

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH**DATED THIS THE 02ND DAY OF JUNE, 2025****BEFORE****THE HON'BLE MS.JUSTICE J.M.KHAZI****CRIMINAL APPEAL NO.100081/2023****BETWEEN:**

ANSARI
S/O. KHASIM JINGRU
AGED ABOUT 27 YEARS
OCC: FISHERIES
R/O VANALLI, NEAR JAMIYA MASZID
VANNALLI, KUMTA
DIST. KARWAR - 581 332

...APPELLANT

(BY SRI NEELENDRA GUNDE, ADVOCATE
FOR SRI SANTOSH B. MANE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY POLICE INSPECTOR,
KUMTA POLICE STATION,
KUMTA DIST. UTTAR KANNADA
REPRESENTED BY APP
HIGH COURT OF KARNATAKA
BENCH AT DHARWAD.
2. MOOSA
S/O DAWOOD POSGE
AGED ABOUT 48 YEARS
OCC: FISHERIES
R/O GAGAL, HINI, NEAR MASJID
KUMTA - 581 351

...RESPONDENTS

(BY SRI. ABHISHEK MAILPATIL, HCGP FOR R-1
SMT. CHITRA M. GOUNDALKAR, ADVOCATE FOR R-2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 OF CR.P.C. SEEKING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 23.11.2022 AND ORDER OF SENTENCE DATED 24.11.2022 PASSED BY THE LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE-FTSC-1 U.K. KARWAR (SPL. COURT FOR TRIAL OF CASES FILED UNDER POCSO) ACT IN SPECIAL CASE NO. 57/2022 AND ACQUIT THE APPELLANT FROM THE ALLEGED CRIME PUNISHABLE UNDER SECTION 377 IPC AND SECTIONS 4 AND 6 OF POCSO ACT REGISTERED AGAINST THE APPELLANT IN KUMTA P.S. CRIME NO. 56/2022.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 04.12.2024, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MS. JUSTICE J.M.KHAZI

CAV JUDGMENT

(PER: THE HON'BLE MS. JUSTICE J.M.KHAZI)

Through this appeal, filed under Section 374(2) of the Code of Criminal Procedure, the accused has challenged his conviction and sentence for the offence punishable under Sections 377 IPC and Sections 4 and 6 of POCSO Act.

2. For the sake of convenience, parties are referred to by their ranks before the trial Court.

3. Based on the complaint filed by the maternal uncle of the victim boy, the concerned police registered case in Cr.No.56/2022 and after detailed investigation filed charge sheet for the offences punishable and Section 377 IPC and

Section 4 of the POCSO Act. It is alleged that on 15.03.2022 at 2.00 p.m, while the victim boy aged about six years was playing in front of the shop of Abdul Karim Alji situated at Kagal Hini village, accused lured the victim boy of giving a ride on his motorbike bearing registration No.KA-47/S-6607 and took him near Aghanashini river at a distance of about one and half kilometres and after parking the motorbike by the side of the road, put the victim boy, face down on the petrol tank of the motorbike, slipped his pant below his waist and similarly slipped his i.e. accused pant and underwear and inserted his penis into the anus of the victim, resulting in bleeding and thereby committed the offences punishable under Section 377 IPC and Section 4 of POSCO Act.

4. During investigation, the accused was arrested. Both accused and the victim boy were subjected to medical examination. The clothes of the accused and victim boy were subjected to FSL examination. After completing detailed investigation charge sheet was filed.

5. The trial court framed charge against the accused for the offence punishable under Section 377 IPC and Sections 4 and 6 of POCSO Act. Accused pleaded not guilty and claimed trial.

6. In order to prove the allegation against the accused, the prosecution has examined PWs-1 to 24 and relied upon Exs.P1 to 50 and MO-1 pant.

7. During the course of his statement under Section 313 Cr.P.C accused has denied the incriminating evidence led by the prosecution.

8. Accused has not led any defence evidence.

9. Vide the impugned judgment and order the trial Court convicted the accused for the offences punishable under Section 377 IPC and Sections 4 and 6 of POSCO Act and sentenced him to undergo rigorous imprisonment for 20 years and pay fine of ₹1,00,000/- with default sentence of imprisonment.

10. Aggrieved by the same, the accused filed this appeal, contending that it is perverse, capricious and without

proper application of mind. The trial court has not considered evidence on record in proper perspective and came to an erroneous conclusion. The entire case of the prosecution is based on circumstantial evidence, except the victim boy who is just aged six years and whose statement was recorded after one week. The medical evidence does not conclusively establish the alleged crime. The trial Court has also not taken into consideration the fact that the distance of 401 km could not be covered in four hours. According to the version of the mother of the victim boy, they were not aware of the sexual assault till the victim boy was taken to the hospital, but surprisingly at 11.00 a.m, complaint was filed alleging sexual assault. There is delay in filing the complaint and it affect the prosecution case. Viewed from any angle, the impugned judgment and order are not sustainable and pray to allow the appeal, set aside the conviction and sentence, and acquit the accused.

11. On the other hand, the learned HCGP representing the State submitted that the accused was not

known to the family of the victim boy and they had no ill will or motive to falsely implicate the accused. In fact, initially, the victim boy, except saying that accused had taken him on his motorbike did not disclose what exactly transpired. Only on the basis of the medical examination, they were able to know the nature of the offence and filed the complaint. In the above facts and circumstances, the delay in filing the complaint is explained. The victim boy has spoken to about the offence committed by the accused. PW-15 Mohammed Khaleel Ingreji saw the accused taking away the victim boy on his motorbike. None of the witnesses are having any motive or ill will to falsely implicate the accused. In the absence of any ill or motive and in the light of the evidence lead by the prosecution, including the medical evidence, the conviction and sentence is well founded and there are no justifiable grounds to interfere and sought for dismissal of the appeal.

12. Heard arguments of both sides and perused the record.

13. The allegations against accused is that he committed an unnatural offence i.e. penetrative sexual assault on the victim boy by penetrating his penis into the anus of the victim boy. The date of incident is 15.03.2022. As on the said date, the age of the victim boy was five years six months i.e, he was around six years when the incident took place. The victim boy who is examined as a PW-1 has given his age as 6 years. PW-2 Khurshida Begum Katlo is the mother, PW-14 Musa Dawood Poske is the maternal uncle and PW-16 Abbu Syed Katlo is the father of the victim boy. PW-18 Jainabi Mohammed Ali Honnekar is the teacher of the nursery school, where the victim boy was studying. Their evidence reveal that as on the date of incident, the victim boy was aged around six years. PW-2 Khurshida Begum has given the date of birth of the victim boy as 28.07.2016. PW-18 has also deposed that as per the admission register, the date of birth of the victim boy is 28.07.2016.

14. Ex.P31 is the copy of the application for admission wherein the date of birth of the victim boy is noted as

28.07.2016. However, during the course of her evidence, PW-18 has deposed that they have not maintained register in Form No.1. The birth certificate of the victim boy is also collected by the investigating officer as per Ex.P28. It also state the date of birth of the victim boy as 28.07.2016. Thus, as per this document, as on the date of incident, the victim boy was aged five years eight months. In fact, the defence has not disputed the age of the victim boy. Thus, through the testimony of these witnesses and the documents placed on record prosecution proved that as on the date of incident, the victim boy was around six years. Therefore, the provisions of POCSO Act are applicable.

15. Except the victim boy, there are no witnesses to the actual incident. It is pertinent to note that the incident took place on 15.03.2022. According to the prosecution accused took the victim boy on his motorbike under the pretext of giving him a ride and committed unnatural offence by inserting his penis into the anus of the victim boy and let him back from where he had picked him up. The evidence

adduced by the prosecution indicate that after the incident, the victim boy came crying to his mother and when she enquired, he only revealed that accused took him to a secluded place and brought him back. However, she observed blood stains on his pant and she along with her brother i.e., PW-14 took him to PW-10 Dr Sachidananda Naik. On examination, he found abrasion in the anus area and bleeding was also there. Apprehending that victim may also having internal injuries, he advised the mother and uncle of the victim to take him to a higher centre. Accordingly, they took him to Omega Hospital, Mangaluru and he was examined by PW-12 Dr Ullas Manjaiah Shetty and found evidence of sexual assault. Thereafter, they have filed the complaint.

16. Looking to the tender age of the victim boy, the investigating officer has directed PW-7 Chandrawati Patagar, woman PSI to record his statement. Her evidence reveal that when the victim boy was in Omega Hospital, she gave requisition to the doctor to examine him. Since the victim boy was not in a position to speak, she could not record the

statement. However, on 23.04.2022, the mother and uncle of the victim boy brought him to the old CPI office and she has recorded his statement. It is pertinent to note that it was a shocking and humiliating experience for the victim boy to have undergone the unnatural sexual assault by the accused. For this reason, he was not ready to disclose what actually transpired. Only after the treatment and passage of time, he has opened and revealed the fact of a sexual assault on him. For this reason only, in the complaint, at Ex.P23, the maternal uncle of the victim boy has stated that the victim boy did not disclose the details. Only after medical examination at Canara Health Care Centre, they came to know that it is a sexual assault and accordingly after his treatment at the Omega hospital, they have filed the complaint.

17. It is pertinent to note that the PW-10 Dr Sachidanand Naik of Canara Health Care Centre has not intimated the concerned police about the medico legal case. In this regard, the investigating officer has sought his explanation. He has given his explanation as per Ex.P8

wherein he has stated that since the boy was not ready to speak as to what actually transpired, he did not choose to intimate the concerned police. However, he has not stated that he could make out that it was a case of sexual assault and advise the parents to take him to the higher centre. On the other hand, he has stated that since he suspect internal injury, he directed the mother to take him to the higher centre. It appears PW-10 did not want to set himself involved in criminal case and therefore he has not intimated the concerned police and on the other hand, given an explanation that without proper instruments he was not able to examine the victim and therefore he advised his mother to take him to a higher centre.

18. During the course of evidence, the victim boy has clearly deposed that on the date of incident, while he was playing in front of a shop, accused came and took him on his motorbike to Karodi and there he committed unnatural offence on him by inserting his penis into the anus of the victim boy and there after brought him back and left at the

place from where he had picked him up. He has identified the accused before the Court also. The testimony of PW-1 i.e, the victim boy is supported by the evidence of PW-15 Mohammed Khaleel Ingreji and PW-5 Abdul Kareem Alz. They are relatives of the complainant and the mother of the victim boy.

19. The evidence of PW-15 reveal that he saw accused taking the victim boy on his motorbike. The evidence of PW-5 reveal that he is the owner of the Kirana shop in front of which the victim boy was playing and saw accused brought back the boy on his motorbike and left him in front of his shop. It is pertinent to note that the victim boy, his parents, PW-14 Musa Davood Pokse and PW-15 are not the residence of Kaagal Hini. On the date of incident, they had come to the said village to attend a lunch arranged on account of the marriage of a relative. They were not at all knowing the accused, though a suggestion is made to these witnesses that due to ill will, false complaint is filed against the accused.

20. However, the defence has not established what was the motive or ill will for the complainant and others to

falsely implicate the accused. The testimony of the victim boy and PWs-15 and 5 with regard to the identity of the accused is not disputed by the defence during their cross-examination. While the evidence of PW-1 – the victim boy prove the actual incident, the testimony of PWs-15 and 5 prove that immediately before and after the incident, they saw the victim boy in the company of accused. Even though PW-1 - the victim boy has deposed that he has given evidence as directed by his parents, the examination of his testimony clearly indicates that it is reliable and trustworthy. In the absence of any motive for false implication of the accused, this Court finds no reason to disbelieve the testimony of PWs-1, 5 and 15.

21. The evidence of the PW-12 Dr Ullas Shetty clearly establish the fact that on 16.03.2022, at 12.10 a.m, he examined the victim boy and opined that there was possibility of anal intercourse or insertion of similar object. After the receipt of FSL report, he gave opinion that there was a evidence suggestive of recent forceful penetration on the

victim boy and issued the opinion as per Ex.P16. PW-10 Dr Sachidananda Naik was the first Doctor who examined the victim boy and referred him to the higher centre. Though suggestions are made to both PW-10 and 12 that if a boy sustain injury while playing with a stick such injury as suffered by the victim boy are possible. However, the defence could not dislodge the evidence of PW-12 that it is a case of penetrative sexual assault.

22. The examination of oral and documentary evidence placed on record by the prosecution clearly establish the allegations made against the accused. The trial Court on detailed and thorough analysis of the evidence led by the prosecution has come to a correct conclusion that accused has committed the offences alleged and convicted and sentenced him. The conclusions arrived at by the trial Court is consistent with the evidence on record and this Court finds no perversity calling for interference.

23. After the 2019 amendment, the offence under Section 377 IPC is punishable with imprisonment for life or

imprisonment of either description for a term which may extend to 10 years and also liable for fine. Section 6 of POCSO Act is punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and also shall be liable to fine or with death.

24. Section 42 of POCSO Act require that where an act or omission constitute an offence punishable under the said act and also under other law for the time being enforce, then the offender is found guilty of such offence shall be punishable only under such law or this act as provide punishment which is greater in number. Therefore, though in case of offence punishable under Section 377 of IPC, discretion is vested with the Court to punish the accused with minimum sentence, in the light of Section 42 of POCSO Act, the trial Court is justified in imposing rigorous imprisonment for 20 years and also imposing fine of ₹1 lakh. There is also

no scope for interference while imposing the punishment also.

In the result, the appeal fails, and accordingly the following:

ORDER

- (i) Appeal filed by the appellant under Section 374(2) of Cr.P.C is dismissed.
- (ii) The impugned judgment and order dated 23.11.2022 in Spl.C.No.57/2022 on the file of Addl.District and Sessions Judge - FTSC-1, U.K.Karwar (Special Court for trial of cases filed under POCSO)Act is hereby confirmed.
- (iii) The Registry is directed to send back the trial Court records along with copy of this judgment.

**Sd/-
(J.M.KHAZI)
JUDGE**

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