



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CRIMINAL APPEAL NO.100599 OF 2024 (C)

BETWEEN:

SRI. DYAMANNA @ DEVAPPA S/O. BALADANDAPPA,
AGE: 54 YEARS, OCC. AGRICULTURE,
R/O. JANGAMARAKALGUDI VILLAGE-583224,
TAL. GANGAVATHI, DIST. KOPPAL.

...APPELLANT

(BY SRI. VISHWAPRAKASH UPPIN, ADVOCATE FOR
SRI. SRINAND A. PACHHAPURE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
THROUGH RURAL POLICE STATION,
GANGAVATHI, NOW REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD,
BENCH AT DHARWAD-580011.

2. KUMARI LAXMI D/O. BETTAPPA KUBBER,
AGE: 19 YEARS, OCC. HOUSEHOLD WORK,
R/O. 2ND WARD, JANGAMARKALGUDI-583224,
TAL. GANGAVATHI, DIST. KOPPAL.

...RESPONDENTS

(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP FOR R1;
SRI. S.P. KANDAGAL, ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., (SECTION 415 (2) OF BNSS), PRAYING TO CALL FOR THE RECORDS IN SPL. S.C. POC SO NO.37/2020 AND SET ASIDE THE JUDGMENT OF CONVICTION DATED 20.06.2023 AND ORDER OF SENTENCE DATED 22.06.2023 PASSED BY THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, AT KOPPAL IN SPL.S.C. POC SO NO.37/2020 AND ACQUIT THE APPELLANT FROM THE OFFENCES PUNISHABLE UNDER SECTION 376(3) AND 506 OF IPC AND SECTION 4(2) AND 6 OF POC SO ACT, IN THE INTEREST OF JUSTICE.

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THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard the learned counsel for the appellant, learned Addl.
SPP for the respondent No.1/State as well as learned counsel for
the respondent No.2/Complainant.

2. This appeal is filed against the judgment of conviction
dated 20.06.2023 and order of sentence dated 22.06.2023
passed in SPL.S.C. POCSO NO.37/2020 by the Additional District
and Sessions Judge, FTSC-1, at Koppal (for short, 'Trial Court') for the
offence punishable under Section 376(3) and 506 of IPC and
Sections 4(2) and 6 of POCSO Act, 2012.

3. The factual matrix of the case of prosecution is that
PW3-victim is a minor girl aged about 15 years and accused No.1
and 2 are the residents of Jangamarakalgudi Village, Gangavathi
Taluk, Kappal District, which comes within the limits of
Gangavathi Rural Police Station. When the victim was going to
house of accused No.1 to watch TV, accused No.1 used to touch



her body, hands and chin. That on 01.01.2020 at about 11.00 a.m., Accused No.1 forcibly had sexual intercourse with the victim for the first time, despite her resistance and threatened her life with dire consequences, if she discloses the same to anybody and further warned her to come to his house whenever he calls upon her. The accused No.1 often called her to watch TV and had forcible sexual intercourse with her several times in his house. Though in the charge sheet, an allegation is made against accused No.2 and accused No.2 is acquitted by the trial Court and hence, no appeal against the acquittal and therefore, the other factual aspects in respect of accused No.2 is not mentioned in the present case. The police investigated the matter in respect of both the incident of accused No.1 and 2 and filed the charge sheet and after filing of the charge sheet, both accused No.1 and 2 were tried before the trial Court, since both of them claims trial and they did not plead guilty.

4. The prosecution in order to prove the charges, examined PW1 to PW17 and got marked on Ex.P1 to P55 and MOs 1 to 22. On behalf of the defence, accused No.1 examined himself as DW1 and got marked document D1 to D3. The trial Judge after completion of the prosecution evidence, examined



both accused Nos.1 and 2 by invoking Section 313 of Cr.P.C. Both of them have denied the incriminating evidence. Accused No.2 submits that no defence evidence but accused No.1 has been examined. However, accused No.1 submitted his defence evidence and filed written statement stating that he had been intentionally implicated in the case. The accused No.1 is having a wife, children, daughter-in-law and grandchildren, who were residing along with him in a small house. It is contended that in the said situation, it is impossible to commit alleged rape on victim on several occasions, that too in his house. The trial Judge having considered both oral and documentary evidence acquitted accused No.2 and convicted accused No.1. The trial Judge imposed a sentence of rigorous imprisonment for the remainder of his natural life, along with fine of Rs.25,000/-. Being aggrieved by judgment of conviction and sentence, the present appeal is filed before this Court.

5. The main contention of the counsel appearing for the appellant before this Court is that the trial Court committed an error in accepting the evidence of PW-2 with regard to her age is concerned, believing the documents marked as Exs.P25 to P27. The counsel further submits that the very approach of the trial



Court is erroneous. The counsel in support of his argument relies upon the judgment of the Hon'ble Apex Court in the case of ***P. Yuvaprakash V/s. State represented by Inspector of Police¹***, decided on 18.07.2023. The counsel brought to the notice of this Court the paragraph No.13 and so also the paragraph No.14. The counsel also relies upon the judgment of the Hon'ble Apex Court in the case of ***Kiran V/s. State of Karnataka²*** and brought to notice of this Court paragraph No.13.

6. The counsel referring this judgment would contend that only Constitutional Courts can impose a sentence for the remainder of natural life, when the life imprisonment was imposed. The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Court and hence, the conviction and sentence requires interference. The counsel also submits that the evidence of PW-3 also not inspires the confidence of the Court to come to a conclusion that she was subjected to the sexual act and only the trial Court can consider the evidence of

¹ 2023 SCC Online SC 846

² 2025 SCC Online SC 2863



PW-3- victim, if it is consistent and reliable and if the same is not found reliable and consistent, the question of convicting the accused does not arise and hence, it requires interference of this Court.

7. Per contra, Sri. M.B. Gundawade, learned Additional S.P.P appearing for the respondent No.1/State and Sri. S.P. Kandagal, learned counsel appearing for respondent No.2 submit that in order to prove that the victim was aged about 15 years, the documents marked as Exs.P25 to P27 were produced. Those documents are certificates issued by the school, that too based on the admission application as well as the admission register and so also the same is spoken by PW-12-Headmaster. The counsel further submits that when these documents are proved that victim is aged about 15 years and the same is taken note of by the trial Court to come to a conclusion that she is a minor, it attracts the offences under Sections 4 and 6 of POCSO Act, 2012 having considered the other evidence available on record.

8. Learned Additional S.P.P appearing for the respondent No.1/State and also learned counsel appearing for respondent No.2 further submits that the victim was examined



as PW-3 before the trial Court. Her evidence clearly establishes that whenever she used to go to the house of accused No.1, he used to touch her and ultimately subjected her to sexual acts and threatening her by stating that not to reveal the same to anybody and so also repeatedly subjected her for sexual act. As a result, she became pregnant and gave birth to a male child. The counsel further submits that the DNA test is also positive that the accused No.1 is the biological father of the child as per Ex.P45. The counsel also submits that the mother of the victim was also examined as PW-4 and she also supported the case of the prosecution. Learned counsel further submits that medical evidence and also the evidence of PW-3 corroborates with FSL report and the trial Court rightly comes to the conclusion that accused has committed a heinous offence of rape on the minor girl and rightly convicted and sentenced the accused. Hence, it does not require any interference.

9. Having heard the counsel appearing for the appellant, the counsel appearing for the respondent No.1/State and the counsel appearing for respondent No.2 and having considered the grounds urged in the appeal memo as well as oral



submissions made by counsels, the points that would arise for the consideration of this Court are:

- i. Whether the trial Court committed an error in convicting the accused for the offence punishable under Section 376(3), 4 and 6 of POCSO Act and so also under Section 506 of IPC and whether it requires interference of this Court?
- ii. Whether the appellant has made out the ground to modify the sentence as contended and whether it requires interference of this Court or it requires any modification of the sentence?
- iii. What order?

Point No.(i):

10. Having heard the respective counsel and perused the material on record, particularly the charges levelled against the accused, and so also the oral and documentary evidence available before the Court including the material objects which have been marked, we have given our anxious consideration to the same and re-appreciated the same in keeping the grounds urged in the appeal memo and so also in view of the principles



laid down in the judgments referred supra by the counsel appearing for the appellant.

11. The first and foremost limb of argument of the counsel for the appellant is that the trial Court committed an error in accepting that the victim was a minor, considering the documents marked as Exs.P25 to 27 and ought not to have relied upon the same. The counsel also would submit that though PW-2 has been examined in order to prove those documents and the same has not been proved. The counsel relying upon the judgment in the case of **P. Yuvaprakash** referred supra particularly brought to the notice of this Court paragraph No.13 and hence, this Court extracted paragraph No.13 and 14 with regard to the accepting of the date of birth is concerned.

"13. *It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the court concerned has to determine the age by considering the following documents:*

"(i) *The date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*



(ii) The birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) And only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board."

14. *Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the authority concerned i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C-1 i.e. the school transfer certificate showed the date of birth of the victim as 11-7-1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness i.e. CW 1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW 3, the Revenue Official (Deputy Tahsildar) concerned had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ext. C-1 could not have been relied upon to hold that 'M' was below 18 years at the time of commission of the offence."*



12. Having considered paragraph No.13, which have been referred above, it is evident that in order to prove the date of birth of the victim, three documents are to be taken note of as per Section 94 of the Juvenile Justice Act and having considered the discussions made above in paragraph No.13 and 14, it is very clear that an ossification test or any other latest medical age determination test is required, if the case does not fall within the purview of (i) and (ii) referred above, that has been discussed in the judgment in point No.3. If the document discloses that age proof of the victim girl is proved by examining the witness of the document marked as Exs.P25 to 27 and in the case on hand, it is very clear that date of birth certificate from the school is produced, that too the school certificate of the admission to 1st standard and also documents are very clear that an application as well as birth certificate issued by the school are produced before the Court. Even though the said document is not a matriculation document, but it is very clear that Date of Birth certificate issued by the school is produced before the Court and also the said document is in respect of 1st standard and studied in the very particular school from 1st standard to 8th standard and when such material is available before the Court in



compliance with Section 94(2) of J.J. Act, it is proved that she is aged about 15 years as on the date of the incident. Hence, the very first contention of the counsel that no ossification test is conducted, cannot be accepted. But the certificate issued by the school i.e., with regard to the date of birth certificate, which was entered in the school is produced and proved and the same is first admission record. Hence, the very first contention of the counsel appearing for the appellant cannot be accepted and the same is rejected.

Point No.(ii)

13. The second limb of argument before this Court is that the Sessions Judge is not having any power to impose the sentence of life imprisonment, for the remainder of natural life. In support of this, he relies upon the judgment of Hon'ble Apex Court in the case of **Kiran** referred supra, wherein at paragraph No.8, the Apex Court observed that the question remains as to whether the Sessions Court is competent to award sentence of imprisonment for life till the remainder of life and prohibit the benefit of set off as provided under Section 428 of the Cr.P.C. A



specific question was framed by the Apex Court at paragraph-8 and the same is answered in paragraph No.13, which reads as follows:

"8. Now, the question remains as to whether the Sessions Court was competent to award a sentence of imprisonment for life till the remainder of life and prohibit the benefit of set-off as provided under Section 428 of the Cr.PC.

13. This Court, hence, as evident from the extract hereinabove, clearly held that in appropriate cases as a uniform policy, punishment of imprisonment for life beyond any remission can be awarded, substituting the death penalty; not only by the Supreme Court but also by the High Courts. The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Courts."

14. Having considered the paragraph Nos.8 and 13 of the aforementioned judgment, the question remains for consideration and question with regard to the imposing of the imprisonment for life without remission. It is held that the said power was conferred only on the Constitutional Courts and not on the Sessions Court. Hence, this Court has to examine the factual aspects of the case that the victim is minor under Section 2(d) of the POCSO Act, 2012 and subjected to sexual act against her will.



15. The said judgment was in connection with murder but in the case on hand, the offences are invoked under the special enactment of the Protection of Children from Sexual Offences Act, 2012. The trial Judge invoked Section 6 to impose the sentence. Hence, this Court would like to extract Section 6 of the POCSO Act, which reads as follows:

6. Punishment for aggravated penetrative sexual assault.-(1) *Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.*

(2) The fine Imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

16. Having read Section 6 of the special enactment of POCSO Act, the punishment for aggravated penetrative sexual acts shall not be less than 20 years with rigorous imprisonment for a term, which shall not be less than 20 years, but which may extend to imprisonment for life. Having read this provision, it is very clear that which may extend to imprisonment for life and word is used as 'may' and not 'shall'. However, in further



proviso, it says that which shall mean imprisonment for the remainder of natural life of that person and shall also liable to be fine or with death. Having read the proviso of statutory punishment provided under Section 6 of POCSO Act and so also in the case on hand, the accused is aged about 50 years at the time of committing the offence. Now he is aged about 56 years and taking note of the said fact into consideration, it is appropriate to modify the sentence i.e., minimum sentence as imposed in Section 6 i.e., rigorous imprisonment shall not be less than 20 years. It is appropriate to modify the same as rigorous imprisonment of 20 years and we are of the opinion that it could be modified. Hence, we answered the same accordingly point No.2 in partly affirmative.

17. In view of the above discussions, we pass the following:

ORDER

- i. Appeal is ***allowed in part.***
- ii. The judgment of conviction is upheld and sentence is modified by imposing the rigorous imprisonment of 20 years



instead of life imprisonment for
remainder of life.

SD/-
(H.P.SANDESH)
JUDGE

SD/-
(B. MURALIDHARA PAI)
JUDGE

JTR/RKM
CT:PA
LIST NO.: 1 SL NO.: 23