



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

CRIMINAL APPEAL NO. 1827/2018 (A)

BETWEEN:

THE STATE OF KARNATAKA
THROUGH DAVANAGERE WOMEN
POLICE STATION
REPT. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 01

...APPELLANT

(BY SRI.RAJATH SUBRAMANYA, HCGP)

AND:

1. AMAR @ AMARANATHA RAMAPPA MADHARA
S/O RAMAPPA MADHARA
AGED ABOUT 25 YEARS
R/O HARALAYYA NAGAR
RANEBENNURU

2. SHANMUKHA K YARGUNTE
S/O LATE SHIVAMURTHAPPA
AGED ABOUT 39 YEARS
R/O NO.1165/2, 5TH CROSS
GANDHINAGARA
DAVANAGERE - 577 001

...RESPONDENTS

(BY SRI. M R BALAKRISHNA, ADVOCATE FOR R1:
SRI.VARUN M R, ADVOCATE FOR R2)
(AUTHORIZED BY HCLSC)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1)AND
(3) CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AND SET ASIDE
THE JUDGMENT AND ORDER DATED 14.02.2018, PASSED BY THE II





ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPL. JUDGE, AT DAVANAGERE IN S.C.NO.77/2016, ACQUITTING THE ACCUSED-RESPONDENTS FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366 AND 376 OF IPC AND SECTIONS 6 AND 17 OF POCSO ACT, AND SECTIONS 9 AND 10 OF PROHIBITION OF CHILD MARRIAGE ACT.

THIS APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, **K.S.MUDAGAL J.**, DELIVERED THE FOLLOWING:

JUDGMENT

“Whether the impugned judgment and order of acquittal in SC No.77/2016 passed by the II Addl. District and Sessions Judge and Special Judge, Davanagere suffers patent illegality or perversity ?” is the question involved in this case.

2. The respondent was tried in SC No.77/2016 before the Trial Court on the basis of the charge sheet filed by Davanagere Women Police in Crime No.3/2016 of their Police Station. The said charge sheet was filed against respondent No.1 (Accused No.1), Rajani and Anil @ Maruthi (Accused Nos.2 and 3) for the charges for the offences punishable under Sections 366 and 376 of IPC and Sections 6 and 17 of the Prevention of Children from Sexual Offences Act, 2012 (‘the POCSO Act’ for short). The Trial Court split up the case against accused Nos.2 and 3 and registered the same in SC No.103/2016. Thus in SC No.77/2016 only the present



respondent No.1 was tried. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.

3. The case of the prosecution in brief is as follows:

(i) PW.1 is the father and PW.7 is the mother of PW.4/the victim. PW.4 is born on 29.03.1998. Accused No.1 was working under PW.1 as lorry driver. On 06.01.2016 at 9.30 a.m. luring PW.4 of love and marriage accused No.1 kidnapped her from the lawful custody of her parents. He took her from Davanagere to Harihar in autorickshaw and from there he took her to Hospet in a bus. In Hospet he lodged her in Siddartha Lodge and committed penetrative sexual assault on her. From there he took her to Bengaluru and Goa, then returned to Madapura village. In Madapura village with the aid of accused Nos.2 and 3 he set up a house and married minor victim in Beeralingeshwara temple and stayed there with her. During such stay he committed repetitive penetrative sexual assault on her.

(ii) On PW.1 filing police complaint as per Ex.P1 against accused No.1, Davanagere Women Police registered FIR as per Ex.P15 on 07.01.2016 for the offence under Section 363 IPC.



On police chasing accused No.1 for tracing the victim, accused No.1 hid himself with the victim in the farmland and Police traced them on 06.02.2016 and brought them to the Police Station. Then the Investigating Officer subjected the victim to medical examination, got her statement/Ex.P9 recorded under Section 164 Cr.P.C. through the Magistrate, conducted investigation and filed the charge sheet.

4. The Trial Court on hearing the parties initially framed the charges against accused No.1 for the offences punishable under Sections 366 and 376 of IPC and Sections 6 and 17 of the POCSO Act. The Trial Court framed additional charges for the offences punishable under Section 9 and 10 of Prohibition of Child Marriage Act, 2006. Accused NO.1 denied the charges and claimed trial. Therefore trial was conducted.

5. In support of the case of the prosecution PWs.1 to 16 were examined, Exs.P1 to P26 and MOs.1 to 3 were marked. Accused No.1 after his examination under Section 313 Cr.P.C. did not lead any defence evidence. On his behalf the portions of statement of PW.4 were marked as Ex.D1 to D3 by way of confrontation.



6. The Trial Court on hearing the parties by the impugned judgment and order though held that the victim PW.4 being aged below 18 years was proved, acquitted the accused on the ground that the prosecution failed to establish the charges of forced sexual intercourse, kidnapping, child marriage etc. Challenging the said judgment the above appeal is filed.

7. Sri Rajath Subramanya, learned HCGP and Sri M.R.Varun, learned counsel for respondent No.2 reiterating the grounds of appeal submit that PW.4/victim's evidence was cogent and consistent regarding the charges and the same was corroborated by the evidence of her parents, medical evidence and other witnesses and the trial Court was not justified in rejecting the same. They further submit that once the age of the victim was proved, the prosecution has the benefit of presumption under Sections 29 and 30 of the POCSO Act and the accused failed to rebut the same which the trial Court failed to take note of. They submit that the impugned judgment and order suffers patent illegality and perversity, therefore the same is liable to be set aside.

8. Per contra Sri M.R.Balakrishna, learned counsel for accused No.1 justifying the impugned judgment and order of



acquittal submits that the age of the victim was not proved in accordance with law and there was inordinate delay in filing the complaint. He further submits that there were material contradictions and inconsistencies in the evidence and the prosecution was not entitled to the benefit of presumption under Sections 29 and 30 of the POCSO Act. He further submits that the Trial Court on judicious appreciation of the evidence has acquitted the accused. Such judgment does not warrant interference of this Court.

9. In support of his submissions, he relies on the judgment of the Hon'ble Supreme Court in ***P.Yuvaprakash vs. State Rep by Inspector of Police***¹

Analysis

10. As stated above, the case of the prosecution is that PW.4/victim was a child within the meaning of Section 2(d) of the POCSO Act, on 06.01.2016 the accused No.1 kidnapped her from the lawful custody of her parents and committed aggravated sexual assault on her from 06.01.2016 till 06.02.2016. During the said period, he married her though she was a child. The Trial Court on full fledged trial has acquitted

¹ AIR 2023 SC 3525



accused No.1 finding that the evidence of the prosecution witnesses was deficient to place conviction.

11. It is settled position of law that in an appeal against judgment of acquittal the scope of interference is limited. The Hon'ble Supreme Court in ***Prem Singh v. State of Haryana***² has held that in case of the appeal against acquittal, the accused has the benefit of double presumption. The first one being the presumption of innocence at the trial stage. Secondly that is reinforced, reaffirmed and strengthened by the judgment of acquittal. It was further held that merely because two views are possible, the appellate Court cannot reverse the judgment and in such case the view which is favourable to the accused has to be considered. It was held that unless the judgment of acquittal suffers patent illegality or perversity, the same cannot be reversed.

12. This Court has to examine the present case in the light of the principles laid down in ***Prem Singh's*** case referred to *supra*. To sustain the charges under the POCSO Act the prosecution was required to prove that PW.4 was a child below 18 years. To establish that the prosecution relied on the

² (2013) 14 SCC 88



evidence of PWs.1 and 7 the parents of the victim, PW.4 the victim and PW.12 lecturer in SRLS PU college, Davanagere. Ex.P18 is the date of birth confirmation certificate issued by the said PU college. Relying on Ex.P18 it was contended that PW.4 was born on 29.03.1998, therefore as on the date of offence i.e., on 06.01.2016, she was aged 17 years 9 months. PWs.1, 4 and 7 reiterated that PW.4 was aged below 18 years at the time of the incident.

13. The Hon'ble Supreme Court in ***Mahadeo v. State of Maharashtra and Another***³ has held that the yardstick applicable for the assessment of the age of juvenile in conflict with law under Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as JJ Rules) is applicable to the juvenile victim also. The Hon'ble Supreme Court in the above said judgment referring to said Rule 12(3) held as follows:

"12. We can also in this connection make reference to a statutory provision contained in the Juvenile Justice (Care and Protection of Children) Rules, 2007, where under Rule 12, the procedure to be followed in determining the age of a juvenile has been set out. We

³ (2013) 14 SCC 637



can usefully refer to the said provision in this context, inasmuch as under Rule 12(3) of the said Rules, it is stated that:

“**12. (3)** In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, by the Committee by seeking evidence by obtaining—

(a)(i) the *matriculation or equivalent certificates*, if available; and *in the absence whereof*;

(ii) *the date of birth certificate from the school* (other than a play school) *first attended*; and *in the absence whereof*;

(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;”

Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well."

14. The reading of the above judgment goes to show that, to prove the age of the juvenile victim or juvenile in conflict with law, 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 resorted.

15. In the present case admittedly at the time of the incident PW.4 was studying in PUC and had completed matriculation. Despite that the Investigating Officer did not collect the matriculation certification to prove her date of birth. Only in the absence of that the Investigating Officer had to resort to the school certification. Even in that case, he had to secure the certificate from the school first attended by the victim. But he collected Ex.P18 which is issued by PW.12/incharge Principal of the College. PW.12 states that she issued that on the basis of the admission register maintained in their college. She says that at the time of admission PW.4 had produced the Transfer certificate issued by her first attended school and her matriculation certificate. But those documents



were not produced along with Ex.P18 to show that PW12 relied on them.

16. In view of the aforesaid judgment in ***Mahadeo's*** case the trial Court was in error in relying on Ex.P18 and the other evidence to hold that the victim being aged below 18 years was proved. In the absence of the evidence as required under Rule 12 of the JJ Rules and the judgment in ***Mahadeo's*** case and other evidence regarding age proof is of no use to prove the fact of victim being below 18 years. In such case the charges under Sections 6 and 17 of the POCSO Act and Sections 9 and 10 of the Prohibition of Child Marriage Act do not sustain.

17. Then what remains are the charges under Sections 366 and 376 of IPC. This Court has to examine whether the prosecution has proved beyond reasonable doubt that accused No.1 kidnapped PW.4 with an intention to subject her to sexual abuse or marry her and committed forced sexual intercourse. PW.4 in her statement under Section 164 Cr.P.C. recorded on 24.02.2016 states that accused No.1 luring her that her family members are in his house and they are calling her, took her to his house in Ranebennur. She says that there grandmother, aunt and uncle of accused No.1 were present, they offered her



some juice, on consuming the same she lost her consciousness. She says when she regained consciousness, she found herself in Davanagere Women Police Station. She further states that on Police enquiring her and accused No.1, she told the Police that she does not know anything, then Police asked her whether she wants to go with accused No.1 or with her parents, on her option the Police sent her with her parents.

18. According to Investigating Officer before PW.4 she giving such statement she had given statement before him on 06.02.2016 stating that her father had fixed her marriage with her maternal uncle Srikanth and she was in love with accused No.1, therefore, they eloped. According to the prosecution, she revealed before the Investigating Officer about accused No.1 marrying her and committing sexual assault on her etc. In Ex.P9 that is her statement under Section 164 Cr.P.C. she has given a total go-bye to her alleged statement given before the Investigating Officer.

19. It is the defence of the accused that victim is major and she was interested in the accused as her father had intended to give her in marriage with her maternal uncle and his



maternal uncle declined to marry her, to force the accused to marry her, he is falsely implicated in the case. It is material to note that PW.1 in his complaint suppressed accused No.1 being his relative. But that has surfaced in Ex.P9 the statement of the victim herself.

20. It is already held that victim being minor is not proved. The evidence of PW.4 and Ex.P9 shows that she was close with accused No.1. She says that on 06.01.2016 on accused No.1 calling her on phone at 9.30 a.m. she went to High School ground and from there at the instance of the accused, she went to Harihara in autorickshaw and from there both of them went to Hospet in a bus. There they stayed in Siddartha lodge. She claims that in the said lodge he committed sexual assault on her and he said he will marry her. She herself deposes that next day from Hospet they went to Huligi and from Huligi to Bengaluru. After staying in the house of the friend of accused No.1 in Bengaluru they came to Madapura. They stayed in the house of Rajani and Maruthi viz., accused Nos.2 and 3 for two days. She claims that accused Nos.1 to 3 went to Beeralingeshwara temple and her marriage with accused No.1 was performed and they stayed in a room, there also accused



No.1 committed sexual assault on her. On learning about Police chasing them accused No.1 had hidden her in farm land and from there Police took her and accused No.1 to the Police station. Such evidence goes to show that for about one month she moved with accused No.1 in public conveyance and in public places. Nowhere she raised alarm, sought anybody's help or tried to escape.

21. When PW.4 says in her statement under Section 164 Cr.P.C. that in the house of accused in Ranebennur she was administered juice laced with stupefying material, but in her deposition she says that on they reaching Siddarth lodge accused offered her some juice, on consuming the same she became unconscious and on regaining the consciousness, she found that she was nude and the accused had committed rape on her. That also goes to show that her version regarding she being administered with stupefying material is being changed from time to time and not acceptable one. Her evidence shows that Beeralingeswara temple where they claimed to have been married was a public place. There also she has not resisted nor alerted the public. None of the witnesses from the said temple or from that area were examined.



22. It is no doubt true that PW.10/doctor has spoken about the injuries i.e., abrasions on both thighs and right knee of PW.4/victim. But, PW.4 herself in her evidence states that on learning about the Police chasing accused No.1 to trace them, both of them ran into the land to escape and during such time she was hit by some thorny bushes and suffered those injuries. PW.10 deposes that as per the dentist's opinion the age of the victim was 15 to 17 years and as per the radiologist's opinion the age was between 18 and 21 years. Such medical evidence is not conclusive and has the margin of error i.e., plus or minus two years. Such evidence not only falsifies the case of the prosecution that PW.4 was a minor, but also goes to show that she had attained the age of discrimination. She lived along with the accused for about one month and moved with him in public places and public conveyance without raising her little finger. That goes to show that sexual cohabitation, if any, was not under any force. Therefore, the charges for the offences under Sections 366 and 376 IPC were not proved beyond reasonable doubt.

23. In ***Yuvaprakash's*** case the Hon'ble Supreme Court holding that the facts proved victim's willingness to accompany



the accused and even their marriage, acquitted the accused.
This matter is fully covered by the said judgment.

24. Looked from any angle, the impugned judgment and order of acquittal cannot be said to be perverse or patently illegal warranting interference by this Court. Hence the following:

ORDER

The appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AKC
List No.: 1 Sl No.: 7