



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.800 OF 2025

BETWEEN:

1. STATE OF KARNATAKA
BY POLICE SUB-INSPECTOR
WOMEN POLICE STATION
UDUPI DISTRICT
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU – 560 001.

...APPELLANT

(BY SMT. RASHMI PATEL, HCGP)

AND:

1. MANIKANTA @ MANU

[REDACTED]

2. SHIVARAMA MENDON

[REDACTED]





3.

[REDACTED]

[REDACTED]

...RESPONDENTS

(BY SRI. K. PRASANNA SHETTY, ADVOCATE FOR R1;
SRI. TEJAS N., ADVOCATE FOR
SRI. SACHIN G., ADVOCATE FOR R2;
SMT. RENUKA DEVI, ADVOCATE FOR R3 [ABSENT])

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.PC PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 05.02.2024 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, UDUPI, IN SPL.C.NO.66/2022 AND THEREBY, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366A, 376(1) AND 354(A)(1)(i)(2) AND (D) OF IPC AND SECTION 3 R/W SECTIONS 4, 7 R/W SECTIONS 8, 11(iii) R/W 12 OF POCSO ACT, 2012

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This matter is listed for admission and we have heard learned HCGP for the appellant-State, learned counsel for respondent No.1 and learned counsel for respondent No.2.

2. The present appeal is filed by the appellant-State against the judgment of acquittal for the offence punishable under Sections 366(A), 376(1) and 354(A)(1)(i)(2) and (D) of IPC and Section 3 read with Sections 4, 7 read with Section 8, 11(iii) read with Section 12 of the POCSO Act, 2012.

3. The factual matrix of case of the prosecution is that victim girl is a minor. On 25.04.2022 at about 10.00 a.m. at Latha Hotel of Giliyaru Village, the accused No.2, who was acquainted with the victim girl, when she was in 9th standard, on the pretext of loving her, followed and contacted her through mobile and took her in his scooter to Amrutheshwari temple and from there at about 10.30 a.m. to Latha hotel, Kota, Giliyaru Village and touched her hand and leg and had committed sexual assault and harassment on her. It is also the case of prosecution that on the same day at about 12.00 p.m.



at a place called Harthattu bus stand of Giliyaru Village, Brahamvara Taluk, the accused No.1 called her through phone on the pretext that he wanted to talk with her and thereafter induced her to come with him to go to Kundapura and kidnapped her in his motorcycle to the old house belongs to one Korta Rama situated at Kolkere, Basruru Village, Kundapura Taluk and subjected her for forcible sexual intercourse without her consent. On the basis of the complaint filed by the victim girl, the women police have registered the case in Crime No.34/2022 for the offences punishable for the provisions of IPC and POCSO Act. The police after investigation filed the charge sheet against accused Nos.1 and 2.

4. The accused Nos.1 and 2 were released on bail and they did not plead guilty and claimed for trial. Hence, the prosecution examined the witnesses P.Ws.1 to 24 and marked the documents Exs.P1 to 36 and M.Os.1 to 7 are also marked. The accused was subjected to 313 statement and not led any defence evidence.

5. The Trial Court having considered the evidence of all the witnesses, particularly in paragraph No.31 in respect of



proof of age of victim girl is concerned comes to the conclusion that the same has not been proved. The Trial Court even had taken note of Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007 which corresponds to Section 94 of Juvenile Justice (Care and Protection of Children) Act. The said provision is applicable to POCSO Act also and discussed in detail the judgment in **Crl.A.No.1819/2023** in **YUVAPRAKASH VS. STATE**, particularly in paragraph No.14, considering Section 94 of Juvenile Justice (Care and Protection of Children) Act comes to the conclusion that age is not proved and considered the admission on the part of P.W.1, wherein she categorically admits that at the time of alleged incident, she was aged about 18 years. The Trial Court also taken note of age of the victim girl as spoken by P.W.2, wherein he says that victim girl was 17 years at the time of the incident. The medical report shows that the age of the victim girl is 17 years 6 months and there is no consistency in the evidence of P.W.1 and P.W.2 and the documents produced by the prosecution. Hence, the Trial Court comes to the conclusion that victim girl was a minor on the alleged date of the incident.



6. The Trial Court also with regard to the offence under Sections 363 and 375 of IPC taken note of the evidence and extracted the same in paragraph Nos.35, 36 and 39 i.e., oral evidence before the Court as well as before the learned Magistrate while recording the statement under Section 164(5) of Cr.P.C., wherein also she has not stated anything about subjecting her for sexual act and also considered the medical evidence. So also in respect of accused No.2 also, the Trial Court discussed in paragraph No.48 and comes to the conclusion that no material corroborates the case of prosecution and acquitted the accused. The said judgment of acquittal is challenged by the State before this Court by filing this appeal.

7. The main contention of Smt. Rashmi Patel, learned HCGP is that Trial Court committed an error in relying upon the evidence of P.W.1 in coming to the conclusion that her evidence is inconsistent. She would vehemently contend that P.W.1 has been examined, wherein she has stated that her date of birth is 15.10.2004 and the date of incident is 25.04.2022. This shows that the victim was not major at the time of the incident. But,



the Trial Court has wrongly come to the conclusion that victim girl was major at the time of incident and hence, the provisions of POCSO Act are not applicable. She would vehemently contend that the Trial Court has lost sight of the evidence of P.W.9, owner of Latha Hotel, who clearly says that accused had come with the victim girl to his hotel and he has also stated that he has given CCTV footage, wherein it is shown that accused and the victim girl visited the hotel on that day. The evidence of P.W.8 and P.W.9 and also the victim girl was not considered in a proper perspective. The victim in her chief-examination has stated that accused touched her hands and legs. But, when she was asked about the incident in cross-examination, she said that she could not inform the Court about the sexual intercourse committed by the accused No.1 due to shyness and these are the factors which were not taken note of by the Trial Court.

8. Learned counsel for respondent No.2 would submit that Trial Court in detail discussed in paragraph No.48 that P.W.1 has not spoken anything about accused No.2 and there is no material against accused No.2.



9. Learned counsel for accused No.1 also would submit that Trial Court in detail taken note of evidence of P.W.1-victim girl and nothing substantiates act of the accused.

10. Learned counsel for respondent No.3-complainant, who was authorized by HCLSC is absent and no representation before the Court.

11. Having heard learned HCGP for the appellant-State and also learned counsels appearing for respondent Nos.1 and 2, we have perused the material available on record, particularly the reasonings given by the Trial Court as regards proving the age of victim girl is concerned and except medical report, wherein it says that victim was aged 17 years 6 months, no evidence is placed before the Court. But, in a case where there is medical evidence, there must be an ossification test and the same is not done. Apart from that, P.W.1 admits that she is aged about 18 years and having perused the evidence of P.W.1 in paragraph Nos.33 and 34, particularly paragraph No.35, she categorically says that, except touching her hand and leg, not made anything and thereafter, he left her at Thekkatte which is also discussed in paragraph No.36. So



also the Trial Court discussed with regard to 164(5) statement in paragraph No.39, wherein also the victim girl has not stated anything about subjecting her for forcible sexual act and the evidence of P.W.2 is nothing but hearsay i.e., father of the victim. When P.W.1 herself has not stated anything about subjecting her for forcible sexual act, the evidence of P.W.2 will not come to the aid of the prosecution and there is no medical evidence before the Court.

12. When such being the case, question of invoking the offence under Sections 366(A), 376(1) and 354(A)(1)(i)(2) and (D) of IPC and Section 3 read with Sections 4, 7 read with Section 8, 11(iii) read with Section 12 of the POCSO Act, 2012 does not arise in the absence of cogent evidence before the Court. The evidence of P.W.1-victim girl is inconsistent and the same is not trustworthy, wherein allegation is made against both accused Nos.1 and 2. But, the evidence before the Court is contrary to the same and even Section 164(5) statement is also not in respect of subjecting her for sexual act. When all these materials are considered by the Trial Court, we do not find any ground to admit the appeal.



13. In view of the discussion made above, we pass the following:

ORDER

The criminal appeal is *dismissed*.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

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List No.: 1 Sl No.: 15