



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH 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.2204 OF 2025

BETWEEN:

1. STATE OF KARNATAKA
BY CIRCLE INSPECTOR OF POLICE
KUNDAPURA CIRCLE, UDUPI DISTRICT
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001.

...APPELLANT

(BY SMT. RASHMI PATEL, HCGP)

AND:

1. MAHESH
S/O KUSHTA @ KRISHNA
AGED ABOUT 23 YEARS
R/AT KADEKODU
KAVRADI POST
AMPARU VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT-576 101.
2. SMT. JAYANTHI
W/O LATE SANJEEVA POOJARI
AGED ABOUT 55 YEARS
VICTIM'S MOTHER ELDER SISTER
HATWAR BEETU, KODI ROAD





HANGALURU VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT-576 101.

...RESPONDENTS

(R1 AND R2 ARE SERVED AND UNREPRESENTED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.PC (419(1) AND (3) OF BNSS) PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 19.01.2024 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE - F.T.S.C-1, UDUPI, IN SPECIAL CASE NO.5/2023 ACQUITTING THE ACCUSED/RESPONDENT, FOR THE OFFENCE PUNISHABLE UNDER SECTION 376(2)(n) OF IPC AND SECTIONS 5(j)(ii) AND 5(I) PUNISHABLE UNDER SECTION 6 OF THE POCSO ACT 2012.

THIS APPEAL COMING ON FOR ORDERS 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)

This matter is listed for orders with delay of 557 days in filing the appeal.

2. The learned High Court Government Pleader for the appellant-State would submit that both the victim as well as



accused are present before the Court with twins aged 5 months. The Trial Judge having considered the evidence of the victim and though victim supported the case of the prosecution and also FSL report is positive, particularly, taking note of 313 statement of the accused in paragraph No.31, wherein he says that both of them belong to different caste and they were not allowed to continue their love affair and at the instance of family members of the victim, case was registered. Even subsequent to registration of the case also, both of them got married and they are very cordial.

3. The Trial Court also taking note of the judgment of the Apex Court in K. DHANDAPANI vs. THE STATE BY INSPECTOR OF POLICE reported in 2022 SAR CRIMINAL 853, wherein the Apex Court has observed with regard to accused and prosecutrix got married subsequently and living happily with their children and sentence and conviction of the appellant was set aside.

4. But, in the case on hand, there is no conviction and it is a case of acquittal. No doubt, the FSL report also discloses that the accused is the biological father of the fetus of the



victim girl and produced Ex.P22-DNA Test Analysis, the Trial Court also discussed with regard to Section 29 of the presumption under POCSO Act, but Trial Judge comes to the conclusion that prosecution has failed to prove the age of the victim girl. The evidence on record goes to show that there was love affair between the accused and victim girl since from 3 years and the victim has voluntarily eloped with the accused and had gone to Hattiyangadi and both of them had sexual intercourse and the said incident has taken place on 01.01.2021 and the complaint was lodged on 21.11.2022 and there was delay of almost 20 months and there is an inordinate delay and the Trial Court also comes to the conclusion that very FIR is suspicious.

5. Having taken note of all these reasons, the Trial Court has given benefit of doubt in favour of the accused. The victim girl also in her evidence says that both of them were loving each other and the accused was also telling that he would marry her and the same is also discussed in paragraph No.11 of the Trial Court. Having taken note of peculiar facts and circumstances of the case and even subsequent to



registration of the case also both of them have married and living together and they are cordial and both of them appeared before this Court along with twins aged 5 months, when such being the case, in view of the judgment of the Apex Court, wherein also the Apex Court taking note of subsequent development set aside the conviction and the Trial Court while acquitting the accused given the reason, particularly with regard to the age of the victim, no document is placed and the same is not proved. When such being the case, question of invoking the POCSO Act does not arise.

6. Having taken note of all these factors into consideration, it is not a case to admit the appeal. Both the accused and victim, who appeared before the Court also furnished the ration card issued by the Civil Supplies and Consumer Affairs Department dated 07.12.2024 and it depicts both the accused and victim as family members along with their mother, father and brother and the same is also taken note of by this Court and particularly, when the age of the victim is not proved by the prosecution, it is not a case for admission.



Accordingly, the criminal appeal is dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

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