IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 9TH DAY OF JUNE, 2025

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE Mrs JUSTICE K S HEMALEKHA

CRIMINAL APPEAL NO. 200244 OF 2021
(374(Cr.PC)/415(BNSS)

BETWEEN:

GANAPATI S/O TUKARAM METRE
AGE. 40 YEARS,
OCC. COOLIE, R/O HILALPUR VILLAGE,
TQ HUMNABAD, NOW AT KAPANOOR,
KALABURAGI-585102.

...APPELLANT

(BY SRI. RAJESH DODDAMANI,ADVOCATE)

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AND:

1. THE STATE OF KARNATAKA
   THROUGH KALABURAGI GRAMEEN POLICE STATION,
   NOW REPRESENTED BY
   THE ADDITIONAL STATE PUBLIC PROSECUTOR
   HIGH COURT OF KARNATAKA
   KALABURAGI BENCH-585102.

2. SMT. CHANNAMMA
   W/O. BASAVARAJ HANUMGONDA
   AGE:40 YEARS,
   R/O. DANOTTI VILALGE,
   TQ:CHITTAPUR,
   DIST:KALABURAGI

NOW AT KAPNOOR INDUSTRIAL AREA,
KALABURAGI.

…RESPONDENTS

(BY SRI.SIDDALING P. PATIL,ADDL. SPP FOR R1;
SRI. SUDHEER KULKARNI, ADV. FOR R2)

THIS CRL.A. IS FILED U/S.374 (2) OF CR.P.C PRAYING TO CALL FOR RECORDS AND EXAMINE THE RECORDS IN SPECIAL CASE POCSO NO.60/2017 AND SET ASIDE THE JUDGMENT AND SENTENCE PASSED BY THE LEARNED II ADDITIONAL SESSIONS JUDGE KALABURAGI FOR CONVICTING THE APPELLANT BY ITS JUDGMENT DATED 08.11.2019 PASSED IN SPECIAL CASE POCSO NO.60/2017.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE Mrs JUSTICE K S HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

Assailing the judgment and order dated 08.11.2019 passed by the Court of II Additional Sessions Judge, Kalaburagi, in Special Case (POCSO) No.60/2017, accused has preferred this appeal.

2. Vide impugned judgment, the Trial Court has convicted the accused/appellant for offences punishable under Section 376(2)(n) of IPC read with Section 4 of the POCSO Act, 2012.

3. The accused has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,00,000/- and to further undergo simple imprisonment for a period of two years, in default of payment of the fine amount.

4. We have heard the learned counsel for the appellant, learned Additional SPP for the state and the learned Amicus Curiae for respondent No.2 – *de-facto* complainant.

5. Perused the evidence and materials on record.

6. Briefly stated, case of the prosecution is that, victim's father was working in the plastic factory of one Arif Sheth situated at Kapanoor industrial area. On 24.09.2017, at about 9 A.M., he went to the factory for work. At about 2.30 P.M., victim girl, a minor aged about 16 years was sent by her mother to the factory to give lunch box to her father. At that time, the accused who was also working in the said factory committed forcible penetrative sexual assault on the victim and thereby committed the charged offences.

7. Law was set into motion by the victim's mother. PW9 – PSI working at Kalaburagi Rural Police Station, on

receiving her complaint/Ex.P5, registered a case and forwarded the FIR - Ex.P14 to the jurisdictional Court. The victim's statement was recorded and she was sent for medical examination. The investigation was taken over by PW8 – CPI.

8. The accused was arrested and subjected to medical examination. The further statements of the victim and the complainant were recorded. Statement of the victim was also recorded under Section 164 of Cr.PC by the learned Magistrate. The seized articles were sent for FSL examination. On completion of investigation, charge sheet was filed.

9. The charges were framed against the accused for the offences punishable under Section 376(2)(n) of IPC and Section 4 of the POCSO Act, 2012.

10. In order to establish the charges, the prosecution got examined PW1 to PW9 and Exs.P1 to P14. The accused denied all the incriminate evidence appeared against him, however did not choose to lead any evidence on his behalf.

11. Learned Sessions Judge, appreciating the oral and documentary evidence on record, vide impugned judgment

convicted and sentenced the accused for the charges leveled against him, as noted *supra*.

12. Assailing the impugned judgment, learned counsel for the appellant contended that the Trial Court has not taken into consideration the contradictions and infirmities appeared in the evidence of the victim and erroneously convicted the accused, which has resulted in miscarriage of justice. He would contend that the father of the victim and one Shashikanth, who according to the prosecution rushed to the spot immediately, are not examined and complainant is a hearsay witness. He contended that medical examination report of the victim, as well as the FSL report does not corroborate the version of the victim and does not support the prosecution case and therefore, a reasonable doubt arises as to whether the victim was subjected to penetrative sexual assault, as claimed by the prosecution. He further contended that neither the evidence of the victim nor the evidence of PW2 or PW3 would clearly indicate or establish that there was penetrative sexual assault on the victim and therefore, the accused is entitled for benefit of doubt. He, therefore sought to allow the appeal and set aside the impugned judgment passed by the Trial Court.

13. Learned Additional SPP, on the other hand contended that the victim has categorically supported the case of prosecution and her evidence is further supported by the evidence of PW2 and PW3. He contended that without any loss of time the complaint was lodged and the victim has given history before the Doctor narrating the incident. He contended that PW3 is an independent witness, whose evidence lend support to the prosecution version and corroborates the evidence of PW1 and therefore, the Trial Court has rightly convicted the accused for the charged offences. He contended that the reasons assigned by the Trial Court are in accordance with law and accordingly sought to dismiss the appeal.

14. Learned *Amicus curiae* appearing for respondent No.2 has contended that victim is a minor aged between 14 to 15 years, which is evident from the Birth Certificate as well as the medical opinion. She was subjected to penetrative sexual assault by the accused. There is no delay in lodging the complaint and the victim has supported the case of prosecution and withstood the rigor of cross examination and her evidence is corroborated by the evidence of her mother and therefore, the Trial Court has rightly convicted the accused. He

contended that there is no illegality committed by the learned Sessions Judge and therefore, sought to dismiss the appeal.

15. As per prosecution, the victim was a minor at the time of incident. To prove that she was a minor, the prosecution has got marked Ex.P12–the date of birth certificate of the victim issued by the Head Master of the Government Higher Primary School, Kapanoor, Kalaburagi, where the victim studied from 4th standard to 7th standard. As per Ex.P12, date birth of the victim is 07.06.2004. Further, the evidence of the doctor–PW5 goes to show that as per radiologist and dentist, age of the victim was about 14 to 15 years. From this, we have no hesitation to hold that the victim was a minor at the time of incident.

16. The incident is alleged to have been taken place at about 02.55 to 3.00 P.M., on 24.09.2017, when the victim girl had been to the plastic factory, where her father was working. According to the prosecution, her mother – PW2 sent her to the factory for giving lunch box to her father. It is alleged that the accused who was also working in the said factory, forcibly held the victim, closed her mouth, removed her clothes and

committed penetrative sexual assault. As per Ex.P5, when the victim screamed, her father, one Shashikanth, the owner of the factory by name Ariff and one boy came to the spot and at that time, the accused left the victim.

17. The complainant is examined as PW2. She has stated that the victim has studied upto 7th Standard. Her husband was going to the factory in the morning at 7 A.M. and was returning at 6 P.M. On the date of incident, her daughter carried the lunch box to her husband. At about 2 p.m., many people had gathered near the factory. She also went to the spot and saw the victim crying and at that time her husband, CW4 and CW6 came there. On enquiry, she was informed by her daughter that when her father had gone to attend the call of nature, the accused asked her to keep the lunch box in a corner and then closed her mouth, removed her clothes and committed rape on her against her will.

18. PW2 has stated that they went to the Police Station along with the victim, wherein police recorded her statement as per Ex.P5.

19. The victim girl is examined as PW1. She has stated that, when she went to the factory to give lunch box to her father, accused asked her to sit on the steps and then took her inside the room, removed her clothes and spoiled her. She has stated that when the accused took her inside, he held her mouth and she struggled and resisted and when he was spoiling her, she screamed and that time her father, Shashikanth and two others came to the spot. On seeing them, the accused ran away from the spot.

20. In Ex.P5 it is stated that, one Shashikanth, Ariff i.e., owner of the factory, victim's father and a boy came to the spot on hearing the screaming of the victim. The prosecution has examined the owner of the factory – Ariff as PW3. In his evidence, he has deposed that on 24.09.2017, as it was Sunday they worked till 2' o clock. The victim brought the lunch to CW3 i.e., her father. All of them had lunch together and went for Tea. After having tea, himself and the accused as well as CW3 came back to the factory. While coming back, CW3 went to attend the first call of nature. Accused went ahead towards the factory. After payment of the bill, CW3 came towards the factory in a hurried manner and so he

followed him. They found the accused and the victim. The accused was trying to adjust his dress and the dress of the victim was scattered. On enquiry, the victim informed that accused raped her. He shouted at the accused, but the accused did not reply and then he advised CW3 to lodge a complaint. Later, victim's mother and sister also came to the spot.

21. From the above evidence on record, it can be gathered that, victim girl had been to the plastic factory where her father was working, to give the lunch box. The accused was also present in the said factory. The accused has not denied his presence in the factory at the relevant point of time, in the cross examination of either PW1 or PW3.

22. The complaint was lodged by the mother-PW2 and the same was registered by 7.35 P.M., on the very same day, by PSI – PW9. It is alleged that, the accused removed victim's clothes and committed forcible penetrative sexual assault on her. A perusal of the evidence of PW3, who came to the spot immediately after the incident and saw accused and victim together, does not indicate that either the victim or the accused

were without clothes. He has stated that the accused was trying to make his dress correct and dress of the victim was scattered. PW2 or PW3 have not specifically stated that when victim's father and other witnesses came to the spot, they saw victim or the accused without wearing any dress. As per the cross examination of PW1, accused removed her pant and lifted her top. This assumes importance, since, the clothes of the victim were sent to FSL for examination of the presence of Seminal Stains or Spermatozoa.

23. In the history furnished by the victim to the doctor, she has not stated about the accused removing her clothes, though she has stated that the accused attacked her and committed forcible sexual intercourse. Hence, the FSL report assumes importance.

24. As we have noted earlier, without any loss of time, complaint was lodged on the same day as per Ex.P5. Victim has deposed that she struggled and resisted, when accused committed the act of rape. She was sent for medical examination before PW5, working as Specialist in GGH, Kalaburagi. PW5 has deposed that she found no external

injuries on any parts of victim's body. She collected her Cervical and Vaginal Swab and smear and clothes for FSL examination. She issued a preliminary medical certificate marked as Ex.P9. After the receipt of FSL report, issued the final report as per Ex.P11. The FSL report is marked as Ex.P10. As per final opinion at Ex.P11, PW5 has opined that there is no evidence of recent sexual intercourse.

25. From the evidence of PW5, it can be seen that victim was examined by her on the very same day at about 10.50 p.m., she collected the clothes of the victim etc., and sent for FSL examination. She has furnished the final opinion as per Ex.P11 stating that there is no evidence of recent sexual intercourse.

26. PW5 has not noticed any external injuries on the private part of the victim. The clothes of the victim were collected and sent for FSL examination. As per FSL report-Ex.P10, Seminal Stain was not detected in the articles sent for FSL examination. Further, spermatozoa was not detected in article 1(b) i.e., cervical smear and article 2(b) i.e., vaginal smear.

27. The Trial Court mainly relying on the evidence of the victim has come to the conclusion that, accused taking undue advantage of the absence of her father and others, committed rape inspite of her resistance. However, the Trial Court failed to appreciate that the victim was examined by the doctor immediately after the incident and the doctor has opined that there is no evidence of recent sexual assault on the victim. Further, as per FSL report, the articles sent for examination did not find the presence of Seminal Stains or Spermatozoa.

28. It is held by the Hon'ble Apex Court in ***Sham Singh Vs. State of Haryana*** reported in ***(2018) 18 SCC 34*** that,

> *"testimony of the victim in rape cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable."*

In '***Krishan Kumar Malik Vs. State of Haryana'***, reported in ***(2011) 7 SCC 130,*** the Hon'ble Apex Court held, 'to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the

same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality'.

29. In the instance case, we find that the testimony of the victim is not reliable to hold that she was subjected to penetrative sexual assault. The manner in which the alleged incident has taken place as per the version of the victim is not believable. Her evidence to the extent that she was subjected to forcible penetrative sexual assault is not supported by medical evidence. However, we find that her evidence and other materials on record would clearly establish that she was subjected to sexual assault by the accused, which offence would attract Section 7 punishable under Section 8 of the POCSO Act, 2012, The sentence prescribed for the said offence is imprisonment for not less than three years, but which may extend upto five years with fine.

30. The appellant/accused is in custody from 25.09.2017. He has therefore undergone the maximum sentence which could be imposed for the offence under Section 8 of the POCSO Act, 2012.

31. For the forgoing reasons, we pass the following:

ORDER

i) The appeal is ***partly allowed;***

ii) The judgment and order dated 08.11.2019 passed by the II Additional Sessions Judge, Kalaburagi in Special case (POSCO) No.60/2017 in so far as convicting and sentencing the accused/appellant for the offence punishable under Section 376(2)(n) of IPC and Section 4 of the POCSO Act, 2012 is ***set aside.***

iii) Appellant/accused is convicted for the offence under Section 7 punishable under Section 8 of the POCSO Act, 2012.

iv) He is sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.10,000/- and in default of payment of fine amount, he shall undergo simple imprisonment for a period of six months.

v) Accused having already undergone the entire sentence including default sentence, he shall be set at liberty, if not required in any other case.

vi) The order of the Trial Court issuing direction to the DLSA for payment of compensation to the victim is unaltered.

vii) In the event of deposit of the fine amount by the accused, the entire amount shall be disbursed to the victim as compensation.

Learned *amicus curiae* shall be entitled to a honorarium of Rs.10,000/-, which shall be paid by the High Court Legal Services Committee, Kalaburagi Bench.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(K S HEMALEKHA)
JUDGE

THM, TMP
List No.: 1 Sl No.: 38
CT-JLR