



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 200194 OF 2024

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

BETWEEN:

RAJKUMAR S/O MARUTI KUMBAR
AGE: 30 YEARS, OCC: AGRICULTURE
RESIDENCE OF WALASANG
TQ: BHALKI, DIST: BIDAR-585328

...APPELLANT

(BY SRI. AVINASH A UPLOANKAR., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH BHALKI RURAL POLICE STATION
DISTRICT BIDAR,
NOW REPRESENTED BY ADDL. SPP
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585107

2. MADHAV
S/O DULABHARAO WAGMODE
(FATHER OF VICTIM),
AGE: 50 YEARS, OCC: AGRICULTURE
RESIDENCE OF WALASANG
TQ: BHALKI, DIST: BIDAR-585328

...RESPONDENTS

(BY SRI.JAMADAR SHAHABUDDIN, HCGP FOR R1;
R2 SERVED)





THIS CRL.A IS FILED U/S.374 (2) OF CR.P.C (OLD) U/SEC. 415 OF BNSS (NEW) PRAYING TO CALL FOR RECORDS AND EXAMINE THE RECORDS IN SPECIAL CASE NO.45/2021 AND SET ASIDE THE JUDGEMENT PASSED BY THE LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL COURT AT BIDAR IN SPL. CASE NO.45/2021 FOR CONVICTING THE APPELLANT BY ITS JUDGEMENT DATED 10TH JULY 2024 AND SENTENCING HIM ON 11TH JULY 2024, FOR THE OFFENCE PUNISHABLE U/SEC.363 OF IPC AND SECTIONS 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 R/W 376(1) OF IPC AND SEC.12 OF POCSO ACT, 2012.

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 who is accused No.1 has preferred this appeal against the judgment of conviction dated 10.07.2024 and order on sentence dated 11.07.2024 passed in Spl.Case No.45/2021 by the Additional District & Sessions Judge & Special Court, Bidar (for short, 'the Trial Court').

2. For the sake of convenience, the parties are referred to as per their rank before the Trial Court.

3. The brief facts leading to filing of this appeal is that, respondent-Bhalki Rural Police have submitted the



charge-sheet against the accused for the offences punishable under Sections 363, 366-A, 376(2)(n) 109 of IPC and Sections 4, 12, 17 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act, 2012').

4. It is alleged by the prosecution that accused No.1 obtained the telephone number of victim-CW.12 and used to tell her that he loves her and he will marry her and that on 14.07.2021 at 03.30 a.m., accused kidnapped her from house in Walsang, Bhalki, and took her on motorcycle bearing registration No.KA-39/Q-4698 to Kalaburagi. From there, accused No.1 took her to Puna by bus and with the help of accused No.4 in Patas area he took room from CW.33 and kept her for 5 days and committed forceful sexual intercourse with her. From there, he took her to Waked area in Puna and with the help of accused No.3 took a rented house from CW.35 and kept her there. Thus, the accused has committed the alleged commission of offences.



5. After filing the charge-sheet, the case was registered against the accused Nos.1 to 5 in Special Case No.45/2021. The accused were enlarged on bail. The charges were framed against accused Nos.1 to 5 for the commission of offences. The same was read over and explained to accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, the prosecution is examined in all 19 witnesses as PWs.1 to 19 and got marked 30 documents as Exs.P1 to P30 and 8 material objects as MOs.1 to 8. On closure of prosecution side evidence, the statement under Section 313 Cr.P.C. recorded. The accused have totally denied the evidence of prosecution witnesses appearing against them and accused No.1 was examined as DW.1 and got marked 1 document as Ex.D1.

7. Having heard the arguments on both sides, the Trial Court has convicted the accused No.1 for the offences punishable under Sections 363 of IPC and Section 4 of



POCSO Act, 2012 read with Section 376(1) of IPC and Section 12 of POCSO Act, and acquitted accused Nos.2 to 5 for the offences punishable under Sections 109 of IPC and Section 17 of the POCSO Act, 2012. Being aggrieved by the judgment of conviction and order on sentence, the appellant-accused No.1 has preferred the present appeal.

8. The learned counsel appearing on behalf of the appellant would submit that, the impugned judgment of conviction and order on sentence passed by the Trial Court is contrary to law, facts and evidence on record. The victim girl is aged about 17 years 6 months as per the prosecution papers. The Investigating Officer has not complied the mandatory provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the J.J.Act').

9. In the absence of any material for believing the date of birth, the production of Ex.P18 is not sufficient to come to the conclusion that the victim was child as on the date of commission of offence. The medical record reveals



that there are no seminal stains, spermatozoa, vaginal secretion were detection and absolutely that there are no evidence to convict accused for the alleged commission of offences. The victim had not suffered any external injuries on the body. The medical evidence is also reveals the same. The appellant allegedly had sexually assaulted the victim girl inside a jungle on the intervening night of 24.09.2022 and 25.09.022 multiple times and in normal circumstances, the victim girl should have suffered some external injuries at least on her backside. The medical records as well as the deposition of the Doctor-PW.11 also would go to show that the hymen of the victim girl was found to be intact. The RFSL report at Ex.P27 would go to show that the test report was negative. The undergarments of the victim girl as well as the appellant were forwarded by the prosecution for chemical examination and the report would reflect that no seminal stains, spermatozoa, virginal secretion and blood stains not detected in any of the articles which were referred to



Forensic Science Laboratory by the prosecution for chemical examination. However, surprisingly the Doctor has opined that there is evidence of sexual act. Such opinion of the Doctor is not supported by any other material available on record including her examination report of the victim. The Trial Court has not properly appreciated the evidence on record in a proper perspective manner and prays to allow this appeal.

10. To substantiate his arguments, he has relied on the judgment of the Hon'ble Supreme Court in the case of ***P.Yuvaprakash vs. State Rep. by Inspector of Police [2023 LiveLaw (SC) 538]***.

11. As against this, learned High Court Government Pleader would submit that, the Trial Court has properly appreciated the evidence on record in accordance with law and facts. Absolutely that there are no grounds to interfere with the impugned judgment of conviction and order on sentence passed by the Trial Court. Hence, prays to dismiss the appeal.



12. Having heard the arguments on both sides and on perusal of materials on record, the following points would arise for consideration:

- i) Whether the prosecution proves beyond all reasonable doubt that the victim was child as defined under Section 2(d) of the POCSO Act as on the date of commission of offence?
- ii) Whether the prosecution proves beyond all reasonable doubt that the accused has committed offence punishable under Section 4 and 12 of the POCSO Act, 2012?
- iii) Whether the prosecution proves beyond all reasonable doubt the accused has committed offence under Section 363 and 376(1) of IPC?
- iv) What order?

13. My findings 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.



Point No.1:

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

15. The Investigating Officer has submitted the charge-sheet against the accused for the offences punishable under Sections 363 of IPC and Section 4 of the POCSO Act read with Section 376(1) of IPC and Section 12 of the POCSO Act, and charge-sheet is also filed against accused Nos.2 to 5 for the offences punishable under Sections 109 of IPC and Section 17 of the POCSO Act.

16. It is alleged by the prosecution that as on the date of commission of offence, the victim was child as defined under Section 2(d) of POCSO Act. To substantiate the same, the prosecution has produced Ex.P18-Admission Abstract issued by the Principal, Morarji Desai Residential School, Bhalki, Bidar, which reveals that, the date of birth of the victim is 20.01.2004. As per the admission abstract, the age of the victim is 17 years 5 months 14 days. To



substantiate the same, the prosecution has not examined the Principal of concerned school, who has issued Ex.P18. One Sangamesh s/o Naganath is shown as CW.27 who speaks about issuance of Ex.P18, but prosecution has examined him before the Court.

17. In paragraph-22 of the Trial Court, the Trial Court has observed that, Ex.P18 marked with consent on 05.09.2023. Even if it is presumed that Ex.P18 marked with consent, the same is not sufficient to come to the conclusion that the prosecution has proved the contents of the document. It is well settled principle of law that mere marking of document does amount to prove the Investigating Officer has not collected any materials on what basis the school authorities have entered the date of birth of victim in Ex.P18.

18. The Hon'ble Supreme Court in the case of **P.Yuvaprakash** (*supra*) held that, if the matriculation certificate or any equivalent certificate of the victim-girl is available, the same should be produced and marked to



prove the age of the victim-girl. It is only in the absence of such document/s, the prosecution can produce the other documents as stated in the aforesaid judgment of the Hon'ble Supreme Court, to prove the age of the victim-girl. The victim-girl was undisputedly studying in 2nd year PUC, as on the date of registration of FIR and for the reasons best known to the prosecution, it has failed to produce the matriculation certificate or marks card of the victim-girl which would have been a conclusive proof with regard to her age.

19. The Investigating Officer has not produced the birth certificate/SSLC Marks Card/Ossification test certificate as required under Section 94 of the J.J.Act, 2015. The Medical Officer has not complied the mandatory provision of Section 164A of Cr.P.C. The Investigating Officer is also failed to comply mandatory provision of Section 34 of POCSO Act. The Investigating Officer has not explained anything with regard to compliance of Section 94 of the J.J.Act.



20. Viewed from any angle, I do not find any cogent, clinching and legal evidence to prove the age of the victim. Accordingly, the prosecution has failed to prove that the victim was child as defined under Section 2(d) of POCSO Act, 2012. Accordingly, I answer point No.1 in negative.

Point No.2:

21. When 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. Accordingly, I answer point No.2 in negative

Point No.3:

22. With regard to offence under Section 363 and 376(1) of IPC are concerned, the mother of the victim has lodged a complaint on 14.07.2021. On the basis of the complaint, the respondent-police have registered a case in Crime No.79/2021 against the accused for the offences



punishable under Sections 363 of IPC and after investigation, the Investigating Officer has submitted the charge-sheet against the accused for the offences punishable under Sections 363 and 376(1) of IPC.

23. A perusal of evidence of PW.5, it is clear that on 14.07.2021 at about 3:30 am accused No.1 called the victim through over phone and assured the victim that he will marry her and thereafter he took the victim on motorcycle bearing No.KA-39-Q-4698 to Gulbarga. Thereafter they went to Puna through bus. The victim and accused were stayed for 5 days in Patas area at Puna where the accused had sexual intercourse with victim. The medical report/Ex.P16 does not reveal as to the history of examination of the victim. In Ex.P16, PW.19 has stated that no external injuries noted on victim's body and no bite marks, abrasion marks noted on victim's breasts, cheeks or any other parts of the body and no injuries noted on genital region, hymen was intact.



24. PW.19-Dr.Nandini also clearly admitted that, she did not find any seminal stains or blood on victim's clothes. PW.19 has not deposed anything against the accused. If really accused has committed the alleged offence, the victim should have disclose the same before the Medical Officer and it is the duty of the Medical Officer to examine the victim as required under Section 164A of Cr.P.C. However, the Medical Officer has not complied mandatory provision of Section 164-A of Cr.P.C.

25. PWs.9 to 13 have not supported the case of the prosecution. The evidence of victim has not been substantiated by any other evidence. The evidence of the victim has not been corroborated by the medical evidence. Viewed from any angle, I do not find any evidence to prove the essential ingredients for the offence under Sections 363 and 376(1) of IPC.

26. Viewed from any angle, I do not find any cogent, convincing and clinching evidence to convict the



accused for the alleged commission of offence. Hence, I answer point No.3 in Negative.

Point No.4:

27. For the aforestated reasons and discussions, I proceed to pass the following:

ORDER

- (1) The appeal is ***allowed***.
- (2) The judgment of conviction dated 10.07.2024 and order on sentence dated 11.07.2024 passed by the Addl. Dist. & Sessions Judge & Special Court, Bidar in Spl.Case No.45/2021 is set aside.
- (3) The appellant-accused is acquitted for the offences punishable under Sections 363 of IPC and Section 4 of POCSO Act, 2012 read with Section 376(1) of IPC and Section 12 of POCSO Act, 2012.



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(4) The bail bond of the accused shall stand cancelled.

(5) The fine amount, if any, deposited by the accused shall be returned.

The registry is directed to send a copy of this order to the Trial Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

MSR,SDU
LIST NO.: 1 SL NO.: 31
CT-BH