



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.147 OF 2021 (A)

BETWEEN:

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

...APPELLANT

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

AND:

1. RAJU @ RAJEEV KUMAR
S/O. VIKRAM SHARMA
AGED ABOUT 28 YEARS
RESIDING AT UNDER CONSTRUCTION
APARTMENTS AT SHIVAJINAGAR
BENGALURU DISTRICT-560 046

PERMANENT ADDRESS
LEGAL VILLAGE, BARSUYI THANA
KATTAHAR DISTRICT
BIHAR STATE.
2. SMT. JABEENA
W/O. ASHRAP ALI
AGED ABOUT 38 YEARS
RESIDING AT NEAR MESTHRIPALYA CHURCH
SRIRAMPURA





BENGALURU CITY.
(AMENDMENT CARRIED OUT IN VIEW OF
ORDER DATED 4-7-2022)

...RESPONDENTS

(BY SRI N.S. SAMPANGIRAMAIAH, AMICUS CURIAE FOR R-1;
SMT. AISHWARYA S. HANCHATE, ADVOCATE FOR
SRI ANIRUDH CHAMUNDA, ADVOCATE FOR R-2
(VIDE COURT ORDER DATED 12-3-2026 AUTHORIZED BY HCLSC)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND
(3) OF THE CR.P.C PRAYING TO SET ASIDE THE IMPUGNED
JUDGMENT AND ORDER DATED 12-11-2019 PASSED BY THE
LEARNED LIII ADDITIONAL CITY CIVIL AND SESSIONS SPECIAL
JUDGE, BENGALURU IN SPL.C.C.NO.409 OF 2014 ACQUITTING THE
RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER
SECTIONS 363, 343, 376 OF IPC AND UNDER SECTION 3 READ WITH
SECTION 4 OF POCSO ACT, 2012.

THIS CRIMINAL APPEAL, COMING ON FOR ADMISSION, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

This appeal is directed against the judgment of acquittal dated 12.11.2019 passed by the Court of the LIII Additional City Civil and Sessions Special Judge, Bengaluru, in Special C.C.No.409 of 2014, wherein the respondent/accused has been acquitted of the offences punishable under Sections 363, 343, 376 of Indian Penal Code, 1860 (for short, "IPC") and Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act").

2. We have heard the learned High Court Government Pleader appearing for the State, learned *Amicus Curiae* appearing for the accused, as well as the learned counsel appearing for respondent No.2/*defacto* complainant. Perused the evidence and material on record.

3. Briefly stated, case of the prosecution is that on 13.05.2014 at about 05.30 a.m., accused kidnapped the minor daughter of the complainant, aged about 15 years,



by inducing her, from the house of Sagairaj near the Church of Mestripalya and wrongfully confined her for 12 days in an under-construction building at No.1-A, Davis Road and during the said period, committed forcible sexual intercourse on the victim.

4. Charges were framed against the accused for the offence punishable under Sections 363, 343, 376 of IPC and Section 3 read with Section 4 of the POCSO Act. In order to establish the charges, the prosecution in all examined PW1 to PW7 and got marked Exs.P1 to P7.

5. The learned Sessions Judge, vide impugned judgment, acquitted the accused, holding that the case of prosecution that the victim was kidnapped and confined by the accused cannot be believed and further, the age of the victim that she was a minor aged about 15 years as on the date of incident is also not proved.

6. The trial Court, having regard to the evidence and material adduced by the prosecution, came to the



conclusion that the victim without any resistance, was residing with the accused for 12 days and no attempt was made by her to escape from that place and if really the accused had forcibly taken her to the building and confined her against her wish, she would have disclosed the same to others, even when the accused had introduced her as his wife to the owner of the building.

7. Insofar as the age of the victim is concerned, the learned Sessions Judge has observed that the age of the victim from the medical report issued by the doctor cannot be treated as proof of her age and further, no birth certificate of the victim is produced by the prosecution.

8. The learned HCGP appearing for the State would vehemently contend that in this case the victim as well as her mother, the complainant, has supported the case of prosecution and their evidence is further corroborated by the medical evidence. She contended that in Ex.P2, issued by PW4, it is clearly stated that the



victim is aged between 14 to 16 years and therefore, the prosecution has proved that the victim was a minor, hence, established the charges levelled against the accused.

9. The learned counsel appearing for the complainant would also contend that the victim has supported the case of prosecution and her evidence clearly reveal that she was kidnapped by the accused under threat and confined in an under-construction building for 12 days. She contended that in the absence of any other documents regarding proof of age, the age has to be determined by medical examination and in the present case such medical examination was conducted by PW4 to ascertain the age of the victim and as per Ex.P2, age of the victim is estimated between 14 - 16 years. She contended that the reasons assigned by the learned Sessions Judge to acquit the accused are therefore not in accordance with law.



10. Learned *Amicus Curiae* appearing for the accused has contended that this is an appeal preferred against the judgment of acquittal wherein the learned Sessions Judge, having regard to the entire evidence and material on record and the facts and circumstances of the case, has come to the conclusion that the prosecution has not proved the charges levelled against the accused. He contended that in view of the said finding, the accused has double benefit and his innocence is further reinforced.

11. Learned *Amicus Curiae* further contended that the prosecution has not proved the age of the victim by adducing any cogent evidence and merely on the certificate issued by the doctor, which is marked as Ex.P2, it cannot be said that the victim was a minor as on the date of incident. He further contended that the fact that the victim stayed with the accused for about 12 days itself shows that she willingly accompanied and stayed with him without any resistance and therefore, it cannot be said that the accused has kidnapped her by force or threat and



confined her in the under-construction building against her wish. He has therefore sought to dismiss the appeal.

12. According to the prosecution, on 13.05.2014 at about 05.30 a.m., the accused, by inducing the minor victim by saying that if she did not accompany him, he will commit suicide, kidnapped and took her to an under-construction building situated at No.1-A, Davis Road, and confined her in the said building for 12 days and committed penetrative sexual assault on her.

13. The complaint - Ex.P5 is lodged by victim's mother, examined as PW2. Even though the incident of kidnapping took place on 13.05.2014, the complaint was lodged after 2 days i.e., on 15.05.2014. The victim was traced on 26.05.2014. Her medical examination was conducted by the doctor - PW4. As per medical report, the hymen was ruptured and there was evidence of sexual intercourse. However, there was no external injury noticed.



14. It is relevant to see as to whether the prosecution has established the age of the victim in accordance with law, to show that she was a minor as on the date of commission of the offence and whether the victim was forcibly taken by the accused and subjected to sexual assault.

15. Victim is examined as PW1. In her evidence, she has stated that accused asked her to wait near her house at about 05.00 a.m. on the date of incident and when she refused, he stated that he will commit suicide. Since he was in love with her, she accompanied him to an under-construction building in Hegde Nagar. He took her to a temple in Marathahalli and applied Kumkum and married her. Thereafter, he took her to an under-construction building in Shivaji Nagar, wherein they stayed together for 12 days and during that time, he forced her to have physical contact with her.



16. The complainant is examined as PW2. She has also reiterated the complaint averments.

17. Even according to the prosecution, the victim stayed with the accused for 12 days in an under-construction building, where the accused was working. PW3 is the owner of the said under-construction building. He has stated that about 8 days prior to the arrest of the accused, he had brought the victim girl to the said building stating that she is his wife. According to him, the police informed that the victim was a minor and the accused had kidnapped the said victim. PW3 has nowhere stated that the victim at any point of time complained to him, during her stay with the accused in the said under-construction building, that she was forcibly taken by the accused and confined in the said building. There is no evidence adduced by the prosecution that the victim resisted the company of the accused and she was forcibly detained in the building. The fact that the victim went along with the accused and stayed for 12 days itself shows that there was no force or



threat on the part of the accused and the victim was not confined against her wish by the accused. In this background, it has to be seen as to whether the prosecution has established beyond doubt that the victim was a minor as on the date of commission of the offence. Since, even if the victim has willingly accompanied the accused and stayed along with him and there was any sexual intercourse committed on her, then the charges could be held to be proved if the victim is a minor as on the date of commission of the offence.

18. The Apex Court in the case of ***P. Yuvaprakash v. State of T.N.***, reported in ***(2024) 17 SCC 684***, held 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 Juvenile Justice (Care and Protection of Children) Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the 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 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."

19. Further, in the above decision, the Apex Court has referred to the decision in the case of **Sanjeev Kumar Gupta v. State of U.P.**, reported in **(2019) 12 SCC 370**. The relevant para is extracted hereunder:



"17. ... Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the examination board concerned in the same category, [namely, (i) above.] In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the 2007 Rules made under the 2000 Act. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category."

20. In the case on hand, the prosecution is relying on Ex.P2 - Certificate issued by PW4, in proof of the age of the victim. We have carefully perused the said certificate at Ex.P2. We find that the Medical Officer has estimated



the age of the victim as between 14 - 16 years, on the basis that her 3rd molar teeth has not developed. Except the said examination, it appears that no other examination, like radiological/ossification test or latest medical examination was conducted to ascertain the age. From Ex.P2, it is clear that there was no X-ray taken, as the parents of the victim refused to take the X-ray. Except Ex.P2, there is no other document such as the school certificate or birth certificate, etc., produced in proof of the age/date of birth of the victim.

21. PW4 in his evidence has stated that on the basis of dental examination, the victim's age was ascertained as between 14 - 16 and average age is 15 years. He has not stated as to what was the mode of examination he conducted and how he estimated the victim's age as between 14 - 16 years. In the absence of any other convincing evidence with regard to the age of the victim, it cannot be held that the prosecution has



established that the victim was a minor as on the date of incident.

22. This is an appeal preferred against the judgment of acquittal.

23. In a case of acquittal, the presumption of innocence in favour of the accused is reinforced by the acquittal judgment passed by the trial Court. Even if two views are possible, the view which is in favour of the accused has to be accepted.

24. The Hon'ble Apex Court, in its 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, 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."

25. 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.

26. In the case of ***Jafarudheen and others -v- State of Kerala*** reported in ***(2022) 8 SCC 440***, at



paragraph No.25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

"25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

27. The learned Sessions Judge, having appreciated the evidence and material on record, has come to the conclusion that the prosecution has not established charges levelled against the accused. The reasons assigned by the trial Court are not illegal or perverse. Upon examining the evidence and material on record, we are of the view that there is no sufficient ground for



interfering with the impugned judgment passed by the trial Court. Accordingly, the following:-

ORDER

- i) The appeal is ***dismissed***.
- ii) Learned *Amicus Curiae* is entitled for a honorarium of Rs.10,000/- payable by the High Court Legal Services Committee.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

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

AM, LDC
List No.: 1 Sl No.: 10