

CRL.A NO.100369 OF 2022

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27th DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO.100369 OF 2022 (A)

BETWEEN

STATE OF KARNATAKA,
REPRESENTED BY THE
POLICE INSPECTOR, DHARWAD,
WOMEN POLICE STATION,
DHARWAD DISTRICT,
THROUGH THE ADDITIONAL
STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH-580001.

...APPELLANT

(BY SRI. M.B. GUNDWADE, ADDITIONAL SPP)

AND

1. SHRI MUTTAPPA
S/O. NINGAPPA VAYAGAL,
AGE: 31 YEARS, OCC: LABOURER,
R/O. JADAGERI ONI,
NEAR HALE MASUTI,
ANNIGERI-582201,
DIST: DHARWAD-580001.

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2. KASTURAVVA
W/O. SOMASHEKHARAYYA HIREMATH,
R/O. AGASI ONI, ANNIGERI,
DIST: GADAG.

CAUSE TITLE AMENDED AS
VIDE ORDER DATED 28/07/2025.

...RESPONDENTS

(BY SRI. PRAVEEN HUCHAREDDY, ADVOCATE FOR R1;
SMT. ANURADHA R. DESHPANDE, AMICUS CURIAE FOR R2;
P.W.-6 AND P.W.-8 ARE SERVED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.PC., SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 20.09.2021 PASSED BY II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, DHARWAD IN SPL.S.C.NO.53/2019 AND TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 20.09.2021 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS SPECIAL JUDGE, DHARWAD IN SPL S.C.NO.53/2019 AND TO CONVICT THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 376 OF IPC AND UNDER SECTION 6 OF POCSO ACT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.02.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

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

The appellant-State has filed this appeal under Section 378(1) and (3) of the Code of Criminal Procedure (for short 'Cr.P.C.') challenging the judgment of acquittal dated 20.09.2021 in Spl.S.C.No.53/2019 on the file of II Addl. District and Sessions Judge and Special Judge, Dharwad (for short 'trial Court').

2. The parties would be referred with their ranks, as they were before the trial Court for the sake of convenience and clarity.

3. The case of prosecution in nutshell is that the accused being the relative of complainant was visiting the house of complainant often. Thus, he was in acquaintance with the family members of the complainant. He was having close relationship with the victim who was aged about 7 years. On 30.10.2019 at about 03.30 p.m., when the child victim was playing in front of her house, accused entered the house and as the victim was alone in the house, he

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asked her to give water, at that time he closed the door and committed sexual assault with her by removing his pant and the panty of the victim and also squeezed her chest and thereby the accused has committed the offences punishable under Section 376 IPC and Section 6 of Protection Of Children from Sexual Offence Act, 2012 (for short 'POCSO Act).

4. Immediately after the incident, the victim screamed loudly and went inside the house where her mother was preparing sweet pancake (ಪೋಳಿಗೆ) and informed it to her mother.

5. On 01.11.2019, the mother of victim lodged the first information and set the Criminal Law into motion. After receipt of the first information, the investigation commenced. The victim and accused were subjected to medical examination; Panchanamas were drawn. The Investigating Officer collected the birth certificate of the victim and other required documents from the concerned authorities. After completion of investigation, Investigating

Officer has filed the charge sheet before the Special Court. Afterwards, the learned Sessions Judge has taken cognizance of the aforesaid offences against accused.

6. After hearing both sides, the learned Sessions Judge has framed the charges against accused for the offences punishable under Sections 376 IPC and Section 6 of the POCSO Act.

7. On behalf of prosecution, totally, 18 witnesses were examined as P.W.1 to P.W.18 apart from marking Exs.P.1 to P.35 and marking Material Objects 1 to 10 and closed its side before the trial Court.

8. After recording the statement of accused under Section 313 Cr.P.C., and after hearing arguments of both sides, the learned Sessions Judge held that all the private witnesses have turned hostile and evidence of the victim child is not trustworthy and thereby acquitted the accused for the offences punishable under Section 376 IPC and Section 6 of the POCSO Act, 2012.

9. Aggrieved by the said judgment of acquittal, the State has preferred the present appeal.

10. Learned Addl. SPP would submit that there is consistent evidence of the victim from initial stage till she has given evidence before the Court that accused has committed sexual assault upon her. Only because there is no corroboration from the other witnesses who have turned hostile because of compromise with accused, the learned Sessions Judge has acquitted the accused which is not in accordance with law. The evidence of child victim even though, as sole testimony shall be believed if it is trustworthy and unimpeachable. In the instant case, there is trustworthy evidence from the side of victim. Hence, he prayed for allowing the appeal and to convict the accused for the offences punishable under Sections 376 IPC and Section 6 of POCSO Act, 2012.

11. Smt. Anuradha R. Deshpande, Amicus curiae appointed for respondent No.2-the first informant would also submit that there is consistent evidence of the victim

child. The parents of victim and other witnesses have not completely supported the case of prosecution because of the pressure exerted upon them from the people of accused even though accused was in custody at that time.

12. The learned Amicus Curie would further submit that, the defense has taken one year time to cross-examine the complainant, the victim and other witnesses, which establishes that only after making the parents of the victim and others hostile, cross-examination on behalf of accused was done. There is clear and clinching evidence that accused has put his private part in the vagina of the victim which is clearly and categorically established; only because there is no injury on the private parts of the victim, her evidence cannot be disbelieved. Hence, prayed for allowing the appeal and to convict accused.

13. Learned counsel Sri.Praveen Huchchraddi for accused/respondent No.1 would submit that there is no admissible material produced before the trial Court to say that accused has committed the offences alleged against

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him. The victim has improved her version from time to time and thus her evidence is not believable one. Except the victim and official witnesses, there is no evidence on record to show that the alleged incident has taken place. The victim being child, aged about 7 years, there is every chance of tutoring the victim, which cannot be ruled out in this case. Considering these aspects, rightly the trial Court has acquitted the accused. Hence, prayed for dismissal of the appeal. In this regard, he relied on the following judgments:-

- 1) The State Vs. Vipin @ Lalla in Crl.A.No.94/2025(SC)
- 2) Mallappa and others Vs. State of Karnataka in Crl.A.No.1162/2011(SC)
- 3) Ms. Suja Jones Mazurir W/o Pascal Vs. State of Karnataka in Crl.A.No.1050/2017(HC)
- 4) Nirmal Premkumar and another Vs. State of Karnataka in Crl.A.No.1098/2024(SC)

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14. Having heard the arguments of both sides, verifying the appeal papers and the trial Court records, the points that arise for consideration are:

1) Whether the prosecution proves beyond reasonable doubt that accused has committed the offences punishable under Section 376 IPC and Section 6 of POCSO Act?

2) Alternatively, whether the prosecution has established that accused has committed the aggravated sexual assault on the victim?

15. Our answer to Point No.1 is in **Negative** and Point No.2 is in **Affirmative** for the following:

REASONS

The case of prosecution in nutshell is that on 30.10.2019 at about 03.30 p.m., in the house of complainant situated at Annigeri village; accused has committed aggravated penetrative sexual assault on victim child aged about 7 years and thereby committed the offence

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punishable under Section 6 of POCSO Act, 2012 and Section 376 IPC.

16. To substantiate its case, the prosecution examined in all 18 witnesses as P.W.1 to P.W.18. P.W.1 is the spot panchanama and spot sketch witness; P.W.2 is said to be the panch witness for Ex.P4 and P5; P.W.3 is said to be the panch witness for Ex.P5; P.W.4 is the Headmaster of school who has produced the school admission register of the victim; P.W.5 is the doctor who examined the accused; P.W.6 and P.W.7 are parents of the victim; P.W.8 is the victim; P.W.9 is female police officer in whose presence statement of victim was recorded; P.W.10 is the P.W.D Assistant Engineer who has prepared spot sketch;. P.W.11 has issued the extract of the house property, wherein the alleged incident has taken place; P.W.12 is the doctor, who conducted medical examination on victim. P.W.13 to P.W.17 are neighbors/relatives of the victim. They have not supported the case of prosecution; P.W.18 is the Investigating Officer, who conducted investigation.

17. The evidence of P.W.4, the Headmaster of Adikavi Pampa Primary School, Annigeri, reveals that he has issued the birth certificate of victim stating the date of birth of victim as per Ex.P.8 as 19.08.2012, based on the school admission register; Ex.P.8 is the school admission certificate reveals that the victim was studying in second standard and her date of birth is mentioned in Register No.1470/2018. According to this document she was born on 19.08.2012. Along with this school certificate, the witness has brought the school admission register which is marked as Ex.P.9. After obtaining the extract of the relevant entry as per Ex.P.9(a), the original register was returned to the school Headmaster which is required for his day to day administration. This register reveals that date of birth of the victim is mentioned as 19.08.2012. Thus, Ex.P.8 and school admission register extract as per Ex.P.10 clearly and categorically establish that the date of birth of the victim is 19.08.2012. The alleged incident has taken place on 30.10.2019. Hence, the victim was aged about 7 years as on the date of the alleged incident. Exs.P.8 to 10 were not

disputed by the accused at the time of cross-examination of P.W.4. Furthermore, the learned Sessions Judge has come to the conclusion that Victim was child aged about 7 years as on the date of alleged incident and this finding of the learned Sessions Judge is not challenged by the accused. Furthermore, he has not disputed the date of birth of the victim at the time of submitting arguments in this appeal.

18. Evidence of P.W.12-doctor reveals that as per the radiologist's opinion age of victim is 6 to 9 years and as per the opinion of the dentist, age of victim was 6 to 8 years.

19. Thus, the coupled reading of the evidence of Headmaster and the doctor's opinion, age of victim is less than 12 years is established by the prosecution beyond all reasonable doubt.

20. P.W.6 is the mother of victim who has not supported the case of prosecution in entirety in her examination-in-chief. Hence, she was cross-examined by learned SPP. In that cross-examination, the suggestion was

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put to P.W.6 that the victim has narrated what happened to her at 03.30 p.m. on 30.10.2019 and said suggestion was denied by the witness. But, she narrated that the victim has stated so before C.W.9, which establishes that she is not disputing such an incident has taken place. She has admitted that afterwards, the victim was examined by her and C.W.8 and C.W.9. She admitted that, seeing the mother and others, accused ran away from the spot. She has admitted that she waited till her husband came and then after enquiring with the elders, she has lodged the complaint that accused has committed sexual assault upon the victim child and she got written the first information through C.W.11. She has also categorically admitted that the people of accused have requested to compromise the case and accordingly, they have compromised the case and she met the advocate of the accused. She has only denied the suggestion that because of such compromise she is deposing falsely.

21. After the examination-in-chief and cross-examination of this witness by learned special PP, nearly one year later, the witness was again recalled by learned counsel for accused and in that cross-examination she deposed that she does not know what is written in the first information and panchanama and why photos were taken and because she was called by her sister-in-law-Sugandhamma to prepare sweet pancake on that day, she went to her house etc. The entire evidence of P.W.6 is to be looked into and not a portion of her cross-examination conducted by learned counsel for accused alone.

22. The sum and substance of the entire evidence of P.W.6 clearly and categorically establish that only because of compromise with people of accused, she has not deposed the truth before the Court even though the child narrated the incident to her.

23. P.W.7 is the father of victim and he also not supported the case of prosecution wholeheartedly in his examination-in-chief and hence cross-examined by learned

SPP, he admitted that they got written the complaint through his elder brother and lodged the complaint. He admitted that as per the request from the people of accused, they have compromised and in that regard he met the advocate for accused. He denied the suggestion that because of said compromise he is not deposing the truth. About one year after this cross-examination by learned SPP, this witness was cross-examined by learned counsel for accused and at that time again he has given a complete go by and deposed that no such incident as alleged had taken place and accused was not visiting their house, etc.

24. P.W.1 is the panch witness for drawing up of spot panchanama and spot sketch as per Ex.P.1 and Ex.P.2. He has only deposed about drawing up of such panchanama and stated that he does not know the complete details of said panchanama.

25. P.Ws.2 and 3 are said to be the panch witnesses for drawing up of punchanamas at the time of seizure of articles of accused and articles belonged to child victim in

the police station. But, they have not supported the case of prosecution.

26. P.W.5 is the doctor who examined the accused on 01.11.2019 and gave his certificate that there is nothing on record to show that accused is incapable of performing the sexual act. He has collected the articles from accused and handed over them to the police. His above evidence is not disputed by the accused.

27. P.W.9 is woman PSI in whose presence the statement of victim was recorded as per Ex.P.16.

28. P.W.10 has prepared spot sketch by examining the spot.

29. P.W.11 has issued the property extract of the spot of incident as per Ex.P.21.

30. Evidence of P.W.12-doctor is relevant. The evidence of doctor reveals that the hymen of the victim was intact, there was no discharge. She has given her final

opinion that there is no evidence to show the recent sexual assault on the victim as on the date of issuing report.

31. The evidence of P.W.13 to P.W.17 is not much relevant because they are relatives and neighbors of the victim and not supported the case of prosecution, as already there was compromise between the parents of victim and the people of accused. Hence, their evidence has no relevance.

32. The remaining evidence is the evidence of P.W.18-Investigating Officer. He has deposed in detail about how he has conducted the investigation. He has revealed the procedure of investigation conducted by him.

33. On perusal of the evidence of Investigating Officer, it is established that he conducted investigation in accordance with the procedure prescribed under law.

34. The accused has taken specific contention that there is no evidence of penetrative sexual assault or aggravated penetrative sexual assault on the victim

because the doctor's evidence establishes that there was no such assault on the victim.

35. As discussed earlier the evidence of victim is very very important to decide what happened to her at the time of incident. The evidence of doctor is corroborative piece of evidence to substantiate the case and that alone cannot be the base to decide the case.

36. As far as discrepancy alleged by the defence in the evidence of victim and highlighted by the learned Sessions Judge is concerned, her entire evidence, statement before doctor and statement under Section 164 Cr.P.C., are to be analyzed with care and caution. With this background, the evidence of victim before Court has to be looked into.

37. P.W.8 was initially questioned by the learned Sessions Judge to know whether she is in a position to give evidence or not because she is a child who was below the age of 10 years at the time of recording her evidence; by putting some questions, the learned Sessions Judge satisfied that she is in a position to give evidence. But, oath

is not administered to her because she is aged below 12 years. Hence, her evidence given before Court is to be looked with care and caution.

38. Initially, when child witness entered the witness box, she kept silent for some time for about half an hour afterwards, again she was examined wherein she has stated as follows:

“2. ನಾನು ಆಟವಾಡುವ ಮುಂಚೆ ಆರೋಪಿ ಅಲ್ಲಿಗೆ ಬಂದನು. ಎಷ್ಟು ದಿವಸದ ಹಿಂದೆ ಬಂದಿದ್ದನು ಎಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. ಆತ ನೀರು ಕೊಡು ಬಾ ಎಂದು ಕೇಳಿದನು. ನಂತರ ಆರೋಪಿ ಕದ ಮುಚ್ಚಿದನು. ನಂತರ ಆತ ನನ್ನ ಪ್ಯಾಂಟನ್ನು ಬಿಚ್ಚಿದನು. ನಂತರ ನನ್ನ ಪ್ಯಾಂಟನ್ನು ಬಿಚ್ಚಿದನು. ಸಾಕ್ಷಿ ನಂತರ ಚಡ್ಡಿ ಬಿಚ್ಚಿದನು ಎಂದು ನುಡಿಯುತ್ತಾಳೆ. ನಂತರ ಆತನ ಸಾಮಾನನ್ನು ತೆಗೆದು ನನ್ನ ಸಾಮಾನಿಗೆ ಹಚ್ಚಿದನು. ಸಾಮಾನು ಎಂದರೆ ಎನು ಎಂದರೆ ಪ್ರಶ್ನಿಸಿದ್ದಕ್ಕೆ ಸಾಕ್ಷಿ ಆಕೆಯ ಮಮಾಂಗದ ಕಡೆ ಬೊಟ್ಟು ಮಾಡಿ ತೋರಿಸಿ ಅಲ್ಲಿಂದ ತೆಗೆದು ಹಚ್ಚಿದನು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಂತರ ಆರೋಪಿ ನನ್ನ ಬಾಯಿ ಮುಚ್ಚಿದನು. ನಂತರ ನಾನು ಚೀರಿಕೊಂಡೆನು. ನಾನು ಚೀರಿಕೊಂಡ ನಂತರ ನನ್ನ ಮಮ್ಮಿ ಬಂದರು. ಆ ಸಮಯದಲ್ಲಿ ಆರೋಪಿ ಪ್ಯಾಂಟ ಹಾಕಿಕೊಂಡು ಓಡಿ ಹೋದನು. ಆರೋಪಿ ಮಾಡಿದ್ದನ್ನು ನಾನು ನನ್ನ ತಾಯಿಗೆ ತಿಳಿಸಿದೆನು. ಈ ಘಟನೆ ನಡೆಯುವ ಪೂರ್ವದಲ್ಲಿ ನನ್ನ ಎದೆಯ ಮೇಲೆ ಕೈಯಾಡಿಸುತ್ತಿದ್ದನು, ಆದರೆ ಎನೂ ಮಾಡಿರುವುದಿಲ್ಲ.”

39. P.W.12-Dr.Swetha has given her evidence that on 01.11.2019 at 09.15 a.m., the victim and her mother was brought to the hospital by WHC 808 of Dharwad

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Women Police Station and then she enquired the victim, wherein victim deposed that since about 5 years the accused was visiting their house and he is well acquainted to them and he was talking with her. It is further stated by the victim before P.W.12 as follows:

“30-10-2019 ರಂದು ಮಧ್ಯಾಹ್ನ 3-30 ಸಮಯದಲ್ಲಿ ತಾನು ಬಿದ್ದ ಮನೆಯಲ್ಲಿ ಆಟವಾಡುತ್ತಿದ್ದಾಗ ಆರೋಪಿ ತನ್ನ ಎದೆಯನ್ನು ಮುಟ್ಟಿ ಮೊಲೆಗಳನ್ನು ಹಿಚುಕಿ ತನ್ನ ಮರ್ಮಾಂಗಕ್ಕೆ ಆತನ ಗುಪ್ತಾಂಗವನ್ನು ತಾಗಿಸಿದ ಎಂದು ನೊಂದ ಬಾಲಕಿಯು ಅಳುತ್ತ ಬಂದು ಹೋಳಿಗೆ ಮಾಡುತ್ತಿದ್ದ ತನ್ನ ತಾಯಿಗೆ ತಿಳಿಸಿರುತ್ತಾಳೆ. ನೊಂದ ಬಾಲಕಿಯ ತಾಯಿ ಸಹ ಈ ಬಗ್ಗೆ ಹೇಳಿಕೊಂಡಿದ್ದು ತನಗೆ ಆರೋಪಿ ಮನೆಗೆ ಬಂದಿದ್ದು ಗೊತ್ತಿರಲಿಲ್ಲ ಘಟನೆಯು ಮಳೆಯಿಂದಾಗಿ ತಮ್ಮ ಬಿದ್ದಿರುವ ಮನೆಯಲ್ಲಿ ನಡೆದಿದ್ದು ಆಕೆಯ ಗಂಡ 2 ದಿನಗಳ ಕಾಲ ಊರಲ್ಲಿ ಇಲ್ಲ ಎಂದು ತಿಳಿಸಿರುತ್ತಾಳೆ.”

40. The statement given by the victim before judicial officer under Section 164 CrPC. is marked as Ex.P17, wherein the child victim has stated as follows:

“ನಾನು ಎರಡನೇ ತರಗತಿಯಲ್ಲಿ ಓದುತ್ತೇನೆ. ನಮ್ಮ ಮನೆಯಲ್ಲಿ ನಾನು ನನ್ನ ತಂದೆತಾಯಿ ಇರುತ್ತೇವೆ. ನನ್ನ ಅವ್ವನ ಹೆಸರು ಕಸ್ತೂರಿ. ನನ್ನ ಅವ್ವ ನನ್ನ ಜೊತೆ ಬಂದಿದ್ದಾಳೆ. ನಾನು ಆರಾಮ ಇಲ್ಲ ಎಂದು ಶಾಲೆಗೆ ಹೋಗಿರಲಿಲ್ಲ ಮನೆಯಲ್ಲಿ ಇದ್ದೇನು. ನಾನು ಮಧ್ಯಾಹ್ನ 3-00 ಗಂಟೆ ಸುಮಾರಿಗೆ ಆಟ ಆಡುತ್ತಿದ್ದೆನು. ನಮ್ಮ ಊರಿನ ಮುತ್ತು ಇವನು ಮನೆಯ ಕಡೆಗೆ ಬಂದನು. ನಮ್ಮ ಮನೆಯ ಒಳಗೆ ಬಂದು ಬಾಗಿಲು ಹಾಕಿದನು. ಮುತ್ತು ತನ್ನ ಪ್ಯಾಂಟು ಕಳೆದನು ನನ್ನ ಪ್ಯಾಂಟ್

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ಕಳಿಸಿದನು. ಮತ್ತು ತನ್ನ ಸಾಮಾನನ್ನು ನನ್ನ ಮೈಗೆ ಹಚ್ಚಿದನು. ನನ್ನ ಎದೆಯ ಮೇಲೆ ಕೈ ಆಡಿಸಿದನು. ನನ್ನ ಎದೆ ನೋವಾಯಿತು. ಮತ್ತು ನನ್ನ ಬಾಯಿ ಮುಚ್ಚಿ ಹಿಡಿದಿದ್ದನು. ಮತ್ತು ಬಾಯಿ ಮೇಲಿಂದ ಕೈ ತೆಗೆದಾಗ ನಾನು ಜೋರಾಗಿ ಬಾಯಿ ತೆಗೆದು ಚೀರಿದೆನು. ನನ್ನ ಅವ್ವ ಓಡಿಬಂದಳು. ಮತ್ತು ತನ್ನ ಪ್ಯಾಂಟ್ ಹಾಕಿಕೊಂಡು ಓಡಿಹೋಗಿಬಿಟ್ಟನು. ಮತ್ತು ದಿನಾಲೂ ನನ್ನ ಎದೆಯ ಮೇಲೆ ಕೈಯಾಡಿಸುತ್ತಿದ್ದನು.”

41. The above examination-in-chief of child victim was recorded on 07.03.2020. She was cross-examined on 29.03.2021 i.e., more than one year after completion of her examination-in-chief. In that cross-examination, there are specific suggestions put to the victim that she has deposed falsely in her examination-in-chief as per the say of police; several specific suggestions were made to the victim that whatever she deposed in her examination-in-chief was wrong; but the child victim denied all those suggestions.

42. Specifically, question No.9 was put to her that the incident narrated in her examination-in-chief is not done by accused-Muttappa, for which she has answered “ಇಲ್ಲಾರಿ

ಮಾಡ್ಯಾನ್". That means he did it and she denied the said suggestion.

43. Learned counsel for accused vehemently submitted that the witness was tutored. Who has tutored the witness is not explained by him. Admittedly, the parents of victim have not supported the case of prosecution when they were examined on 07.03.2020 i.e., on the day of examination-in-chief of victim itself. Thus, there is no chance or occasion for her family members or parents to tutor the witness. There is no personal interest to any police or to any other person to tutor the victim and it is not elicited in her evidence. Under these circumstances, the argument of learned counsel for the accused that the victim was tutored is ruled out and that cannot be accepted.

44. The 'penetrative sexual assault' is defined in Section 3 of POCSO Act, 2012. It reads as follows:

"3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—

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(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

45. Section 5 defines the 'aggravated penetrative sexual assault'. It reads as follows:

"5. Aggravated penetrative sexual assault.—

(a) Whoever, being a police officer, commits penetrative sexual assault on a child —

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

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(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits

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*penetrative sexual assault on a child in that institution;
or*

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

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(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks;

(iv) causes death of the child; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

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(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of [communal or sectarian violence or during any natural calamity or in similar situations]; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

46. Thus, as per Section 5(m), whoever commits penetrative sexual assault on a child below 12 years is said to have committed 'aggravated penetrative sexual assault'. Hence, if prosecution is able to establish that accused has committed penetrative sexual assault on the victim then it amounts to aggravated penetrative sexual assault because

it is established that victim is minor below the age of 12 years.

47. In the instant case it is alleged that the accused has committed penetrative sexual assault on the victim. However, it is not supported by the medical evidence. If accused has used force and penetrated his penis on the vagina of the victim, then there is every possibility of causing some injury on that part of the victim because she was a child aged only 7 – 9 years at that time. However, that has not happened in this case. On careful perusal of victims evidence, it is not conclusive to hold that the victim that the accused has penetrated or inserted any part of his penis in her vagina. However, the act committed by the accused would amount to 'sexual assault'.

48. Section 7 of the POCSO Act, 2012 defines 'sexual assault'. It reads as follows:

"7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other

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person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

49. According to POCSO Act, 2012, if any person with sexual intent touches the vagina of the child then it amounts to sexual assault.

50. Section 9 defines 'aggravated sexual assault'. It reads as follows:

"9. Aggravated sexual assault.—(a) *Whoever, being a police officer, commits sexual assault on a child—*

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

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(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall

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be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

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(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of [communal or sectarian violence or during any natural calamity or in any similar situations]; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public; 2

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[(v) whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity,] is said to commit aggravated sexual assault.

is said to commit aggravated sexual assault.”

51. Thus, according to Section 9(m), whoever commits sexual assault on a child below 12 years has committed 'aggravated sexual assault'.

52. In the instant case, as discussed above, accused has committed 'sexual assault' on a child below the age of 12 years. The evidence of victim child categorically establishes that accused touched his penis on the private part of victim. There is no exaggeration in her evidence. She has not made any improvement on this point but her evidence is consistent as discussed above. Only by considering minor variations in her evidence, the learned Sessions Judge came to the conclusion that the sole testimony of victim is inconsistent and is unbelievable, which is not justifiable.

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53. Learned counsel for appellant relies on following citations:

1) *The State V/s Vipin @ Lalla in Crl. Appeal No.94/2025, (SC)*

"9. We have gone through the order of the Trial Court as well as the High Court. The only worthwhile evidence which has been produced before the Court by the prosecution is the deposition of the prosecutrix herself. Although the age of the prosecutrix is 16 years and four months which has not been seriously disputed (accused was about 20 years of age at the time of the incident). Nevertheless the fact remains that the medical examination which was conducted on 18.09.2014 revealed that no injuries were detected on the body of the prosecutrix. Though it was stated in the medical report that her hymen was torn. Definitely the prosecutrix in her examination-in-chief as well as in cross-examination has stuck to the fact that she was raped by the accused but the fact remains that she has contradicted her statement at more than one place. Moreover she has said in her statement under Section 164 CrPC she had hit the accused on her head by Danda whereas in her examination-in-chief she stated that she hit the accused on his foot. When the accused had surrendered on 10.10.2014 none of these injuries were noticed on the body of the accused.

10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.

12. In any case as we have already stated above that the testimony of the prosecutrix does not inspire confidence, under these circumstances, we are not inclined to interfere with the well considered order of the Trial Court and the High Court."

2) Mallappa and others V/s State of Karnataka in Crl. Appeal No.1162/2011(SC)

"25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record.

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However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The 'two-views theory' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of

*action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law. In **Selvaraj v. State of Karnataka**³,*

*"13. Considering the reasons given by the trial court and on appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in **Jagan M. Seshadri v. State of T.N.** [(2002) 9 SCC 639] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus:*

"9. ...We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutory principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the

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order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.”

(emphasis supplied)

*In **Sanjeev v. State of H.P.**⁴, the Hon’ble Supreme Court analyzed the relevant decisions and summarized the approach of the appellate Court while deciding an appeal from the order of acquittal. It observed thus:*

“7. It is well settled that:

*7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see **Vijay Mohan Singh v. State of Karnataka**⁵, **Anwar Ali v. State of H.P.**⁶)*

*7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see **Atley v. State of U.P.**⁷)*

*7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see **Sambasivan v. State of Kerala**⁸)”*

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3) *Ms. Suja Jones Mazurier W/o Pascal V/s State of Karanataka in Crl. Appeal No.1050/2017 (HC)*

"19. The other judgments referred by learned counsel for appellant are Ranjit Hazarika Vs. State of Assam⁴ (Ranjit Hazarika), Ganesan Vs. State Represented by its Inspector of Police⁵ (Ganesan) the Apex court emphasized that while the victim testimony is important, it must be scrutinized in light of entire evidence including medical reports and circumstances of the case. Where the victim's testimony is inconsistent, influenced by external tutoring or where medical evidence fails to corroborate the allegations, the benefit of doubt must go to the accused. In the present case, the child's memory gaps, admitted coaching by mother, lack of conclusive medical evidence of sexual assault, and DNA reports creates serious doubts on the prosecution's case. While the legal proposition laid down by the Apex court in the above referred decisions is undoubtedly authoritative, however the facts and circumstances of the present case are clearly distinguishable and are not applicable to the present case."

4) *Nirmal Premkumar and another V/s State of Karnataka in Crl. Appeal No.1098/2024 (SC)*

"11. Law is well settled that generally speaking, oral testimony may be classified into three categories,

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viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence."

54. Amicus Curie for respondent No.2 relied on the SLP (Crl.)No.69/2025 wherein at paragraph No.16 it is mentioned as below:

"16. *The reasoning of the High Court, set out above, falls far short of the parameters required under Section 389 of Cr.P.C. for enlargement of a convict, punished for heinous offence, on bail after suspending the sentence. The finding that no sexual assault was found, without considering the overall nature of the evidence of the case, is completely untenable. According to the evidence of the prosecutrix, Respondent No.2, at gunpoint, closed her mouth and forcibly took her to the house of Amro and committed rape on her. All that the medical evidence said was that no conclusive opinion about the crime could be given since FSL Report was awaited. That does not mean that the ocular evidence could be ignored. As far as non-availability of FSL Report is concerned, the prosecution has explained the*

situation and the Trial Court has also found that the non-availability of the DNA Report did not adversely affect the case of the prosecution. The reasoning that despite the availability of washrooms in the house it was difficult to believe that the prosecutrix could go out for the toilet, is conjectural in nature.”

55. On careful perusal of all the aforesaid citations; the principle stressed by Hon’ble Apex court, time and again is that when there is consistency in the evidence of solitary evidence of victim, then it is to be accepted. But, if there is inconsistency in her evidence and if it is not trustworthy, then the conviction based on sole testimony of victim is improper.

56. In the instant case as discussed above in detail, there is consistency in the evidence of victim about the alleged incident.

57. We are fully aware about the power of Appellate Court in case of acquittal and how it is to be exercised. 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."

58. 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.

59. 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 proved beyond reasonable doubt that accused has committed 'aggravated sexual assault' on the

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victim which is punishable under Section 10 of POCSO ACT, 2012.

60. Hence, the following:

ORDER

- i) Appeal filed under section 378(1) & (3) of Cr.P.C., is partly allowed by setting aside the judgment of acquittal dated 20.09.2021 in Spl.S.C.No.53/2019 on the file of II Addl. District and Sessions and Spl. Judge, Dharwad;
- ii) Accused is convicted for the offence punishable under Section 10 of POCSO ACT, 2012.
- iii) Accused is sentenced to undergo rigorous imprisonment of 5 years and to pay fine of Rs.25,000/-; in default of payment of fine, to undergo simple imprisonment of further period of six months. Out of this fine amount, Rs.20,000/- shall be paid to the victim as compensation under Section 395 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 357 Cr.P.C.), balance shall be credited to the State exchequer.
- iv) The appellant is directed to surrender before the trial Court within one month, to serve the remaining part of the sentence, failing which, the

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trial Court shall proceed in accordance with law to secure his presence.

- v) Appellant/accused is entitled for set-off for the period he has already undergone in custody under Section 468 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 428 of Cr.P.C.)
- vi) Learned Amicus Curiae, Smt.Anuradha R. Deshpande, counsel is entitled to honorarium of Rs.10,000/- which shall be paid by the High Court Legal Services Committee, Dharwad.
- vii) 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, by making due enquiry.
- viii) Copy of this judgment shall be forwarded to the trial Court.

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

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

HMB
CT-MCK