



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

CRIMINAL APPEAL NO.200078 OF 2019

BETWEEN:

VISHAL S/O BALABHEEM JAMADAR,
AGE:21 YEARS, OCC:COOLIE,
R/O. BALENKERI VILLAGE, TQ.ALAND,
DIST.KALABURAGI-585 302.

...APPELLANT

(BY SRI. VISHAL PRATAP SINGH, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH ALAND POLICE STATION,
DIST.KALABURAGI
(REPRESENTED BY LEARNED
ADDL. STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA AT
KALABURAGI- 585 103)

...RESPONDENT

(BY SRI. SIDDALING P. PATIL, ADDL SPP)

THIS CRL.A IS FILED U/SEC.374 (2) OF CRIMINAL
PROCEDURE CODE, PRAYING TO ADMIT THIS APPEAL CALL
FOR THE RECORDS FROM THE COURT BELOW AND SET ASIDE





JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 22.12.2018 PASSED BY THE II ADDL.SESIONS JUDGE AT KALABURAGI IN SPL.CASE (POCSO) NO.8/2018, FOR THE OFFENCES PUNISHABLE U/SEC.366, 376(2)(1)&(N) OF I.P.C AND U/SEC.6 OF POCSO ACT, 2012 AND ACQUIT THE APPELLANT/ACCUSED, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 27.11.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY)

The learned II Addl. Sessions Judge, Kalaburagi (for short 'the trial Court') as per the judgment dated 22.12.2018, found appellant/ accused guilty of the offences punishable under Section 366, 376(2)(i) and (n)



of IPC and Section 6 of POCSO Act, 2012 and passed order of sentence, sentencing the accused to undergo rigorous imprisonment for life and to pay a fine of Rs.1,00,000/- for the offences punishable under Section 376(2)(i) and (n) of IPC and Section 6 of POCSO Act and also sentenced to undergo rigorous imprisonment for a period of 10 years and also to pay fine of Rs.1,00,000/- for the offence punishable under Section 366 of IPC. Being agreed by the impugned judgment and order of sentence, the accused has come up with a present appeal.

2. The case was set into motion against the accused on the complaint of PW2 Mallikarjuna, the father of the victim/PW2. The case alleged against the accused in brief is that on 13.06.2017 at about 03.00 p.m. near Amba Bhavani temple in Aland Town, the accused induced the victim, a minor girl aged about 16 years promising her to marry and kidnapped her and took the victim to Bangalore and kept her in a shed put up in under constructed building and committed sexual assault on her



on 18.07.2017 at about 11.00 p.m. Thereafter, for about 2 to 3 months in the night hours the accused subjected the victim to sexual assault for 3-4 times and thereby the accused committed the offence alleged. The complainant police initially registered the case against the accused for the offence punishable under Section 363 and 366A of IPC and after apprehending the accused along with the victim added the other offences and proceeded with the investigation. After completion of the investigation filed charge sheet against the accused before the trial Court. The accused was arrested on 25.11.2017 and since then he has been in judicial custody.

3. After hearing the accused and the prosecution and on perusal of the materials available on record the trial Court framed charge against the accused for the offences punishable under Sections 366, 376(2)(i) and (n) of IPC under Section 6 of POCSO Act to which the accused pleaded not guilty and thereby claimed to be tried. In support of the case of the prosecution, 12 witnesses are



examined as PW1 to PW12. The prosecution has produced documents at Exs.P1 to P22 and the material objects at Exs.MO1 to MO6. After closing up the evidence of prosecution, the accused was examined under Section 313 Cr.PC in which the accused denied the incriminating materials forthcoming against him in the evidence of prosecution witnesses as false and he chose to examine defence evidence by examining himself as DW1. But he has not chosen to produce any document.

4. The trial Court by considering the evidence on record held the accused guilty of the offences charged and thereby convicted and sentenced him to undergo imprisonment as per the impugned judgment of conviction and order of sentence.

5. The contention of the accused in the appeal is that the impugned judgment passed against him by the trial Court is contrary to facts of the case, evidence on record and settled principle of law. In the evidence of the



victim/ PW1, there is no material regarding the alleged aggravated sexual assault on her by the accused. In the cross-examination, the victim has admitted that she stated before the learned Magistrate in her statement under Section 164 of Cr.PC that the accused did not do anything to her and no incident took place. She also admitted that police would be on duty at bus stand and whenever she traveled in the bus, there were passengers and she did not make any hue and cry in the bus. The evidence of PW3, who is alleged to have informed the complainant about kidnapping of the victim by the accused, cannot be believable. There is no material from the prosecution to attract the offence for which the accused was convicted under impugned judgment.

6. It is also the contention of the accused that the PW5 and PW6, who are panchas to the spot mahazar turned hostile to prosecution case. The prosecution has utterly failed to prove the age of victim according to well established principle of law and hence, the conviction of



the accused by the trial Court without following such process of law is bad in law. The prosecution has failed to give an explanation regarding non-examination of material witnesses and therefore, the argument of the learned counsel for the accused is that the accused may be acquitted of the offences charged against him in the case by allowing the appeal.

7. Heard the learned counsel for the accused and also the learned Addl. SPP. Perused the oral and documentary evidence forthcoming on record of the trial Court.

8. Now the point that arises for the consideration of this Court is:

Whether the trial Court has failed to appreciate the oral and documentary evidence or record in proper perspective and thereby committed any error in convicting the accused for the offences charged against him in the case?



9. As submitted by the learned counsel for the accused, the offence charged against the accused is under Section 6 of POCSO Act and Section 376(2)(i) and (n) of IPC. At the very outset, it is burden on the prosecution to prove that the victim is child within the meaning of Section 2(d) of POCSO Act i.e. the prosecution should prove that the victim was below the age of 18 years as on the date of alleged incident.

10. Further, the prosecution should prove that the accused kidnapped the victim inducing her to marry him and thereby took her to Bengaluru and kept her in a place and committed repeated sexual assault on her. In this background, it is relevant to appreciate the evidence on record and also the principles of law laid down in the decisions relied on by the learned counsel for the accused in the case.

11. PW2 Mallikarjun is father of the victim. He gave complaint to the police. As per his evidence, the victim is



his daughter and she was 16 years during 2016-2017 and she was studying in 10th Standard. On 13.06.2017 at about 03.00 p.m. all the family members were in the house and at that time the victim went to her friend's house to bring note book. But thereafter she did not come back till 05.00 p.m. Hence, they searched for the victim. The adjacent shopkeepers namely CW5 Chandrakanth and CW6 Ashok informed that the accused took the victim in an Auto Rickshaw towards municipality. For about one month they searched for the victim, but she was not found. Hence, he gave complaint to the police as per Ex.P4. Thereafter, the police came to the spot near Ambhavani Temple, Sulthanpur and drew mahazar.

12. It is also the evidence of PW2 that after four months from the date of the incident, the police informed that the victim was traced. Hence, he along with his wife, CW5 and CW6 went to the police station and found that the accused and victim were in the police station. On enquiry, the victim informed that near Ambhavani Temple



the accused took her to Aland bus stand in an Auto Rickshaw, took her from Aland to Kalaburagi by bus and from Kalaburagi to Bengaluru by bus and kept her in a Tin shed put up in an under constructed building. The accused was doing painting work and stayed there for four months.

13. The evidence of PW2 is also that the victim also informed that the accused promised her that he would marry her and thereby committed rape on her for 3-4 times. The victim also informed that the accused after coming to know about the police complaint brought her to Hyderabad, and from Hyderabad to Kalaburagi and took her to his relative's house in Kalaburagi and both the accused and the victim had bath and visited Sharanabasaveshwar Temple and the accused left her in the temple and went in order to bring coconut for pooja and at that time the police held the accused and brought them to the police station. This evidence of PW2 is in accordance with prosecution case.



14. PW11 Suresh Bandivaddar is the then PSI of complainant police station. As per his evidence on 14.07.2017 at about 06.00 p.m. he received complaint at Ex.P4 and registered the case as per FIR at Ex.P15. On the next day, he sent the photo of the victim to Child Help Line and uploaded the details of the victim in child missing track and on the same day he visited the spot and drew mahazar at Ex.P7. At that time, the complainant was present and showed the spot. PW5 and CW6 were also present. On the next day on 16.07.2017 he recorded the statements of CW3 to CW6. On 18.07.2017 he took steps to search the accused and the victim. On 25.07.2017, he requested the school authority to issue school certificate of the victim.

15. It is also the evidence of PW11 that on 28.08.2017, he directed his staff to go to Bengaluru and Chikbalapura to trace and produce the accused and victim. But the victim and accused were not traced. However, on 24.11.2017 they found the victim near Sharanabasaveshwar



Temple and brought her and produced before CPI and recorded the statement of victim. On 25.11.2017 when he was on duty near Aland check post at about 07.30 a.m. he found the accused and brought him to the police station and produced him before the CPI along with report as per Ex.P16.

16. PW12 is Hanumanth Sannamani is then CPI who took up further investigation of the case and conducted investigation. He deposed regarding enquiry of the concerned witnesses and also receiving of the concerned document. In the investigation, he received medical report of the victim. Pending receipt of FSL report he completed the investigation and filed chargesheet against the accused. Thereafter, on 20.02.2018 he received FSL report and sent it for final medical report. On 18.03.2018 he received final medical opinion of the accused and victim and forwarded FSL report at Ex.P13 and final medical opinion at Ex.P22 to the Court. The final medical opinion of the accused is produced as per Ex.P22.



This evidence of PW12 would show that he did the investigation and after completion of the investigation filed final report against the accused in the case.

17. As the offence charged against the accused is under POCSO Act, the first and foremost thing is that the prosecution should prove that the victim was below the age of 18 years as on the date of offence. The victim has been examined as PW1. She has deposed in her chief examination in accordance with prosecution case. However, as submitted by the learned counsel for the accused, it is true that in the statement at Ex.P1 given by the victim under Section 164 Cr.PC before the learned Magistrate. It is stated that the accused did not do anything to her. But the evidence of the victim would show that the accused took her to Bengaluru and kept her in Tin shed in an under constructed building for about four months and had sexual intercourse with her for 2 to 3 times during that period. The victim showed the spot to



the police at Bengaluru and the photos were taken as per Exs.P2 and P3.

18. Further, in the chief examination the victim has deposed that her date of birth is 10.01.2002. The incident took place on 13.02.2017. This would show that the victim was aged 16 years i.e. 15 years and one month as on the date of the alleged incident. Even though in the argument the contention of the learned counsel for the accused is that the victim was aged more than 18 years, there is absolutely no material forthcoming from him in the cross examination of the victim to prove that victim was aged more than 18 years.

19. There is absolutely no material forthcoming from the accused in the cross examination of the victim regarding the age of the victim. Hence, the evidence of the victim that her date of birth is 10.01.2002 as mentioned in her chief examination stands not controverted.



20. Moreover, the prosecution has examined PW4 Mallikarjun, who is the Headmaster of MGMG Girls High School, wherein the victim was studying 10th Standard in the year 2016-2017. The evidence of PW4 is that on 30.11.2017 on the request of the IO he issued school certificate of the victim on the basis of school records and the date of birth of the victim is 10.01.2002. He issued certificate as per Ex.P6. In the evidence of PW4 in cross examination it was recorded by the trial Court that PW4 brought the original admission register to the Court and it was perused and found that the date of birth of the victim is mentioned as 10.01.2002. There is absolutely no material forthcoming from the accused in the cross-examination of PW4 to make the evidence of PW4 and the certificate Ex.P6 dis-believable.

21. As mentioned in the evidence of PW4, the certificate Ex.P4 is based on the original admission register maintained by the school in the ordinary course of its transactions. Hence, if the evidence of PW2 who is father



of the victim, the victim PW1 and also the evidence of PW4 coupled with the document at Ex.P6 are considered, it would be clear that the victim was aged 16 years i.e. she was aged below the age of 18 years as on date of incident.

22. PW8 Dr. Prachiti is Specialist at Government General Hospital, Kalaburagi, who examined the victim on 24.11.2017 at about 09.45 p.m. and issued Ex.P11. As per the evidence of PW8, on examination and the victim it was found that the hymen of the victim was torn and it was healed. In the chief examination PW8 has also deposed that spermatozoa was not detected in the concerned clothes of the victim and there was no evidence of recent intercourse, but there was an act similar to it.

23. However, as per the case of prosecution the victim was kidnapped on 13.06.2017 and thereafter, the victim was found on 24.11.2017 and the accused was found on 25.11.2017 i.e. after the period of more than 5 months of the alleged incident. As per the evidence of



victim, she was subjected to sexual assault 3 to 4 times by the accused, when she was along with the accused in Bengaluru. After coming to Kalaburagi, it is also the evidence of the victim that she took bath. Therefore, there is time gap between the alleged incident and the day on which the PW8 subjected the victim to medical examination. Hence, the evidence of PW8 that there was no evidence of recent sexual intercourse found on examination of the victim, would not falsify the case alleged against the accused for the offence punishable under Section 6 of POCSO Act.

24. PW3 Chandrakanth is the person who saw the victim with the accused at Ambhavani Temple on the relevant day. In the chief examination he deposed that about one year two months earlier at about 03.00 p.m. when he was in his cycle shop he saw the accused taking the victim in an Auto Rickshaw towards the bus stand. At about 06.00 p.m. the complainant/PW2 and family members started searching the victim and he informed the



complainant that the accused took the victim in an Auto Rickshaw towards bus stand. PW3 also deposed that after 4 and ½ months the police informed that the victim was traced and hence, he along with the complainant, wife and son of the complainant and CW6 had gone to police station and found the accused and victim. Except denial of the contentions by way of suggestion in the cross examination of PW3, there is no material from the accused to show that the evidence of PW3 is not believable.

25. PW5 Rashid Ansari and PW6 Babu are alleged to be the attestors to the panchanama at Ex.P7. But both of them have denied that the police drew any such panchanama in their presence at the spot near Ambhavani Temple.

26. PW7 Prabhu is attestor to the mahazar at Ex.P8 regarding seizure of clothes and samples of the victim. He deposed that the police drew the mahazar in the office of the Circle Inspector, Aland and seized the properties at



MO1 to MO4. On the same day, the police drew mahazar and seized the innerwear and baniyan of the accused as per Ex.P9. The innerwear and baniyan of the accused are identified by PW7 as per MO5 and MO6.

27. PW7 also deposed that 20 days later the police took him along with Shrishail to Bengaluru and drew panchanama at Ex.10 in the place shown by the victim. Any material in the cross-examination of PW7 does not help the accused to disbelieve the evidence in chief examination regarding the mahazars at Exs.P8, P9 and P10.

28. The above discussed evidence on record would show that the victim has deposed the fact regarding the case alleged against accused in her chief examination. It is true that there are some discrepancies in her evidence with her statement under Section 164 of Cr.PC before the Magistrate as per Ex.P1 that the accused did nothing to



her. But in the evidence in chief examination, the victim has clearly deposed the fact as per prosecution case.

29. It is true that the accused has got himself examined as DW1 in support of his defence put forth in the case. But except denial of the case of the prosecution in the evidence in chief examination there is absolutely no material forthcoming from the accused to make the evidence of the victim not believable. The evidence of the accused as DW1 is that he is no way concern with the victim and he had never gone to anywhere and that the police brought him from his house at Aland. The accused has also deposed that the victim herself took the photos. Such evidence of accused by way of defence evidence is in no way make out any case to disprove the evidence of the victim and the concerned documents.

30. In the case on hand, the offence alleged is sexual assault committed on the minor girl, who was child as per the provision of POCSO Act. Therefore, the



evidence of the victim needs no corroboration to believe her evidence. At the time of argument, the submission of the learned counsel for the accused is that the victim accompanied the accused with consent and that the victim was aged more than 18 years as on the date of alleged incident.

31. The argument of the learned counsel for the accused is that the prosecution has not produced relevant document to prove the age of the victim. However, as submitted by the learned Addl. SPP, the PW8 is the doctor who examined the victim, has deposed that according to the dentist, the age of the victim is from 16 to 17 and according to the radiologist, age of the victim is below 18 years. If the said evidence is taken to consideration, it would be clear that the age of the victim would be in the range of 14 to 18 years. But when there is school document on record to prove the date of birth of the victim, there is no reason to disbelieve the fact that the victim was aged 16 years as on the date of alleged



incident and hence, she was child within the meaning of the provision of POCSO Act as on the date of incident.

32. The learned counsel for the accused has drawn the attention of this Court to the decision of the Hon'ble Apex Court in Criminal Appeal No.94/2025, ***State (GNCT of Delhi) V/s Vipin @ Lalla***, decided on 07.01.2025, wherein it is held that

"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."



33. However, as per the facts of the said case, the incident took place on 16.09.2024 and the complaint was lodged after 2 days i.e. on 18.09.2014. The victim contradicted her statement at more than one place. She said in her statement under Section 164 of Cr.PC that 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. Further, when the accused had surrendered before the police, none of such injuries were noticed on the body of the accused.

34. On the other hand, in the present case, there is no material forthcoming in the cross examination of the victim to make her evidence not believable. Her evidence inspires confidence of this Court to believe that the accused committed sexual assault on her when she was with the accused. The mere fact that the victim did not oppose the accused when she was taken by the accused and also that she did not inform the surrounding persons at the concerned places that she was being kidnapped by



the accused, cannot be ground to disbelieve her evidence, as the offence is punishable under Section POCSO Act and the victim is child within the meaning of Section 2(d) of POCSO Act, her consent is immaterial in the case.

35. The learned counsel for the accused has drawn the attention of this Court to the decision of the Hon'ble Apex Court in Criminal Appeal No.1098/2024, ***Nirmal Premkumar & Another V/s State Rep. by Inspector of Police***, decided on 11.03.2004. On the basis of the said decision, submission of the learned counsel for the accused is that if there is any discrepancy in the evidence of victim, such evidence cannot be relied upon unless there is corroboration. In the said decision, it is held that:

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

36. The learned counsel for the accused has also relied on the decision of the Hon'ble Apex Court in the case of ***P. Yuvaprakash V/s State Rep. by Inspector of Police*** reported in **(2023) 10 SCR 478**, in which in the case under POCSO Act the Hon'ble Apex Court has held that for the determination of age of the victim, the provision of Section 92(2)(iii) of the JJ Act could be considered.

37. In the present case, there is absolutely no case made out by the learned counsel for the accused that the evidence of the victim is not wholly unreliable. Moreover, mere fact that she stated something different in her statement under Section 164 of Cr.PC before the learned Magistrate cannot be a ground to discard her evidence before the trial Court, as she clearly deposed the facts in accordance with the case of prosecution. Therefore, the



accused has failed to establish any ground to demonstrate that it would be a serious error for this Court to conclude that the victim's uncorroborated testimony is reliable.

38. In respect of the point regarding the age of victim, the learned counsel for the accused has drawn the attention of this Court to the decision of the Co-ordinate Bench of this Court in Criminal Appeal No. 719/2017 decided on 22.06.2024, (***The State of Karnataka by Turuvanuru Police Inspector Rep. by State Public Prosecutor V/s Ramesh and another***), in which relying on the decision of the Hon'ble Apex Court in ***Mahadeo V/s State of Maharashtra and Another*** reported in (2013) 14 SCC 637, it is held that for age of the victim the Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 should be followed.

39. In the said decision, the Co-ordinate Bench of this Court has held that to prove the age of the victim, the prosecution has to first produce matriculation or equivalent Certificate, if available, only in the absence of that, date of birth certificate from the school first attended



has to be produced. In the absence of the above two, the birth certificate given by the Corporation or Municipal authority or Panchayath has to be produced. Only in the absence of the first three documents, ossification test has to be restored.

40. It is true that in the case on hand, the matriculation or equivalent certificate of the victim is not produced. The date of birth certificate issued by the school first attended by the victim is also not produced. However, as discussed herein above, there is absolutely no material forthcoming from the accused to make the evidence of PW4 and the certificate at Ex.P6 issued by PW4 not believable.

41. Moreover, PW8 the doctor, who examined the victim, has clearly deposed that as per the dentist the age of the victim is from 16 to 17 years and as per the radiologist report the age of the victim is below 18 years. Therefore, unless the accused show with cogent evidence



that the victim was aged more than 18 years as on the date of alleged incident, the fact that the prosecution has not produced any document as contemplated under Section 95(2) of JJ Act to prove the age of the victim that she was aged below the age of 18 years as on the date of alleged incident, falls to the ground and any such contention does not merit consideration to make the case of the prosecution against the accused not believable.

42. The learned counsel for the accused has relied on one more decision of the Hon'ble Apex Court in Criminal Appeal No.2276/2014, **Manak Chand @ Mani V/s the State of Haryana**, decided on 30.10.2023. But as per the facts of the said case, at the relevant time i.e. in the year 2000, when the alleged offence of rape was said to have been committed, the age of consent was 16 years and above. It was only vide an amendment made in the year 2013 that the age has been increased to 18 years. As per the facts of the said case, the offence alleged against the accused is under Section 376 of IPC. The said case is not



under POCSO Act. Therefore, any of the submissions of the learned counsel for the accused on the basis of said decision does not merit consideration of the case on hand.

43. Moreover, as submitted by learned Addl. SPP, it would be clear that in the criminal case every case should be considered on the basis of facts of each case. Therefore, even though there is no dispute regarding the principles of law laid down in the above referred decisions regarding the determination of the age of the victim as on the date of the incident, those principles do not falsify the case on hand to come to the conclusion that the victim was aged 16 years i.e. she was aged below the age of 18 as on the date of offence in the case.

44. Any of the contentions of the learned counsel for the accused that there is no case made out against the accused for the offence convicted for, falls to the ground. The reasoning of the trial Court in the impugned judgment would show that the trial Court on judicious appreciation



of all the facts and circumstances has arrived at the conclusion that the charges were proved beyond reasonable doubt. There is no perversity or patent illegality found in the impugned judgment of conviction and or a sentence.

45. From the discussions made herein above, it would be clear that the accused has failed to make out any sufficient ground, much less any ground to interfere with the impugned judgment of the trial Court. Therefore, we are of the view that this appeal is liable to be dismissed.

46. In the result, we proceed to pass the following:

ORDER

This appeal is hereby dismissed.

Consequently, the judgment dated 22.12.2018 of the learned II Addl. Sessions Judge, Kalaburagi in Special Case (POCSO) No.8/2018 shall stand confirmed.



The office shall return the trial Court records along with copy of this judgment forthwith.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE

SMP
List No.: 19 Sl No.: 1
CT:SB