



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

CRIMINAL APPEAL NO.748/2017 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY MADUGIRI POLICE STATION
TUMKURU DISTRICT
REP. BY SPP, HIGH COURT BUILDING
BENGALURU - 560 001

...APPELLANT

(BY SMT.SOWMYA R, HCGP)

AND:

1. SRI VENKATESH
S/O SHIVANNA
AGED ABOUT 26 YEARS
R/O HOSAHALLI, KASABA HOBLI
MADUGIRI TALUK
TUMKURU DISTRICT

2. SRI.LAKSHMINARAYANAPPA
S/O CHIKKANNA
R/O HOSAHALLI, KASABA HOBLI
MADUGIRI TALUK
TUMKUR DISTRICT

...RESPONDENTS

(BY SRI.NANDISH PATIL, ADVOCATE FOR R1;
SMT.SHILPA RANI, ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND
(3) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF
ACQUITTAL DATED 16.11.2016 PASSED BY THE III ADDITIONAL
SESSIONS JUDGE AND SPECIAL COURT FOR TRIAL OF CASES UNDER
SC/ST (POA) ACT, 1989 AND SPECIAL COURT FOR TRIAL OF CASES





UNDER POCSO ACT, 2012 TUMKUR IN SPL.CASE NO.120/2013 -
ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE
PUNISHABLE UNDER SECTIONS 450 AND 376 OF IPC AND UNDER
SECTIONS 4 OF POCSO ACT, 2012.

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

CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE K.S.MUDAGAL)

Challenging the judgment and order of acquittal in
Spl.Case.No.120/2013 passed by III Additional Sessions Judge,
Tumkur and Special Court for trial of cases under Protection of
Children From Sexual Offences Act 2012, the State has
preferred this appeal.

2. Respondent No.1 was sole accused. Respondent
No.2 was PW.1/complainant in Spl.Case.No.120/2013 before
the trial Court. For the purpose of convenience, parties are
referred to henceforth according to their ranks before the Trial
Court.

3. PW.2 is the daughter of PW.1, PW.5 is the wife and
PW.3 is the brother of PW.1 and PW.4 is wife of PW.3. Accused
was tried in Spl.Case.No.120/2013 for the charges for the



offences punishable under Sections 450, 376 of IPC and Section 4 of the Protection of Children From Sexual Offences Act, 2012 (for short 'POCSO Act') on the basis of the charge sheet filed by Madhugiri police in Crime No.34/2013 of their police station. Crime No.34/2013 was registered against the accused on the basis of complaint filed by PW.1 as per Ex.P1.

4. The case of the prosecution in brief is as follow:

That on 06.03.2013 PW.2/victim was aged 15 years. Accused used to stalk her when she was going to school and used to eve-tease her. On 06.03.2013 at 6:30 p.m. when PW.2 was alone in her house situated at Hosahalli village, accused trespassed into the said house and committed penetrative sexual assault on her. By that time PWs.1 and 3 returned home. On seeing them the accused sped away. Based on the complaint/Ex.P1, investigation was conducted and the charge sheet was filed against the accused for the offences punishable under Section 448, 376(2)(h) of IPC and Sections 3(a) and 6 of POCSO Act.

5. The trial Court on hearing both side framed the charges against the accused for the offences punishable under



Sections 450, 376 of IPC and Section 4 of the POCSO Act. The accused denied the charges and claimed trial. Therefore, trial was conducted.

6. In support of the case of the prosecution, PWs.1 to 13 were examined, Exs.P1 to P9 and MOs.1 to 9 were marked. After his examination under Section 313 Cr.P.C, accused did not lead any defence evidence.

7. The trial Court on hearing both side, by the impugned judgment and order has acquitted the accused on the ground that victim being aged below 18 years is not proved. The trial Court has further held that the allegation of accused committing force penetrative sexual assault is not proved. Challenging the said judgment and order of acquittal, the State has preferred the above appeal.

8. Heard both side.

Submissions of Smt. Sowmya R, learned HCGP for appellant/State:

9. Victim/PW.2 has supported the prosecution case and her evidence is corroborated by the evidence of other witnesses. The medical evidence shows that there was act of



sexual intercourse. The fact of victim being aged below 18 years was proved by the evidence of PW.8 and Ex.P8. Under the circumstances, the trial Court was in gross error in acquitting the accused.

Submissions of Sri Nandish Patil, learned Counsel for respondent No.1 and Smt. Shilpa Rani, learned Counsel for respondent No.2:

10. Basically the fact of victim being minor was not proved in accordance with law. Evidence of PW.2 itself shows that there was no act of sexual assault as alleged. Further medical evidence was also inconclusive. There was delay in filing the complaint. The accused was falsely implicated in the case to force him to marry the victim. Subsequently, the victim herself has obtained *exparte* divorce decree against the accused in M.C.No.82/2022. The trial Court on judicial appreciation of the evidence and applying relevant laws has acquitted the accused. Such judgment does not warrant interference by this Court.

11. On hearing the submissions of both side and on examining the material on record, the point that arises for



consideration is "whether the impugned judgment and order of acquittal suffers illegality or infirmity?"

Analysis:

12. There is no dispute that the accused, victim and PW.1 hail from the same village. It is also not disputed that PWs.1 and 5 are the parents of PW.2/victim, PW.3 is brother of PW.1 and PW.4 is wife of PW.3. It was alleged that as on 06.03.2013 PW.2 was aged 15 years and on that day at about 6:30 p.m. when other family members were out of the house, the accused trespassed into the house and committed penetrative sexual assault on PW.2.

13. To prove the charge under Section 4 of the POCSO Act, prosecution is required to establish that as on the date of incident, PW.2 was aged below 18 years. Further to prove charge under Section 376 IPC, prosecution was required to establish that the accused committed forced penetrative sexual assault on PW.2. Further prosecution was supposed to lead evidence with regard to criminal trespass by the accused into the house of PWs.1 and 2.



Reg. age of the victim:

14. It was contended that as on the date of incident, victim was aged 15 years. Hon'ble Supreme Court in para 12 of the judgment in ***Mahadeo S/o Kerba Maske Vs. State of Maharashtra and Another***¹ has laid down the guidelines regarding proof of age of the juvenile victim 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 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, 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***;

¹ (2013) 14 SCC 637



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.***"

(Emphasis supplied)

15. In the light of legal principles laid down in the above judgment, the prosecution in the first place, is required to produce the matriculation or equivalent certificate of the victim. In the absence of that, the date of birth certificate from her first attended school and in the absence of that, the birth certificate given by the Panchayat of Hosahalli village or local authority has to be produced. If none of them were available, then the ossification test has to be conducted.

16. In the present case, complaint itself states that at the time of the incident the victim was studying in S.S.L.C. It was not the case of the prosecution that she dropped out from the school. But matriculation certificate was not produced. In the absence of that, the prosecution was required to produce the date of birth certificate from the first attended school. To



prove the age of the victim, the prosecution relied on the evidence of PW.8/Headmaster of Mahatma Gandhi Memorial Girl's High School, Madhugiri and Ex.P.8/the certificate issued by him. The evidence of PW.8 and Ex.P.8 show that such certificate was issued ***based on transfer certificate produced*** by the victim ***at the time of her admission to the said high school***. PW.8 deposed that, he does not know who had written that transfer certificate. Therefore, Ex.P.8 and evidence of PW.8 did not fall within the requirement of Rule 12(3)(ii) the Juvenile Justice (Care and Protection of Children) Rules, 2007 referred in the judgment of Hon'ble Supreme Court in ***Mahadeo's*** case referred to *supra*.

17. The investigating officer did not produce the birth certificate of victim issued by Municipal authority or Panchayat nor referred her for ossification test. Absolutely there was no explanation why such required documents were not produced. Under the circumstances, the trial Court was justified in arriving at a conclusion that the victim being aged below 18 years was not proved.



HC-KAR

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Reg. offences under Sections 376 and 450 of IPC:

18. It is alleged that the accused on 06.03.2013 at 6.30 p.m. trespassed into the house of the victim and committed sexual assault on her. The accused totally denied the incident and contended that he was implicated in the case because of the political rivalry between him and PW.1/the victim's father. The trial Court on appreciation of evidence found that evidence of PW.1 regarding alleged incident was not credible and medical evidence was also not supportive. Hence acquitted the accused.

19. The scope of interference in an appeal against the acquittal was expounded by Hon'ble Supreme Court in para 13 of judgment in case ***Prem Singh Vs State of Haryana***² reads as follows:

13. The parameters within which the High Court was required to exercise its powers under Section 378 of the Code while hearing the State's appeal have already been noticed. ***If a conclusion with regard to the innocence of the accused is reasonably possible on the basis of the evidence and materials on record the High Court ought not to have disturbed the findings recorded by the trial court, even if, on a reappraisal of the evidence, it was inclined to take a different view.*** So long the view taken by the trial court was a possible view the exercise of the appellate power of the High Court under Section 378 Cr.P.C would remain circumscribed by the well-settled parameters.

² (2013)14 SCC 88



The reading of the above judgment shows that merely because two views are possible, the Court cannot interfere with judgment of acquittal unless such judgment suffers patent illegality or perversity.

20. In the present case, the offence alleged to have taken place on 06.03.2013 at 6.30 p.m. PW.1 claimed that when he came to the house, the accused ran away. But the complaint was filed on 09.03.2013 at 7.00 p.m. The FIR was delivered to the trial Court on 10.03.2013 at 6.50 p.m. In the complaint it is stated that his wife i.e., PW.5 had been to Bengaluru. He waited till her arrival and therefore there was delay in filing the complaint. The records show that PW.1 was not an illiterate person. PW.5 says that soon after the incident she was informed by PW.1 over phone about the incident. Thus as they had already discussed the matter, there was no reason to postpone the filing of the complaint for three days. Even assuming that matter according to them was a question of family's reputation, the FIR at Ex.P2 shows that there was delay in delivering the FIR also. That was not explained. Further PW2/victim herself in the cross examination deposed that except hugging her and holding her hands the accused did



not do anything else to her. She has further stated that when her father/PW.1 and uncle/PW.3 came home, she informed them about such acts of the accused.

21. The accused contended that himself and PW.1 belong to rival political parties, therefore, he was falsely implicated in the case. PW.1 in his cross examination contended that he did not belong to any political party. Whereas his daughter PW.2 in her cross examination admitted that PW.1 and PW.3 were JDS party workers and the accused belonged to Congress party. Such admission of PW.2 goes to show PW.1 tried to hide something. PW.2 was examined by the doctor/PW.6 on 10.03.2013 at 4.50 p.m. that is within four days of the incident. The evidence of PW.6 and Ex.P5 state that on medical examination no traces of recent sexual intercourse were found. Coupled with that, spot mahazar at Ex.P3, the scene of offence, the house of accused is surrounded by house of Nataraju and arecanut garden of Veerachikkappa. Except PW.1 and his relatives, no other independent witnesses were examined to speak about the incident. As already noted PWs.1 to 5 are all related to each other. The evidence on record shows that there was some rivalry between the accused and



PW.1. Considering all these facts, the trial Court arrived at the conclusion that the charges were not proved beyond reasonable doubt. On reappriciation of evidence, no perversity or illegality is found in the impugned judgment and order.

22. Coupled with the above, copy of the judgment in MC No.82/2022 passed by the Additional Senior Civil Judge and JMFC, Madhugiri, placed before this Court shows that respondent No.2 herself has filed the said petition against the accused seeking divorce on the ground of desertion and cruelty. Said judgment shows that she contended in the said petition that herself and accused were married on 14.06.2015 and they begot a female child by name Babitha in such marriage. She has also stated that they lived together for two years and then she was subjected to ill-treatment and deserted her.

23. Records show that charge sheet was filed on 24.05.2013, the impugned judgment was delivered on 16.11.2016. Judgment in MC No.82/2022 shows that pending trial, the accused and PW.2 got married. But the same was not disclosed to the trial Court. Said fact also goes to show that there was some suppression of material fact. On that count also



the impugned judgment and order does not warrant interference. Hence the following:

ORDER

Appeal is dismissed.

**Sd/-
(K.S.MUDAGAL)
JUDGE**

**Sd/-
(M.G.S. KAMAL)
JUDGE**