

Naveen Kumar @ Naveen vs the State of Karnataka

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Court : Karnataka

Decided On : Oct-31-2025

Judge : G Basavaraja

Appeal No. : CRL.A/1212/2023

Appellant : Naveen Kumar @ Naveen

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2025 BEFORE THE HON'BLE MR. JUSTICE G BASAVARAJA CRIMINAL APPEAL NO. 1212 OF 2023 (C) BETWEEN: NAVEEN KUMAR @ NAVEEN, S/O RAVANAPPA, AGED ABOUT 21 YEARS, R/A 'A' KOTHURU VILLAGE, SRINIVASAPURA TALUK, KOLAR - 563135. APPELLANT (BY SRI ABHISHEK R HUDDAR, ADVOCATE) AND:

1. THE STATE OF KARNATAKA. SRINIVASAPURA POLICE STATION, SRINIVASAPURA, REP BY SPP, HIGH COURT OF KARNATAKA, Digitally BENGALURU - 560 001. signed by

SRINIVASAPURA TALUK, KOLAR - 563135. RESPONDENTS (BY SRI RANGASWAMY R, HCGP FOR R1, R2 SERVED AND UNREPRESENTED) THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 06.04.2023 IN SPL.C (POCSO) NO.8/2021 ON THE FILE OF ADDITIONAL -2-

DISTRICT AND SESSIONS JUDGE FTSC I (POCSO) AT KOLAR WITH RESPECT TO ACCUSED NO.1/APPELLANT AND TO ACQUIT THE ACCUSED NO.1/APPELLANT AND TO ACQUIT THE ACCUSED NO.1/APPELLANT FOR THE OFFENCE P/U/S.363,376(2)(n) OF IPC AND U/S.6 OF POCSO ACT 2012. THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

Appellant/accused No.1 has preferred this appeal against the judgment of conviction and order on sentence passed against him in Spl.C.(POCSO) No.08/2021 by the Additional District and Sessions Judge, FTSC-I, (POCSO), Kolar, dated 06.04.2023.

2. For the sake of convenience, the parties herein are referred to as per their status before the Trial Court.

3. Brief facts leading to this appeal are that Police

Inspector, Srinivasapura Police Station, Kolar filed charge sheet against accused Nos.1 and 2 for the offences punishable under Sections 363, 376(2)(n), 114 of Indian Penal Code (for short 'IPC') and Sections 6 and 16 of Protection of Children from Sexual Offences Act, 2012 (for short 'POSCO Act'). -3-

4. It is alleged by the prosecution that on 28.12.2020 at

about 1:45 p.m., when CW1/victim girl was on the terrace of the house situated in Maruthi Nagar of Srinivasapura, accused Nos.1 and 2 went to the said house in Car bearing Registration No.KA-03-AE/1051. Accused No.1 called the victim girl stating that he wanted to talk with her and made her to sit in the car. Accused No.1 and 2 took her to the rented house of accused No.2 in Ambedkar nagar, Nerluru village of Anekal Taluk. The accused kept the victim in the said house from 23.12.2020 to 13.01.2021 and accused No.1 had repeated sexual intercourse with the victim against her wish. Accused No.2 abetted the accused No.1 in committing the offence. Thus, the accused committed alleged offence.

5. Accused No.1 was arrested on 13.01.2021 and since

the date of arrest, accused is in judicial custody. Upon hearing on charges, the trial Court framed charges for the alleged commission of offences and the same was read over and explained to the accused. Having understood the same accused pleaded not guilty and claimed to be tried. -4-

6. To prove the guilt of the accused, prosecution has

examined 13 witnesses as P.W.1 to P.W.13 and 17 documents are marked as Exs.P1 to P17. 12 material objects were marked as M.O.1 to 12. On closure of prosecution side evidence, statement of the accused under Section 313 of Code of Criminal Procedure was recorded. Accused has totally denied the evidence of prosecution witnesses, but has not chosen to lead any defence evidence on his behalf.

7. Having heard on both sides, the trial Court convicted

accused No.1 for the offences punishable under Sections 363, 376(2)(n) of IPC and Section 6 of POSCO Act and passed sentence thereon. Accused No.2 is acquitted for the offence punishable under Section 16 of POCSO Act. Being aggrieved by the judgment of conviction order on sentence passed against accused No.1/appellant, this appeal is filed.

8. Sri.Abhishek R.Huddar, the learned counsel

appearing for the appellant vehemently submitted that the impugned judgment of conviction and order on sentence passed by the Trial Court is contrary to law, fact and circumstances and probabilities of the case. That there are no eye-witnesses to the -5-

incident. It is submitted that in the statement under Section 164 of Cr.P.C., which was being recorded by the Magistrate, the victim has clearly stated that she loved the appellant for past three years and that the appellant has never troubled the victim and there was no forceful act upon the victim by the appellant. This aspect was not at all considered by the Trial Court.

9. In addition to this, during the course of cross-

examination, P.W.2- victim has clearly admitted that she has given a statement before the Magistrate that accused No.1 has not committed rape on the victim and has not troubled her. Further, the victim has stated that she herself went in the car in which the accused No.1 had arrived. Therefore, offences under Section 363 of IPC does not attract to the case on hand.

10. P.W.3 -B.M.Narayanaswamy- father of victim has

turned hostile. Further, learned counsel would submit that the prosecution has failed to prove that the victim was minor at the time of the incident. During the course of cross-examination of the victim, the accused has specifically denied that the victim was not minor. Except school document, prosecution has not produced any document to show that she was minor at the time

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of the alleged incident. The ossification test certificate is also not produced. The Investigation Officer has not complied with the mandatory provision of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'Act, 2015') and also Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2016, (for short 'Rules, 2016') and also Section 27 of POCSO Act. The Trial Court has not properly appreciated the evidence on record in accordance with law and facts and accordingly sought to allow the appeal.

11. Sri.Rangaswamy R., the learned High Court

Government Pleader for respondent No.1 submits that the Trial Court has properly appreciated the evidence on record in accordance with law and facts. Absolutely there are no grounds to interfere with the impugned judgment of conviction and the

order on sentence passed by the Trial Court and sought for

dismissal of the appeal.

12. Having heard the arguments on both sides, the following points arise for my consideration:

(i) Whether the appellant/accused No.1 has made out a ground to interfere with the impugned -7-

Judgment of conviction and order on sentence

passed by the Trial Court?

(ii) What order?

13. My answer to Point No.1 is in the affirmative. Reasons:

14. I have carefully examined the materials placed before this Court. It is the case of the prosecution that on 28.12.2020 at about 1:45 p.m., when CW1/victim girl was on

the terrace of the house situated in Maruthi Nagar of Srinivasapura, accused Nos.1 and 2 went to the said house in Car bearing Registration No.KA-03-AE/1051. Accused No.1 called the victim girl stating that he wanted to talk with her and made her to sit in the car. Accused No.1 and 2 took her to the rented house of accused No.2 in Ambedkar nagar, Nerluru village of Anekal Taluk. The accused kept the victim in the said house from 23.12.2020 to 13.01.2021 and accused No.1 had repeated sexual intercourse with the victim against her wish. Accused No.2 abetted the accused No.1 in committing the offence.

15. To prove the case of the prosecution, the prosecution examined 13 witnesses as P.W.1 to P.W.13 and 17 documents are marked as Exs.P1 to P17. 12 material objects were marked as M.O.1 to 12.

16. On 29.12.2020 one Krishna Reddy, the maternal uncle of the victim who is examined as P.W.1, on missing of the victim, filed a complaint. On the basis of the said complaint,

Srinivasapura Police, Kolar have registered a case in Cr.No.263/2020 against the appellant/accused No.1 on the basis of suspicion as stated at Ex.P1 and Section 363 of IPC, and submitted FIR to the Court on 29.12.2020 at 03:00 p.m. That on 13.01.2021, the Police have arrested accused No.1 and accused No.2 on 20.01.2021 and thereafter submitted the report before the Magistrate to insert offence punishable under Sections 376, 114 read with Section 34 of IPC and Section 6 of POCSO Act and also for further investigation on these offences.

17. The accused has specifically denied as to the age of

the victim. It is submitted that at the time of commission of offence, the age of the victim was below 18 years. To substantiate this aspect, prosecution has produced Ex.P7- School -9- Admission Register extract issued by the Head Master, Vasavi Vidya Mandira, Rayalpadu, Srinivasapura taluk, Kolar district. The date of birth of the victim in the said record is shown as

25.07.2003. The prosecution also examined P.W.8- B.R.Nagendra, who has deposed in his evidence that as per school documents, the date of birth of the victim is 25.01.2003. P.W.8- B.R.Nagendra has not whispered anything that on basis of which document he has entered the date of birth of the victim in the school register as 25.07.2003. The evidence of P.W.8 is

quite inconsistent to the entry made in Ex.P7. P.W.3- Narayanaswamy the father of the victim has not whispered anything as to the date of birth of the victim.

18. Ex.P.10 is the medical examination report of the

victim rape which is recorded under Section 164 A of Cr.P.C reveals that the age of the victim is shown as 17 years. On the basis of general physical examination, the medical officer has shown in this document that girl is aged around 16-18 years, moderately built and nourished, alert, conscious and co-operative, higher mental function are normal. That there are no external injuries in the breast, thigh, arm or neck or private parts. - 10 -

19. P.W.2- the victim has stated that she was studying in

II year PUC in Vijaya College at the time of commission of offence. The Investigating Officer has not collected the birth certificate of the victim. The Investigating Officer has also not collected the SSLC markscard of the victim. He has not explained anything as to non-collection of birth certificate or the SSLC markscard. When the SSLC markscard is available, the

Investigating Officer would have collected the same and produced before this Court, but he has not done so. Therefore, adverse inference can be drawn against the prosecution under Section 114(g) of Evidence Act, 1872. Thus, the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

20. The Investigating Officer has not complied with the

mandatory provisions of Section 94 of Act, 2015 and also Rule 12 of Rules, 2016. Accordingly, the prosecution has failed to prove that the accused was minor as defined under Section 2(d) of POCSO Act. -11-

21. With regard to the alleged offence is concerned, it is

the case of the prosecution that 28.12.2012 at around 01:30 p.m., the accused has kidnapped victim in a car and took her to a rented house of accused No.2 - Girish and committed rape on the victim for several times.

22. P.W.2-the victim has been produced before the

Principal Civil Judge and JMFC, Srinivasapura on 20.01.2021. On that day, the Magistrate has recorded her statement under Section 164 of Cr.P.C., in which she

has stated as under: " . 130 BOND . . . SD BWUQH , . -_ OF . . . -12- 155 , . .

23. During the course of cross-examination, P.W.2 victim has clearly admitted as to the statement given by her

under Section 164 of Cr.P.C. When the victim has stated before the Magistrate on oath that the accused has not committed any offence as alleged against him, it is the duty of the Investigating officer to explain as to why he has filed the charge sheet as against the accused. Investigating Officer has not explained anything in this regard. Though the statement under Section 164 of Cr.P.C is not a substantive piece of evidence, when the victim has admitted, the statement recorded by the Magistrate, that statement cannot be ignored. Therefore, the evidence of P.W.2 during the trial and also the statement under Section 164 of Cr.P.C recorded by the Investigating Officer, will falsify the evidence of P.W.2 which is given in examination-in-chief.

24. Though P.W.2 in her 164 statement has stated that there was no sexual assault upon her and has not given any - 13 -

trouble to her, she has deposed in her evidence at the time of trial that the accused has several times committed rape on her when she was in her house. Therefore, testimony of P.W.2 is quite inconsistent and not trustworthy.

25. P.W.3-the father of the victim has also not whispered

anything against the accused regarding alleged commission of offence. The Trial Court has not properly appreciated the evidence on record in accordance with law and facts, and convicted the accused which is unsustainable under the law.

26. With regard to the FSL report is concerned, Ex.P11,

one panty (item No.3) said to be of victim's and one pant (item No.11) said to be of accused No.1, the presence of seminal stains was detected. Mere detection of seminal stain on item No.3 and 11 are not sufficient to come to the conclusion that the accused has committed alleged commission of offence.

27. The victim has deposed before the Medical Officer

that she is in love with the accused and she went by her own will on 28.12.2020 at around 01:30 p.m. to Bangalore where she has stayed along with the accused for 15 days in the house where she has given history of having sexual intercourse with him - 14 -

which was 5 days back. This history given by the victim is not disputed by the prosecution, same is entered in Ex.P10. The version of the victim and also history given by the victim before the Medical Officer reveals that even if there was any sexual intercourse between accused and the victim, same is consensual intercourse which does not come under the definition of rape, as the prosecution has failed to prove that the victim was minor at the time of alleged incident. Viewed from any angle, I do not find any cogent, convincing, trust-worthy, corroborative, clinching evidence to convict the accused for the alleged commission of offence.

28. Accordingly, I answer point No.1 in affirmative. Regarding Point No.2

29. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

(i) Appeal is allowed;

(ii) Judgment of conviction and sentence passed by the Additional District Judge and FTSC-I - 15 - (POSCO), Kolar in Spl.C.(POSCO) No.08/2021 dated 06.04.2023 is set-aside;

(iii) Appellant/accused is acquitted of the offence under Sections 363, 376(2)(n), 114 of IPC and Sections 6 and 16 of POSCO Act;

(iv) Registry is directed to send intimation to the concerned jail authorities to release the accused forthwith if he is not involved in any other cases;

(v) Registry to send the copy of this Judgment

along with Trial Court records to concerned Courts. Sd/- (G BASAVARAJA)
JUDGE GVP List No.: 1 SI No.: 58

