

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO.100151 OF 2022 (A)

BETWEEN

SMT. SARITA BANDEKAR,
AGE: MAJOR,
OCC: HOUSEWIFE,
R/O. DUBBANASHISI,
TAL: GOKARANA,
DIST: UTTARA KANNADA,
REP. MOTHER GUARDIAN OF THE VICTIM,
PIN CODE-581344.

...APPELLANT

(BY SMT. ANURADHA DESHPANDE, ADVOCATE)

AND

1. MANJUNATH
S/O. NARAYANA BANDEKAR,
AGE: 30 YEARS,
OCC: FISHERMAN,
R/O. DUBBANASHISI,
TAL: GOKARANA,
DIST: UTTARA KANNADA- 581344.

2. STATE OF KARNATAKA,
BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD,
THROUGH GOKARANA POLICE STATION.

...RESPONDENTS

(BY SRI. PRANAV UMESH BADAGI AND
SRI. R.H. ANGADI, ADVOCATE FOR R1;
SRI. M.B. GUNDAWADE, ADDITIONAL SPP FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.P.C. 1973 SEEKING TO CALL FOR RECORDS IN SPECIAL CASE NO.50/2020 ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, U.K. KARWAR (SPECIAL COURT FOR THE TRIAL OF CASES FILED UNDER POCSO ACT) AND TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 19.08.2021 FOR THE OFFENCE UNDER SECTION 376, 506 OF IPC AND 4, 6 OF THE POCSO ACT BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, U.K. KARWAR (SPECIAL COURT FOR THE TRIAL OF CASES FILED UNDER POCSO ACT) IN SPECIAL CASE NO.50/2020 AND AN ORDER OF CONVICTION IN FAVOR OF THE APPELLANT THEREBY ALLOWING THE PRESENT APPEAL AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21.01.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This appeal is filed under Section 372 of Cr.P.C. by the complainant challenging the judgment of acquittal dated 19.08.2021 in S.C.No.50/2020 on the file of Additional District and Sessions Judge, FTSC-I, U.K., Karwar (Special Court for Trial of Cases filed under POCSO Act, 2012) (for short, 'Trial Court'), acquitting the accused for the offences punishable under Sections 376, 506 of IPC and Sections 4 and 6 of POCSO Act, 2012.

2. Parties would be referred with their ranks as they were before the Trial Court for the sake of convenience and clarity.

3. Based on the final report submitted by the Investigating Officer i.e., Circle Inspector of Kumta Circle in Crime No.33/2020, the learned Sessions Judge has taken cognizance for the offences punishable under Sections 376 and 506 of IPC and under Sections 4 and 6 of POCSO Act, 2012.

4. The case of the prosecution in nutshell is that on 20.10.2019 at 09.30 a.m. accused has committed rape on the victim girl knowing fully well that she is minor by giving some eatables and ice cream to her, situated at House No.81/A at Gokarna Dubbanashasi Village in Nadumaskeri Village Panchayath within the limits of Gokarna Police Station. It is the case of prosecution that accused entered the house of victim when no one was there in her house on the pretext of requesting a cup of water for drinking; when the victim girl opened the door and went inside the house to bring water, he followed her, entered the kitchen, held her mouth with hands and threatened her that if she makes cry and hue, he would kill her parents; tied her hands with nylon rope, removed her clothes, removed his clothes and committed sexual intercourse with her and thereafter, committed sexual intercourse 2-3 times and because of that she became pregnant and she was 6 months pregnant at the time of lodging of complaint; He threatened her that if she informs the same to anyone, he would kill her parents

and because of that fear, victim has not intimated about the incident to anyone.

5. On 28.04.2020 at 02.00 p.m., C.W.28 PSI of Gokarna Police Station has received E-mail from Kumta Police Station that a minor victim girl is pregnant for 25 weeks and after receiving that E-mail, he has also received MLC from C.W.28, who has received it from Canara Health Care Centre, Kumta. Thereafter, C.W.28 visited Dubbanashasi Village and visited the house of complainant and then came to know that victim had been to Canara Health Care Centre, Kumta and then he obtained the phone number of complainant, contacted her through phone and requested her to lodge the complaint. Afterwards at 07.00 p.m., he received the complaint given by first informant (mother of victim), got registered Crime No.33/2020 and submitted FIR to the Court. Thereafter, C.W.28 handed over the case file for further investigation to C.W.29 and C.W.29 directed C.W.28 to produce the accused; accordingly

C.W.28 with his officials went to the house of accused, caught hold him and produced before C.W.29.

6. According to C.W.29, on 28.04.2020, he received a phone call from C.W.28 and came to know about registration of case and then he came to Gokarna police station and conducted further investigation; at that time, enquired the victim girl, her parents; as per his directions, C.W.28 produced accused before him at 23.30 hours, he enquired the accused and arrested him; he has given memorandum for arrest of accused. He conducted the spot panchanama, drew spot sketch, recorded the statements of witnesses, make arrangements to produce the victim before court to record her statement under S.164 Cr.P.C., he has drawn another panchanama after recording statement of victim under S.164 Cr.P.C., and seized the rope used for commission of the offence; he subjected the minor girl and accused for medical examination. He has obtained report from the doctors. He has obtained the school documents of victim girl to know her date of birth. Afterwards, he has

filed charge-sheet against accused person alleging the aforesaid offences. Afterwards, victim girl has given birth to a child and then with the permission of Court, he has obtained blood samples of the victim, accused and the child and then submitted to FSL for examination. Afterwards, the incoming officer has received the report from FSL and produced before the Court.

7. After filing the charge sheet, the Trial Court has taken cognizance of the offences punishable under Sections 376 and 506 IPC, Sections 4 and 6 of POCSO Act, 2012 and after hearing arguments of both sides, charge was framed for the aforesaid offences by learned Special Judge. Accused pleaded not guilty and claimed trial when the charge was read over and explained to him.

8. On behalf of prosecution, 17 witnesses were examined as P.W.1 to P.W.17. Exs.P.1 to P.38 and M.O.1 were marked before the learned Special Judge. On behalf of the accused, at the time of cross-examination, one document was marked as Ex.C.1.

9. After completion of the evidence of prosecution, statement of accused under Section 313 of Cr.P.C. was recorded by putting all incriminatory substance available against the accused by the learned Special Judge. Accused has denied the case of prosecution in toto in the said statement and has not submitted any defence evidence, but he has filed his written submissions.

10. After hearing arguments of both sides, the learned Special Judge came to the conclusion that accused is not guilty of the offences alleged against him and the offences alleged against him are not proved beyond reasonable doubt and thereby acquitted the accused for the offences punishable under Sections 376 and 506 IPC and also Sections 4 and 6 of POCSO Act, 2012.

11. Aggrieved by the said judgment of acquittal, the complainant being the mother of victim, through the assistance of DLSA, has filed the present appeal.

12. Heard arguments of both sides.

13. Learned counsel for appellant Smt.Anuradha Deshpande would submit that the case was registered on 28.04.2020 at 07.00 p.m. based on the complaint given by the mother of the victim, the first informant. Prior to 27.04.2020, victim and her mother were not aware about what happened to the victim. Only when victim told that she was suffering from stomach pain, she was taken to the hospital on 27.04.2020 by the mother of the victim. After examining the victim, the doctor asked victim and her mother to come on next day and in the meanwhile, the doctor has given MLC intimation to Kumta Police Station, who in turn has given intimation to Gokarna Police Station. Hence, Gokarna Police have visited the house of complainant. But complainant and victim were not in the house and they had been to Canara Health Care Centre, Kumta. Only on 28.04.2020 when the victim and her mother had been to the hospital, the doctor told about the pregnancy of the victim and told them to lodge a complaint.

14. After thorough investigation, charge-sheet is filed against accused. On 29.07.2020, the victim has given birth to a baby boy, which was given to the Child Welfare Center to initiate legal process for adoption of the baby. On 03.02.2020, I.O. has taken permission of the Court to take the victim, accused and the child for DNA examination. Accordingly, on 05.02.2020 he obtained said permission and on 11.02.2020 he has collected the blood samples of victim, child and the accused through doctor before the learned JMFC and it was sent to DNA Center, Bengaluru and accordingly DNA report received that there was no match of DNA between accused and the child. However, DNA report alone cannot be the basis to decide the case of present nature. The Trial Court has not appreciated the facts in a proper manner. The Trial Court ought to have taken second DNA test. But, instead of doing so, the Court acquitted the accused. Even though the complainant had been to the police station at 01.30 p.m., she was made to sit up to 07.00 p.m. in the police station, and then, the complaint was registered. The complainant and victim are villagers

and not worldly wise and were not aware of pregnancy of the victim. These facts are not properly appreciated by the Trial Court. Hence, prayed for allowing the appeal and to convict the accused.

15. Learned Additional SPP supported the case of prosecution and the arguments of learned counsel for appellant and also prayed for conviction of the accused.

16. Per contra, learned counsel for accused/respondent No.1 Sri R.H.Angadi would submit that there is no clinching and proper evidence produced before the Trial Court to show that the accused has committed the offences alleged against him. There are so many exaggerations and improvements in the evidence of complainant and the victim. The delay in filing the complaint is not at all explained. The DNA report clinches the issue and it shows that there is no involvement of accused in committing the alleged offences. Considering these aspects, rightly, learned Special Judge has acquitted

the accused. Hence, it needs no interference. Hence, prayed for dismissal of appeal.

17. Having heard the arguments of both sides and upon verifying appeal papers along with Trial Court records, the points that would arise for our consideration are:

1. Whether the prosecution has proved beyond reasonable doubt that the accused has committed the offences alleged against him?

2. Whether the judgment of acquittal of Trial Court warrants any interference?

18. Our findings on these points are in **NEGATIVE** for the following:

REASONS

19. This is the appeal filed by victim against the judgment of acquittal. An acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and come to its own conclusion as per Sections 378 and 386 of Cr.P.C. This

power is to be exercised with due care and caution because the presumption of innocence in favour of accused is further strengthened by the acquittal of an accused. In this regard, the Hon'ble Apex Court in the case of **Chandrappa vs. State of Karnataka** reported in **(2007) 4 SCC 415** has laid down the general principles regarding the powers of Appellate Court while dealing with an appeal against an order of acquittal, which reads as follows.

"42. *From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against

acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(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.

(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."

20. The aforesaid judgment of Hon'ble Apex Court and principles noted down in the aforesaid judgment are reiterated by the Hon'ble Apex Court in the case of **Sampat Babso Kale vs. State of Maharashtra** reported in **(2019) 4 SCC 739**. This judgment is followed by a Co-ordinate Bench of this Court in Criminal Appeal No.200098/2019 dated 24.04.2020 of Kalaburagi Bench.

21. With this background the facts of the present case are to be analyzed.

22. Initially on 27.04.2020, the victim has been taken to Canara Health Care Centre, Kumta and after examining her, the doctor told victim and her mother to come on next day. In the meanwhile, the doctor confirmed himself that the victim was pregnant for 25 weeks and she is minor and hence he has given information to Kumta police station, who in turn has given information to Gokarna Police Station. On 28.04.2020 when victim and her parents had been to the hospital, they were directed to lodge complaint and they were also informed that the victim is pregnant for 25 weeks. According to the case of prosecution, till then they were not aware that victim was pregnant.

23. In this regard, in the evidence, mother of victim-P.W.8 has deposed that during April-2020, victim was having giddiness problem and hence she was taken to the doctor. On 27.04.2020 she was again taken to the hospital

because victim told that she was suffering from stomach pain. There, the doctor conducted scanning told them to come on next day. Thus, only on the next day, she was aware about this incident. But her cross-examination reveals that before they had been to Canara Health Care Centre, Kumta, 4-5 times, the victim was taken to Dr.Hosamani. Thus, the mother of victim was definitely aware about pregnancy of the victim much earlier to they had been to Canara Health Care Centre.

24. The victim also in her cross-examination has deposed that she and her mother had been to Dr.Hosamani at Gokarna and he is a very famous doctor in Gokarna and he examined her 4-5 times. They had been to said hospital because she was having pain in her abdomen. She had informed Dr.Hosamani that she was not having regular menstrual cycle. According to the victim the incident had taken place on 20.10.2019. In Ex.P.19, the last menstrual date is mentioned as 30.10.2019. Thus, even after the alleged date of incident, the victim had a menstrual cycle

and therefore, only after 30.10.2019, the incidence of rape has occurred.

25. In this regard, learned counsel for appellant would vehemently submit that in the complaint and also in her evidence, the victim has specifically stated that 2-3 times the accused has committed rape on her and hence the date 20.10.2019 is not so material and afterwards also the incident of rape had taken place and thus the victim became pregnant after 30.10.2019.

26. It is to be noted here that the DNA report as per Ex.C.1 reveals that the victim is the biological mother of the child, which was born on 29.07.2020 at Karwar Institute of Medical Science, but accused is not its biological father.

27. The birth certificate of victim is produced. P.W.5 is the Headmaster of Anand Ashrama High School, Benki Kottla, wherein the victim studied. Her date of birth was given by this witness to the police as per their requisition. He has produced her school certificate consisting the date of birth and the copy of register and school T.C. According to

these documents, the date of birth of victim is 30.10.2006 and he has given said date based on the school T.C., which was received from primary school. Thus, the victim was minor as on the date of alleged incident.

28. The learned Sessions Judge on examining materials has come to the conclusion that victim was minor as on the date of alleged incident. This observation and finding of learned Sessions Judge is not challenged by accused. Hence, as it is already established that the victim was minor as on the date of alleged incident, now the only thing to be decided is 'whether accused had sexual intercourse with the victim and he is the cause for her pregnancy'.

29. As discussed above, already DNA report is received saying that accused is not the cause for pregnancy of the victim. Even though DNA report is negative, the evidence of prosecutrix cannot be brushed aside. However, it is to be verified with due care and caution.

30. The conduct and attitude of victim and her parents is to be looked into. Even though the alleged incident had taken place on 20.10.2019 and subsequently also, it was not noticed by either of the parents of the victim. Only on 27.04.2020 they had been to Canara Health Care Centre and on 28.04.2020 they came to know about the incident. This fact needs to be analyzed properly because 6 months after the alleged incident i.e., when victim was pregnant for about 6 months, they came to know about this incident, which is not a believable thing. This is more so because victim was examined by Dr.Hosamani in Gokarna and her mother accompanied to the doctor about 4-5 times, prior to they had been to Canara Health Care Centre, Kumta.

31. Furthermore, on 28.04.2020 when complaint was lodged, it is only stated that when nobody was there in the house, accused came from back side i.e., when victim had been to kitchen to bring water and hugged her, forced her and removed his clothes and her clothes and committed

sexual intercourse with her. At that time there is no whisper about tying the hands of the victim. However, only some days afterwards when the victim had been to the Court and when her statement under Section 164 Cr.P.C., was recorded, for the first time she has stated about tying of her hands with rope.

32. Immediately after lodging complaint on 29.04.2020, I.O. has conducted spot panchanama and at that time according to victim and other witnesses, he was in their house for about 1-1.5 hours and verified the spot carefully. But at that time the alleged rope was not seized. According to the parents of victim, they have shown the rope to the police on the day of conducting spot panchanama itself, but it was not seized. Again on 05.04.2020, the I.O. has conducted another panchanama under which this rope as per M.O.1 was seized. This is the rope used by fishermen and it will be available in all the houses of fishermen as admitted by all the witnesses. The victim categorically admitted in her cross-examination that

at first instance the rope was not seized by the police. Thus, it is clear that after lodging the complaint, they are making improvements in the case.

33. The accused is the owner of the boat in which both accused and father of the victim were going to the sea to catch fish. There is no evidence to show that there is enmity between accused and the father of victim. Accused was going with father of victim to bring fish as per the cross-examination of victim.

34. The sum and substance of the evidence produced before the Court reveals that there is substantial improvement in the case of complainant and victim by adding rope to their case some days after lodging the complaint. There is inordinate delay of 6 months in lodging the complaint which is not explained. Further, the DNA report is not in favour of the prosecution. On the other hand, it is in favour of accused.

35. When there is inordinate delay in lodging the complaint, DNA report assumes importance, which is not in

favour of prosecution. Hence, in the absence of cogent evidence against accused, relying on the evidence of prosecutrix alone, who has made improvement in her case, the conviction cannot be recorded against accused. Considering these aspects meticulously, the learned sessions Judge has rightly come to the conclusion that the prosecution has not proved the guilt against accused and acquitted him.

36. Having independently assessed the evidence of the prosecution witnesses and having carefully examined the material on record, we are of the considered view that the prosecution has failed to establish the guilt of the accused for the charged offences beyond reasonable doubt.

37. Hence the following:

ORDER

- i) Appeal filed under section 372 Cr.P.C., is dismissed by confirming the judgment of acquittal dated 19.08.2021 in S.C.No.50/2020 on the file of Additional District and Sessions Judge, FTSC-I, U.K.,

Karwar (Special Court for Trial of Cases filed under POCSO) Act, 2012;

ii) The victim is entitled for compensation under Victim Compensation Scheme. Hence, the DLSA is hereby directed to provide appropriate compensation to the victim, if any such application is filed by her, after a due enquiry.

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

**Sd/-
(GEETHA K.B.)
JUDGE**

SH
CT-MCK