



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 577 OF 2025 (C)

BETWEEN:

1. HAMPALIAH,
S/O, SABAIAH,
AGED ABOUT 20 YEARS,
R/AT SHEET HOUSE
IN FRONT OF S.L.V HARIDHAMA APARTMENT,
B.H.E.L LAYOUT,
VIDYARANYAPURA POST,
BENGALURU. 560097

...APPELLANT

(BY SRI. ABHAY RAJIV SHIVAM ADVOCATE FOR
SRI NAGARALE SANTOSH SUBHASHCHANDRA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY YELAHANKA NEW TOWN STATION,
BENGALURU.
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DR AMBEDKAR VEEDHI ROAD,
BENGALURU 560 001
2. SMT ROSHANI
W/O LATE LALA BAHADUR
AGED ABOUT 30 YEARS,
R/AT SECURITY ROOM,
SLV HARIDHAMA APARTMENT,





BHEL LAYOUT,
VIDYARANYAPURA,
BANGALORE-97.

...RESPONDENTS

(BY SMT. N. ANITHA GIRISH, HCGP FOR R1;
SMT. VAISHNAVI VIBHUTE, ADVOCATE FOR
SRI SHARAN L. JAIN, ADVCOATE FOR R1)

THIS CRL.A FILED U/S 374(2) CR.P.C (U/S 415(2) BNSS) BY THE ADVOCATE FOR THE APPELLANT/S PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGEMENT AND ORDER DTD 23.11.2024 AND SENTENCED ON 25.11.2024 BY ALLOWING THE APPEAL AND ACQUIT THE APPELLANT HEREIN FROM OFFENCES P/U/S 3 R/W 4(2) OF POCSO ACT.THE ACCUSED IS SENTENCED TO UNDERGO RI FOR A PERIOD OF 25 YEARS FOR THE OFFENCES P/U/S 3 R/W 4(2) OF POCSO ACT AND TO PAY A FINE OF RS.1,00,000/- IN DEFAULT OF PAYMENT OF FINE ACCUSED SHALL UNDERGO SI FOR 01 YEAR; AND ETC.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred the appeal against the judgment of conviction and order on sentence dated 23rd November, 2024 passed in Spl. CC No.1978 of 2022 by the Additional City Civil and Sessions Judge, FTSC-IV at Bengaluru (for short the "trial Court").



2. Parties in this appeal are referred to as per their rank and status before the trial Court.

3. Brief facts leading to this appeal are that the Inspector of Police, Yelahanka New Town Police Station-Bangalore submitted the charge sheet against the accused for the offence under Section 376(2)(n), 376(3) of Indian Penal Code and Section 5(1) r/w Section 6 of Protection of Children From Sexual Offences Act, 2012, (for short "POCSO Act"). It is alleged by the prosecution that the victim-minor girl, along with her mother Roshini-complainant, grandmother-Juna, grandfather-Khalak and other siblings are residing in the security room of SLV Haridhama Apartment. Accused-Hampaiah is residing in a sheet house opposite to their apartment belonging to CW18-Smt. Devika. On 07th June, 2022 at about 01.00 pm in the afternoon, the victim girl and her sister Sharmila were playing on the road in front of the apartment, grandmother-Juna was at parking place of the said apartment. The accused had taken the victim girl and her



sister Sharmila to his house by offering chocolates. He gave chocolates to Sharmila and sent her back and made victim girl to stay in his house. Sharmila came back and told her mother that Hampaiah had taken both of them, sent her back by giving chocolate and told the victim girl to stay back in his house. Juna immediately went near the house of Hampaiah and when she peeped through broken window glass of his house, she found that victim girl was undressed and was lying on a bed sheet. The accused, by removing his pant, was lying on her and committing sexual assault on the victim girl. When Juna knocked the door of his house, the accused opened the door and ran away. On the basis of First Information Report lodged by the mother of the victim girl as per Exhibit P1, Yelahanka New Town Police have registered a case in Crime No.174 of 2022 on 08th June, 2022 at about 01.00 am for the offence under Section 376(2)(f) of Indian Penal Code and Section 4, 6, and 8 of POCSO Act, 2012. After investigation, IO has submitted the charge sheet against



the accused for the offence under Section 376(2)(n) and 376(3) of Indian Penal Code and Section 5(1) read with Section 6 of POCSO Act, 2012. After filing the charge sheet, cognizance was taken and case was registered in Special Case No.1978 for 2022. The accused was arrested by the police on 06th August, 2022. Since the date of arrest, accused is in judicial custody.

4. Having heard upon charges, trial Court has framed the charges for the commission of alleged offences. The 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, in all, examined sixteen witnesses as PWs1 to 16. 28 documents were marked as Exhibits P1 to 28. Twelve material objects were marked as MOs1 to 12. On closure of prosecution side evidence, statement under Section 313 of Code of Criminal Procedure was recorded. Accused has



totally denied the evidence of the prosecution witnesses. However, he did not choose to lead any defence on his behalf. During the course of cross-examination of PW2, four documents were marked as Exhibits D1 to D4. The accused, in his statement, has stated as under:

"ನಾನು ಬೆಳಗ್ಗೆ ಕೆಲಸಕ್ಕೆ ಹೋಗಿ ಸಂಜೆ ಕೆಲಸವಿಂದ ಬರುತ್ತಿದ್ದೆ, ನಾನು ಬೆಂಗಳೂರಿಗೆ ಬಂದು 15 ದಿನ ಆಗಿತ್ತು. ನಾನು ತಪ್ಪು ಮಾಡಿಲ್ಲ. ಸುಳ್ಳು ದೂರು ಸಲ್ಲಿಸಿದ್ದಾರೆ."

6. Having heard the arguments on both sides, trial Court has convicted the accused for the offence under Section 3 read with 4(2) of POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for a period of 25 years for the offence under Section 3 read with 4(2) of POCSO Act and to pay a fine of ₹1,00,000/- and in default of payment of fine, accused shall undergo simple imprisonment for one year. Being aggrieved by the impugned judgment of conviction and order on sentence, the appellant has preferred this appeal.



7. Sri Abhay Rajiv Shivam, learned counsel for the appellant submits that the judgment of conviction and order on sentence is liable to be set aside as the same is against the well-established principles of criminal law. The prosecution has utterly failed to prove the case beyond all reasonable doubt. The prosecution has not led any evidence to prove that the appellant is involved in the commission of offence. There is no credible evidence which has been laid by the prosecution to prove the case beyond all reasonable doubt. The victim girl-PW15 has completely turned hostile in her cross-examination. It is submitted that evidence of PW1 and victim girl is filled with inconsistencies and contradictions which does not inspire confidence to believe the same and is far from truth. The victim girl was tutored by her mother. PW1, in her cross examination deposed that she has not seen the incident. It was PW2 who saw the incident. She further deposed the victim and PW1 used to live in a place where she was surrounded by lot of people. She has stated that



she does not know what was written in the complaint-Exhibit P1. She does not know to read or write. She has admitted that she signed the blank paper near her house which is seen in Exhibit P1 as directed by the police. She has deposed that a person named Shyam told her to only state whatever the police have said, otherwise she will have to face the consequences. When asked about the CCTV cameras in the Apartment, she has stated that she does not know about it and no CCTV footages are collected. Further, it is submitted that CW1 has identified the sheet house as per Exhibit D1. When Exhibit D1 was shown to CW2 and asked whether there is a window in the said sheet house, she has denied saying that she does not know and when asked if the window is about 5 to 6 feet, she has stated that if she goes there and see, she will get to know. She has further deposed that there is no CCTV installed in the apartments. Further, she has deposed that she has put her left thumb mark on the blank sheet given by police and has deposed that the police did not seize any



material evidences. The mahazar witnesses turned hostile. They have stated that since police forced them to sign on the blank paper, they have signed the same. Hence, he submits that the impugned judgment of conviction and order on sentence is liable to be set aside. On all these, it is sought to allow this appeal. To substantiate his argument relied on the following decisions:

1. NARENDRA KUMAR v. STATE (NCT of Delhi) reported in (2012)7 SCC 171.
2. SURESH N. BHUSARE v. STATE OF MAHARASHTRA reported in (1999)1 SCC 220.

8. As against this, Smt. N. Anitha Girish, learned High Court Government Pleader, appearing for the respondent-State and Smt. Vaishnavi Vibhute learned Advocate appearing for respondent No.2, would submit that the trial court has properly appreciated the evidence on record in proper perspective and there is no ground to interfere with the impugned judgment of conviction and order on



sentence passed by the trial court and sought for dismissal of the appeal.

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

- 1) Whether the trial Court is justified in convicting the accused for the offences under Section 3 read with 4(2) of POCSO Act;
- 2) Whether the appellant is liable for punishment for offence under Section 8 of POCSO Act?
- 3) What Order?

10. My answer to the points are as under:

Point No.1: in the negative;

Point No.2: in the affirmative; and

Point No.3: as per final order



Regarding Points 1 and 2:

11. I have examined the materials placed before me. Before appreciation of the evidence on record, it is necessary to mention here as to the decision of the Hon'ble Apex Court in the case of TAMEEZUDDIN v. STATE (NCT of Delhi), reported in (2009) 15 SCC 566, wherein at paragraph 9 of the judgment, it is observed as under:

"9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable."

12. In the case of NARENDRA KUMAR (supra), the Hon'ble Supreme Court, at paragraphs 22, 30 and 32 of the judgment, observed thus:

"22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making



deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence.

30. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

32. The given facts and circumstances make it crystal clear that if the evidence of the prosecutrix is read and considered in totality of the circumstances along with other evidence on record, in which the offence is alleged to have been committed, we are of the view that her deposition does not inspire confidence. The prosecution has not disclosed the true genesis of the crime. In such a



fact situation, the appellant becomes entitled to the benefit of doubt."

13. In the decision in SURESH N. BHUSARE (SUPRA) at paragraphs 9 and 10, it is observed thus:

"9. With all these infirmities in her evidence, no implicit reliance could have been placed upon her evidence. The High Court having failed to consider all these important aspects erroneously came to the conclusion that her evidence was reliable. The High Court was wrong in reversing the order of acquittal passed by the trial court and convicting the appellant for both the offences.

10. We, therefore, allow this appeal, set aside the order of conviction and sentence passed by the High Court. They are therefore ordered to be released from jail, if their presence in jail is not required in connection with some other case."

14. In the case on hand, the genesis of the case arise from the complaint given by PW1 as per Exhibit P1. In the complaint, it is stated as under:



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"ವಿಷಯ- ನನ್ನ ಅಪ್ರಾಪ್ತ ಮಗಳಾದ ಕುಮಾರಿ ಹರ್ಷಿತಾ, 4 ವರ್ಷ ಎಂಬ ಮಗುವಿನ ಮೇಲೆ ಹಂಪಯ್ಯ ಎಂಬಾತನು ಅತ್ಯಾಚಾರ ಮಾಡಿರುವ ಬಗ್ಗೆ ದೂರು.

ನಾನು ಈ ಮೇಲೆ ತಿಳಿಸಿರುವ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಮನೆಗಳ ಕೆಲಸ ಮಾಡಿಕೊಂಡು ಜೀವನ ನಡೆಸುತ್ತಿರುತ್ತೇನೆ. ನಾವು 10 ವರ್ಷಗಳ ಹಿಂದೆ ನೇಪಾಳದಿಂದ ಕೆಲಸಕ್ಕಾಗಿ ಬೆಂಗಳೂರಿಗೆ ಬಂದು ಸುಮಾರು 7 ವರ್ಷಗಳಿಂದ ಇದೇ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತೇವೆ.

ನನಗೆ ಒಂದು ಗಂಡು ಮಗು ಹಾಗೂ ಎರಡು ಹೆಣ್ಣು ಮಕ್ಕಳಿರುತ್ತಾರೆ. ನನ್ನ ಗಂಡ ಲಾಲ್ ಬಹದ್ದೂರ್ ಬಿ.ಹೆಚ್.ಇ.ಎಲ್ ಲೇಔಟ್ ನಲ್ಲಿರುವ ಎಸ್.ಎಲ್.ವಿ ಹರಿದಾಮ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನಲ್ಲಿ ಸೆಕ್ಯೂರಿಟಿಯಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದು, ನಾನು ಇದೇ ವಿಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಸೆಕ್ಯೂರಿಟಿ ರೂಮ್‌ನಲ್ಲಿ ವಾಸವಿರುತ್ತೇವೆ. ನನ್ನ ಗಂಡ ಲಾಲ್ ಬಹದ್ದೂರ್ ರವರು ಮೂರು ವರ್ಷದ ಹಿಂದೆ ಮೃತಪಟ್ಟಿದ್ದು, ನಾನು ನಮ್ಮ ಅತ್ತೆ ಜೂನಾ, ಮಾವ ಕಲರ್ ಮತ್ತು ಮಕ್ಕಳೊಂದಿಗೆ ಇದೆ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಸೆಕ್ಯೂರಿಟಿ ರೂಮ್‌ನಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತೇವೆ.

ನಾನು ದಿನಾಂಕ 7.6.2022 ರಂದು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು ಒಂದು ಗಂಟೆಯಲ್ಲಿ ನಾವು ವಾಸವಿದ್ದ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಸೆಕ್ಯೂರಿಟಿ ಮನೆಯಲ್ಲಿ ಅಡುಗೆ ಮಾಡುತ್ತಿದ್ದೆನು. ನಮ್ಮ ಅತ್ತೆ ಇದೆ ಮನೆಯ ಪಾರ್ಕಿಂಗ್ ಸ್ಥಳದಲ್ಲಿದ್ದರು. ನನ್ನ ಮಕ್ಕಳಾದ ಶರ್ಮಿಷಾ ಮತ್ತು ಹರ್ಷಿತ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಮುಂಭಾಗದ ರಸ್ತೆಯಲ್ಲಿ ಆಟ ಆಡುತ್ತಿದ್ದರು. ಸುಮಾರು 2 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ನಮ್ಮ ಅತ್ತೆ ನನ್ನ ಎರಡನೇ ಮಗಳಾದ ಹರ್ಷಿತಾಳನ್ನು ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದಿದ್ದು, ನಮ್ಮ ಅತ್ತೆ ತಿಳಿಸಿದ್ದೇನೆಂದರೆ, ನಾವು ವಾಸವಿದ್ದ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನ ಮನೆಯಿಂದ ಎದುರುಗಡೆಯ ಒಂದು ಶೀಟ್ ಮನೆಯಲ್ಲಿ ವಾಸವಿರುವ ಹಂಪಯ್ಯ



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ಎಂಬುವನು ನನ್ನ ಮಕ್ಕಳಾದ ಶರ್ಮಿಳ ಮತ್ತು ಹರ್ಷಿತಾಳನ್ನು ಚಾಕಲೇಟ್ ಕೊಡುತ್ತೇನೆಂದು ಹೇಳಿ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಶರ್ಮಿಳಾಗೆ ಚಾಕಲೇಟ್ ಕೊಟ್ಟು ಮನೆಗೆ ವಾಪಸ್ ಕಳುಹಿಸಿ ಹರ್ಷಿತಾಳನ್ನು ಅವನ ಮನೆಯಲ್ಲಿ ಇರಿಸಿಕೊಂಡಿರುತ್ತಾನೆಂದು ಶರ್ಮಿಳಾ ಮನೆಗೆ ಬಂದು ನಮ್ಮ ಅತ್ತೆಗೆ ಹೇಳಿದ್ದರಿಂದ, ತಕ್ಷಣ ನಮ್ಮ ಅತ್ತೆ ಹಂಪಯ್ಯ ರವರ ಮನೆಗೆ ಬಳಿ ಹೋಗಿ ಮನೆಯ ಕಿಟಕಿಯಲ್ಲಿ ನೋಡಿದಾಗ ಹಂಪಯ್ಯ ನನ್ನ ಮಗಳಾದ ಹರ್ಷಿತಾಳ ಬಟ್ಟೆಗಳನ್ನು ಬಿಚ್ಚಿ ಅವನ ಪ್ಯಾಂಟನ್ನು ತೆಗೆದು ಅತ್ಯಾಚಾರ ಮಾಡುತ್ತಿದ್ದನ್ನು ನೋಡಿ ನಮ್ಮ ಅತ್ತೆ ಬಾಗಿಲು ಬಡೆದಾಗ ಹಂಪಯ್ಯನು ಬಾಗಿಲು ತೆಗೆದು ಓಡಿ ಹೋದನೆಂದು ನಮ್ಮ ಅತ್ತೆ ನನಗೆ ಹೇಳಿದರು.

ನಾನು ನನ್ನ ಮಗಳಾದ ಹರ್ಷಿತಾಳನ್ನು ನೋಡಿದಾಗ ನನ್ನ ಮಗಳ ಬಟ್ಟೆ ಗಲೀಜಾಗಿದ್ದು, ನನ್ನ ಮಗಳ ತುಟಿಗಳು ಉದಿಕ್ಕೊಂಡಿದ್ದವು, ನನ್ನ ಮಗಳ ಮರ್ಮಾಂಗದ ಬಳಿ ಗಾಯವಾಗಿರುವುದು ಕಂಡುಬಂದಿದ್ದು, ಈ ಬಗ್ಗೆ ನನ್ನ ಮಗಳನ್ನು ಕೇಳಿದಾಗ ಹಂಪಯ್ಯ ಎಂಬುವನು ಚಾಕಲೇಟ್ ಕೊಡುವುದಾಗಿ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನ ಬಟ್ಟೆ ಬಿಚ್ಚಿ ತುಟಿ ಕಚ್ಚಿ ಈ ರೀತಿ ಮಾಡಿರುತ್ತಾನೆ ಎಂದು ಹೇಳಿದಳು.

ನಮ್ಮ ಮನೆಯ ಮುಂದೆ ಹಂಪಯ್ಯ ಎಂಬುವನು ಬಾಸವಾಗಿದ್ದು, ಆಗಾಗ ನನ್ನ ಮಕ್ಕಳನ್ನು ಮಾತನಾಡಿಸಿ ಚಾಕಲೇಟ್ ಕೊಡುತ್ತಿದ್ದು, ನಮಗೆ ಪರಿಚಯದವನಾಗಿರುತ್ತಾನೆ. ಈ ದಿನ ಮಧ್ಯಾಹ್ನ ನನ್ನ ಮಗಳಾದ ಹರ್ಷಿತಾಳಿಗೆ ಚಾಕಲೇಟ್ ಕೊಡುವುದಾಗಿ ನಂಬಿಸಿ ಮನೆಯ ಒಳಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನ ಮಗಳಿಗೆ ಲೈಂಗಿಕವಾಗಿ ಹಲ್ಲೆ ನಡೆಸಿರುತ್ತಾನೆ.

ನನ್ನ ಮಗಳು ತುಂಬಾ ಸುಸ್ತಾಗುತ್ತಿದೆ, ಮೈಕ್ಕೆ ನೋವು ಆಗುತ್ತಿದೆ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ಸ್ನಾನ ಮಾಡಿಸಿರುತ್ತೇನೆ ಹಾಗೂ ನನ್ನ ಮಗಳ ಬಟ್ಟೆಗಳನ್ನು ವಾಷ್ ಮಾಡಿರುತ್ತೇನೆ. ಈ ವಿಚಾರವಾಗಿ ನನಗೆ ಏನು



ಮಾಡಬೇಕೆಂದು ತಿಳಿಯದ ಕಾರಣ ನನಗೆ ಪರಿಚಯದವರಲ್ಲಿ ತಿಳಿಸಿ
ತಡವಾಗಿ ಬಂದು ದೂರು ನೀಡಿರುತ್ತೇನೆ.

ನನ್ನ ಅಪ್ರಾಪ್ತ ಮಗುವಿಗೆ ಚಾಕಲೇಟ್ ಕೊಡುವುದಾಗಿ ನಂಬಿಸಿ
ಮನೆಯ ಒಳಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಲೈಂಗಿಕ ಹಲ್ಲೆ ನಡೆಸಿರುವ
ಹಂಪಯ್ಯ ಎಂಬುವನ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು
ಕೋರುತ್ತೇನೆ."

15. A careful examination of Complaint-Exhibit P1 makes it crystal clear that on the basis of the information given by PW2-Juna, PW1-Roshini has lodged a complaint. In Exhibit P1, it is said that she has stated the contents of the complaint in Hindi. Same is also shown in Exhibit P1. During the course of cross-examination of PW1, she has deposed that she does not know the contents of Exhibit P1. She does not know to read or write and the Police took her LTM near her house on Exhibit P1. PW1 has stated that, on the date of incident, though police took Neela, Marappa, Prashanta, Venkatesha and Chandra, but have not taken any action against Neela, Prashanth and Marappa and filed false charge against the present accused. But, Exhibit P12-FIR reveals that the case is



registered only against Hampaiiah and not the other accused. Mere statement of PW1 as to the other accused, does not mean that other three accused are also involved in the offence. During the course of cross-examination, PW1 has clearly admitted that one Shyam, a local resident, has said that she has to speak according to what the police have told her, otherwise she will be in trouble. This argument advanced on behalf of the accused, cannot be accepted.

16. PW29-Loka Reddy, Police Sub-Inspector who has registered the case, has also deposed that through the help of station staff he has reduced the complaint in Kannada language. He has translated the statement given by PW1 in Hindi. But the same is not endorsed on Exhibit P1. Even the name of the staff is not disclosed by the IO. The IO has not cited him as a witness. Therefore, it is clear that PW1 has not given complaint as per Exhibit P1.



17. PW2-Juna, who is an eye-witnesses, has deposed in her evidence that she is the witness to the alleged incident which she has seen through the broken window. But the same is not stated in the Complaint-Exhibit P1. During the course of cross-examination of PW2, Exhibit D1 was confronted. She has clearly admitted that there is no window. Exhibit P3 is the statement of eye-witnesses recorded under 164(5) of Code of Criminal Procedure. PW13-IO has deposed in examination-in-chief that he has submitted request to the Court to record evidence under Section 164(5) of Code of Criminal Procedure. The statement of CW2 was recorded on 22nd June, 2022 as per Exhibit P20. The Magistrate has recorded the statement of PW2-Juna on 06th July, 2022, after lapse of about one month. The IO produced Juna before the Magistrate to record the statement under Section 164(5) of Code of Criminal Procedure. Though the content of Exhibit P1 does not reveal as to the broken window, for the first time before the court while recording Statement under Section



164(5) of Code of Criminal Procedure, she has deposed that she has witnessed the alleged incident through broken window. But the evidence of PW2 will falsify Exhibit D1 photo that there is no broken window to the sheet house in question. Spot mahazar Exhibit P2, dated 08th June, 2022 reveals that there is a broken window to the room measuring 10 ft x 10 ft. Though the IO has conducted mahazar on 08th June, 2022, the same is not placed before the Court. Only at the time of filing charge-sheet, the IO has produced this document. The IO has not explained anything as to delay in producing witnesses PW2 before the Magistrate for recording the statement under Section 164(5) of Code of Criminal Procedure. The inordinate delay in recording the statement under the said section, and the delay in producing spot mahazar will falsify the evidence of prosecution witnesses. Therefore, it is clear that PW2 is not an eye-witness to the incident.

18. With regard to the evidence of victim, the trial Court has examined this witness as PW15. She has given her



Section 164 Code of Criminal Procedure statement as under:

"ನನ್ನ ಮಗ ತೀರಿಕೊಂಡಿದ್ದು ಅವರಿಗೆ ಐದು ಜನ ಮಕ್ಕಳಿದ್ದು ನಾವು ಹರಿರಾಮನ್ ಬಿಲ್ಡಿಂಗ್ ನಲ್ಲಿ ನಾನು ನನ್ನ ಸೊಸೆ ಹಾಗೂ ನನ್ನ ಮೊಮ್ಮಕ್ಕಳ ಒಟ್ಟಿಗೆ ಇದ್ದು ನಾನು ಮತ್ತು ನನ್ನ ಸೊಸೆ ಇಬ್ಬರು ಮನೆ ಕೆಲಸ ಮಾಡಿಕೊಂಡು ಇರುತ್ತೇವೆ. ಗಾರೆ ಕೆಲಸ ಮಾಡುವ ವೃತ್ತಿಯು ನಮಗೆ ಚಿರಪರಿಚಿತನಾಗಿರುತ್ತಾನೆ. ಆತ ನಮ್ಮ ಕಟ್ಟಡದಲ್ಲಿಯೇ ಶೀಟ್ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾನೆ. ಸದರಿ ವೃತ್ತಿ ನನ್ನ ಮಗನ ನಾಲ್ಕುವರೆ ವರ್ಷದ ಮಗಳಾದ ಹರ್ಷಿತಾಳನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿ ಅವನ ಶೀಟ್ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಾಗಿಲು ಹಾಕಿಕೊಂಡಿರುತ್ತಾನೆ. ಮತ್ತೊಬ್ಬ ಮೊಮ್ಮಗಳಾದ ಶರ್ಮಿಷ್ಠವನ್ನು ಶೀಟ್ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುವ ವೃತ್ತಿ ಹರ್ಷಿತಾಳನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಾಗಿಲು ಹಾಕಿಕೊಂಡಿದ್ದಾನೆ ಎಂದು ತಿಳಿಸಿದ್ದ ಕಾರಣ ನಾನು ಆತನ ಶೀಟ್ ಮನೆಗೆ ಹೋಗಿ ಅದರಲ್ಲಿದ್ದ ಸಣ್ಣ ಕಿಂಡಿಯಿಂದ ನೋಡಲಾಗಿ ನನ್ನ ಮೊಮ್ಮಗಳ ಬಟ್ಟೆ ತೆಗೆದು ಉಲ್ಟಾ ಮಲ್ಲಿಗಿಸಿ ಅತ್ಯಾಚಾರ ನಡೆಸುತ್ತಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ನಾನು ಅಸಹಾಯಕಳಾಗಿ ಕಿರುಚಿಕೊಂಡು ಹೋಗಿ ನನ್ನ ಮೊಮ್ಮಗಳನ್ನು ಕರೆದುಕೊಂಡು ಬಂದಿರುತ್ತೇನೆ. ನಂತರ ನನ್ನ ಸಂಬಂಧಿಕರ ಜೊತೆ ಚರ್ಚಿಸಿ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ದೂರು ನೀಡಿರುತ್ತೇನೆ. ದಿನಾಂಕ 07.06.2022 ರಂದು ಈ ಘಟನೆ ನಡೆದಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ನನ್ನ ಮೊಮ್ಮಗಳ ಮೇಲೆ ಅತ್ಯಾಚಾರ ಮಾಡಿದ ವೃತ್ತಿಯ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂದು ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ."

19. The statement given by child-PW15, who is not cited as witness in the charge-sheet, makes it clear that only at the instance of her mother, she has deposed as the



accused committed the offence. In chief-examination made by the Public Prosecutor, PW15 has deposed as under:

ಪ್ರಶ್ನೆ: ಚಾಸಾ.2 ನಿನಗೆ ಏನಾಗಬೇಕು ?

ಉತ್ತರ: ಸಾಕ್ಷಿ ಉತ್ತರಿಸಿರುವುದಿಲ್ಲ.

ಪ್ರಶ್ನೆ: ಚಾಸಾ.1 ನಿನಗೆ ಏನಾಗಬೇಕು ?

ಉತ್ತರ: ಅಮ್ಮನಾಗಬೇಕು.

ಪ್ರಶ್ನೆ: ತಂದೆ ಎಲ್ಲಿದ್ದಾರೆ ?

ಉತ್ತರ: ಇಲ್ಲ ಎಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ.

ಪ್ರಶ್ನೆ: ನೀನು ಏನು ಓದುತ್ತೀಯಾ ?

ಉತ್ತರ: ಯು.ಕೆ.ಜಿ.

ಪ್ರಶ್ನೆ: ಹಂಪಯ್ಯ ಗೊತ್ತಾ?

ಉತ್ತರ: ಗೊತ್ತು.

ಪ್ರಶ್ನೆ: ನಿಮಗೆ ಪ್ರಕರಣದಲ್ಲಿ ಏನು ತೊಂದರೆಯಾಗಿದೆ?

ಉತ್ತರ: ಸಾಕ್ಷಿ ಉತ್ತರಿಸಿರುವುದಿಲ್ಲ.

ಪ್ರಶ್ನೆ: ಹಂಪಯ್ಯ ಏನು ತೊಂದರೆ ಮಾಡಿದ್ದಾನೆ?

ಉತ್ತರ: ನಾನು ಆಟವಾಡುತ್ತಿದ್ದ ಆಗ ಆತ ನನಗೆ ಚಾಕಲೇಟ್ ಕೊಟ್ಟು ತಪ್ಪು ನಡೆದುಕೊಂಡ.

ಪ್ರಶ್ನೆ: ಯಾವ ರೀತಿ ತಪ್ಪು ಮಾಡಿದ?

ಉತ್ತರ: ನನ್ನ ಬಟ್ಟೆ ಬಿಚ್ಚಿದ ಮತ್ತು ತಪ್ಪು ಮಾಡಿದ್ದಾನೆ."

20. In her cross-examination, PW.15 has deposed as follows:



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"ನನ್ನ ಅಕ್ಕನ ಹೆಸರು ಶರ್ಮಿಷ್ಠ ಎಂದು

ಪ್ರಶ್ನೆ: ಯಾರು ಯಾರು ಆಟವಾಡುತ್ತಿದ್ದೀರಿ?

ಉತ್ತರ: ನಾನು, ನನ್ನ ಅಕ್ಕ ಮತ್ತು ಪ್ರಿಯ

ಪ್ರಶ್ನೆ: ನಾನು, ನನ್ನ ಅಕ್ಕ ಮತ್ತು ಪ್ರಿಯ ಶಾಲೆಗೆ ಹೋಗುತ್ತೀರಾ?

ಉತ್ತರ: ಹೋಗುತ್ತಿದ್ದೇವೆ

ಪ್ರಶ್ನೆ: ಬೆಳಿಗ್ಗೆ 10 ಗಂಟೆಗೆ ಶಾಲೆಗೆ ಹೋಗಿ ಸಂಜೆ 4:30ಕ್ಕೆ

ಶಾಲೆಯಿಂದ ವಾಪಸ್ ಬರುತ್ತೀರಾ?

ಉತ್ತರ: ಹೌದು

ಪ್ರಶ್ನೆ: ಈ ಹಿಂದೆ ಕೋರ್ಟಿಗೆ ಬಂದಾಗ ಕಪ್ಪು ಕೋಟು

ಹಾಕಿಕೊಂಡವರು ಅವರ ಆಫೀಸಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿದ್ದರಾ?

ಉತ್ತರ: ಸಾಕ್ಷಿ ಉತ್ತರಿಸಿರುವುದಿಲ್ಲ

ಪ್ರಶ್ನೆ: ಹಂಪಯ್ಯನ ಹೆಸರು ನಿನ್ನ ಅಜ್ಜಿ ಮತ್ತು ಅಮ್ಮ ಹೇಳಿದ್ದರಿಂದ

ಗೊತ್ತಾಯಿತು ಎಂದರೆ?

ಉತ್ತರ: ಸಾಕ್ಷಿ ಉತ್ತರಿಸಿರುವುದಿಲ್ಲ

ಪ್ರಶ್ನೆ: ಹಂಪಯ್ಯ ನನಗೆ ತಪ್ಪು ಮಾಡಿದ ಎಂದು ನಿನ್ನ ಅಮ್ಮ

ಹೇಳಿದ್ದರಿಂದ ಆತನ ಹೆಸರು ಹೇಳುತ್ತಿದ್ದೀಯಾ ಎಂದರೆ?

ಉತ್ತರ: ಸಾಕ್ಷಿ ಉತ್ತರಿಸಿರುವುದಿಲ್ಲ

ಪ್ರಶ್ನೆ: ಹಂಪಯ್ಯ ಏನು ತಪ್ಪು ಮಾಡಿಲ್ಲ ಎಂದರೆ?

ಉತ್ತರ: ಸಾಕ್ಷಿ ತಪ್ಪು ಮಾಡಿದ್ದಾನೆ

ಪ್ರಶ್ನೆ: ನನ್ನ ತಾಯಿ ಹೇಳಿದ್ದರಿಂದ ಹಂಪಯ್ಯ ತಪ್ಪು ಮಾಡಿದ್ದಾನೆ

ಎಂದು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ?

ಉತ್ತರ: ಹೌದು

ಪ್ರಶ್ನೆ: ಈಗ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಇರುವ ಆರೋಪಿಯನ್ನು

ಇದೇ ಮೊದಲ ಬಾರಿಗೆ ನೋಡುತ್ತಿದ್ದೇನೆ ಎಂದರೆ?



ಉತ್ತರ: ಸಾಕ್ಷಿ ಹೌದು ಎಂದು ತಲೆ ಅಲ್ಲಾಡಿಸಿರುತ್ತಾಳೆ

ಪ್ರಶ್ನೆ: ನಿಮಗೆ ತಪ್ಪು ಮಾಡಿದ ವ್ಯಕ್ತಿ ಈ ಆರೋಪಿ ಅಲ್ಲ ಎಂದರೆ?

ಉತ್ತರ: ಸರಿಯಲ್ಲ

ಪ್ರಶ್ನೆ: ಸದರಿ ಆರೋಪಿಯನ್ನು ನನ್ನ ತಾಯಿ ತೋರಿಸಿ ಇದೇ ವ್ಯಕ್ತಿ
ತಪ್ಪು ಮಾಡಿದವನು ಎಂದು ಹೇಳು ಎಂದು ಹೇಳಿದ್ದರಿಂದ
ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ?

ಉತ್ತರ: ಹೌದು"

21. Further, PW15 has not deposed in her evidence as to penetrative sexual assault said to have been committed by the accused.

22. With regard to medical evidence, the prosecution has produced Exhibit P6-Medico-legal examination of sexual violence of the victim, in which it is stated as under:

"Informant- mother, grand mother, Roshini

The victim was lured by the Mr. Hamppaiah by giving a chocolate and took the victim to a shed near the victim residence at around 1 pm. The victim's grandmother Juna saw through the window of the assailant that he has opened the pants of the victim and was having sexual intercourse forcefully then both grandmother and mother ran to the



assailant residence to save the victim , but he ran away by then. The victim was given bath and washed the victim clothes after the incident."

23. To substantiate this, the prosecution has examined PW5-Dr. Kavita Rani. She has deposed in her evidence as to the injuries found on the victim and also as to issuance of certificate as per Exhibit P6. PW5 has also deposed as to Exhibit P7-FSL Report, in which, the result of examination, is shown as under:

"There is evidence (clinical) suggestive of forceful peno-vaginal and peno-anal intercourse, by the physical injuries and genital injuries present."

24. The same is also admitted by PW5. Therefore, it is crystal clear that there is no medical evidence to prove the alleged penetrative sexual assault said to have been committed by the accused.

25. It is submitted by the learned counsel for the accused that the accused was not present at the time of alleged incident and he was working somewhere else. In



this regard, PW11 has deposed that the accused, his elder brother, elder sister and his brother-in-law were working in the site between 09.30 p.m. to 06.00 p.m.

26. PW9-Venkatesh has also deposed the same in his evidence. But this stray admission of PW9 is not sufficient to come to a conclusion that the accused was not present at the time alleged incident. The accused has not adduced any defence evidence in this regard. Hence, the argument advanced by the accused counsel cannot be accepted.

27. Considering the wounds found on the injured victim as in Exhibit P6 and evidence of medical officer-PW5 and the evidence of victim as to the removal of clothes by this accused, establishes that the accused has committed the offence of sexual assault as defined under Section 7 of the POCSO Act, 2012. Accordingly, the prosecution has proves that the accused has committed the offence under Section 8 of POCSO Act 2012.



28. On careful examination of the entire materials on record, I do not find any cogent, clinching, corroborative or trustworthy evidence to convict the accused for the offence under Section 376(3) of Indian Penal Code and Section 3 read with 4(2) of POCSO Act.

29. Further, it is submitted by the learned counsel for the accused that the accused was arrested on 08th June, 2022, he is in judicial custody for a period of 3 years, 8 months and 15 days, as on today. Considering the other evidence, I am of the opinion that the alleged offence attract the offence punishable under Section 8 of POCSO Act. Accordingly, I answer Point No.1 in the negative and Point No.2 in the affirmative.

Regarding Point No.3:

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

ORDER



- i) Appeal is allowed in part;
- ii) Order on Sentence dated 23rd November, 2024 passed in Spl. CC No.1978 of 2022 by the Additional City Civil and Sessions Judge, FTSC-IV at Bengaluru for the offence under Section 3 read with 4(2) of POCSO Act, 2012, is set aside. However, accused is convicted for the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 for a period of three years, eight months and fifteen days, along with a fine of Rs.1,000/-, in default of payment of fine, the accused shall undergo simple imprisonment for a period of one month;
- iii) The accused has already undergone period of sentence for 3 years 8 months and 15 days. The accused is entitled for benefit of set-off under Section 428 of Code of Criminal Procedure for the period spend from the date of arrest, i.e. from 08th June, 2022, till date;
- iv) The Member Secretary, District Legal Services Authority, Bangalore Urban is directed to take necessary steps for disbursal



of compensation awarded to victim under the Victim Compensation Scheme, in view of modification of sentence by the trial Court, in accordance with law;

- v) Registry is directed to send the copy of this judgment along with conviction warrant to the jail authorities;
- vi) Registry is also directed to send the copy of the judgment to Member Secretary, District Legal Services Authority, Bangalore Urban for compliance.

Sd/-
(G BASAVARAJA)
JUDGE

Inn, KBM
List No.: 1 Sl No.: 44