex.P8 Statement of victim u/Sec 164 of Cr.P.C
Ex.P8(a) Signature of victim
Ex.P9 Police report
Ex.P10 Spot panchanama
Ex.P10(a) Signature of PW-10
Ex.P11 F.S.L. report

Ex.P11(a) Signature of PW-10

Ex.P12 F.I.R

Ex.P12(a) Signature of PW-11

LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENCE

NIL

LIST OF WITNESSES EXAMINED,
AND MO.S MARKED ON BEHALF OF DEFENCE

MO-1 Under garment of victim

MO-2 Under garment of accused

(M.LATHA KUMARI)

LIII Addl.City Civil & Sessions Judge,
Bangalore.

* * *

14.08.2018

Judgment pronounced in the open court, operative portion of which reads as under:-

ORDER

Accused is found guilty of the offence punishable under Section 363, 366 and 376 of IPC r/w Section 5(l) r/w Section 6 of POCSO Act 2012.

To hear regarding sentence.

(M. LATHA KUMARI)
LIII A.C C & S J, Bangalore.

Orders on Sentence pronounced in the open court, operative portion of which reads as under:-

ORDER ON SENTENCE

- The accused is ordered to undergo Rigorous imprisonment for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 366 of IPC.
- The accused is further ordered to undergo imprisonment for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 363 of IPC.
- The accused is further ordered to undergo R.I for a period of 7 years and he shall also

pay fine of Rs.20,000/- for offence punishable under Section 376 of IPC.

- The accused is further ordered to undergo R.I for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 3 r/w Sec.4 of *POCSO Act 2012*.
- The above sentences shall run consequently.
- The accused is entitled to set-off under Section 428 of Cr.P.C.
- Relying upon the provisions of Rule 7(2) and Rule 7(4) of POCSO Act, considering the gravity of the offence and the severity of the mental and physical harm suffered by the victim and her family members and also economical status of the victim discussed supra, as per the notification No. **HD 1 PCB 2011 dated 22.2.2012** Rs.3,00,000/- by way of compensation to victim is awarded. The same shall be made over to the victim by the Karnataka State Legal Services Authority, (K.S.L.S.A). Assistant Registrar is hereby directed to send the copy of this judgment to the Member Secretary, K.S.L.S.A forthwith for information and compliance.
- MO-1 and 2 shall be destroyed after appeal period is over.
- Bail bond of the accused stands cancelled.
- Free copy of this Judgment to be supplied to the accused

(M. LATHA KUMARI)

LIII A.C.C & S.J, Bangalore

Government of Karnataka

FORM No.34

**Warrant of Commitment on a sentence of imprisonment Or fine if
passed by a Magistrate
(See Section 248 and 255)**

To,

The Officer incharge of the Jail at Bangalore.

Whereas on the 14th day of August, 2018
(Name of Prisoner) Kamanna @ Ravi Kumar, S/o Late Dharmiah,
Aged about 22 years, (the 1st, 2nd, 3rd as the case may be). R/at
Near Mariyamma Temple Road, Manjunatha colony, T.R. Nagar
PO, BSK III Stage Bengaluru City, prisoner in Case
Spl.C.C.No.61/2015 (of the calendar for 2018), is convicted before

me (name and official designation) Smt. M.Latha Kumari, LIII Addl.City Civil Court, Bangalore for the offences of (mention the offence or offences concisely) under Section 363, 366 & 376 of IPC and Section 3 r/w Sec.4 of Protection of Children from Sexual Offence Act, 2012 (or Section of the Indian Penal Code) or of.....Act.....), and is sentenced to (state the punishment fully and distinctly) P.T.O.

This is to authorize and require you to receive the said (Prisoner's name) Kamanna, S/o Late Dharmaiah, into your custody in the said jail, together with this warrant, and thereby carry the aforesaid sentence into execution according to law.

Dated, this 14th day of August, 2018.

(M. LATHA KUMARI)
LIII Addl.City Civil & Session Judge,
Bangalore.

ORDER

- The accused is ordered to undergo Rigorous imprisonment for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 366 of IPC.
- The accused is further ordered to undergo imprisonment for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 363 of IPC.

- The accused is further ordered to undergo R.I for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 376 of IPC.
- The accused is further ordered to undergo R.I for a period of 7 years and he shall also pay fine of Rs.20,000/- for offence punishable under Section 3 r/w Sec.4 of POCSO Act 2012.
- The above sentences shall run consequently.
- The accused is entitled to set-off under Section 428 of Cr.P.C.
- Relying upon the provisions of Rule 7(2) and Rule 7(4) of POCSO Act, considering the gravity of the offence and the severity of the mental and physical harm suffered by the victim and her family members and also economical status of the victim discussed supra, as per the notification No. **HD 1 PCB 2011 dated 22.2.2012** Rs.3,00,000/- by way of compensation to victim is awarded. The same shall be made over to the victim by the Karnataka State Legal Services Authority, (K.S.L.S.A). Assistant Registrar is hereby directed to send the copy of this judgment to the Member Secretary, K.S.L.S.A forthwith for information and compliance.
- MO-1 and 2 shall be destroyed after appeal period is over.
- Bail bond of the accused stands cancelled.

- Free copy of this Judgment to be supplied to the accused.

(M. LATHA KUMARI)

LIII Addl.City Civil & Sessions Judge,
Bangalore.