



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 200128 OF 2024

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

BETWEEN:

NAJEER PATEL
S/O IMAMSAB PATEL
AGE: 32 YEARS, OCC: DRIVER
R/O TAKALI VILLAGE, TQ: AFZALPUR
NOW RESIDING AT MILLAT NAGAR
KALABUAGI-585104.

...APPELLANT

(BY SRI. SANTOSH PATIL., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH SUB-URBAN POLICE STATION
KALABURAGI
(REPRESENTED BY ADDL. SPP
HIGH COURT OF KARNATAKA
KALABUAGI BENCH-585107)
2. SMT.BIBI AYESHA
W/O MEHABOOB SHA
AGE: 50 YEARS, OCC: PRIVATE WORK
R/O NEAR SHAMS MASJID, MISBA NAGAR
KLABAURAGI-585103.

...RESPONDENTS

(BY SRI.GOPALKRISHNA B. YADAV, HCGP FOR R1;
SRI. S. V. DESHMUKH ADV., FOR R2)



THIS CRL.A IS FILED U/SEC. 374 (2) OF CR.P.C (OLD) U/SEC. 415 OF BNSS (NEW) PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT AND ORDER OF CONVICTION DATED 30.03.2024 AND SENTENCE DATED 02.04.2024 PASSED IN SPECIAL CASE POCSO NO.9/2023 BY THE COURT OF ADDL. DISTRICT AND SESSIONS JUDGE FTSC-I (POCSO) AT KALABURAGI AND CONSEQUENTLY BE PLEASED TO ACQUIT THE ACCUSED/APPELLANT HEREIN.

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 and order on sentence dated 30.03.2024 in Special Case (POCSO) No.9/2023 passed by the Additional District and Sessions Judge, FTSC-I (POCSO), Kalaburagi.

2. The parties are referred to as per their rank before the trial Court.

3. The brief facts leading to this appeal are as under:



The Police Inspector, Sub-Urban Police Station, Kalaburagi submitted a charge sheet against the accused for the commission of offences under Sections 376(2)(I), 376(3), 384, 506 of the IPC and Sections 4 and 6 of the POCSO Act. It is alleged by the prosecution that prior to 13.03.2022, the accused used to give chocolate to the victim and used to induce the victim child. On 13.03.2022 at 03.00 p.m., when the accused's wife was not in the house at that time, the accused called the victim through phone and induced her to come to his house. Due to inducement, the victim came to the house of the accused. The accused enticed the child out of the keeping of the lawful guardian of the victim without the consent of her guardian and after kidnapping the victim, the accused removed the clothes of the victim and committed rape on her. Further, it is alleged that after committing rape, the accused threatened the victim not to disclose the incident to anybody, if she disclosed the incident, he would finish the victim. Thus, the accused has committed the alleged



offences. After Investigation, Investigating Officer submitted the charge sheet against the accused and the Special Court took cognizance against the accused for the alleged commission of offences and accused was enlarged on bail. On hearing the charges, the trial Court framed the charges against the accused for the alleged commission of offences, the same were read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

4. To prove the guilt of the accused, the prosecution examined in all 14 witnesses as PWs1 to 14 and 31 documents were marked as Exhibits P1 to P31 and 8 material objects were marked as MO.Nos.1 to 8.

5. On closure of the prosecution evidence, the statement under Section 313 of Cr.P.C. was recorded. The accused totally denied the evidence appearing against him. However, he did not choose to lead any defense evidence on his behalf.



6. Having heard the arguments on both sides, the trial Court convicted the accused for the commission of offences under Sections 363, 376(2)(i) and 506 of the IPC and Section 6 of the POCSO Act, 2012 and passed the sentence to undergo rigorous imprisonment for 20 years for the offence under Section 6 of the POCSO Act and a fine of Rs.20,000/-. The accused is sentenced to undergo simple imprisonment for 5 years for the offence under Section 363 of the IPC and fine of Rs.5,000/-. The accused is sentenced to undergo imprisonment for 1 year for the offence under Section 506 of the IPC and fine of Rs.1,000/-. Being aggrieved by the judgment of conviction and order on sentence, the appellant has preferred this appeal.

7. The learned counsel appearing on behalf of the appellant would submit that the judgment and order of conviction and sentence passed by the learned Sessions Judge convicting and sentencing the appellant is opposed to law and the circumstances of the case and the same is



liable to be set aside. The trial Court has erred in convicting the appellant despite the prosecution failing to prove the case. The complainant, in collusion with the police, has cooked up a concocted story and has framed the appellant in the instant case only to settle her scores and the complaint with ill-will has falsely implicated the appellant to meet out harassment.

8. He further submits that PW1 is the victim girl has deposed in her evidence that the appellant resides near the house of the victim and on 13.03.2022 when the mother of the victim was not in the house, the appellant told the victim to come to his house over phone and also gave threat, thereby he committed rape on the victim girl. In the cross-examination, the victim has deposed that her father is doing black magic business and has also deposed that the appellant used to call the victim through phone and the appellant used to button the mobile set and the victim also used to button the mobile set and there is no option in the set of the mobile to click the photo and to



record any video. The victim has also deposed that the police have prepared the complaint. Hence, there are many contradictions, improvements and omissions in the evidence of the witness which go to the root of the prosecution case, thereby raises doubts the evidence of victim is doubtful and not reliable, as she has deposed upon the tutoring by her mother who is the complainant of the case. PW2 is the complainant in this case also the mother of the victim girl has deposed that, appellant has committed rape on victim and has also given life threat and further deposed that, appellant has asked the victim to bring Rs.5,00,000/- and if she has not bring the said amount, the appellant will viral the naked video in YouTube and this was told by the victim to the complainant and as further deposed that, complainant has committed rape upon the victim on 13.03.2022 and this fact was known to the complainant upon enquiry with the victim girl and after discussing about the incident, the complainant lodged complaint on 24.11.2022. In the cross



examination, she has admitted that the wife of the appellant has taken Rs.10,000/- from the complainant and she used to take money from the complainant whenever she was in need. The evidence of the complainant does not inspire confidence because she is a hearsay witness and there are many admissions and omissions in the evidence of this witness and there is a delay of more than eight months in lodging the complaint and the reasons for delay are not satisfactorily explained, which raises doubts regarding the genuineness of the complaint.

9. PW.3 is one Muhammed Meeraj Patel, a punch witness, he has deposed that in his presence spot panchanama was conducted and he has made his signature on it. But in the cross-examination, the said witness has admitted that he cannot read and write Kannada.

10. He further admitted that he does not know what is written in the panchanama as he cannot read and write Kannada. He also admitted that he is giving evidence



as per the instruction of CW7. Hence, the evidence of the witness also raises doubts and the same is not believable. Further he would submit that PW4 is one Harun Khateef, who is a circumstantial witness, has not supported the case of the prosecution. PW5 is one Shaik Rukmuddin, has not supported the case.

11. Further he would submit that there is no medical evidence to substantiate the case of the prosecution. Further he would submit that the prosecution has failed to place the relevant documents to prove the age of the victim as required under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The prosecution has produced the school certificate and examined PW7, which is not sufficient to prove the age of the victim. The trial Court has not properly appreciated the evidence on record in accordance with law and facts. On all these grounds, he sought for allowing this appeal.



12. As against this, the learned HCGP Sri Gopalkrishna B. Yadav would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts and that there are no grounds to interfere with the impugned judgment of conviction and sentence passed by the trial Court and sought for dismissal of the appeal.

13. Having heard the arguments on both sides, the following points would arise for my consideration:

- i. Whether the prosecution proves beyond all reasonable doubt that the victim was a child as defined under Section 2(d) of the POCSO Act, 2012 as on the date of the commission of the offence?
- ii. Whether the trial Court is justified in convicting the accused for the alleged offences under Sections 363, 506 of the IPC and Section 6 of the POCSO Act?
- iii. What order?



Reasons to point Nos.1 and 2

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

15. It is alleged by the prosecution that prior to 13.03.2022, the accused used to give chocolate to the victim and used to induce the victim child. On 13.03.2022 at 3:00 p.m., when the accused's wife was not in the house at that time, the accused called the victim through phone and induced her to come to his house. Due to inducement, the victim came to the house of the accused. The accused enticed the child out of the keeping of the lawful guardian of the victim without the consent of her guardian and after kidnapping the victim, the accused removed the clothes of the victim and committed rape on her. Further, it is alleged that after committing rape, the accused threatened the victim not to disclose the incident to anybody; if she disclosed the incident, he would finish



the victim. Thus, the accused has committed the alleged offences.

16. To prove the age of the victim, the prosecution has produced Exhibit 13, which is the registration of admission, in which the date of birth of the victim is shown as 01.05.2007. Exhibit P14 is the zerox copy of the birth certificate issued by the Head Mistress, Fortune English Medium High School, Jeelanabad, Kalaburagi, which reveals that the age of the victim was 01.05.2007. Exhibit P12 is the bona fide certificate issued by the Head Mistress, Fortune English Medium High School, Jeelanabad, Kalaburagi, which reveals that the date of birth of the victim was 01.05.2007. PW7 – Syada Nazima Zabin, Head Mistress, Fortune English Medium High School, Jeelanabad, Kalaburagi has deposed in her evidence as to the issuance of Exhibits P12 to P14. PW11 – Ramesh, Police Inspector, has not deposed anything in his evidence as to the non-production of the certified copy of the birth certificate issued by the concerned authority.



Though Exhibit P14 is the birth certificate of the victim, this is not a certified copy issued by the concerned authority; this is a zerox copy of the birth certificate issued by the administration of Fortune English Medium High School, Jeelanabad, Kalaburagi. PW2 is the mother of the victim and has not deposed as to the date of birth of the victim; even she has not deposed in her evidence whether she has produced a copy of the birth certificate to the school authorities at the time of admission of the victim. The Investigating Officer has not whispered anything about how the Headmaster of the concerned school produced the zerox copy of the birth certificate, how he issued it, and on what basis he issued this zerox copy by putting his seal and signature on the zerox copy of the birth certificate. The Investigating Officer has not explained anything as to the non-collection of the original certified copy of the birth certificate obtained from the concerned authority. Therefore, mere production of the zerox copy of the birth certificate issued by the concerned



school authorities is not sufficient for compliance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

17. It is well settled principle of law that mere production of document does not amount to proof. Accordingly, a prosecution has not proved Exhibit P14 in accordance with law. With regard to Exhibit P13, the school admission register extract is concerned same is not sufficient to prove the age of the victim. In view of the decision of Hon'ble Apex Court in the case of ***P.Yuvaprakash Vs. State Rep. By Inspector of Police¹***.

18. Exhibit P8 is the medicolegal examination report for sexual violence of the victim which reveals that the medical officer has not complied with the mandatory provisions of Section 164A of the Code of Criminal Procedure. The Investigating Officer has also

¹ 2023 INSC 676



not complied with the mandatory provisions of Section 34 of the POCSO Act. The Investigating Officer has not obtained an ossification test certificate from the concerned medical board to prove the age of the victim. Viewed from any angle, I do not find any cogent, convincing, credible or legal evidence to prove that the victim was a child as defined under Section 2(d) of the POCSO Act on the date of commission of the offence. Accordingly, point No.1 is answered in the Negative.

Regarding Point No.2:

19. Since the prosecution has failed to prove that the victim was child as defined under Section 2(d) of POCSO Act 2012, the question of committing offence under the penal provisions of POCSO Act 2012, does not arise. Accordingly, the prosecution has failed to prove that the accused has committed the offence punishable under Section 6 of POCSO Act 2012.



20. With regard to the offence punishable under Sections 363, 506 and 376(2)(i) of IPC are concerned, PW.1 in his evidence stated that the alleged incident took place on 13.03.2022 at 3.00 p.m. and the complaint came to be filed on 24.11.2022. After lapse of 8 months 11 days, the complaint is filed. The complainant has not whispered anything as to the delay in lodging the complaint. However, in Ex.P.17 at Column No.3(c), it is stated that, ಮನೆಯಲ್ಲಿ ಕುಟುಂಬದೊಂದಿಗೆ ವಿಚಾರ ಮಾಡಿ ತಡವಾಗಿ ಬಂದು ದೂರು ನೀಡಿರುತ್ತೇನೆ. None of the prosecution witnesses have deposed anything as to delay in filing the complaint. After lapse of 8 months 11 days, the victim was examined by the Medical Officer wherein he stated that a victim by name Shahana aged 15 years, bought by WPC No.379 and 354 in Crime No.274/2022 admitted to Government Hospital at 10.11 p.m., on 24.11.2022, examined at 11.00 p.m. and she was sent for examination taken by social worker, WPC and her mother. She knows a person by name Nazir S/o: Imamsab, R/o: Kalaburagi and she has



sexual contact once 8 months back. The abnormal delay of 8 months 11 days in approaching the Medical Officer has also not explained by the prosecution. Ex.P9, the Test Report issued by the Government of Karnataka, Regional Forensic Science Laboratory, Police Training Center, Naganalli, Kalaburagi, reveals that the seminal stain was not detected in article Nos.1, 3, 5, 6, 7 and 8 and spermatozoa was detected in article Nos.2 and 4. Accordingly, the evidence of PW.1 is not supported with the medical evidence.

21. PW.1, has deposed in her evidence that on 13.03.2022, when his mother was not in the house, she was in the house with her sister. At that time, the accused called her through phone and she did not receive phone call. Accused called repeatedly. Hence, her younger sister received call and accused asked her sister to give phone call to her, otherwise he will come to the house. Her sister given phone to her and accused told her to come to his house and gave a threat that if she would not go to his



house, he will come to his house. Hence, she went to his house due to fear. When she went to the house of the accused, at that time, his family members were not in the house. Accused used to dragged by holding her hands and teased her and she removed her clothes and committed rape on her. After committing rape, he gave life threat stating that if she disclose the incident to anybody, he will kill her parents and her. Then, she came to her house. Thereafter, accused used to take her to hotel, garden and he used to come to school and used to take money from her by giving threat. On 08.11.2022, accused called through phone to her mobile and abused her mother. Therefore, her mother went to the police station and lodged a complaint. Thereafter, the police have registered the case. The police took her to the Government Hospital, Kalaburagi. At the time of examination, the doctor collected her clothes which are marked as MO Nos.1 to 3. Thereafter she came to her house and shown the house of the accused to the police. The police conducted spot



panchanama in the house of accused and took the photo of panchanama at Ex.P1. She gave her statement before the learned Magistrate under Section 164 of Cr.P.C. as per Ex.P3.

22. PW.2-B.B.Ayusha, the mother of the victim deposed in her evidence that CW.7 is her husband, CW.4 is her daughter, the victim is about 15 years old and she was studying in 10th Standard. CW.5 is her relative. She know CWs.6 and 8, she know the accused who was present on screen, who is their neighbour, accused is married person and having one child. On 10.11.2022, she came to know that, CW.6 told her that, victim was wandering with accused in Kalaburagi Garden, thereafter she enquired with victim. On enquiry, victim told her that, she used to go to the house of accused, she further told her that, on 13.03.2022 at about 3.00 p.m., the accused called the victim through phone and asked her to come to his house, accused gave a threat to victim, if she is not come to his house, due to threat victim went to the house



of the accused, at that time there were none in the house of the accused except accused and accused has committed rape on victim and gave life threat not to disclosed the incident, if she disclosed the incident he would kill her parents, due to said threat she did not disclosed. Further victim told her that, accused asked her bring 5 lack Rupees, if she not bring the said amount he will viral her naked video in the Youtube. Thereafter, she discussed with my family members about the incident and lodged the complaint on 24.11.2022 against the accused. Now, she seen the complaint, same is marked as Ex.P.4, witness identified his signature, same is marked as Ex.P.4(a). Thereafter, police had come to her house and she shown the spot to the police and police conducted spot panchanama, she put her signature on panchanama and victim was also present and put her signature on panchanama. She was present at the time of panchanama conducted in the house of accused and she put her signature on panchanama.



23. PW.3-Md.Miraj Patel has deposed with regard to the mahazar conductor by the police.

24. PW.4-Harun Khathif, the circumstantial witness has not supported the case of the prosecution.

25. PW.5-Shaik Rukmuddin, has also not supported the case of the prosecution.

26. PW.6-Dr.Shashikala, has deposed with regard to the examination of the victim and issuance of certificate at Exs.P9 and 10.

27. PW.7-Syada Nazima Zabin, Headmaster, has deposed as to the issuance of Exs.P12 to 14.

28. PW.8-Shantappa Sidramappa, Assistant Engineer PWD, has deposed with regard to the rough sketch prepared by him as per Ex.P15.

29. PW.9, Kavita, WPSI, Sub-Urban Police Station, PW.10, Buramma, WPC-361, PW.11, Ramesh Yallappa



Kamble, PW.12, Anil Hanumanth, have deposed with regard to their respective investigation.

30. PW.13-Mohammad Nizamuddin, the driver has deposed that his evidence with regard to the panchanama conducted by the police as per Ex.P1.

31. PW.14-Subash Rukmanappa, Press Reporter has not supported the case of the prosecution.

32. On careful examination of the entire evidence placed on record, it is crystal clear that PWs.1 and 2, the material witnesses, have not deposed anything as to the abnormal delay of 8 months 11 days in filing the complaint. Even the evidence of PW.1 is not consistent to the evidence of PW2. The evidence of PWs.1 and 2 appears to be unnatural, the same is not trustworthy and believable. When the evidence of material witnesses including the victim is not trustworthy and believable, it is not safe to convict the accused for the alleged commission of offences. Absolutely there is no positive, cogent,



convincing, clinching, believable, credible and trustworthy evidence before the Court to convict the accused. Accordingly, the trial Court is not justified in convicting the accused for the aforesaid offences. Hence, I answer point No.2 in the Negative.

33. Point No.3: For the aforesaid reasons and discussions, I proceed to the following:

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The judgment of conviction and order on sentence dated 30.03.2024 and sentenced dated 02.04.2024 passed in Special Case (POCSO) No.09/2023 by the Additional District and Sessions Judge, FTSC-I (POCSO), at Kalaburagi, is hereby set aside.
- (c) The accused is acquitted for the offence punishable under Sections 363, 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

TIN/msr
List No.: 1 Sl No.: 47
CT-BH