

Sri Chandru vs the State by

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Court : Karnataka

Decided On : Dec-26-2025

Judge : G Basavaraja

Appeal No. : CRL.A/1638/2021

Appellant : Sri Chandru

Respondent : The State by

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF DECEMBER, 2025 BEFORE THE HON'BLE MR. JUSTICE G BASAVARAJA CRIMINAL APPEAL NO.1638 OF 2021 c/w CRIMINAL APPEAL NO.1645 OF 2021 IN CRL. APPEAL NO.1638/2021 BETWEEN: SRI CHANDRU S/O LATE NAGASHETTY AGED ABOUT 24 YEARS R/O KELAGADE UPPAR STREET, CHAMARAJANAGAR TOWN-571313. ...APPELLANT (BY SRI. P.P. HEGDE, SR. COUNSEL A/W SRI. PRASANNA KUMAR B., ADV.) AND: THE STATE BY CHAMARAJANAGAR TOWN POLICE, REPTD. BY STATE PUBLIC PROSECUTOR, HIGH COURT BUILDING,

BANGALORE-01. RESPONDENT (BY SRI. B. LAKSHMAN, HCGP)
THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET

ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 14.09.2021 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHAMARAJANAGARA AND SPL. JUDGE FOR POCSO CASES IN SPL.C.NO.164/2018 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE -2- OFFENCE P/U/S 341,363,366,368,376(3) OF IPC AND SEC.4, 8, 12 OF POCSO ACT. IN CRL.APPEAL NO.1645/2021 BETWEEN: SMT MAHADEVAMMA W/O PUTTASUBBASHETTY, AGED ABOUT 24 YEARS, R/O HALE BEEDI, KODI MOULAY VILLAGE, CHAMARAJANAGAR TALUK-571313. ...APPELLANT (BY SRI. P.P. HEGDE, SR. COUNSEL A/W SRI. PRASANNA KUMAR B., ADV.) AND:

1. THE STATE BY CHAMARAJANAGAR TOWN POLICE, REPTD. BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BANGALORE-01.

2. SMT. JAYALAXMI, W/O BANGARASWAMY, 44 YEARS, MEGALA UPPARA STREET, CHAMARAJANAGAR-571313 RESPONDENTS (BY SRI. B. LAKSHMAN, HCGP FOR R1, R2 - SERVED.) [CAUSE TITLE AMENDED VIDE COURT ORDER DATED: 19.07.2024.] THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 14.09.2021 - CONVICTING THE APPELLANT/ACCUSED NO.2 FOR THE OFFENCE P/U/S 114 OF IPC AND SECTION 17 OF POCSO ACT. -3- THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.12.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING: CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

The appellants have preferred these appeals against the judgment of conviction and order on sentence dated 14th September, 2021 passed in Spl.C.No.164 of 2018 by the Principal District and Sessions Judge & Special Judge for POCSO Cases, Chamarajanagara (for short "the trial Court").

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,

Chamarajanagara Town Police submitted the charge-sheet against the accused 1 and 2 for the offences punishable under Sections 363, 366, 368, 114, 341, 376 of Indian Penal Code and Sections 4, 8, 12 and 17 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

4. It is alleged by the prosecution that, PWs2 and 3 are the parents of the victim. The date of birth of the victim girl is 14th April, 2003. The victim girl was studying in JSS -4-

College at Chamarajanagara and used to go to college by bus. It is further alleged that the accused was teasing and talking with victim girl while she was going to the college and was also saying that he loves her, likes her and wants to marry her. On 11th July, 2018 when the victim girl was going to school, at that time, accused took her in a bus, assuring to take her to

Mysuru. Instead of going to Mysuru, he took her to Kodi Moulay Village to the house of accused No.2. When the victim girl asked accused No.1 as to why he brought her to Kodi Moulay Village, he told that a car will come there, thereafter they will go to Male Mahadeshwara Temple, get married and later go to Mysuru. They stayed in the house of accused No.2

for about 7 days. Accused No.1 had sexual intercourse with

victim girl in the house of accused No.2. The mother of the victim girl has lodged missing complaint. Upon registration of the missing complaint, Police visited the house of victim girl and drawn spot mahazar in the said place. Thereafter, during

the course of investigation, police secured the presence of the victim girl and accused and brought them to Chamarajanagara Police Station on 18th July, 2018 and they called the parents of the victim girl and in their presence, the women police recorded the statement of victim. In her statement, she has stated that

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accused No.1 forcibly took her to Kodi Moulay village and confined her in the house of the accused No.2 and there, the accused No.1 had sexually assaulted the victim. On coming to know that accused No.1 had sexual intercourse with the victim girl, they have registered the case against the accused No.1 for the offence punishable under Section 376 Indian Penal Code and under the provisions of POCSO Act. During the course of recording of the statement of the victim girl, police have also taken photographs. Thereafter, victim girl was sent to medical examination in the presence of her mother. Thereafter, police took the victim girl to the Court for recording the statement under section 164 of Code of Criminal Procedure.

5. The police took the victim girl to Kodi Moulay village

to the house of accused No.2 where the accused No.1 had sexual intercourse with the victim girl, mahazar was conducted in the presence of the panchas and the mother of the victim girl. During the process of drawing mahazar, they have taken the photographs. The victim girl has handed over the clothes which were worn by her while she was in the house of the accused No.2. Thereafter, the police have also recovered the school bag along with which the victim girl was kidnapped by

-6- the accused No.1 and sent the accused No.1 for medical

examination. During the process of investigation the Investigating officer has also recorded the statement of the witnesses and secured the property extract of the house of accused No.2 and also collected admission register extract of the victim girl from the school authorities to establish the date of birth of the victim girl. On completion of the investigation, the Investigating officer has filed charge-sheet against the accused for the aforesaid offences.

6. After filing the charge-sheet, case was registered. Accused No.1 is in judicial custody since the date of his arrest. Accused No.2 was released on bail.

7. Upon hearing on charges, the trial Court has framed the charges for the commission of alleged offences. Same were read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

8. To prove the guilt of the accused, in all, 26 witnesses were examined as PW1 to PW26. 32 documents were marked as Exhibits P1 to P32. Nine material objects were marked as MOs.1 to 9. On closure of prosecution side -7- evidence, statement under Section 313 of Code of Criminal

Procedure was recorded. The accused have totally denied all the evidence of prosecution witnesses. However, they did not choose to lead any defence evidence on their behalf.

9. Having heard the arguments on both sides, the trial

Court has convicted accused No.1 for the offences under Sections 341, 363, 366, 368, 376(3) of Indian Penal Code and Sections 4, 8, 12 of the Protection of Children from Sexual

Offences Act. The trial Court has passed the sentence to accused No.1 to undergo simple imprisonment for a period of one month and to pay fine of Rs.5,000/- for the offence punishable under Section 341 Indian Penal Code; to undergo simple imprisonment for a period of 5 years and to pay fine of Rs.10,000/- for the offence punishable under Section 363 of Indian Penal Code; to undergo simple imprisonment for a period of 5 years and to pay fine of Rs.10,000/- for the offence punishable under Section 366 of Indian Penal Code; to undergo rigorous imprisonment for a period of 20 years and to pay fine of Rs.5,00,000/- for the offence punishable under Section 376(3) Indian Penal Code; to undergo simple imprisonment for a period of 3 years and to pay fine of Rs.50,000/- for the

-8- offence punishable under Section 8 of POCSO Act; and further sentenced to undergo simple imprisonment for a period of 3 years and to pay a fine of

Rs.50,000/- for the offence punishable under Section 12 of POCSO Act.

10. Accused No.2 is convicted for the offence punishable under Section 114 Indian Penal Code and Section 17

of Protection of Children from Sexual Offences Act. Accused No.2 is sentenced to undergo simple imprisonment for a period of 5 years and to pay fine of Rs.2,00,000/- for the offence punishable under Section 17 of POCSO Act.

11. After pronouncing the judgment, accused No.1 was

taken to custody and is in custody till date. Being aggrieved by the Judgment of conviction and order on sentence, the appellants have preferred Criminal Appeals No.1638 of 2021 and 1645 of 2021.

12. The learned counsel appearing for the appellants

would submit that the prosecution has failed to prove that as on the date of commission of offence, the victim was a child as defined under Section 2(d) of POCSO Act. The prosecution has produced the document Exhibit P16-Birth Certificate which is -9- issued by the Registrar of Births and Deaths, Municipal Council, Chamarajanagara, which reveals that the date of birth of the victim as 14th April, 2003. But the author of the document is not examined.

13. PW10-Gangaprasad, teacher of the victim girl has

produced school admission register extract-Exhibits P17 to P19, showing the date of birth of the victim girl as 14th April, 2003 and he has no personal knowledge in the connected case. In the aadhar card, the date of birth of the victim is mentioned as 13th April, 2003.

14. With regard to the alleged incident is concerned,

prosecution has miserably failed to prove the guilt of the accused for the reason that Exhibit P9-missing complaint was lodged by PW2-Jayalakshmi on 12th July, 2018 at 06.45 p.m. realising that the victim has not returned from the school since 11th July 2018. There is no accusation or even reference against these accused in

the complaint. Based on the complaint, FIR came to be registered in Crime No.316 of 2018

as per Exhibit P22. On 13th July, 2018, spot mahazar was conducted

- 10 - 2018, spot mahazar was prepared as per Exhibit P5 in the house of accused No.2 in which also there is no accusation against the accused. The victim girl was traced on 17th July, 2018 and was produced before the doctor, along with the police.

15. In Exhibit P3, PW11-Dr.Sruthi has stated as "elope

with her boyfriend named Chandrashekara alias Chandru Kodi Moulay Village and stayed in Chandru's relatives house for about six days. During their stay, they had sexual intercourse on 11th and 12th July, 2018 and as she had her periods on 13th July, 2018 they did not have sexual intercourse since then. After sexual intercourse on 12th July, 2018 she took bath and changed her clothes. There were no signs of external injuries." Dr.Sruti was of the opinion that there is no evidence of sexual

intercourse. In Exhibit P4 there is no recital of penetrative sexual

regards statement of victim girl under Section 164 Code of Criminal Procedure Code (Exhibit P4) is concerned, the learned Counsel would submit that the victim does not speak about the commission of any sexual assault. The statement of the victim - 11 -

given to the police after registration of FIR and during the investigation as per Exhibit P1, is contradictory to each other. In the statement Exhibit P4, the victim has stated that accused is her "maavana maga and they were in love with each other". She had voluntarily gone to his sister-in-law's house in Kodi Moulay Village and stayed together in the said house. There is nothing wrong in accompanying the accused by the victim girl.

This does not amount to an offence. She has neither been lured nor threatened by anyone to go to her relative's house and stay there.

16. Evidence of PW1-victim is contrary to Exhibit P4.

Hence cannot be believable. In page 5 of the deposition, victim has clearly stated "MAz DgAi U K iq JAz gz d." It has come in evidence that due to enmity, the present litigation is made against the accused, at the instance of her parents. Except PW1 to PW3 all other material witnesses PW4 to PW8 have turned hostile. There is no cogent and convincing evidence before the Court.

17. Dr. Mahesh has admitted in the cross-examination that he examined the shoulder joint and elbow joint of the - 12 -

accused. He found that the accused was between 17 and 18 years and might be below 18 years. He has admitted that he has not produced any medical records. No public document or the birth certificate are produced by the prosecution. Suppression of these material facts would result in drawing adverse inference against the prosecution and on all these grounds sought for allowing this appeal.

18. Smt. Archana.K.M, Amicus Curiae appearing for

respondent No.2 and Sri B. Lakshman, learned High Court Government Pleader would submit that the trial Court has properly appreciated the evidence on record in its proper perspective and there are no grounds to interfere with the impugned judgment of conviction and order on sentence passed by the trial Court and hence sought for dismissal of appeals.

19. Having heard the arguments advanced on behalf of the parties and on perusal of material placed before this Court, the following points would arise for my consideration:

1. Whether the trial Court is justified in coming to the conclusion that the Prosecution has - 13 - proved the case beyond all reasonable doubt that as on the date of incident, the victim was a child as defined under Section 2(d) of POCSO Act?

2. Whether the trial Court is justified in convicting the accused No.1 for commission of offence under Sections 341, 363, 366, 368, 376(3) of Indian Penal

Code and Sections 4, 8 and 12 of POCSO Act?

3. What Order?

20. My answer to the above points are as under: Point No.1: in the negative; Point No.2: in the negative; and

Point No.3: as per final order

Regarding Points 1:

21. I have examined the materials place before me.

The investigating officer submitted charge-sheet against accused 1 and 2 for offence punishable Sections 341, 363, 366, 368, 376(3) of Indian Penal Code and under Sections 4, 8, 12 and 17 of POCSO Act. It is alleged by the prosecution that the - 14 - victim girl is studying in JSS College, Chamarajnagar. She used to go to college by bus. It is further alleged that accused was teasing and talking to victim girl when she was going to school and the accused used to tell the victim that he loves her

and would like to marry her. Further, it is the case of the prosecution that on 11th July 2018, when the victim was going to school, at that time, accused No.1 assured her to take to Mysore, instead he took her to Kodi Moulay Village to the house of accused No.2. When the victim asked accused No.1 why he brought her there, he told that a car will come there, thereafter they will go to Male Mahadeshwara Hills get married and

thereafter go to Mysore. At Kodi Moulay, they stayed in the house of the accused No.2 for about seven days. During that time, the accused No.1 had sexual intercourse with the victim girl in the house of accused No.2. In this regard, mother of the victim has lodged missing complaint. Upon registration of the complaint, Police visited the house of victim girl and conducted spot mahazar. Thereafter, during the process of investigation, Police secured the presence of both victim and accused and brought them to Chamarajanagara Police Station on 18th July

2018. They called the parents of the victim girl and in the presence of victim, Women Police recorded the statement of - 15 - victim and registered case against accused No.1 for the offence punishable under section 376 of IPC and under the provisions of POCSO Act. After investigation, investigating officer submitted sheet against the accused for commission of alleged offence. Accused 1 and 2 were arrested. Accused No.2 was released on bail as per order of the court dated 3rd August

2018. Accused No.1 was arrested on 17th July 2018 and was

released as per order dated 14th June 2019, and after pronouncement of the impugned judgment of conviction, accused were taken into custody and they are in custody since the date of arrest.

22. Learned Counsel appearing for the appellants

submitted that the prosecution has not placed any acceptable legal evidence before the court to prove that the victim was child as defined under section 2(d) of POCSO Act. The prosecution has produced Exhibits P16 to 18, viz. birth certificate, school certificate and admission register extract respectively, which reveal the date of birth of the victim as 14th April 2003. First, this court has to analyse the genuineness of the birth certificate-Exhibit P 16. This birth certificate is issued by the Registrar of Births and Deaths, Municipal Council,

- 16 - Chamarajanagar under section 12/17 of Registration of Birth and Deaths Act 1969 and rule 8/13 of Karnataka Registration of Birth and Death Rules, 1999. As per this birth certificate, the date of birth of victim is 14th April 2003. The date of registration is 06th September, 2018. The date of issuance of

the birth certificate is 06th September, 2018.

The address

District, and in the remarks column, it is shown that "28th April, 2003 B r number 976".

23. The author of the document and the officer who has

issued this certificate, has not been examined by the prosecution. In view of section 8 of Registration of Births and Deaths Act, 1969, it shall be the duty of a person specified under this provision, to give or cause to be given, either orally or in writing with signature, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars including the Aadhar number of parents and the informant, if available, in case of birth, required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16.

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24. It is relevant to mention here as to provisions of Section 13 of Registration of Births and Deaths Act, 1969. The same reads as under:

13. Delayed registration of births and

deaths.-(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is

given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered

within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without

prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action. - 18 -

25. A plain reading of the said provision makes it crystal-clear that the policy embodied under this Section is the manipulation in the entries relating to dated of births and deaths. Such entry shall be made immediately after the occurrence. Precaution should be taken while making delayed

entries. The losses that an entry which has not been made within one year of its occurrence, cannot be made good without an order of the Magistrate. Section 13(3) of the said Act is just a constraint on the Registrar. It is not a provision whereby an aggrieved party could get an adjudication on his disputed date of birth. The order binds only the Registrar and not others. The entry made by the Registrar pursuant to orders of Magistrate cannot carry higher probative value, and its proof must necessarily depend upon the facts and circumstances of each case.

26. In the case on hand, the investigating officer has

not collected any material to show as to who has issued endorsement to the effect that the date of the victim is not entered in the birth register before the Magistrate; who has filed application under Section 13(3) of the Registration of Births and Deaths Act, 1969 for orders from the Magistrate to - 19 - Register the date of birth of the victim as the same was not registered within one year; and the Order passed by the concerned court. In the absence of these materials the contents of birth certificate-Exhibit P16 cannot be accepted.

27. Additionally, the alleged incident took place on 11th

July, 2018. Entry in Column 10 of Exhibit P16-birth certificate reveals that the date of birth is registered on 06th September, 2018 and the date of issue of birth certificate is shown as 06th

September, 2018. The contents of Exhibit P16 reveals that only after filing complaint and registration of the case, this birth certificate is obtained. Therefore,

in the absence of aforesaid materials, the contents of birth certificate will create suspicion in getting the birth certificate from the concerned authority. Hence, the same cannot be accepted.

28. With regard to School Certificate-Exhibit P17 issued by the Headmaster, JSS Girls High School, Chamarajanagara is concerned, the date of birth of victim is shown as 14th April,

2003. The certificate is issued on the basis of admission of the

victim to IX Standard on 12th June, 2017. Exhibit P17- Admission Register extract reveals the date of birth of the Victim as 14th April, 2003. This document is also issued by the - 20 -

Headmaster of JSS Girls High School, Chamarajanagara. In Exhibit P19-Register extract issued by the JSS Girls High School, Chamarajanagara, the date of birth of victim is shown as 14th April, 2003. To prove the contents of these documents, prosecution has examined Sri Gangaprasad-PW10, who has deposed in his evidence regarding issuance of Exhibits P17 to P19. In his cross-examination, he has clearly admitted that he has not entered the date of birth in the original Register. He cannot say as to on what basis this entry was made by the concerned authority. But he has deposed that on the basis of

transfer certificate, the entry was made. The said transfer certificate is not produced by the Prosecution. Since the prosecution has failed to show on what basis the school authority has entered the date of birth of the victim in Exhibits P17 to P19, the same cannot be accepted. The Investigating Officer has not explained anything as to non-production of the relevant documents to prove the age of the victim. Further, the Investigating Officer has also failed to obtain ossification test certificate to prove the age of the victim as required under Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 34 of POCSO Act. For the aforesaid reasons, I am of the considered opinion that the prosecution - 21 - has failed to prove that the victim was child as defined under Section 2(d) of POCSO Act, as on the date of commission of alleged offence. Hence, the question of offence under the penal provisions of POCSO Act does not arise. Accordingly, I

answer point No.1 in the negative. Regarding Point No.2:

29. With regard to offence punishable under Sections

341, 363, 366, 368, 376(3) and 114 of Indian Penal Code is concerned, it is the case of the prosecution that on the basis of the complaint filed by PW2-Smt. Jayalakshmi mother of the victim, jurisdictional police have registered case in Crime No.316 of 2018 for the offence punishable under Section 363 Indian Penal Code and submitted First Information Report to the Court as per Exhibit P22 on 12th July, 2018, against

unknown accused. On the next date, i.e. in 13th July, 2018, police have conducted mahazar near the house of Jayalakshmi as per Exhibit P10. The victim was traced on 17th July, 2018 and was produced along with Police before Dr PW 11. Dr Shruti PW 11 in the history at Exhibit P3 it is stated as under: "Eloped with her boyfriend named Chandrashekar Alias Chandru to Kodi Moulay Village

- 22 - and in Chandru's relatives House for about six days. During their stay, they had sexual contact (intercourse) On 11 July 2018 and 12 July 2018, as she had her periods on 13 July 2018, they did not have sexual intercourse since 10. After sexual force on 12 July 2018, she took bath and change her clothes. There were no signs of external injuries."

30. Dr. Shruti has given her opinion that on _ local

inspection of the victim, there is no evidence of sexual intercourse. However, as per exhibit P4, there is no recital as to penetrative sexual assault. It is relevant to mention here as the statement of the victim girl recorded under section 164(5) of CRPC, which is marked as Exhibit P4. In the said statement, she has stated as under: "DISOD H- > Bessava 3 BOSE Bess GEOG . TOS , VAY SLGDOT DOW BES . . - 23 - tee Va} . WEVA QVOE-N.O7.2018 9.268 lobe Be OS). WET wee wee . zoe acy. aga . We vay 1 Bese . VOSS VELQAG DoS . te DOW was VIS DVIS: 12.07.2018 we DOLD). " 13.07.201800W COW : Dos We ay SiS . MOOG. We va . Seer DOW . was SEHD Geeta . 245 3.30

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31. The statement of the victim to the police after

registration of FIR and during investigation as per Exhibit P1 is contradictory to each other and the statement of victim recorded under section 164(5) of Code of Criminal Procedure, will falsify the statement of victim recorded by the police on 16th July, 2018 as per Exhibit P1. In the statement at Exhibit

P4, victim has stated that the accused is her "i U" (mavana maga) and they were in love with each other, and she had voluntarily gone to the house of her sister-in-law at Kodi Moulay Village, and stayed there together in the said house. During the course of cross-examination of PW1, she has clearly admitted the contents of exhibit P4 that MAz DgAi U

K iq JAz gz d. Further, she has clearly admitted that she cannot see the contents of statement recorded by the police. She has further admitted that she

knew Murugesh. He is her mother's sister's son and is her elder brother. He is the resident of Chennipura Moulay. She also knew Nethra, wife of Murugesh. Nethra is related to accused No.1. The marriage between Nethra and Murugesh is a love marriage. In this regard, often there was altercation between the family members of victim and the accused No.1. - 25 - It is submitted by the learned counsel for the complainant that due to enmity, the present allegation is made against accused/appellants at the instance of parents of the victim.

32. PW4-Mahadevamma, PW5-Lakshamma, P6-

Nagaraju, PW7-Rajesh and PW8-Krishna have not supported the case of prosecution. Even during the course of cross- examination made by the Special Public Prosecutor after treating them as hostile witnesses, they have categorically denied as to the statement recorded by the investigating officer under section 161 of Code of Criminal Procedure marked as Exhibits P11 to P15. Accordingly, the prosecution has failed to elicit any favourable answers from them.

33. Viewed from any angle, I do not find any legal

evidence before this court to constitute the offence punishable under sections 344, 363, 366, 368, 376(3) and 114 of Indian Penal Code. On the contrary, materials placed before this court reveals that the victim girl has voluntarily accompanied the accused and the alleged sex is a consensual sex. Absolutely, there is no evidence to show that there is penetrative sexual assault on the victim. While answering Point No.1, this Court has held that the trial court is not justified in coming to the

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conclusion that the prosecution has failed to prove that the

victim was child as defined under section 2(d) of POCSO Act. The prosecution has failed to prove the essential ingredients of the commission of alleged offence under section 376 as defined under Section 375 of Indian Penal Code. Accordingly, prosecution has failed to place any cogent, convincing, trustworthy or corroborative evidence to convict the accused for commission of alleged offences. Hence, I answer Point No.2 two in the negative. Regarding Point No.3:

34. For the discussion and reasons aforestated, I proceed to pass the following:

ORDER

i) Appeals are allowed; ii) Judgement of conviction and order on sentence dated 14th September 2021, passed in Special Case No.164 of 2018 by the Principal District & Sessions Judge and Special Judge for POCSO Cases, Chamarajanagara, is set aside; - 27 - iii) Accused are acquitted of offences punishable under sections 363, 366, 368, 114, 341, 376(3) of Indian Penal Code and sections 4, 8, 12 and 17 of POCSO Act; iv) The bail bonds if any executed by appellants, shall stand cancelled; v) Registry is directed to send the copy of this

judgment along with the trial records to the

concerned court; vi) Registry is also directed to communicate a copy of this order forthwith to the Superintendent of the concerned Jail for compliance and release of the accused No.1/Appellant in Criminal

Appeal No.1638 of 2021. vii) Registry is directed to pay an amount of Rs.10,000/- to Smt. Archana.K.M, Amicus Curiae, who has assisted the Court on behalf of respondent No.1 in Crl.A. No.1645 of 2021.

Sd/- (G BASAVARAJA) JUDGE Inn

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