



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 22ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 200013 OF 2024

(374(Cr.PC)/415(BNSS))

BETWEEN:

GANGADHAR
S/O SHARANABASAPPA NEELAHALLI
AGE: 25 YEARS, OCC: DRIVER
R/O MADBOOL VILLAGE, TQ: CHITTAPUR
DIST: KALABURAGI-585317.

...APPELLANT

(BY SRI. MAHANTESH H DESAI., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH MADBOOL P S
TQ: CHITTAPUR, DIST: KALABURAGI
REPRESENTED BY ADDL. SPP
HIGH COURT OF KARNATAKA BENCH
AT KALABURAGI-585104.

2. SHRI.SHARANAREDDY
S/O HANAMANTHRAYA
AGE: 45 YEARS, OCC: AGRICULTURE
R/O MADBOOL VILLAGE, TQ: CHITTAPUR
DIST: KALABURAGI-585317

...RESPONDENTS

(BY SRI.GOPALKRISHNA B. YADAV, HCGP FOR R1;
R2 SERVED)





THIS CRL.A IS FILED U/SEC. 374(2) CR.P.C (OLD) U/SEC. 415 OF BNSS (NEW) PRAYING TO SET-ASIDE THE IMPUGNED JUDGMENT OF CONVICTION AND ORDER OF SENTENCE PASSED BY THE HONORABLE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE FTSC-I (POCSO), AT KALABURAGI SPECIAL CASE (POCSO) NO.10/2022 DATED 06.11.2023 AND 09.11.2023 BY ALLOWING THIS APPEAL, CONSEQUENTLY ACQUIT THE APPELLANT OF THE CHARGES LEVELED AGAINST HIM.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellant has preferred this appeal against the judgment of conviction dated 06.11.2023 and order on sentence dated 09.11.2023 passed Special Case (POCSO) No.10/2022 by the Additional District Court and Sessions Judge, FTSC-I (POCSO) Kalaburagi.

2. The parties are referred to the same rank what they had before the trial Court.

3. The brief facts leading to this appeal are that:

The Circle Inspector of Police, Kalagi Circle, Madbool Police Station, laid a charge sheet against the accused for the commission of offences punishable under Sections



363, 376(2)(n), 344, 506 of IPC and Sections 4 and 6 of POCSO Act 2012. It is alleged by the prosecution that, on 24.09.2021 at about 8.30 p.m., when PW.1 the victim was proceeding towards to Kalaburagi from Madbool to go to school, infront of Ram Mandir, Kalaburagi, accused came thereby proposed his love to her and asked her to go anywhere and he will marry her, induced her and kidnapped from the lawful guardianship of her parents with an intent that she may be forced to illicit intercourse with him and thereby committed sexual intercourse with the victim repeatedly by confining wrongfully the victim from 25.09.2021 to 22.11.2021 and also accused committed criminal intimidation by threatening life to the victim. Thus, the accused has committed the alleged offences.

4. After filing the charge sheet, the case was registered against the accused. The case was committed to the Court of Sessions and was registered in Spl.C.(P)No.10/2022. The accused was enlarged on bail.



On hearing the charges, the trial Court framed the charges for the alleged commission of offences; the same was read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, in all 24 witnesses were examined as PWs.1 to PW.24, 33 documents were marked as Exs.P1 to P33 and 28 Material objects were marked as MOs.1 to 28. On closure of prosecution evidence, the statement under Section 313 of Cr.P.C. was recorded. The accused has totally denied the prosecution witnesses appearing against him. However, he did not choose to lead any defence evidence on his behalf.

6. Having heard the arguments on both sides, the trial Court has convicted the accused for the commission of offences under Sections 363, 376(2)(n), 344, 506 of IPC and Section 6 of POCSO Act 2012, and the accused is sentenced to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.20,000/- for the



offence under Section 6 of POCSO Act, 2012. The accused is sentenced to undergo imprisonment for a period of 5 years and to pay a fine of Rs.6,000/- for the offence under Section 363 of the IPC. Further, the accused is sentenced to undergo imprisonment for a period of 1 year and to pay a fine of Rs.3,000/- for the offence under Section 344 of the IPC. The accused is sentenced to undergo imprisonment for a period of 1 year and to pay a fine of Rs.5,000/- for the offence under Section 506 of the IPC, with default sentences. Being aggrieved by this judgment of conviction and order of sentence, the appellant has preferred this appeal.

7. Learned counsel for the appellant would submit that the judgment under appeal is against the well established principle of law and facts of the case and the medical evidence on record has completely falsified story of the prosecution and the medical evidence is not corroborated with the version of victim girl-PW.1. There are no material improvements in the testimony of



complainant as well as prosecutrix which goes to the roots of the prosecution case. There is a delay of 5 days in lodging the complaint. The prosecution has not explained anything with regard to the delay in lodging the complaint. The presence of the victim secured by the Investigating Officer on 23.11.2021 and the statement of victim girl under Section 164 of Cr.P.C., was recorded on 04.12.2021, which is in violation of guidelines laid down by the Hon'ble Supreme Court in the case of The State of Karnataka Vs. Shivanna @ Tarkari Shivanna. The victim was examined by PW.17-Dr.Smriti and as per the history given by the victim girl, accused and victim have stayed together from 24.09.2021 to 22.11.2021 and the victim herself accompanied the accused voluntarily. There are no external injuries found on the body and there is no sign of forcible sexual intercourse and RFSL report is negative. Hence, the medical evidence falsifies the story of prosecution. PW.11-Anuradha the Head Master of the school has been examined by the prosecution, wherein she



has clearly admitted that she has verified school records and admission register and after verification issued the date of birth showing her date of birth as 05.11.2005. The birth certificate and register extract are marked as Exs.P15 and P16. She has admitted in her examination that no birth certificate is produced. Accordingly, the Investigating Officer has failed to comply the mandatory provisions of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015. The prosecution has failed to prove that the victim was child as on the date of the offence and there are no evidence to prove the guilt of the accused for the alleged commission of aforesaid offences.

8. Further, he would submit that the victim and accused have filed joint compromise petition under Section 359(8) r/w 528 of BNSS, Act, along with marriage certificate as the victim and accused got married so also the birth certificate of child which is born during their wedlock, seeking permission to compound the offences.



The same is rejected on the ground that the alleged offences are not compoundable in nature.

9. On all these grounds sought for allowing of this appeal.

10. As against this, learned High Court Government Pleader would submit that the trial Court has properly appreciated the evidence on record in a proper perceptive manner. Hence, there are no materials to interfere with the impugned judgment of conviction and order on sentence passed by the trial Court and sought for dismissal of the appeal.

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

- (a) Whether the prosecution proves beyond all reasonable doubt that the victim was child as on the date of the alleged commission of offence as defined under Section 2(d) of POCSO Act, 2012?



- (b) Whether the prosecution proves beyond all reasonable doubt that the accused has committed the offence under Section 6 of POCSO Act, 2012?
- (c) Whether the trial Court is justified in convicting the accused for the offence under Sections 363, 376(2)(n), 344, 506 of IPC and Section 6 of POCSO Act 2012?
- (d) What order?

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

Point No.1: In the Negative:

Point No.2: In the Negative:

Point No.3: In the Negative;

Point No.4: As per final order.

13. I have examined the materials placed before this Court.

Regarding Point Nos.1 :

14. The case of the prosecution that as on the date of commission, the victim was child. To substantiate the same, the prosecution has produced Exs.P15 and 16, birth



confirmation certificate and admission register extract, which reveals that the date of birth is mentioned as 05.11.2005. To substantiate the contents of Exs.P15 and 16, the prosecution has examined PW.11-Anuradha, the Head Master of school, who has deposed with regard to the issuance of Exs.P15 and 16. However, PW.11 has not deposed anything that on what basis the school authorities have entered the date birth of the victim in the admission register. The birth certificate is not produced by the prosecution. The Investigating Officer has not complied the mandatory provisions of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015. Even the Investigating Officer has not stated anything with regard to the non compliance of the aforesaid provision. The medical officer has also failed to comply the mandatory provision of Section 164(4) of Cr.P.C. The Investigating Officer has also failed to comply the mandatory provision of Section 34 of POCSO Act, 2012. In view of the decision of the Hon'ble Apex Court in the case of **P.Yuvaprakash**



v. State Rep. by Inspector of Police reported in ***AIR 2023 SC 3525***, the school certificate is not sufficient to prove the age of the victim when it is seriously disputed by the accused. Accordingly, the prosecution has failed to prove that the victim was child as defined under Section 2(d) of the POCSO Act, 2012 as on the date of the commission of offence. Hence, I answer point No.1 in the negative.

Regarding Point No.2:

15. When the prosecution has failed to prove that the victim was child as said as defined under Section 2(d) of the POCSO Act, 2012, the question of committing the offence under the penal provision of POCSO Act, 2012, does not arise. Hence, I answer point No.2 in the negative.

Regarding Point No.3:

16. With regard to the alleged commission of offences punishable under Sections 363, 376(2)(n), 344, 506 of IPC are concerned, PW.1 has deposed in her



evidence that the accused used to visit her house and talk to her. Further, she deposed that prior to 7-8 months of the alleged incident, the accused took her to his house and had sexual intercourse with her on 3-4 times and after one month, accused took her to a lodge at Kalaburagi and again had sexual intercourse. Further, she deposed that on 24.09.2021, she got down near Ram Mandir, where the accused came and took her along with him. Thereafter, they traveled to Jewargi, Vijayapura, Hubballi and stayed at Siddharudh Math for one day and later they went to Karakanahalli village in Kolar District and stayed for about two months in a rented house and during that period the accused repeatedly had sexual intercourse with her. Further, PW.17-Dr.Smruti, the medical officer has deposed that she examined the victim on 24.11.2021, wherein the victim gave history stating that she knew the accused for 4 years and went with him on 24.09.2021 and stayed with him for about two months and had daily physical contact. She has also deposed that there are no external injuries



found on the victim and RFSL report is negative. The evidence of material witnesses and the medical evidence reveals that there is no aggravated penetrative sexual assault by the accused. The evidence reveals that both the accused and victim had sexual intercourse with the consent which is consensual sex. On careful examination of the entire evidence on record, I do not find any cogent, convincing, clinching and corroborative legal evidence to convict the accused for the commission of offences under Sections 363, 376(2)(n), 344, 506 of IPC and Section 6 of POCSO Act 2012. Hence, the trial Court is not justified in convicting the accused for the aforesaid offences. Accordingly, I answer point No.3 in the negative.

Regarding Point No.4:

17. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

(a) The Criminal Appeal is allowed.



- (b) The judgment of conviction dated 06.11.2023 and order on sentence dated 09.11.2023 passed Special Case (POCSO) No.10/2022 by the Additional District Court and Sessions Judge, FTSC-I (POCSO) Kalaburagi, is hereby set aside.
- (c) The accused is acquitted for the offence punishable under Sections 363, 376(2)(n), 344, 506 of IPC and Section 6 of POCSO Act 2012.
- (d) The bail bond of appellant/accused shall stand cancelled;
- (e) The trial Court is directed to refund the fine amount, if any in deposit, to the appellant/accused;

Registry is directed to send the trial Court records along with the copy of this Judgment to the concerned Court.

Sd/-
(G BASAVARAJA)
JUDGE

msr
List No.: 1 Sl No.: 46
CT-BH