

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1357 OF 2024

BETWEEN:

RAMACHANDRA
S/O. THIMMAIAH,
AGED ABOUT 31 YEARS,
AUTORICKSHAW DRIVER
R/O RATHNASANDRA-GOLLARAHATTI,
KASABA HOBLI, TALUKA SIRA,
DISTRICT TUMKUR-572 137.

...APPELLANT

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL FOR
SRI. NITYANAND V. NAIK, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY SUB INSPECTOR OF POLICE,
KALLAMBELLA POLICE STATION,
TALUKA SIRA, DISTRICT TUMKUR
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE. 560 001
2. VICTIM GIRL,
RESENTED BY FATHER
LINGAPPA S/O DYAMAPPA,
68 YEARS,
R/O RATHNASANDRA-GOLLARAHATTI,
KASABA HOBLI, TALUKA SIRA,
DISTRICT TUMKUR-572 137.

...RESPONDENTS

(BY SRI. B. LAKSHMAN, HCGP FOR R1,
SRI. RAJATH H.V., ADV. FOR R2.)

THIS CRL.A IS FILED U/S 374(2) CR.PC PRAYING TO SETTING ASIDE THE IMPUGNED JUDGMENT OF CONVICTION DATED 03.12.2022 AND ORDER OF SENTENCE DATED 19.12.2022 IN SPL.C.NO.206/2020 PASSED BY THE LEARNED ADDL. DIST. AND SESSIONS JUDGE, (FAST TRACK SPECIAL COURT-I) TUMAKURU AND BY ACQUITTING HIM OF THE OFFENCE P/U/S 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012, 366 AND 376 OF IPC ALLEGED AGAINST HIM.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.01.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

1. This appeal is preferred against the judgment of conviction and order on sentence dated 03rd December, 2022 passed in Spl.C. No.206 of 2020 by the Additional District and Sessions Judge (FTSC-1), Tumakuru (for short "the trial Court").

2. It is the case of prosecution that Circle Inspector of Police, Rural Circle, Sira, laid a charge sheet against the accused for the offence under Sections 343, 363, 376(1) of Indian Penal Code, Section 6 of POCSO Act and Section 9 and 10 of Child Marriage Act. It is alleged by the prosecution that on 22nd May, 2020 at around 06.30 a.m. within the limits of Kallambella Police Station jurisdiction, in land bearing Sy.No.17

of Ratnasandra Village which belongs to CW1/PW2, the accused enticed PW1, forcibly abducted her and took her to Shri Prasanna Parvathi and Shri Nanjundeshwara Swamy Temple in Arakere Village and tied *mangala-sutra* to her neck and also put toe ring on her toe, and then took her to a room on the first floor of the previously rented house belonging to CW12. There, the accused wrongfully confined her for 3 days from 22nd to 25th May, 2020 and forcibly had sex every day with PW2 victim, who is a minor. Thus, the accused has committed the aforesaid/ offence.

3. After laying charge-sheet, the accused was arrested and was produced before the Special Court and was remanded to judicial custody. From the date of arrest, till this day, the accused is in judicial custody.

4. After submitting charge sheet, cognizance was taken by the Special Court and case was registered in Special Case No. 206 of 2020. Upon hearing the charges, the trial Court has framed charges for commission of alleged offences. Same were read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried. In order to prove the guilt of the accused, 12 witnesses were examined by prosecution as PWs1 to 12. 29 documents

were marked as Exhibits P1 to P29 and seventeen material objects were marked as MOs.1 to 17. On closure of prosecution side evidence, statement of accused under Section 313 of Code of Criminal Procedure was recorded. The accused has totally denied the evidence of prosecution, however, he did not choose to lead any defence on his behalf. But during the course of cross-examination of prosecution witnesses, two documents were marked as Exhibits D1 and D2. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence under Section 6 of POCSO Act read with Section 376 of Indian Penal Code and passed sentenced to undergo rigorous imprisonment for a period of twenty years with fine of ₹50,000/-. Further, the accused is sentenced to undergo rigorous imprisonment for a period of five years for the offence under Section 366 Indian Penal Code with fine of ₹10,000/-. Being aggrieved by the judgment of conviction and order on sentence, the accused/appellant has preferred this appeal.

5. Sri Hashmath Pasha, learned Senior Counsel appearing on behalf of the counsel for the appellant, would submit that Investigating Officer has not produced the original copy of birth certificate of the victim. Exhibit P23- Birth Certificate is only a

Xerox copy, in which the name of the victim is not shown. In view of Section 10 of the Registration of Births and Deaths Act, 1969, within one year, the concerned authority has to implead the name of the child, but the same is not done here. Therefore, this document will not be of any help to the case of the prosecution to prove the age of the victim.

6. He would further submit that Exhibit P18 is not a birth certificate extract or School Admission Register Extract. It is only a communication of fact that the school authorities have issued the same at the request of the Investigating Officer, and the same is hit by the provisions of Section 162 of Code of Criminal Procedure. Placing reliance on the decisions of Hon'ble Supreme Court in the cases of KALIRAM v. STATE OF HIMACHAL PRADESH reported in (1973) 2 SCC 808 and VINOD CHATURVEDI AND ANOTHER v. STATE OF MADHYA PRADESH reported in (1984)2 SCC 350, the learned Counsel submits that these documents are inadmissible. That the documents cannot be admitted in evidence and it cannot be used against the accused. In this regard, he has relied on the decision of Hon'ble Supreme Court in the case of MALAY KUMAR GANGULY v. DR. SUKUMAR MUKHERJEE AND OTHERS reported in (2009)9 SCC 221. Absolutely, there is no admissible document

to prove the age of the victim. Additionally, the Investigating Officer has not collected the certificate as required under Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015.

7. Since the prosecution has not produced the relevant documents to prove the age of the child as on the date of commission of offence, the question of constituting the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 does not arise. In this regard, he has relied on the decisions in of Hon'ble Supreme Court in the cases of ALAMELU AND ANOTHER v. STATE REPRESENTED BY INSPECTOR OF POLICE reported in (2011)2 SCC 385 and MANAK CHAND ALIAS MANI v. STATE OF HARYANA reported in 2023 SCC ONLINE SC 1397. He would submit that the author of the document is not examined by the prosecution. PW10-Head Mistress was not working as a teacher at the time of admission of this child and there is no evidence to show as to who has given the date of birth to the concerned school at the time of admission. When the author is not examined, merely marking the document as exhibit does not amount to proof. In this regard, he has relied on the decision of Hon'ble Supreme Court in the case of NARBADA DEVI GUPTA v. BIRENDRA KUMAR JAISWAL AND

ANOTHER reported in (2003)8 SCC 745. The same is followed by another decision of Hon'ble Supreme Court in the case of MALAY KUMAR GANGULY (supra). Xerox copy of the document is not admissible in evidence in view of decisions of Hon'ble Supreme court in the cases of H.SIDDIQUI (DEAD) BY LRS. v. A. RAMALINGAM reported in (2011)4 SCC 240, RAKESH MOHINDRA v. ANITA BERI AND OTHERS reported in (2016)16 SCC 482; J.YASHODA v. J.SHOBHA RANI reported in (2007)5 SCC 730 and another decision of this Court rendered in Criminal Appeal No.1126 of 2014 in the case of MAHADEVU @ PAPPI v. STATE OF KARNATAKA.

8. The victim has voluntarily accompanied the accused as both were in love with each other while studying in high school. They were classmates and known to each other. The act between the Appellant and victim is consensual. Admittedly, victim has a mobile, however, call details are not collected by the I.O. In the absence of the material placed on evidence, the adverse inference can be drawn against the prosecution. In this regard, he has relied on the decision of Hon'ble Supreme Court in the case of TOMASO BRUNO AND ANOTHER v. STATE OF UTTAR PRADESH reported in (2015) 7 SCC 178. On all these grounds, it was sought for allowing the appeal.

9. On the other hand, Sri Rajat H.V., learned Counsel appearing for respondent No.2 submitted that though the prosecution has not produced the original birth certificate, the same is not fatal in view of Rule 12 of Juvenile Justice (Care & Protection of Children) Rules, 2007. In this regard, he has relied on the decision of Hon'ble Supreme Court in the case of JARNAIL SINGH v. STATE OF HARYANA reported in (2013)7 SCC 263. In Exhibit P8, it is clearly stated as to the date of birth of the victim. PW10, who has issued the certificate, has clearly deposed as to the date of birth of the victim. Since the date of birth is proved under Exhibit P8, the same is sufficient to prove the age of the victim, though the Xerox copy is marked. Accused is not a classmate of the victim. He is married and has three children. He is 27 years old. The trial Court has properly appreciated the materials on record in proper perspective and there are no grounds to interfere with impugned judgment of conviction. Hence, sought for dismissal of the appeal.

10. The learned High Court Government Pleader Sri B. Lakshman appearing for the respondent-State, would support the impugned judgment of conviction and order on sentence and submits that the trial Court has properly appreciated the

evidence on record and has passed the impugned judgment. There is no ground for interference in this appeal. Accordingly, he sought for dismissal of the appeal.

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

1. Whether the prosecution proves beyond all reasonable doubt that the victim was child as defined under Section 2(d) of POCSO Act, 2012, as on the date of commission of alleged offence?
2. Whether the trial Court is justified in convicting the accused for the offence under Sections 366 and 376 of Indian Penal Code and Section 6 of POCSO Act?
3. What order?

12. My answer to the above points are as under:

Point No.1: in the negative;

Point No.2: in the negative;

Point No.3: as per final order.

Regarding Points 1 and 2:

13. I have examined the materials placed before this court. The Circle Inspector of Police, Sira, submitted the charge sheet against accused for the offence punishable under Sections 343, 363 and 376(1) of Indian Penal Code; Section 6 of the POCSO Act and Sections 9 and 10 of Child Marriage Act. It is alleged by the prosecution that on 22nd May, 2020, at around 06.30 a.m. within the limits of Kallambella Police Station jurisdiction, in land bearing Sy.No.17 of Ratnasandra Village which belongs to CW1/PW2, the accused enticed PW2/PW1, forcibly abducted her and took her to Shri Prasanna Parvathi and Shri Nanjundeshwara Swamy Temple in Arakere Village and tied *mangala-sutra* to PW2 and also put toe ring on her toe and then took PW2 to a room on the first floor of a previously rented house. There, the accused wrongfully confined her for 3 days from 22nd to 25th May, 2020 and forcibly had sex every day with PW2-victim, who is a minor. Thus, the accused has committed the aforesaid offences. To substantiate the case, Prosecution has examined 12 witnesses as PWs1 to 12. 29 documents were marked as Exhibits P1 to P29 and seventeen material objects were marked as MOs.1 to 17. To prove the age of the victim, the IO has adduced the evidence of victim

PW1. PW2 is the father of victim. PW7-Puttlingappa is the uncle of CW1. PW8-Smt. Usha is the elder sister of victim. PW9-Dr. Shobha is the Medical Officer, PW10 Smt. L.M. Anusuya is the Headmistress of Government Higher Primary School, Rathnasandra and PW12-Shivakumar is the Investigating Officer. The Investigating Officer has produced the copy of the complaint filed by victim as per Exhibit P1. Exhibit P9 is the Medico Legal Examination Report of sexual violence pertaining to victim. Statement of victim is recorded under Section 164(5) of Code of Criminal Procedure. School certificate is marked as Exhibit P18. Exhibit P22 is the covering letter addressed by the Headmistress of Government Higher Primary School, Ratnasandra to the Circle Inspector of Police, Sira Rural Circle. Exhibit P23 is the birth certificate issued by the concerned authority.

14. A careful examination of the entire oral and documentary evidence makes it clear that, the victim and other witnesses have stated the age of the victim at the time of commission of offence as 17 years. With regard to the documentary evidence is concerned, the victim has specifically stated in her evidence that her date of birth is 28th November, 2002. As per the evidence of prosecution witnesses, the alleged incident took

place on 26th May, 2022. At that point in time, the age of victim comes to 17 years, 5 months, 28 days.

15. In the backdrop of the arguments advanced on behalf of the appellant, this court has to examine the evidence placed by the prosecution.

As regards Exhibit P23 copy of Birth Certificate:

16. Exhibit P23 is not the original or the certified copy of the birth certificate, but it is only a Xerox copy. In the said birth certificate, the name of the victim is not shown and the same is left blank. However, with regards to sex, it is shown as 'female' and date of birth as '28th November, 2002'; Place of birth is shown as 'Kenchayyanapalya'; Name of father is shown as 'Lingappa' and Name of mother is shown as 'Chandramma'. The Date of registration is 30th November, 2002. In view of Section 10 of Registration of Births and Death Act, 1969, within one year, the concerned Authority has to implead the name of the child, but the same is not done in the case on hand. The reason for non-compliance of Section 10 of Registration of Births and Death Act has not been explained by the prosecution. It is settled principle of law that mere production and marking of documents as exhibits is not enough to prove

the content of the document as held by Hon'ble Supreme Court in the case of NARBADA DEVI GUPTA. The said principle is also reiterated in the decision of H SIDDIQUI (supra). The investigating officer has not whispered anything as to why he has not examined the author of the document Exhibit P23 and as to why he has not collected the original copy of the said document. Reason for non-entering the name of the child in the birth certificate as per Section 10 of Registration of Births and Deaths Act is also not disclosed by the prosecution. For the aforementioned reasons, as also relying on the above decisions, I am of the opinion that Exhibit P23 is not proved by the prosecution in accordance with law. Accordingly, Exhibit P23 will not be of any help to the case of prosecution to prove the age of the victim.

As regards Exhibit P18-School Certificate:

17. This copy of the school document is in Kannada language which is stated as "ಶಾಲಾ ದಾಖಲಾತಿ ನಕಲು" (*Shalaa daakhalaati nakalu*). This document is issued by the Headmistress of Government Higher Primary School, Ratnasandra, Sira Taluk. In column number 4, the date of birth is shown as 28th November, 2002. To prove this document, the prosecution has examined PW10-Anasuya L.M. Headmistress of the School.

She has deposed in her evidence as to issuance of the certificate Exhibit P18. During the course of our cross-examination, she has clearly admitted that at the time of admission of the school, she was not working in the said school. She has stated that on the basis of School Admission Register and the birth certificate of the victim, she has issued Exhibit P18. But the said School Admission Register extract and the birth certificate of the deceased are not produced before the court. The investigating officer has not explained anything as to non-production of school admission register extract or the birth certificate. While discussing regarding Exhibit P23-birth certificate, this Court has already discussed that in Exhibit P23 the name of the victim is not shown. When such being the case, on what basis the Headmistress has mentioned the date of birth, is not known. If PW10 has issued Exhibit P18 on the basis of birth certificate, the investigating officer could have collected the said document and produced before the court. But he has not done so. Hence, Exhibit P18 is not sufficient to prove the age of the age of the victim. Hence, the question of constituting the offence punishable under the penal provisions of POCSO Act, 2012, does not arise.

As regards Medical Certificate:

18. The doctor has shown the age of the victim as 17 years in the medico legal examination certificate. But the doctor has not examined the age of victim as required under Section 27 of POCSO Act and Section 164A of CrPC. Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 provides the same hierarchy of documents as provided in Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015. In the case on hand, the investigating officer has not produced the certified copy of birth certificate or examined the author of the document. There is no authenticated record to believe that the school authorities have entered the date of birth based on the birth certificate. When there is no authenticity to the legal evidence as to the date of birth of the victim, investigating officer should have obtained the ossification test certificate from the medical board. The same is also not produced. Further, it is admitted by PW1 that she was studying in Government Junior Girls Pre-University College, Sira. However, the investigating officer has not produced the matriculation or equivalent certificate. When PW1 was studying in First Year

PUC at the relevant of point of time, the investigating officer could have collected the same from the concerned authorities.

19. In the absence of these material evidence, adverse inference can be drawn against the prosecution that if those documents were to be produced, same will go against the prosecution. In the absence of these material witnesses and relying on the aforesaid decisions placed by the learned Counsel for the appellant, I am of the opinion that the prosecution has failed to prove that the victim was a child as defined under Section 2(d) of POCSO Act as on the date of incident.

20. The trial court has framed charges against the accused for commission of offence under Sections 366, 343 and 376 of Indian Penal Code. The trial Court has acquitted the accused for the offence under Section 343 of Indian Penal Code. To prove the guilt of the accused under Sections 366 and 376 of Indian Penal Code is concerned, in Exhibit P1-statement of the victim, she has clearly stated that every day when she was going to school, she was talking with the accused. She and the accused were in love with each other. Further, it is stated that the accused had promised her that he will marry her.

21. In Exhibit P9-Medico Legal Examination Report of Sexual Violence, in Column 1(vii) 'Description of incident in the words of narrator' of 15.A- History of Sexual violence, it is stated as under:

"Kum. xxx xxx xxx she is giving history that on 22.05.2020 morning she went to field at around 6.00 am to pluck flowers. Meanwhile, Mr. Ramachandra took her forcefully to the place Oorukere by luggage auto. From there to Arkere by walk then made her to stay in a room was everything fundamentally arranged by him. While going, on the way only he tied mangalya and on that day night they both had sexual contact. He made her to sleep on her and he slept and kissed all over the body penetration of penis to her vagina. She is giving history that 3-4 times he had sexual contact with her before this incident. On 23, 24 and 25, they stayed there itself. He use to cook there in the room and he did not allow her to go outside. He destroyed her mobile sim everything on 25.5.2020 night 12.00 am with police and her brother, they surrendered to Police. She says that she in sexual contact with him 3-4 times before also."

It also reveals that there are no external injuries seen on the body of the victim.

22. In Exhibit P10-statement under Section 164(5) of Code of Criminal Procedure, the victim has clearly deposed that after completion of PUC, she was in love with accused.

23. Exhibit P17-Forensic Science Laboratory final opinion, it is stated that *"presence of seminal stains was not detected in item articles No.1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15. So its negative for seminal fluid and its constituents. Clinically there are signs suggestive of sexual activity however, forceful penetrative sexual intercourse can neither be confirmed/nor refuted."*

24. Perusal of the entire evidence on record makes it crystal clear that PW1-victim has stated in her examination-in-chief that she and accused were in love with each other.

25. PW2-Lingappa, the father of victim is a hearsay witness. During the course of cross-examination, he has deposed that he does not know the contents of Exhibit P12.

26. PW6-Chandramma, mother of victim has deposed in her evidence that on enquiry with her daughter, she came to know that accused was in love with her daughter. She has also admitted in the cross-examination that her daughter was having a mobile phone.

27. PW7 is the uncle of victim who has also admitted as to same.

28. PW8-Usha, who is the elder sister of victim, is hearsay witness.

29. PW9-Dr. Shobha, has reported as to the contents of Exhibit P9.

30. During the course of cross-examination of PW12-investigating officer, he has clearly stated that accused and victim appeared before him voluntarily.

31. Upon careful examination of the entire oral and documentary evidence placed before this court, it is clear that victim has consented for having sexual contact with the accused. Victim has voluntarily accompanied accused and both were in love with each other. Victim is also having a mobile phone. However, the call record details are not collected by the investigating officer. In the absence of any material evidence placed on record, an adverse inference has to be drawn against the prosecution as has been held by the Hon'ble Supreme Court in the case of TOMASO BRUNO AND ANOTHER (supra).

32. Viewed from any angle, I do not find any evidence to show that the accused has committed rape on the accused. Accordingly, the prosecution has failed to prove the guilt of the accused for commission of offence punishable under Sections

366 and 376 of Indian Penal Code and Section 6 of POCSO Act.

Hence, I answer Points 1 and 2 in the negative.

Regarding Point No.3:

33. For the reasons aforesaid, I proceed to pass the following:

ORDER

- i) Appeal is allowed;
- ii) Judgment of conviction and order on sentence dated 3rd December, 2022 passed in Special Case No.206 of 2020 by the Additional District and Sessions Judge (FTSC-1), Tumakuru, is set aside;
- iii) Accused is acquitted of the offence punishable under Sections 376 and 366 of Indian Penal Code and Section 6 of POCSO Act, 2012.
- iv) Registry is directed to send a copy of this order to the Jail Authority to release the accused, if he is not required in any other case.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn