



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

CRIMINAL APPEAL NO. 128 OF 2023

BETWEEN:

NAVEEN SUVARNA @ NAVEEN S
@ NAVEEN POOJARY,
S/O LATE VASANTHPOOJARY
AGED ABOUT 42 YEARS,
R/AT SRI DURGA NILAYA,
NEAR VAIDYANATH NAGAR
PACCHANADI VILLAGE
MANGALURU - 575 001.

...APPELLANT

(BY SRI. AJAY PRABHU M, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
INSPECTOR OF POLICE,
MANGALURU RURAL POLICE STATION,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE - 560 001.
2. THE VICTIM GIRL
D/O KESHAVA ACHARYA
AGED ABOUT 22 YEARS



R/AT NEAR JAI SANTHOSHI MATHA BAJANA
MANDIR,
SANTHOSHNAGARA, VAMANJOOR POST,
PACCHANADI VILLAGE,
MANGALURU - 575 001,
REP. BY FATHER OF KESHAVA ACHARYA.

...RESPONDENTS

(BY SRI. VINAY MAHADEVAIAH, HCGP FOR R1;
SRI. B.V. SHRAVAN BHARADWAJ, ADVOCATE FOR R2)

THIS CRL.A IS FILED U/S.374(2) OF CR.P.C PRAYING
TO SET ASIDE THE JUDGMENT OF CONVICTION DATED
13.12.2022 AND ORDER OF SENTENCE DATED
14.12.2022, PASSED BY THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE/FTSC II (POCSO) D.K., MANGALURU IN
S.C.NO.134/2018, CONVICTING THE
APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 6 OF THE
POCSO ACT R/W SEC.376(2)(n) OF IPC.

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

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL



ORAL JUDGMENT

This appeal is by the accused No.2 against the against the judgment of conviction and order of sentence dated 13.12.2022 passed in Special Case No.134/2018 on the file of Additional District and Sessions Judge/FTSC-II (POCSO), D.K., Mangaluru (hereinafter referred to as 'the Trial Court'). By which, the accused No. 2-appellant herein has been convicted for the offences punishable under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 read with Section 376(2)(n) of IPC and has been sentenced to undergo imprisonment for ten years and to pay the fine of Rs.30,000/- and in default to pay the fine, shall undergo further imprisonment for a period of six months.

2. A complaint dated 18.06.2018 came to be filed by victim before the respondent-Police alleging that she was studying in 10th Standard at Mangalajyothi School till the year 2017 and she had befriended one Sandeep of Jyothinagar, who had promised her of marriage and had sexual intercourse on two occasions. Thereafter, she had not contacted the said Sandeep. Things stood thus, accused No.2-appellant herein



somehow learning about the victim having had sexual intercourse with said Sandeep, started blackmailing her and was sending messages through his mobile number onto her mobile number, demanding her to oblige and satisfy his physical need, failing which he would make her relationship with said Sandeep public. Being fearful, one day she had accompanied accused No.2 on his motorcycle to his sister's house at Bondel. On reaching the place, she found one Sudha aunty at the said place, who had left the victim and accused No.2 in the said place and had gone out. During her absence, accused No.2-appellant herein, despite her resistance and screaming forcibly had sexual intercourse under the threat of he making her relationship with Sandeep public. That accused No.2-appellant herein had similar sexual intercourse at the same place at Bondel between August and November, 2017. That during the month of December, 2017, she had missed her periods and on re-opening of her school in the month of May, 2018, her mother had taken her to one Dr. Brundha Shetty on 15.06.2018, where she was found to be pregnant. That the said Dr. Brundha Shetty had advised her to go to Government Lady Goschen Hospital, Mangalore. Where she had disclosed about



she having had forcible sexual intercourse with accused No.2 and Sandeep, which information was passed on to the jurisdictional police and accordingly she had lodged a complaint seeking necessary action against the accused persons.

3. On receipt of the said complaint, respondent-Police had registered a case in Crime No.103/2018 for the offences punishable under Section 376, 34 of IPC and Section 5, 6, 17 of POCSO Act, 2012. Investigation was conducted. A charge sheet was filed against four persons, namely Sandeep-accused No.1, Naveen Suvarna-accused No.2-who is appellant herein, Puneeth kumar-accused No.3 and Sudha- accused No.4.

4. Since the accused persons pleaded not guilty and sought for trial, statements were recorded under Section 313 of the Cr.P.C and matter was set-down for trial.

5. The trial court framed the following points for its consideration:

" 1. Does the prosecution prove beyond all reasonable doubt that, PW.1 (for short the victim) was the minor as on 14.08.2017?

2. Does the prosecution prove beyond all reasonable doubt that, the 1st accused being the lover of the victim has committed the penetrative intercourse in his house at Thiruvailu village knowing that she was minor by the time?



3. Does the prosecution prove beyond all reasonable doubt that, the 2nd accused has committed the multiple forcible penetrative sexual intercourse with the victim in a room of the house at Padavinangady resulting pregnancy? in her

4. Does the prosecution prove beyond all reasonable doubt that, the 4th accused has provided an accommodation in her room and aided the 2nd accused to commit the forcible penetrative sexual intercourse with the victim?

5. Does the prosecution prove beyond all reasonable doubt that, the 3rd accused has committed the forcible penetrative sexual intercourse at his room bearing No.11 of the building called Oasis II at Vamanjoor village in the month of December 2017?

6. What order? "

6. The prosecution has examined as many as 21 witnesses and has exhibited 51 documents marked as Ex.P1 to Ex.P51. No evidence has been laid on behalf of the accused.

7. The trial Court on appreciation of the evidence has passed the following order:

" Acting under Sec.235(1) of Cr.P.C. the accused No.1 Sandeep Kulal and accused No.3 Puneeth Kumar and 4th accused Smt.Sudha are acquitted for offences punishable under Sec.6 and 17 of the POCSO Act r/w Sec.376(2)(n) of the Indian Penal Code. They shall be set at liberty forthwith.

Their bail bonds shall stand cancelled forthwith.

Acting under Sec.235(2) of Cr.P.C. the accused No.2 Naveen Suvarna @ Naveen S Naveen Poojary is convicted for the offence punishable under Sec. 6 of the POCSO Act r/w Sec.376(2)(n) of the Indian Penal Code.

His bail bonds shall stand cancelled forthwith.

The Honda Activa involved in this case and mobiles seized shall be returned to the respective owners on proper identification if not already released.



The hearing of accused No.2 on the sentence to be imposed to be deferred. He is taken into custody and remanded him to J.C. with a direction to the concerned to produce him before the court on 14.12.2022."

8. Being aggrieved, accused No.2-appellant herein is before this Court.

9. Learned counsel for the appellant taking this Court through the records submits that the trial Court erred in passing the judgment of conviction and sentencing the accused No.2/appellant herein for the offences punishable under Section 6 of the POCSO Act, as the prosecution has not discharged its burden of proving the victim being below the age of 18 years. He submits that the proof as required under Section 34 of the POCSO Act read with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act') has not been furnished. He refers to Ex.P.29, which is a certificate issued by one Mangala Jyothi Integrated School represented by its Headmaster. He submits that the said document indicates the information provided thereunder had been obtained from the admission register, which is of the year 2014-2015, while the victim was purportedly studying in 8th standard.



10. PW-18 is the Headmaster who had issued Ex.P.29 and the said witness in his evidence has admitted that the document at Ex.P.29 had been issued based on the Transfer Certificate. He submits that evidence produced by the prosecution in the nature of Ex.P.29 and examining PW-18 in furtherance thereof does not meet the statutory requirement of proving the age of the victim.

11. As regards, the order of conviction and sentencing accused No. 2/appellant for the offence punishable under Section 376 of IPC, he submits that the prosecution has miserably failed to prove and establish the alleged place of incident. He refers to paragraph No.17 of the impugned judgment and submits that the apartment bearing door No.1-12-18(5) of A.R.K Apartments at Padavinangady according to the prosecution, belonged to one. Stanislus Pinto, an aged lady, neither the accused No. 2 nor accused No. 4 had any access to the said property. The trial Court has acquitted accused No. 4, who according to prosecution has facilitated in commission of the offence. Since the prosecution has failed to prove and establish its case of offence having taken place in the said



place, the very substratum of the case stands effaced. The trial Court, though having held that the prosecution has failed to prove the place of occurrence of offence, ought to have acquitted accused No. 2/appellant, as it is not the case of the prosecution that he had committed the offence elsewhere.

12. As regards to medical evidence, which according to the learned counsel for the appellant is the sole link between the alleged offence and the accused No. 2/ appellant, the same also falls short of required standard of proofs. He refers to the deposition of Investigation Officer, examined as PW-19, who in his deposition has admitted that in DNA ID form and the donor's declaration enclosed therewith do not contain the date on which the samples of victim, her child and the accused were secured. He submits that the said witness has also pleaded ignorance as to the personnel through whom the blood samples were sent for FSL examination. He also refers to the deposition of PW-21, Assistant Director and Technical Manager of DNA Division, FSL, Bangalore, who in his cross-examination has admitted that in his report he has not mentioned about the EDTA vaccinator which is an agent used to preserve the blood



sample. He also refers to the deposition of PW-1 who has admitted that the blood samples were received at his office in the month of October 2018, and the said samples were subjected for verification only in the month of June 2020, which is after 2 years from the date of receipt. He also refers to Ex.P.41, which is an identification form indicating collection of blood sample of the accused No. 2/appellant on 03.10.2018 at 10.25 a.m. and to the FSL report at Ex.P.49, which indicates the report having been prepared during 03.05.2020 and 25.05.2020. He submits that prosecution has not produced any material as to the manner, mode and method adopted to preserve the blood sample which is essential to establish the scientific evidence.

13. Thus, on all three counts, the prosecution has failed to establish the case, bringing home the guilt of the accused, for the offence alleged.

14. He relies upon the judgment of the co-ordinate Bench of this Court in the case of ***Ismail Vs. State of Karnataka*** disposed of on 19.01.2024 in ***Criminal Appeal No. 1445 of 2022*** and submitted under the similar facts and circumstances of this case, the co-ordinate Bench of this Court taking note of



provisions of Section 34 of POCSO Act and Section 94 of JJ Act, as well as the manner and method required for preserving the blood sample, for the purpose of DNA test, had acquitted the accused therein, submits that the accused No. 2/appellant herein being similarly situated may also be extended similar relief.

15. Learned counsel for the appellant also refers to a communication which was forwarded by Dr. Brunda Shetty of Vaishnavi Clinic to the Police Inspector of Mangaluru Police Station, wherein admittedly the victim was brought to her clinic on 15.06.2018 by her mother and grandmother, wherein they informed her aged to be 19 years. This aspect of the matter has been admitted by the Investigation Officer. Hence, seeks for allowing the appeal.

16. Learned HCGP on the other hand submits that the prosecution has established the case not only through oral testimony of the witnesses but also through the scientific evidence. Minor omissions and lapses shall not take away the case of the prosecution. Since DNA test report have revealed the child born to the victim belonging to the accused No. 2, the



said scientific evidence is sufficient enough to confirm the guilt of the accused, which the trial Court has done and no interference is warranted at this juncture. Hence, he seeks for dismissal of the appeal.

17. Learned counsel appearing for victim/ respondent No. 2 submits that the prosecution has established the case of victim being below age of 18 years and accused taking advantage of the situation, misusing and repeatedly subjecting the victim for sexual assault and submits no grounds are made out for interference at the hands of this Court.

18. Heard the learned counsel appearing for the parties.
Perused the records.

19. The point that arises for consideration is ;

"Whether in the facts and circumstances of the case the trial Court is justified in passing the judgment of conviction and order of sentence against the accused No. 2/appellant for the offences punishable under Sections 376(2)(n) of IPC and Section 6 of the POCSO Act?"

20. In order to maintain case under the provisions of POCSO, the prosecution is required to prove and establish that the victim is below the age of 18 years as defined under



Section 2(m) of the POCSO Act. The Hon'ble Apex Court in the case of ***P. Yuvaprakash Vs. State Rep. by Inspector of Police*** reported in **2023 SCC OnLine SC 846** dealing with the issue regarding determination of age of the victim, in paragraph Nos.14, 15 and 16 has held as under:

"14. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

"94. Presumption and determination of age.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(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:

Provided such age determination test conducted on the order of the Committee or the Board shall be



completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

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. "

21. In the instant case, except document at Ex.P.29 and examining PW-18, the prosecution has not brought on record



any other evidence as required under Section 94 of the JJ Act. Document at Ex.P.29 do not meet the list of documents to be produced in terms of Section 94 of the JJ Act. The said certificate is not issued by the school first attended by the victim. It is neither the document equivalent to a Certificate of Matriculation nor is the certificate issued by the Corporation regarding date of birth. Prosecution in the absence of these documents ought to have subjected the victim for ossification test which is absent in this instant case. Even as admitted by the Investigating Officer in his evidence that the mother and grandmother of the victim when she was taken at the first instance to Dr. Brunda Shetty of Vaishnavi Clinic, they had informed the age of the victim to be 19 years. In the absence of clear evidence with regard to age of the victim, this Court is of the considered view that trial Court has erred in accepting Ex.P.29 and the evidence of PW-18 to be sufficient enough to hold the victim to be the age below 18 years. As such the consequent passing of the judgment of conviction and imposing sentence for the offences punishable under Section 6 of the POCSO Act cannot be sustained.



22. As regard to the offences under Section 376 of IPC is concerned, according to the victim, accused No. 2/appellant herein had taken her to a place which is an apartment bearing No.1-12-18(5) of ARK apartment at Padavinangady as described in the mahazar drawn at Ex.P.6 and the sketch at Ex.P.7.

23. Paragraph No. 17 of the judgment of the trial Court reads as under:

"17. The house referred above is un-disputedly bearing door No.1-12-18(5) of A.R.K. Apartments at Padavinangady as described in the mahazar at Ex. P6 and the sketch at Ex.P7 is standing to the name of one Mrs. Stanislus Pinto the aged lady who is residing therein as referred in the cross-examination of the learned defence counsel. The victim and the witness PW.3 Smt. Prathima asserts their presence at the time of conducting the spot mahazar by PW.19. Obviously there is no evidence on record to show as to how the 4th accused was having access to the said house. Therefore, her presence therein and the co-operation she has allegedly extended to the 2nd accused cannot be presumed. At this stage, the cross-examination admission of the victim that, ನಾನು ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಹೇಳಿದ ಮನೆಯು 4 ನೇ ಆರೋಪಿ ಸುಧಾರವರಿಗೆ ಸೇರಿದ ಮನೆ ಅಲ್ಲ ಎಂದರೆ ಸರಿ is quite evident to rule out the allegations against her. It is seen that, in the month of April 2018 i.e. nearly 6 months after the alleged incident the 4th accused has a mobile conversation by her number 9972254783 with the victim as can be seen in the CDR at Ex.P35. But this cannot be evidence to connect the incident took place 6 months prior thereto. Thus harboring the 2nd accused by an invisible hand for his acts and deeds other than the 4th accused cannot be ruled out. Therefore and in the absence of convincing evidence the benefit of this situation has to be given to the 4th accused."



24. Thus, even according to the trial Court, there was some invisible hand which had harbored accused No. 2 for his alleged acts and deeds, that was sufficient enough for the trial Court to have acquitted the accused for want of evidence in this regard, yet the trial Court has ventured to proceed further and to handover this harsh punishment to the accused which cannot be sustained.

25. As regard the DNA report is concerned, the High Court of Gujarat in the case of ***Premjibhai Bachubhai Khasia Vs. the State of Gujarat*** reported in **2009 SCC OnLine Guj 12076**, at paragraph No.25 has held as under:

"25. The science of DNA is at a developing stage and when the Random Occurrence Ratio is not available for Indian Society, it would be risky to act solely on a positive DNA report, because only if the DNA profile of the accused matches with the foetus, it cannot be considered as a conclusive proof of paternity. Contrarily, if it is solitary piece of evidence with negative result, it would conclusively exclude the possibility of involvement of the accused in the offence".

26. In the case of ***Kattavellai @ Devakar Vs. State of Tamil Nadu***, reported in **2025 SCC OnLine SC 1439** the Hon'ble Apex Court at paragraph 44 has held as and under:



" 44. This lack of a common procedure to be followed, is concerning. As such, we issue the following directions which shall be followed henceforth, in all cases where DNA Evidence is involved:

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48-hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement Corresponding to the nature of the sample taken.

3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorization of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.



27. In the instant case, it is evident that the blood samples of accused No. 2/appellant herein was collected on 03.10.2018 and was purportedly sent for FSL examination on 04.10.2018. The prosecution has neither cited nor examined any witnesses as to the process and the mode of taking the blood sample, there is complete vacuum on the prosecution's side with regard to subjecting the blood sample for the FSL examination. That apart even as per the FSL report and Ex.P.49, though the samples were purportedly sent on 04.10.2018, the FSL examination was done in the month of May 2020, which is almost 2 years subsequent to date of sending the samples. The witness has remained discreetly silent with regard to the manner of preservation of blood samples. In the light of the aforesaid settled proposition of law requiring the seriousness to be adopted for purpose of conducting the DNA examination, the prosecution, in the consideration of this Court has failed to meet the said requirement. Thus, as rightly pointed out by the learned counsel for the appellant, the prosecution has failed to establish



the case on all the three counts. Accordingly, the appeal succeeds.

ORDER

- (i) Appeal is ***allowed;***
- (ii) The impugned order dated 13.12.2022 passed in Spl. Case. No.134/2018 by the Additional District and Sessions Judge/FTSC-II (POCSO), D.K., Mangaluru, is set aside.
- (iii) The accused No.2-appellant is acquitted of the offences punishable under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 read with Section 376(2)(n) of IPC.
- (iv) The accused No.2-appellant shall be set at liberty forthwith, if his detention is not required in any other cases.
- (v) Fine amount deposited, if any shall be refunded to the accused No.2-appellant.
- (vi) Bail bonds and sureties, if any, stands cancelled.
- (vii) Communicate copy of this order to the trial Court and concerned Prison authorities forthwith.

Sd/-
(M.G.S. KAMAL)
JUDGE

RL,BVK
List No.: 1 Sl No.: 31