HC-KAR

NC: 2026:KHC:63167-DB
CRL.A No. 1806 of 2019

CNR: KAHC010441802019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 1806 OF 2019 (C)

BETWEEN:

SRI MAHANTESHNAIKA
S/O. SRI. SHIVANAIKA
AGED ABOUT 22 YEARS,
R/O. HALLIMALLAPURA VILLAGE,
CHANNAGIRI TALUK-577213.

...APPELLANT

(BY SRI. S.N.SAMEER, ADVOCATE)

AND:

THE STATE-REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE,
CHANNAGIRI,
SANTEBENNUR P.S.

(REPRESENTED BY THE
LEARNED STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE-560001)

...RESPONDENT

(BY SRI. SUDHINDRA B.S., HCGP)

Digitally signed by SHARADAVANI B
Location: HIGH COURT OF KARNATAKA

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PLEASED TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER DATED 05.07.2019 AND SENTENCE DATED 06.07.2019, PASSED BY II ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPL.JUDGE, DAVANAGERE IN S.C.NO.150/2018, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 6 OF POCSO ACT AND ETC.,

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.11.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE B.PRAMOD)

This Criminal appeal is preferred by accused/appellant challenging the judgement of conviction dated 5.07.2019 and order of sentence dated 6.07.2019 passed by the Learned II Additional District and Sessions Judge and Special judge Davangere, in S.C.No.150/2018, whereby the accused has been convicted for the offence punishable

under Section 6 of the Protection of Children from Sexual Offences (for short 'POCSO Act') and sentenced accordingly.

2. Heard Sri S N Sameer, learned counsel for the appellant and Sri Sudhindra B S, learned High Court Government Pleader for the respondent-State.

3. The brief case of the prosecution is that on 30.10.2017, at about 4.30 p.m., when the victim, a minor girl aged about six years and the daughter of PW.3 and 9, was playing in the compound of the Government School at Hallimallapura Village, Channagiri Taluk, the accused approached her and, on the pretext of offering chocolate, induced her to accompany him. It is alleged that the accused, with an intention to commit penetrative sexual assault on the minor victim, took her behind the school, made her lie on the ground and inserted his penis into her mouth, thereby committing aggravated penetrative sexual assault upon her, knowing fully well that she was a minor.

Thereafter, the accused fled from the spot when CWs.1, 5, 6, 7 and 8 arrived at the scene.

4. On the basis of the aforesaid intimation, a criminal case came to be registered against the accused. Upon completion of the investigation, the Investigating Officer filed the charge sheet against the accused for the offence punishable under Section 6 of the POCSO Act. The accused pleaded not guilty to the charge levelled against him and claimed to be tried.

5. In order to prove the guilt of the accused, the prosecution examined 20 witnesses as PWs.1 to 20, got marked 12 documents as Exs.P1 to P12 and produced 4 material objects as MOs. 1 to 4. After completion of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, was recorded, wherein he denied the incriminating circumstances appearing against him in the prosecution evidence. The accused did not choose to adduce any

defence evidence. However, he submitted written submissions in support of his defence.

6. The learned Trial Court, upon appreciation of the testimony of the victim and the other oral and documentary evidence on record, convicted the accused for the offence punishable under Section 6 of the POCSO Act. Being aggrieved by the impugned judgment of conviction and order on sentence, the accused has preferred the present appeal questioning the legality and correctness thereof.

7. Learned counsel appearing for the appellant contends that there are no eyewitnesses to the actual commission of the alleged offence and that the prosecution case rests primarily upon the testimony of the minor victim. It is submitted that the evidence of the victim suffers from material discrepancies and inconsistencies, which have not been properly appreciated by the learned Trial Court.

8. It is further contended that the accused, in his written submissions filed in connection with his examination under Section 313 of Cr.P.C., has specifically taken the defence that he has been falsely implicated in the case at the instance of PW.8. It is submitted that PW.8 has turned hostile and has not supported the prosecution case. Learned counsel further submits that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and that the learned Trial Court was not justified in convicting him. Accordingly, he seeks to set aside the impugned judgment of conviction and order on sentence.

9. Per contra, learned Additional State Public Prosecutor appearing for the respondent–State supports the impugned judgment of conviction and order on sentence. It is submitted that the victim has categorically supported the prosecution case and that her testimony is corroborated by the evidence of other prosecution witnesses, particularly PWs.3, 6, 7 and 8. It is further

submitted that PWs.10, 11 and 12, who are the classmates of the victim, have also supported the prosecution case in material particulars.

10. Learned Additional State Public Prosecutor further submits that the medical evidence supports the testimony of the victim and that the discrepancies pointed out by the defence are minor in nature and do not affect the substratum of the prosecution case. It is therefore contended that the learned Trial Court, upon proper appreciation of the oral and documentary evidence on record, has rightly convicted the accused and that the impugned judgment does not warrant

interference by this Court.

11. Having heard the learned counsel appearing for the parties and upon perusal of the material on record, the following points arise for consideration in this appeal:

> *"(i) Whether the prosecution has proved beyond reasonable doubt that the accused committed aggravated penetrative sexual assault upon the*

minor victim, thereby attracting the offence punishable under Section 6 of the POCSO Act?

(ii) Whether the impugned judgment of conviction passed by the learned Trial Court calls for interference by this Court?

(iii) Whether the sentence imposed upon the accused warrants modification in the facts and circumstances of the case?"

12. In order to consider the rival submissions, it is necessary to re- appreciate the oral and documentary evidence available on record. The prosecution case primarily rests upon the testimony of the minor victim, supported by the evidence of the other prosecution witnesses and the medical evidence.

13. Ex.P6 is the school certificate, which has been marked by consent and establishes that the victim was aged about six years as on the date of the incident. The age of the victim is a material circumstance, particularly having regard to the nature of the charge levelled against the accused. The documentary evidence establishes that the victim was a child within the meaning of the POCSO

Act and was below twelve years of age at the relevant point of time.

14. PW.1 – Geethamma, the complainant and aunt of the victim, has deposed that on 30.10.2017, she was at the house of Lambodara along with PW.3 – Prema, the mother of the victim, PW.6 – Annapoorna and PW.7 – Shilpa, where they were peeling arecanuts. According to her, the accused came there to deliver lunch boxes and, thereafter, she saw him walking towards the school. She has stated that about five minutes had elapsed after the school hours when Nandini, Sanjana and Taruna came and informed them that someone had taken the victim. Immediately, they proceeded towards the school and went behind the school, where they found the victim lying on the ground and the accused standing over her. On seeing them, the accused ran away from the spot. PW.1 has further stated that, when they went to lift the victim, she vomited and, on checking her mouth, they noticed a white

residue and a foul smell. They washed her mouth and took her home.

15. PW.1 has further deposed that, on being brought home, the victim disclosed that the accused had taken her behind the school on the pretext of giving her chocolates. The accused had initially taken both Nandini and the victim with him, but Nandini managed to escape and run away. The accused thereafter took the victim behind the school and put his genital organ into her mouth. PW.1 has stated that, as there were no men at home at that time, they waited until her husband returned at about 7.30 p.m. She then narrated the incident to him, whereupon he reduced the same into writing. Thereafter, they went to the Santhebennur Police Station and lodged the complaint at about 11.30 p.m.

16. PW-2, the victim, in her testimony, has categorically deposed that the accused had put his penis into her mouth. She has further stated that her statement was recorded under Section 164 of Cr.P.C., which was

marked as Ex.P3. She has identified the accused in open Court and has also identified the colour of the clothes worn by the accused at the time of the incident. Her testimony has remained consistent, and she has withstood the test of cross-examination.

17. PW.3 – Prema, the mother of the victim, has stated that on the date of the incident she was also at the house of Lambodara, along with PW.1, PW.6 and PW.7, peeling arecanuts. According to her, Nandini, Taruna and Sanjana came there, and Nandini informed them that the accused had taken the victim behind the school and had made her lie down. On receiving this information, they immediately went behind the school. PW.3 has deposed that she saw the victim lying on the ground and the accused over her, putting his genital organ into the victim's mouth. On seeing them, the accused ran away. PW.3 has further stated that there was white residue in the victim's mouth and that the victim had vomited. She noticed a smell from the victim's mouth, washed it and

took the victim home. The victim thereafter narrated the incident to her. As her husband and brother-in-law were not at home, she narrated the incident to them after they returned, and thereafter they went to the police station.

18. PW.6 – Annapoorna has deposed that on 30.10.2017, she was at the house of Lambodara along with PW.1, PW.3 and PW.7, peeling arecanuts. At that time, her daughter Nandini came there and informed them that someone was attempting to take her and the victim. Nandini told them that the accused had taken the victim, whereas she had managed to escape. PW.6 has stated that, upon receiving this information, PW.1, PW.3 and PW.7 went to see what had happened and returned after some time.

19. PW.7 – Shilpa has also stated that on 30.10.2017, she was at the house of Lambodara along with PW.1, PW.3 and PW.6, peeling arecanuts. Nandini came there and informed them that someone had dragged

the victim away. Immediately, PW.1 and PW.3 went to ascertain what had happened and returned with the victim. PW.7 has stated that she remained at the house peeling arecanuts. She has also spoken to the allegation that the accused had put his genital organ into the victim's mouth; however, from the account furnished, she was not present at the place behind the school when the alleged act occurred.

20. PW.10 – Nandini, in her deposition, has stated that on the date of the incident the accused came and attempted to take both her and the victim with him. She managed to escape, whereas the accused dragged the victim away. PW.10 has further stated that she thereafter went home and informed PW.3, the mother of the victim, about the incident.

21. PW.11 – Sanjana has deposed that she went home on the date of the incident. She has stated that Nandini told her that the accused had taken the victim with him and was doing something to her. Thus, the

evidence of PW.11, insofar as the incident is concerned, is based on what was told to her by Nandini.

22. The evidence of PW.10 and PW.11 is also relevant to the circumstances immediately preceding and following the incident. PW.10 has spoken to the accused attempting to take both her and the victim, her escape and the accused taking the victim away. PW.11 has spoken to the information received by her from Nandini. Their evidence, therefore, is to be appreciated having regard to the extent of their respective personal knowledge: PW.10 speaks to what she herself witnessed, whereas PW.11 speaks to what was conveyed to her by Nandini.

23. PW.12, who is a friend and classmate of the victim, has supported the prosecution case, though certain discrepancies are noticed in her evidence. Such discrepancies, when considered in the light of the

testimony of the victim and the other evidence on record, do not materially affect the prosecution case.

24. PW.13, the medical officer who examined the victim, deposed with regard to the injuries sustained by the victim. The medical evidence lends corroboration to the testimony of the victim. It is settled that medical evidence is ordinarily corroborative in nature and the absence of particular injuries, by itself, would not necessarily discredit an otherwise reliable account of sexual assault.

25. PW.14, the official witness from the Regional Forensic Science Laboratory, has deposed that no seminal stains were detected on item Nos.2, 3 and 4 and that no bloodstains were detected on item No.1. The absence of seminal stains or bloodstains on the articles examined by the forensic expert, by itself, is not sufficient to disbelieve the prosecution case when the testimony of the victim is

otherwise found to be trustworthy and is supported by the other evidence on record.

26. PW.16 is the witness who took the victim to C.J. Hospital. PW.17 registered the First Information Report, which is marked as Ex.P9. The Investigating Officer has spoken to the investigation conducted and the filing of the charge sheet against the accused.

27. The contention of the learned counsel for the appellant that there are no eyewitnesses to the actual commission of the offence cannot be accepted as a ground to discard the prosecution case. In offences of sexual assault, particularly those committed against minor children, the occurrence may not be witnessed by independent persons. The absence of an independent eyewitness is therefore not fatal to the prosecution case, provided the testimony of the victim inspires confidence and establishes the charge beyond reasonable doubt.

28. It is well settled that the testimony of a child witness cannot be discarded merely on account of her tender age. If the evidence of such a witness is found to be natural, trustworthy and reliable, the same can form the basis for conviction. At the same time, the Court is required to scrutinise the evidence of a child witness with due care and caution to rule out the possibility of tutoring or influence.

29. In the present case, the victim was aged about six years at the time of the incident. Her testimony before the Court is consistent with her earlier statement in respect of the material particulars relating to the identity of the accused and the nature of the alleged act. The discrepancies pointed out by the defence do not go to the root of the prosecution case or render the testimony of the victim unreliable. There is no material brought on record to establish that the victim had any reason to falsely implicate the accused.

30. The victim, in her statement recorded under Section 164 of Cr.P.C. and in her testimony before the learned Trial Court, has consistently attributed the commission of the alleged sexual assault to the accused. Her evidence, insofar as the material particulars of the incident are concerned, is consistent and supports the prosecution case. Though certain discrepancies have been pointed out by the learned counsel for the appellant, such discrepancies are required to be considered in the context of the age of the victim and the circumstances under which the incident occurred.

31. The further contention of the appellant that he has been falsely implicated at the instance of PW.8 also does not merit acceptance. Merely because PW.8 has not supported the prosecution case in its entirety, the evidence of the victim and the other prosecution witnesses cannot be discarded. The evidence of a hostile witness is not liable to be rejected in toto, and such part of the

testimony as is found reliable and consistent with the other evidence on record can be taken into consideration.

32. On a careful re-appreciation of the evidence, particularly the testimony of the victim, the supporting evidence of the other prosecution witnesses, the school certificate at Ex.P6 and the medical evidence, we are of the considered opinion that the prosecution has established the guilt of the accused beyond reasonable doubt. The discrepancies and omissions pointed out by the defence are not of such magnitude as to discredit the prosecution case in its entirety.

33. The learned Trial Court, upon proper appreciation of the oral and documentary evidence, has rightly recorded a finding of guilt against the accused for the offence punishable under Section 6 of the POCSO Act. We do not find any perversity, illegality or infirmity in the finding of conviction recorded by the learned Trial Court

warranting interference by this Court. Accordingly, the judgment of conviction deserves to be affirmed.

34. Having affirmed the judgment of conviction, the next question that arises for consideration is whether the sentence imposed upon the accused warrants interference by this Court. While considering the question of sentence, the Court is required to take into account the nature and gravity of the offence, the circumstances in which it was committed, the age and antecedents of the accused and other relevant mitigating and aggravating circumstances.

35. Learned counsel for the appellant submits that the accused was aged about 22 years as on the date of the incident and that he has no criminal antecedents. It is further submitted that the accused was taken into custody on 13.06.2018 and that he has parents to look after. It is therefore contended that these circumstances may be taken into consideration while determining the appropriate sentence.

36. It is not in dispute that the victim was aged about six years at the time of the incident. The offence committed against a child of such tender age is undoubtedly grave in nature and calls for appropriate punishment. At the same time, while determining the quantum of sentence, the Court is required to strike a balance between the gravity of the offence and the mitigating circumstances relating to the accused, without losing sight of the object and purpose of the POCSO Act.

37. It is relevant to note that the alleged incident occurred on 30.10.2017. Section 6 of the POCSO Act, as it stood prior to its amendment by Act No.25 of 2019, prescribed a minimum sentence of rigorous imprisonment for ten years, which could extend to imprisonment for life, and also fine. The enhanced minimum punishment introduced by the subsequent amendment cannot be applied retrospectively to the detriment of the accused, having regard to Article 20(1) of the Constitution of India.

38. In the present case, having regard to the age of the accused at the time of the incident, the absence of any criminal antecedents, his family circumstances and the period of incarceration undergone by him, we are of the considered opinion that, while the conviction recorded by the learned Trial Court deserves to be affirmed, the ends of justice would be met by modifying the substantive sentence to rigorous imprisonment for ten years and a fine of Rs.3,00,000/- (Rupees Three Lakhs only).

39. The imposition of fine is also necessary having regard to the nature of the offence and the consequences suffered by the minor victim. Accordingly, the fine amount, if recovered, shall be paid to the victim towards compensation in accordance with Section 6 of the POCSO Act, as applicable on the date of the offence. Such payment shall be without prejudice to the victim's entitlement to compensation under any applicable statutory victim compensation scheme.

40. In view of the foregoing discussion, we are of the considered opinion that the learned Trial Court was justified in convicting the accused for the offence punishable under Section 6 of the POCSO Act. However, for the reasons stated above, the order on sentence warrants modification to the extent indicated hereinabove.

41. Accordingly, the points raised for consideration are answered as follows:

I. Point Nos.(i) and (ii) are answered in favour of the prosecution, affirming the judgment of conviction.

II. Point No.(iii) is answered partly in favour of the appellant, holding that the sentence imposed by the learned Trial Court warrants modification. Hence, the following:

ORDER

i. The criminal appeal is allowed-in-part.

ii. The judgment of conviction passed by the learned Special Court against the appellant–accused for the offence punishable under

Section 6 of the Protection of Children from Sexual Offences Act, 2012, is hereby confirmed.

iii. However, the order on sentence passed by the learned Trial Court is modified. The appellant–accused is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,00,000/- (Rupees Two Lakhs only) for the offence punishable under Section 6 of the POCSO Act.

iv. The appellant–accused shall undergo simple imprisonment for a period of 2 years in default of payment of fine.

v. The fine amount, if recovered, shall be paid to the victim towards compensation in accordance with law.

vi. The appellant–accused shall be entitled to set-off of the period of detention already undergone by him in connection with the present case, in

accordance with Section 428 of Cr.P.C., subject to verification of the custody records.

vii. The impugned judgment of conviction and order on sentence shall stand modified only to the extent indicated above and shall remain undisturbed in all other respects.

viii. Registry is directed to transmit the Trial Court records along with a copy of this judgment to the concerned Court forthwith for necessary action.

Ordered accordingly.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

Bsv/MKM