NC: 2025:KHC-D:7137
CRL.A No. 100047 of 2021

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 29TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL APPEAL NO. 100047 OF 2021

(374(Cr.PC)/415(BNSS))

BETWEEN:

1. SUKHVINDARSINGH PRITHVISINGH @
PRUDIVI SINGH CHUGH
AGED ABOUT 36 YEARS,
OCC. BUSINESS, R/O. 327/7,
WARD NO.16, AMAR BHAVAN,
CHUOK PANIPAT-HARIYANA-132 103,
PRESENTLY R/O: GULMOHAR COLONY,
BHAGYA NAGAR, 9TH CROSS,
BELAGAVI-590 001.

...APPELLANT

(BY SRI. B.J. ROHIT GOWDA, ADVOCATE)

Digitally signed by R HEMALATHA
Location: High Court of Karnataka

AND:

1. THE STATE OF KARNATAKA
BY TILAKWADI POLICE,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DHARWAD.

...RESPONDENT

(BY SRI. ASHOK KATTIMANI , HCGP)

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C., SEEKING TO CALL FOR THE RELEVANT RECORDS AND ALLOW THIS CRIMINAL APPEAL BY SETTING ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 16/02/2021 PASSED IN SC NO.60/2016 BY THE 3RD

ADDITIONAL SESSIONS JUDGE, BELAGAVI, THEREBY CONVICTING THE APPELLANT FOR THE OFFENCE PUNISHABLE U/S 376 OF IPC AND 5(L) AND 6 OF POCSO ACT-2012 SENTENCING HIM TO UNDERGO TO SUFFER REGOROUS IMPRISONMENT FOR A PERIOD OF 10 YEARS AND TO PAY A FINE OF RS.55,000/- FOR BOTH THE OFFENCES.

THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER:

The appellant has filed this criminal appeal seeking to set aside the judgment and order of conviction and sentence dated 16.02.2021 passed in Spl. C. No. 60/2016 by the learned 3rd Additional Sessions Judge, Belagavi, convicting the appellant for offences punishable under Section 376 of the IPC, Section 5(L), and Section 6 of the POCSO Act, 2012. The appellant was sentenced to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs. 50,000/- for both offences.

1.1 The appellant has been convicted for offences punishable under Section 376 of the IPC, Section 5(L), and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act') and sentenced to undergo imprisonment for 10 years and to pay Rs. 50,000/- for both offences.

2. The case of the prosecution is that PW-6, the victim, approached the Subramanyanagar Police Station, Bengaluru, and lodged a complaint on 04.06.2015 against accused No. 1 and 2. On 06.07.2014, accused No. 2 took the complainant to Belagavi, stating that she needed help looking after her child. During her stay at the house of accused No. 2, the victim alleged that accused No. 1, the boyfriend and business partner of accused No. 2, had committed sexual intercourse with her on eight to ten occasions between 06.07.2014 and 18.05.2015. When the victim brought this to the attention of accused No. 2, she allegedly threatened the complainant and the victim not to disclose it to anyone.

3. Subsequently, the first informant lodged a complaint with the police, who then registered a case against accused No. 1 and 2. Following this, the police initiated an investigation.

4. During the investigation, the investigating officer recorded the victim's statement on 18.05.2015. The victim stated that on 06.07.2014, accused No. 2 took her to Belagavi to look after her child. Afterward, accused No. 1, who was a business partner of accused No. 2, frequently visited her home. The victim alleged that accused No. 1 forcibly committed sexual intercourse with her 8-10 times. When the victim informed accused

No. 2, she allegedly threatened the victim and her mother, PW-9, not to disclose the incidents to anyone, warning that they could be falsely accused of stealing gold ornaments. As a result, the complaint was filed with some delay.

5. The victim was sent for a medical examination to KIMS Hospital, Bengaluru, by PW-13. The investigating officer, PW-11, sent the seized clothes and articles to the RFSL, Belagavi, on 04.07.2015. On 06.07.2015, the investigating officer conducted a spot mahazar with PW-6, the victim, accompanied by women police officers. Later, on 19.08.2015, the police conducted an investigation of accused No. 1 and recorded the statements of witnesses by spot mahazar. On 21.08.2015, accused No. 1 was sent for a medical examination by PW-10, and the seized articles of the accused were sent to RFSL for examination. Subsequently, the police filed a charge sheet on 01.02.2016.

6. To prove its case, the prosecution examined 14 witnesses as PWs. 1 to 14 and exhibited 29 documents (Exs. P1 to P29), marking the material objects as MOs. 1 to 6.

7. The Trial Court, after evaluating the evidence on record, concluded that:

"The prosecution has established the guilt of the accused beyond all reasonable doubt, and passed the impugned judgment of conviction and order of sentence."

8. The learned counsel for the appellant argued that the prosecution failed to establish that the survivor was aged 16 to 17 years at the time of the incident, as no ossification test was conducted. He further submitted that the alleged incident occurred between 06.07.2014 and 18.05.2015, and there was a delay in lodging the complaint. He argued that the evidence of the complaint and the victim's statement recorded by the learned Sessions Judge was not credible, as no corroboration was provided by an independent witness.

8.1 It was further submitted that PW-7, the doctor who conducted the medical examination, admitted that no test was conducted to determine the victim's age. The RFSL report showed no material evidence to prove sexual assault by the appellant, and there were no signs of injury on the victim's body. In Ex. P11, PW-7 stated that no external injuries were found on the victim, and

there was no evidence of recent sexual assault. The medical opinion in Ex. P18/RFSL opinion also stated that there was no evidence of sexual intercourse. Therefore, the conviction of the accused is unsustainable, and the learned Sessions Court erred in relying on the prosecution's version. It was submitted that the conviction and sentence passed by the learned Sessions Court should be set aside.

8.2 The learned counsel for the appellant relied on the following cases:

(i) Nirmal Premkumar and Anr v. State (2024) 03 SCCK 0026.

(ii) Rajak Mohammad v. State of Himachal Pradesh, Crl. A No. 1395/2015.

(iii) Court on its motion v. NCT Delhi, Crl. R No. 2/2024 - Delhi High Court.

9. In response, the learned Additional Government Advocate for the respondent-State contended that the testimony of the survivor, when read in conjunction with the medical records, clearly establishes the guilt of the accused beyond all reasonable doubt. It was argued that the trial Court had duly appreciated the evidence on record and correctly held the accused guilty, leaving no

ground for interference with the impugned judgment of conviction and order of sentence.

10. The survivor, PW-1, in the complaint statement dated 18.05.2015, stated that she was forcibly subjected to sexual intercourse 8-9 times by accused No. 1, who was a business partner in Tilakwadi, and she informed accused No. 2 and her parents about the incidents. However, in cross-examination, PW-1 stated that she was unaware of the exact date of the incidents or the nature of the business relationship between accused No. 1 and accused No. 2. PW-9, the mother of the survivor, did not support the statement of the survivor regarding informing them about the incident prior to the date of the complaint.

11. A doctor, PW-14, who conducted a medical examination to determine the age of the survivor through X-ray, physical examination, and examination of teeth, stated that the survivor's age was approximately 16-17 years on the date of the examination, which was conducted on the same day the complaint was filed, i.e., 19.05.2015 (Ex. P29). In cross-examination, he further opined that although he had knowledge of examining teeth, he was not a specialized dentist. He also stated that the ossification test was essential to determine the survivor's age and opined that the survivor's age could

not be less than 16 years or greater than 18 years. He further deposed that the age gap of 2-3 years cannot be definitively established without conducting the appropriate tests.

12. PW-7, the doctor who conducted the physical examination of the survivor, testified that due to the absence of a vaginal swab, it was difficult to determine whether the rupture of the vagina was solely due to sexual assault. In cross-examination, he stated that there were other tests that could be conducted to determine the age of the victim apart from the ossification test. He also mentioned that there was a rupture of the hymen, but no external or internal injuries were found on the victim's body. According to the FSL report, he opined that it was difficult to determine whether the rupture of the hymen was due to sexual assault or other activities, such as sports.

13. In cross-examination, PW-9, the mother of the survivor, deposed that she had no knowledge of the victim's age and was unaware of the names or addresses of either accused No. 1 or accused No. 2. PW-3 and PW-5, residents and owners of the house, were also not aware of the incident and did not support the prosecution's case.

14. PW-10, a doctor who conducted the medical examination of the accused, opined that the FSL report did not detect any seminal stains, and the presence of blood stains was absent.

15. PW-11, a police officer, in cross-examination, deposed that the husband of accused No. 2 visited the police station along with the complainant. PW-13, the investigating officer, deposed that no attempts were made to obtain documents relating to the victim's age.

16. In the case of **Nirmal Premkumar and Anr. v. State (2024) 03 SCCK 0026**, an appeal was filed by the accused before the Supreme Court challenging the High Court's order convicting them for charges punishable under Sections 11 and 12 of the POCSO Act, 2012. The prosecution alleged that a minor girl, aged 13 years, was sexually harassed by two teachers at her school.

16.1 The prosecution contended that the accused had offered the victim roses, flowers, and chocolates, and when she refused, her hands were twisted, and she was subjected to sexual harassment. However, there were significant discrepancies between the statements given by the victim recorded under Section 164 Cr.P.C. and her deposition recorded in Court. Additionally, her

deposition was not supported by any witnesses, leading to inconsistencies in the prosecution's version. While it is possible for a conviction to be based on the sole testimony of the victim, the contradictions in her statements and testimonies raised reasonable doubt about the involvement of the accused in the crime. As a result, the Court acquitted the accused persons.

17. In the case of **Rajak Mohammad v. State of Himachal Pradesh, Crl. A No. 1395/2015**, the appellant/accused were sentenced for offences punishable under Sections 363, 366, and 376 of the IPC. The statement of the victim contradicted her earlier statement recorded under Section 161 Cr.P.C. Regarding the determination of the prosecutrix's age, the school admission form and certificate were placed on record, and the evidence of the teacher was considered. However, the evidence of a radiologist opined that the victim's age was between 17 and 18 years. The Hon'ble Court set aside the conviction of the accused and held that:

> *"8. While it is correct that age determination based on radiological examination may not be accurate, and some margin either way has to be allowed, the totality of the facts, including the report of the radiological examination, leaves ample room for doubt regarding the correct age of the prosecutrix. The benefit of this doubt must go in favor of the accused."*

18. In the case of **Court on its own motion v. NCT Delhi, Crl. R No. 2/2024** – Delhi High Court, regarding the determination of the victim's age, there were no school records or birth certificates indicating her date of birth. Consequently, a bone age ossification test was conducted. Based on the medical examination, which took into account general physical, dental, and radiological characteristics, the survivor's age was opined to be between 16 and 18 years.

> *"44. The ossification test determines age based on the degree of fusion by taking an X-ray of a few bones. It evaluates the process of bone formation based on fusion of joints between birth and generally up to the age of 25-30 years. Bone age is an indicator of skeletal and biological maturity, which assists in the determination of age."*

18.1 Therefore, even though the ossification test is a medical opinion and advisory in nature, it helps estimate the survivor's age in the absence of documentary evidence. While a radiological examination leaves a margin of one to two years on either side of the age range, the result is still valuable for age estimation.

19. In the case of **Shweta Gulati & Anr. v. The State Govt. of NCT of Delhi (2018 SCC OnLine Del 10448)**, where the employer of the survivor was

charged with offences under Section 376 of the IPC, Section 6 of the POCSO Act, and Section 75 of the J.J. Act, 2015, the absence of documentary evidence to substantiate the survivor's age led to the ossification test being conducted. The test determined the survivor's age to be between 17 and 19 years. The Hon'ble Supreme Court, giving the benefit of doubt to the accused person, held that:

> "14. It is settled that the ossification test is not conclusive for age determination. It is difficult to determine the exact age of a person based on the ossification test or other methods. The Supreme Court, in several decisions, has taken judicial notice of the fact that the margin of error in age determined by radiological examination is two years on either side."

20. The Hon'ble Supreme Court in the case of **Vinod Katara v. State of U.P. (2022 SCC OnLine SC 1204**), in relation to the ossification test, held the following:

> "60. The bone ossification test is not an exact science that can provide us with the exact age of a person. As discussed above, individual characteristics, such as the growth rate of bones and skeletal structures, can affect the accuracy of this method. This Court has observed in Ram Suresh Singh v. Prabhat Singh (2009) 6 SCC 681 and Jyoti Prakash Rai v. State of Bihar (2008) 15 SCC 223, that the ossification test is not conclusive for age determination. It does not reveal the exact age of the person but allows for a margin of two years on either side of the age range. The courts in India have accepted the fact that after the age of thirty years, the ossification test cannot be relied upon for age determination. It is settled that

> the standard of proof for age determination is based on probability, not proof beyond reasonable doubt."

21. In the present case, the prosecution has failed to produce any birth certificate or school records of the victim that could determine her age. They have only produced the Aadhar card of the survivor, which records her age as 17-18 years as of the date of the incident. Additionally, the age of the victim on the date of the complaint was recorded as 16 years. Based on the evidence of PW-14, a doctor who conducted a medical examination through X-ray, physical examination, and examination of teeth, it was stated that the survivor's age was approximately 16-17 years.

22. The prosecution has not conducted an ossification test, which was essential to determine the survivor's age. Therefore, relying on the margin of error principle based on a radiological test, which allows for a margin of 1-2 years, and in the absence of documentary evidence, the survivor's age cannot be safely determined based on medical evidence or the contradictory statements of witnesses.

23. In light of the above, I am of the opinion that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt.

Accordingly, I pass the following:

ORDER

i) The appeal is allowed.

ii) The impugned judgment dated 16.02.2021 passed in Spl.C No. 60/2016 by the learned 3rd additional Sessions Judge, Belagavi, is hereby set aside.

iii) Appellant/accused is acquitted for the aforesaid offences.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE

BKM
List No.: 19 Sl No.: 1