



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1892 OF 2018 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY POLICE INSPECTOR
PANAMBUR POLICE STATION
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SMT. RASHMI PATEL, H.C.G.P.)

AND:

1. THOUSIF @ ABUBAKER SIDDIQ
S/O. LATE M. AHAMED
AGED 28 YEARS
RESIDING AT HOUSE NO.8/127
KANA, INDIRA KATTE, SURATHKAL POST
MANGALURU-575 014.
2. ZUBEDA
W/O. LATE KHASIM
AGED 44 YEARS
RESIDING AT SUNDARA APARTMENT
1ST FLOOR, DOOR NO.101
BRITTO LANE, FALNIR
MANGALURU-575 001.

...RESPONDENTS

(BY SRI KETHAN KUMAR, ADVOCATE, FOR
SRI ABHISHEK MARLA, FOR R-1, AND
SMT. POOJA KATTIMANI, ADVOCATE, FOR
SRI DINESH KUMAR K. RAO, FOR R-2)





THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 26-4-2018 PASSED IN SPECIAL CASE NO.87 OF 2014 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS (SPECIAL) JUDGE, D.K., MANGALURU, IN SO FAR AS IT RELATES TO ACQUITTING RESPONDENT NO.1-ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366A, 376(2)(i) AND 506 OF IPC AND UNDER SECTION 4 OF POCSO ACT, AND IN SO FAR AS IT RELATES TO ACQUITTING RESPONDENT NO.2-ACCUSED NO.2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 16 AND 17 OF POCSO ACT, AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard Smt. Rashmi Patel, learned High Court Government Pleader appearing for the appellant-State, Sri Kethan Kumar, learned counsel appearing for Sri Abhishek Marla, learned counsel for respondent No.1-accused No.1, Smt. Pooja Kattimani, learned counsel for Sri Dinesh Kumar K. Rao, learned counsel for respondent No.2-accused No.2, and perused the material available on record.



2. This appeal is filed by the State against the judgment of acquittal dated 26.04.2018 passed by the II Additional District and Sessions (Special) Judge, D.K., Mangaluru, in Special Case No.87 of 2014 in so far as accused No.1 for the offences punishable under Sections 366A, 376(2)(i) and 506 of the Indian Penal Code, 1860 (for short, 'IPC') and under Section 4 the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and in so far as accused No.2 for the offences punishable under Sections 16 and 17 of POCSO Act, and prays to convict accused Nos.1 and 2 for the charges levelled against them.

3. The factual matrix of the case of the prosecution is that PW2, victim girl, aged about 16 years, lodged a complaint alleging that she had already passed 10th Standard and she is living with her parents. She has stated that two years prior to the incident, while the victim was going to School, accused No.1, who is from the same locality and who is known to her, used to follow her and used to say that, he is loving her and she rejected his proposal. She has further stated that on the previous day of lodging the complaint i.e. on 12.06.2014 in the



evening at about 5.00 p.m., she had been to Panambur Beach, accused No.1 followed her even there by saying he is loving her and requested her to come with him to Mangaluru. They stayed in the Beach up to 9.00 p.m. in the night. Believing the words of accused No.1, she went to Mangaluru along with him. In the night at about 11.00 p.m., accused No.1 brought her to a flat of accused No.2 near Athena Hospital and introduced accused No.2 as Zubeda as his relative. Further, accused No.2 encouraged the victim saying that she should not get frightened and asked accused No.1 and the victim to sleep in a room in her house. Accordingly, both of them slept in the room, after a while, accused No.1 committed sexual intercourse on the victim, without her consent and when she shouted loudly, accused No.1 threatened her stating that she should not disclose the matter to anybody and if she discloses, he will not spare her alive, and committed sexual intercourse up to 12.30 a.m. in the midnight. The next morning, without any other alternative, the victim made a telephone call to her mother, PW3, and as per the advice of her mother, she managed to come out of that house in the evening at about 4.30 p.m. and came to Baikampady and from there, along with



her mother, she went to the Police Station and lodged the complaint-Ex.P3 and the same was received by PW12-Woman Sub-Inspector of Police and in turn, she registered the case in Crime No.105 of 2014 as per Ex.P13.

4. Investigation was continued by PW14-Circle Inspector of Police. On 14.06.2014, he visited the spot and conducted the spot mahazar in the house of accused No.2 as pointed out by the victim, i.e. house on the east side, bearing Door No.17-18-1372/3 on the first floor of Sundara Apartment by the side of Kaprigudde Road as per Ex.P1. It is stated that at the time of drawing spot mahazar, MO1-bed sheet on the cot and MO2-cooling glass of accused No.1, which he had left behind, were seized as pointed out by the victim. As per the instructions of PW14, accused No.1 was traced and arrested near Surathkal Bus Stand by PW12-Woman Sub-Inspector of Police. The voluntary statement of accused No.1 was recorded and accused No.2 was also arrested. Accused Nos.1 and 2 were subjected to medical examination and thereafter, they were produced before the Court. Investigation was continued by PW13-Inspector of Police, who collected the copy of the rental agreement-Ex.P10



of accused No.2, obtained Ex.P14-Date of Birth Certificate from the concerned School, obtained attested copy of Ex.P15-S.S.L.C marks card of the victim and the Date of Birth of the victim is mentioned as 18.06.1998. The statements of witnesses were recorded. The victim was produced before the Magistrate and statement of the victim was recorded in terms of Ex.P4. After completion of the investigation, PW13 filed the charge-sheet and also obtained Ex.P7-FSL report and Ex.P8-medical certificate of the victim.

5. The trial Judge, after having received the charge-sheet, heard the respective learned counsel for the parties and framed the charges. Accused Nos.1 and 2 did not plead guilty and pleaded trial. The prosecution examined fourteen witnesses as PW1 to PW14, got marked Exs.P1 to P15 and marked MOs.1 and 2. After closure of the evidence of the prosecution witnesses, the statements of accused Nos.1 and 2 were recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and they denied the incriminating evidence and did not lead any defence evidence.



6. The trial Court having considered both oral and documentary evidence available on record held that the charges levelled against accused Nos.1 and 2 are not proved. The story projected by the prosecution appears to be very artificial. Absolutely, there is no evidence to show that accused No.1 kidnapped the victim. On contrary, the evidence would show that the victim had voluntarily accompanied accused No.1 and further observation is made that, there is not even a single in-mate of the apartment, who has witnessed accused No.1 entering into the house of accused No.2 and hence, granted the benefit of doubt in favour of accused Nos.1 and 2 and acquitted them. Being aggrieved by the judgment of acquittal passed against accused Nos.1 and 2, the present appeal is filed by the State.

7. Learned counsel appearing for the appellant-State would vehemently contend that the trial Court committed error in not appreciating the oral and documentary evidence in proper perspective, which has resulted in miscarriage of justice; absolutely, there is no deliberation and discussion on the evidence of the prosecution witnesses and no reasoned



judgment has been passed and has reached at a wrong conclusion. She contends that the victim girl has been examined as PW2 and she has categorically deposed before the Court that accused No.1 took her to the house of accused No.2, wherein, accused No.1 subjected her for sexual act. She also contends that MO1-bed sheet contains the bloodstains and the same is proved by the FSL report. She contends that the accused knowingly well that the victim, aged about 16 years, subjected her for sexual act and the document, which is produced before the Court, i.e. Matriculation Certificate (S.S.L.C. marks card) is very clear that the victim is aged 16 years. She further contends that the trial Court failed to appreciate that these accused have not discharged their burden cast upon them under Sections 29 and 30 of POCSO Act and ought to have drawn adverse interference against them and convicted them. Further, the trial Court has not appreciated the evidence of the victim though it is cogent, consistent and corroborated by the evidence of other witnesses. Hence, on all these grounds, she prays for interference of this Court.



8. *Per-contra*, learned counsel appearing for respondent No.1 in his argument would submit that the very case of the prosecution and genesis of the crime is doubtful and he brought to the notice of this Court that victim PW.2 in her evidence before the Court stated that her parents have given complaint that she was missing and that on 13th, Police Smt. Bharti came along with police staff and took her to Panambur Police Station and at that time, her parents were there in the station and hence she has given the complaint in terms of Ex.P3 and also identifies her signature. Learned counsel also brought to the notice of this Court to the evidence of PW.12, who is the Investigating Officer. In his evidence, in paragraph No.2, he says that on 13.06.2014, when he was in police station at around 09.30 p.m. PW.2 Udaya Prabha appeared before the police station and has given the written complaint and the same is registered in Crime No.105/14 and sent the FIR to the court and the statement of PW.12 as well as statement of PW.2 victim is contrary to each other with regard to the genesis of the crime and with regard to the law set in motion. Learned counsel also brought to the notice of this Court to the evidence of PW.3 mother of the victim, that she went and lodged the



complaint of missing of her daughter and also on 12th itself, accused No.1 came and told her that she knows the whereabouts of her daughter and PSI Bharathi took accused No.1 to the police station and so also brought her daughter to the police station and both accused No.1 and PW.2 were already there in the Panambur police station and she does not know as to when the case was registered and the statement of PW.3 is also contradictory to the evidence of PW.2 and PW.12 and hence the very case of the prosecution is doubtful. Learned counsel also would submit that PW.2 in her cross examination categorically admits that accused No.1 was not in the house of accused No.2. Learned counsel also would vehemently contend that the victim while giving her statement before the learned Magistrate under Section 164 Cr.P.C., her father's name is mentioned as Biju Kumar and in the SSLC marks card, her father's name is mentioned as Prabhakar and the very victim PW.2 itself is doubtful and no explanation is given by the prosecution with regard to the same. Learned counsel also would submit that the author of the document for proof of age of the victim was not examined before the court and the same cannot be relied upon and hence, the question of victim being



aged about 16 years at the time of the incident also cannot be accepted and all these factors were taken note of by the trial Court and rightly acquitted the accused.

9. Learned counsel further submits that the oral testimony of PW.1, the evidence of the Doctor and the documentary evidence also do not support the case of the prosecution and the same is also taken note of by the trial Court while acquitting the accused and hence it does not require any interference.

10. Learned counsel for respondent No.1 would vehemently contend that age of the victim girl was not proved before the Court and only relies upon the document of Matriculation Certificate Ex.P15 and Ex.P14 is the Age Certificate issued by the School Authority and the same cannot be relied upon, since the same is not proved by examining the competent authority. Hence, she cannot be termed as minor. The said contention cannot be accepted for the reason that the Apex Court in the judgment in **P.YUVAPRAKASH vs. STATE REP. BY INSPECTOR OF POLICE** in **CRIMINAL APPEAL NO(S).1898 OF 2023** dated **18.07.2023** at paragraph No.11



taken note of Section 34 of POCSO Act, which reads as hereunder:

"34 Procedure in case of commission of offence by child and determination of age by Special Court. – (1)

Where any offence under this Act is committed by child, such child shall be dealt with under the provisions of Juvenile Justice (Care and Protection of Children) 2015, (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of person as determined by it under sub-section (2) was not the correct age of that person"

The Apex Court also observed that in view of Section 34(2) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable, the same is extracted herein 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 concerned examination Board, 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."

11. 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 reference 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 concerned Court has to determine the age by considering the following documents:

"(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, 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”.

12. 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 concerned examination board 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*".

13. Having considered the discussion made by the Apex Court in the judgment referred (supra), it is very clear that at the first instance, matriculation or equivalent certificate has to be taken note of. In the case on hand, the same is placed before the Court and though, the author is not examined before the Court, the same is an authenticated document, wherein date of birth of the victim is mentioned as 18.06.1998 and date



of the incident is 12.06.2014 and at that time, the victim was aged about 15 years 11 months. The counsel also vehemently contends that Ex.P15 does not belong to the victim and name of father is mentioned as Prabhakara and while giving her statement before the Court, her father's name was mentioned as Biju Kumar. The same has been clarified by the prosecution while examining P.W.3. The P.W.3 deposed before the Court that her first husband is Prabhakara and her second husband is Biju Kumar, who is also cited as C.W.7 and specifically deposed that her daughter's father's name is mentioned in the School Certificate as Prabhakara and the same is not disputed during the course of cross-examination of P.W.3. Hence, the contention of learned counsel for respondent No.1 cannot be accepted and only suggestion was made that she has not stated the same before the Investigating Officer that her first husband's name is Prabhakara and except this suggestion, no other suggestion that her first husband was not Prabhakara. The Investigating Officer, who was examined as P.W.13 also clarified and explained in paragraph No.4 that he has recorded the further statement of P.W.3 that her second husband's name Biju Kumar and in the school documents also, name of the



father of the victim is mentioned as Prabhakara. When such clarification is also given by the Investigating Officer as well as P.W.3, the very contention of learned counsel for respondent No.1 cannot be accepted.

14. Learned counsel appearing for respondent No.2/accused No.2 would submit that none of the witnesses speaks as to accused No.1 and PW.2 being together and also clear admission is given by PW.2 victim in her cross examination that accused No.1 was not in the house of accused No.2. Learned counsel also would submit that even though bed spread was seized in the house of accused No.2, witness PW.4 and other recovery witnesses have turned hostile. PW.8 depose before the Court that his wife Smt. Vijayashree B. Poonja is the owner of the premises and the evidence of PW.8 also will not come to the aid of the prosecution. Learned counsel also would submit that in order to invoke Sections 16 and 17 of the POCSO Act, none of the witnesses have spoken about accused No.2 abetting accused No.1 to have sexual intercourse with the victim girl and in the absence of any



ingredient of offence under Sections 16 and 17 of POCSO Act, question of convicting accused No.2 does not arise.

15. In reply to this argument, learned H.C.G.P appearing on behalf of the appellant/State would submit that PW.2 speaks about the recovery and her evidence is very clear that mahazar was conducted in the house of accused No.2 and other witnesses also speaks about mahazar being conducted in the house of accused No.2; that PW.2 also speaks that accused No.2 took the premises of PW.8 on rent and hence the prosecution also made out the case against accused No.2 also.

16. Having heard learned H.C.G.P appearing for the appellant/State and also learned counsel appearing for respondents/accused Nos.1 and 2 and considering both oral and documentary evidence available on record, the point that would arise for consideration of this Court are:-

1. Whether the trial Court committed an error acquitting accused Nos.1 and 2 of the charges levelled against them?
2. What order?



17. Having taken note of the evidence available on record and also the charges framed against accused Nos.1 and 2, we have given our anxious consideration to both oral and documentary evidence available on record. No doubt, as pointed out by learned counsel appearing for accused No.1/ respondent No.1, there is discrepancy in the evidence of PW.2 and PW.12 and also the evidence of PW.3 with regard to the genesis of the crime and they have given different versions. PW.12 says that PW.2 came and lodged the written complaint in the police station. But PW.2 says that PSI Bharati, came and took both of them and PW.3 also gives different version. However, the contradictions, which are available before the Court will not go to the very root of the case of the prosecution and the same is only infirmity and irregularity in the evidence of PW.2, PW.3 and PW.12 with regard to the genesis of the crime is concerned. But the fact is that a missing complaint was given by PW.3 at the first instance in the police station that her daughter is missing and also the evidence of PW.3 is very clear that on the very same day of lodging of the complaint, accused No.1 came and informed her that he knows the whereabouts of



her daughter. But PW.3 says that PSI Bharati took accused No.1 when he came and informed the same and also brought her daughter to the police station and again she says that both of them were there in the police station. The evidence of PW.2 is very clear that Smt. Bharati, PSI came and took her to Panambur police station. Hence, it is very clear that PSI Bharati only secured accused No.1 and PW.2 to the police station. But the version of PW.2 victim is contrary to the same. Though there is discrepancy in respect of genesis of crime is concerned, the Court has to examine the other evidence available before the Court. PW.2 victim was taken to the Magistrate at the first instance and her statement was recorded as per Ex.P4, wherein she has categorically stated before the court that she has studied upto 10th Standard and accused No. 1 is her neighbour, he was forcing her to love him, but she refused and thereafter started to love him and having come to know about the same, her parents were beating and abusing her and that on 12.06.2013, she called accused No.1 and informed him about her parents giving trouble to her and requested for his help and the same was agreed by accused No.1 and he took her to a beach and also made the promise that he would make



accommodation in his relatives' house and thereafter, he took her to an apartment and in the said apartment, a lady, a boy and a girl were there and accused No.1 instructed her to be in the room of the said flat and accused No.1 subjected her for sexual act as against her wish and when she screamed, the lady, who was in the said apartment informed her not to scream. On the next day, she came to know that the said lady was running a brothel in the said house. That accused No.1 having subjected her for sexual act informed her to be in the said house and he would come and take her on the next day morning, however, he did not come to take her; that accused No.1 promising her to marry her, subjected her for sexual act against her will. Hence, she gave the complaint at Panambur Police Station. Said statement under Section 164(5) Cr.P.C. made by victim PW.2 before the learned Magistrate is marked as Ex.P4. Hence, this Court has to examine the evidence available before the Court when the victim was examined before the Court i.e. PW.2. PW.2 victim in her evidence also categorically says that she and accused No.1 were there in the beach and accused No.1 informed her that he would marry her and in the evening, accused No.1 took her to an apartment and



made her to sit in the room and accused No.2 told her not to be scared and accused No.1 subjected her for sexual act in the said room against her will and the said sexual act was against her consent and on the complaint by her parents, she was taken to Panambur police station by Smt. Bharathi and she gave a complaint in terms of Ex.P3 and based on the said complaint, spot mahazar was conducted in terms of Ex.P1 and after 15 days, she gave statement before the learned magistrate in terms of Ex.P4. This witness was subjected to cross examination and during the course of cross examination, it is elicited with regard to the fact of her parents scolding and assaulting and also parents have given the complaint that she was missing and also even after lodging the complaint, she did not want to join her parents and without informing the parents, she left the house and though answer is elicited from the mouth of PW.2 that she knows what is right and what is wrong, she volunteers that she was a minor. It is also elicited that she was having love against accused No.1. But in the cross examination of PW.2, nothing is suggested to PW.2 that accused No.1 did not subject her for sexual act as against her wish and except an omnibus suggestion that no such incident



has taken place as deposed in her chief examination, there is no effective cross examination of PW.2 with regard to the sexual act done by accused No.1 during the course of cross examination. No doubt, in the cross examination by learned counsel for accused No.2, it is elicited that she only called upon accused No.1 stating that her parents were troubling her and also that when she went to the house of accused No.2, her clothes were wet and hence accused No.2 provided the clothes of her daughter and there were two rooms, but accused No.1 was not in the said room and suggestion was made that when her parents were troubling her, accused No.2 consoled her.

18. Having considered the evidence of this witness and also considering the evidence of the Doctor, who has been examined as PW.7, her evidence is very clear that the victim girl was examined by her and on examination, she found that the victim girl was subjected to sexual act and victim was brought to her by WPC-798 and there was reddishness at introitus present in the posterior fontanel and introitus admits two fingers and given the report as per Ex-P8 stating that there is evidence of sexual intercourse on victim girl and also



identifies her signature in the letter submitted to the IO in terms of Ex.P9. This witness was subjected to cross-examination and in the cross-examination, a suggestion was made that the reddishness would occur if there is itching in the private part, however, the same was denied and if any person inserts his own finger, there are chances of such reddishness. Except this answer elicited from the mouth of PW.7, nothing is suggested to this witness. Even nothing is suggested to this witness. Nothing is elicited from the mouth of PW.7 and only suggestion was made that if the victim girl was subjected to sexual act once, there are no chances of loosening of the private part and the same was also denied.

19. Having considered the evidence of PW.2 and also the medical evidence available before the Court, this Court has to take note of the judgment of the Apex Court in the case of ***Phool Singh v. State of Madhya Pradesh*** reported in ***AIR 2022 SC 222*** wherein, the Apex Court made an observation *with regard to the evidence of rape victim. Testimony of Prosecutrix's reliability: when prosecutrix's was alone at home, accused jumped the wall, entered into her bedroom and*



committed rape before fleeing away, prosecutrix fully supported the case of the prosecution, being consistent right from the very beginning, accused unable to point out why sole testimony of prosecutrix should not be believed, no reason to doubt the credibility and trustworthiness of Prosecutrix; once the prosecutrix is found to be reliable and trustworthy without any further corroboration, conviction of accused relying upon sole testimony of prosecutrix sustained.

20. It is trite law also that when the victim gives evidence before the Court stating that she was subjected to sexual act and also when the victim immediately was taken before the learned Magistrate and her statement was recorded in terms of Ex.P4 that she was subjected to sexual act without her consent and the same is substantiated before the Court by examining herself as PW.2 that accused No.1 subjected her for sexual act as against her consent, even assuming that if she has given the consent, the same cannot be considered in view of Section 2D of the POCSO Act, wherein it is clear that the 'child' below the age of '18' is a minor and hence, the question of even consent also does not arise. In the case on hand, the medical evidence



as well as the evidence of PW.2 is very clear with regard to subjecting the victim girl PW.2 for sexual act and even no effective cross examination was made disputing subjecting victim to sexual act and it is not even suggested during the course of cross examination that PW.2 that she was not subjected to sexual act by accused No.1 and even in the cross examination of the Doctor also, no such suggestion was made that victim girl was not subjected to sexual act and the medical evidence corroborates the evidence of the prosecution. The other evidence available before the Court is that of the mother PW.3 of the victim and the fact that the mother had filed the complaint immediately when her daughter was missing is also not before the Court. It is also important to note that PW.3 mother categorically says that accused No.1 and PW.2 were brought to the police station and no doubt, PW.3 says that accused No.1 only came and informed that he know the whereabouts of the victim and thereafter the PSI Bharathi brought accused No.1 to the police station and PW.12 Bharathi was also examined before the Court with regard to apprehension of both accused No.1 and PW.2 and registering



the FIR and securing accused No.1 on 14.06.2014 and produced before the Investigating Officer.

21. Having considered all these materials available before the Court, it is a fit case to reverse the finding of the trial Court and no doubt, this Court is also very conscious that while reversing the judgment of the trial Court, there must be cogent evidence and the same should point out the very role of the accused, that accused only did the act and if any two reasons in re-appreciating the evidence is available before the court, then the benefit of doubt should be given to the accused. But in the case on hand, no such circumstances warranted giving any such benefit of doubt and question of giving any such benefit also doesn't arise.

22. It is also held by the Coordinate Bench of this Court in ***Crl.A.No.976/2020 (The State by Sub-Inspector of Police v. P.S. Pradeep and another DD 28.03.2024)*** that *the accused has primarily the double benefit. Firstly, the presumption under law is that, unless his guilt is proved, the accused has to be treated as an innocent person in the alleged crime. Secondly, the accused has already been enjoying the*



benefit of judgment of acquittal passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analysed.

23. This Court would also like to refer to the judgment in the case of **Chandrappa and others -v- State of Karnataka** reported in **(2007) 4 SCC 415**, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, and it was pleased to observe at paragraph Nos.42(4) and 42(5) as below:

"42(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

42(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

24. Further, in the case of **Sudershan Kumar -v- State of Himachal Pradesh** reported in **(2014) 15 SCC 666**, while referring to Chandrappa's case (supra), the Hon'ble Apex Court at paragraph No.31 of its judgment was pleased to hold that, it



is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons, then only the Court can reverse the same.

25. Having considered the principles laid down in the above judgments and also in keeping in the mind the principles of referred judgments supra and having reassessed the material available on record, the evidence of victim PW.2 throughout when the complaint was lodged as per Ex.P3 and also while making statement under Section 164 Cr.P.C. and also before the Court was that accused No.1 only subjected her for sexual act and the medical evidence also supports the case of prosecution and as observed by us earlier, there is no effective cross-examination denying the very act of subjecting the victim for sexual act and the evidence of PW.1, the doctor's evidence and PW2 victim's evidence is consistent and reasonable and also the same is not seriously disputed by accused No.1 during the course of cross-examination and the cross-examination made by the defence counsel before the Trial Court is also not in respect of the incident which the victim



has deposed before the Court and nothing is elicited from the mouth of P.W.2 that she was not subjected to sexual act. When such being the case and cogent evidence is available before the Court and the evidence of the victim is reliable and there is no infirmity in the evidence of P.W.2 as well as medical evidence, it is a fit case to reverse the findings of the Trial Court in respect of accused No.1 is concerned.

26. Now, in respect of accused No.2, it is the very specific case of the prosecution that sexual act was committed in the house of accused No.2. However, answer elicited from the mouth of P.W.2 during the course of cross-examination made by accused No.2 counsel is very clear that she being afraid of her parents came to the house of accused No.2 and even accused No.2 also provided cloth of her daughter when she came to the house of accused No.2. But, in order to come to a conclusion of invoking Sections 16 and Section 17 of POCSO Act, 2012 that accused No.2 only committed the offence of abetment, no such ingredient is found and none of the prosecution witnesses depose before the Court that accused No.2 committed the offence under Sections 16 and 17 of



POCSO Act. The admission on the part of P.W.2 is very clear that when she came to the house of accused No.2, her cloth was wet and also says that accused No.1 was not in the house of accused No.2.

27. When such evidence and admission is given and the evidence of the prosecution is not pointing out the role of accused No.2, but the bed sheet from the house of accused No.2 was seized and witnesses were also examined before the Court, the recovery witness i.e., P.W.4 not supported the seizure, but P.W.1, who is the neighbour supports the case of prosecution. However, P.W.1, who is also a neighbour of the said apartment in her chief evidence supports the seizure, but not supports the incident. But, in the cross-examination of P.W.1, she admits that she is not aware of what is written in Ex.P1 and also she is not having any information for what reason police came near the house of accused No.2. When such answer is given that she is not aware of the contents of Ex.P1 and for what reason the police came near the house of accused No.2 and no information to that effect, the evidence of P.W.1 cannot be relied upon with regard to spot mahazar is



concerned. But, the fact is that it has emerged during the course of the evidence that an accommodation is provided to the victim in the house of accused No.2. But, in order to invoke the offence under Sections 16 and 17 of the POCSO Act, 2012, wherein charge has been framed against accused No.2 under the said offence, none of the witnesses, who have been examined before the Trial Court spoke anything about the ingredients of those offences. When such being the case, in the absence of any material evidence before the Court to invoke such offence, question of invoking Sections 16 and 17 of the POCSO Act, 2012 against accused No.2 does not arise.

28. The prosecution also relies upon the evidence of P.W.8-owner of the apartment. No doubt, P.W.8 says that accused No.2 is the tenant of PW.8 and the same will not come to the aid of the prosecution, in order to prove the charges levelled against accused No.2 having taken note of over all evidence before the Court. Even P.W.9, who is the neighbour of accused No.2 did not state about the role of accused No.2. When such being the case, benefit of doubt goes in favour of



accused No.2 and there is no incriminating material against accused No.2 and therefore, we answer the point accordingly.

29. Though charges are levelled against accused No.1 invoking the offence under Section 366A of IPC, there is no material before the Court and the victim herself has admitted that she only called accused No.1 and informed about the trouble caused by her parents. Even with regard to Section 506 of IPC also, there is no material before the Court to come to an other conclusion and only material is found for the offence under Section 376(2)(i) and Section 4 of POCSO Act, 2012.

30. In view of the discussion made above, we pass the following:

ORDER

- (i) The criminal appeal is *allowed-in-part*.
- (ii) The judgment of acquittal dated 26.04.2018 passed in Special Case No.87/2014 by learned II Addl. District & Sessions(Special) Judge, Dakshina Kannada, Mangaluru in respect of accused No.2 is confirmed.



- (iii) In respect of accused No.1, the judgment of the Trial Court acquitting the accused No.1 is set aside and he is convicted for the offence punishable under Sections 376(2)(i) and Section 4 of POCSO Act, 2012 only.
- (iv) The accused No.1 is ordered to undergo sentence for a period of ten years with fine of Rs.50,000/- to be deposited within a period of two weeks.
- (v) On depositing fine amount of Rs.50,000/-, the same is payable to P.W.2-victim on proper identification.
- (vi) The accused No.1 is directed to surrender before the Trial Court within two weeks from today. If he fails to surrender before the Trial Court, the learned Trial Judge is directed to secure him and send him to prison by issuing a conviction warrant.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**