HC-KAR
NC: 2026:KHC-K:11157-DB
CRL.A No. 200077 of 2026
CNR: KAHC030028122026

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 9TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

AND

THE HON'BLE MR. JUSTICE SUBRAMANYA RANGARAO

CRIMINAL APPEAL NO. 200077 OF 2026
(378(Cr.PC)/419(BNSS))

BETWEEN:

THE STATE OF KARNATAKA,
THROUGH VIJAYAPURA
RURAL POLICE STATION,
VIJAYAPURA DISTRICT,
REPRESENTED BY
ADDL. STATE PUBLIC PROSECUTOR.

...APPELLANT

Digitally signed by B NAGAVENI
Location: HIGH COURT OF KARNATAKA

(BY SRI. ANILKUMAR NAVADAGI, ADDL. SPP)

AND:

1. DOOLAPPA S/O BALU MASHAL,
   AGED ABOUT 37 YEARS,
   OCC: LABOURER,
   R/O. ARAKERI MANAVAR DODDI,
   TQ. VIJAYAPURA,
   DIST. VIJAYAPURA.

2. SHRI. TUKARAM MANVAR,
   R/O. ARAKERI DODDI,
   TQ. VIJAYAPURA,

DIST. VIJAYAPURA,
KARNATAKA.

…RESPONDENTS

(BY SRI. DEEPAK V. BARAD, AMICUS CURIAE FOR R1;
R2 IS SERVED)

THIS CRL.A. IS FILED UNDER SECTION 419(1) AND (3) OF BNSS/UNDER SECTION 378 (1) AND (3) OF THE CR.P.C., PRAYING TO, A) GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 18.03.2024 PASSED BY THE ADDL. SESSIONS JUDGE, FAST TRACK SPECIAL COURT-I AT VIJAYAPURA IN SPL. CASE (POCSO) NO.79/2023.

B) SET ASIDE THE JUDGMENT AND ORDER DATED 18.03.2024 PASSED BY THE ADDL. SESSIONS JUDGE, FAST TRACK SPECIAL COURT-I AT VIJAYAPURA IN SPL. CASE (POCSO) NO.79/2023 THEREBY ACQUITTING THE RESPONDENT-ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 363 AND 376(2)(N) OF THE INDIAN PENAL CODE 1860 (IPC) AND SECTION 6 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT, 2012).

C) CONVICT AND SENTENCE THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 363 AND 376(2)(N) OF THE INDIAN PENAL CODE 1860 (IPC) AND SECTION 6 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012 (POSCO ACT 2012).

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

CORAM: HON'BLE MR. JUSTICE ASHOK S. KINAGI
and
HON'BLE MR. JUSTICE SUBRAMANYA RANGARAO

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. This appeal is filed under Section 378(1) and (3) of the Code of Criminal Procedure (for short, 'Cr.P.C.,')/Section 419(1) and (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), challenging the judgment of acquittal dated 18.03.2024, passed in Special Case (POCSO) No.79 of 2023 by the Additional Sessions Judge, Fast Track Special Court-I, Vijayapura (hereinafter referred to as 'the Trial Court').

2. Brief facts giving rise to filing of this appeal are as under:

It is the case of the prosecution that the complainant has got five children, out of them, three are female and two are male. Among them, the victim girl studied up to 8th standard at Arakeri Government School, and two years prior to the incident, she left

the school. It is alleged that on 20.09.2023 at about 9.00 a.m., the complainant sent the victim girl to the land, where her brother was working, to give meals, and thereafter, the complainant and his wife went to Vijayapura for hospital and came back to their house at 4.00 p.m. When they came home, the victim girl was not in the house, and therefore, they went to their land, and the victim was also not there in the land. Lastly, they enquired with his son Dondiba, but he replied that the victim did not come over there. Thereafter, they all went in search of the victim girl, but the efforts made by them were in vain. Therefore, the complainant lodged a complaint before the police and the same was registered in Crime No.325/2023 of Vijayapura Rural Police Station. The police, after registering the crime, arrested the accused on 29.09.2023 near Arakeri Temple and brought him to the police station. The police, after investigation, filed charge sheet for the offences

punishable under Sections 363 and 376(2)(n) of the Indian Penal Code, 1860, (for short, 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act, 2012'). The Special Court took cognizance of the offence on 02.12.2023. Section 207 of the Cr.P.C., was complied with and charge was framed on 14.12.2023 for the offences punishable under Sections 363 and 376(2)(n) of IPC and Section 6 of the POCSO Act, 2012 and the same was read over to the accused. The accused pleaded not guilty and claimed to be tried.

3. The prosecution, in order to prove its case, has examined 20 witnesses as PW.1 to PW.20 and marked 35 documents as Exs.P.1 to P.35, and M.Os.1 to 4 were marked. On behalf of the accused, the accused marked one photo as Ex.D.1.

4. After closure of the prosecution evidence, incriminating evidence appearing in the evidence of the prosecution witnesses has been read over to the accused as contemplated under Section 313 of Cr.P.C. The accused denied incriminating evidence and he has not adduced any defence evidence and not made any statement before the Court.

5. The Trial Court, after hearing the learned counsel for the parties, framed the following points for consideration.

> "(1) Does prosecution prove beyond reasonable doubt that accused kidnapped victim girl, who is under eighteen years of age, out of keeping of lawful guardianship without the consent of the guardian and thereby committed an offence punishable under Section 363 of IPC?
>
> (2) Does prosecution further prove beyond reasonable doubt that accused committed rape on victim girl repeatedly and thereby

committed an offence punishable under 376(2)(n) of IPC?

(3) Does prosecution also prove beyond reasonable doubt that accused committed aggravated penetrative sexual assault on victim girl and thereby committed an offence punishable under Section 6 of the POCSO Act, 2012?

(4) What Order?"

6. The Trial Court, after appreciating the entire material on record, answered point Nos.1 to 3 in the negative and point No.4 as per the final order and the accused was acquitted of the offences punishable under Sections 363 and 376(2)(n) of IPC and Section 6 of the POCSO Act, 2012, by judgment dated 18.03.2024.

7. The State, aggrieved by the judgment of acquittal dated 18.03.2024 passed in Special Case (POCSO) No.79 of 2023 by the Additional Sessions Judge, Fast

Track Special Court-I, Vijayapura, has filed this appeal.

8. Heard the learned Additional State Public Prosecutor.

9. The learned Additional State Public Prosecutor submits that the judgment of acquittal passed by the Trial Court is arbitrary and erroneous. He submits that the prosecution has examined 20 witnesses to prove that the accused has kidnapped the victim and committed rape. He also submits that as on the date of the alleged incident, the victim was a minor and the victim was subjected to aggravated penetrative sexual assault by the accused and offence alleged against the accused is liable to be punished under Section 6 of the POCSO Act, 2012. He also submits that there is a presumption under Section 29 of the POCSO Act. The accused has not rebutted the said presumption by leading rebuttal evidence. The said aspect was not properly considered by the Court

below and committed an error in acquitting the accused. Hence, on these grounds, he prays to allow the appeal.

10. Sri Deepak V. Barad, learned Amicus Curiae for appearing for respondent-accused supports the impugned judgment and order of acquittal passed by the Trial Court and prays to dismiss the appeal.

11. Perused the records and considered the submissions of the learned Additional State Public Prosecutor appearing for the appellant-State.

12. The point that would arise for our consideration are:

    i. Whether the State proves that the judgment of acquittal passed by the Trial Court is arbitrary and erroneous and without appreciation of evidence?

    ii. What order?

Reg. Point (i):

13. Initially, the complainant i.e., father of the victim girl, lodged a missing complaint on 23.09.2023 at about 1.15 p.m., alleging that the victim girl was missing. Therefore, a case in Crime No.325/2023 was registered before Vijayapura Rural Police Station, Vijayapura. The police, after registering the crime, arrested the accused on 29.09.2023 near Arakeri Temple and brought him to the police station. The police, after investigation, filed a charge sheet for the aforesaid offences. The Special Court took cognizance, framed the charges and recorded the evidence.

14. The prosecution, in order to prove the age of the victim, has produced the School Transfer Certificate and entry No.693 in the school register relating to victim girl, as per Exs.P.16 and P17, wherein victim's date of birth is shown as 01.06.2006 and according

to the same, as on the date of the alleged incident, the age of the victim girl was 17 years, 3 months and 19 days.

15. The victim girl was examined as PW.1. She has deposed that, during the last two years, she came in contact with the accused. Whenever she used to go to the field and move in the street, the accused used to follow her and talk with her. He used to tell her that he was loving her and that he would marry her. Even though she told him that he had already married, he followed her, induced her and committed rape.

16. During the course of cross-examination, it is elicited that the victim was in love with one Tukaram Barkade. When PW.1 was confronted with the photograph, she admitted the photograph which is marked as Ex.D.1. She also admitted that the matter was settled for Rs.5,00,000/- in the presence of

elders. It is elicited that the love affair between Tukaram Barkade and the victim girl broke down and the matter was settled after receiving Rs.5,00,000/- from said Tukaram. It was suggested to PW.1 that she eloped with one Pandre and the matter was got settled by her father after taking Rs.3,00,000/-. But, she dined the said suggestion.

17. The victim girl has deposed that she was engaged to one Amoghi Mane, and but she denied the suggestion that the said engagement was terminated at the intervention of elders.

18. The facts clearly shows that the victim girl has enough worldly knowledge and she is in the habit of having love affairs and extracting money. She extracted money from Tukaram Bakade. The age of the victim as on the date of the alleged offence is 17 years, 03 months and 19 days, and she was in a

position to understand what is right and wrong for her.

19. The Trial Court, after considering the entire material on record, has recorded its findings in paragraphs-52 to 55, which read as under:

> "52) From the above evidence, it would be clear that, earlier, victim girl loved Tukaram Barakade and that her love with him got broken and that the matter was amicably settled after receiving 5 lakh by complainant from him. Similarly, victim girl's engagement was performed with one Amoghi Mane and same got terminated in the intervention of elders. These facts would clearly show that victim girl has enough worldly knowledge and that she is able to take her own decision to the effect that what is right and what is wrong. That being the case, though school records discloses that she was under 18 years of age at the time of alleged incident, all these attending circumstances would clearly establish the fact that she has attained the age of maturity to take her own decision.

53) Victim girl's evidence as well as statements allegedly given before police as well as Judicial Magistrate would clearly show that she is loving accused for the last two years. If it is hypothetically assumed that victim girl left the house and went with accused, it is only because of her loving accused. In that circumstance, no overt act can be attributable to accused in leaving the house by victim girl. Thus, delay in lodging complaint after three days of alleged missing, certainly, would fatal to the case of prosecution. That being the case, the sole testimony of victim girl would not inspire the confidence of the Court to rely upon.

54) PW.5 and PW.6 are shown as panchas to the panchanamas allegedly prepared in the places where sexual intercourse had taken place. Said panchanamas have been marked as Exs.P.10 and P.11. Both PW.5 and PW.6 have not supported the prosecution case. Be that as it may, drawing of panchanama can be considered as an adding factor to the case of prosecution if prosecution has proved its case beyond reasonable doubt.

55) So far as evidence of PW.14 who took photos at the time of drawing of panchanama; PW.15 who took FIR to the Court; PW.16 who

> traced victim girl and took photo at the time of taking her statement; PW.18 who is said to have recorded the statement of victim girl; PW.20 who registered FIR; and PW.10 who investigated the case and filed charge-sheet, would be a relevant evidence only in case of proving the case put-forth by prosecution."

20. From the perusal of the impugned judgment passed by the Trial Court, it discloses that the Trial Court has considered the entire evidence on record and held that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt.

21. The Hon'ble Apex Court in case of ***Jafarudheen and others v. the State of Kerala***[1], in paragraph-25 held as follows:

> "25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The

[1] 2022 8 SCC 440.

> reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

22. In view of the above, we do not find any grounds to interfere with the impugned judgment of the Trial Court. Accordingly, we answer point No.1 in the ***'negative'***, holding that the Criminal Appeal filed by the State is liable to be dismissed.

Reg. Point No.(ii):

23. In view of the above discussion, we proceed to pass the following:

ORDER

i. The appeal is ***dismissed***.

ii. The impugned judgment of acquittal dated 18.03.2024 passed by the Additional Sessions Judge, Fast Track Special Court – I at Vijayapura, in Special Case (POCSO) No.79/2023, is hereby confirmed.

iii. The High Court Legal Services Committee, Kalaburagi Bench, is directed to pay a sum of Rs.10,000/- as honorarium to the learned Amicus Curiae, appointed to represent respondent No.1.

Sd/-
(ASHOK S. KINAGI)
JUDGE

Sd/-
(SUBRAMANYA RANGARAO)
JUDGE

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