

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.366 OF 2021

BETWEEN:

V. AMARESH @ AMBARISH,
S/O LATE VENKATESHAPPA,
AGED ABOUT 24 YEARS,
R/AT GULPET, KOLAR TOWN,
PERMANENT R/AT HOLALI VILLAGE,
KOLAR TALUK AND DISTRICT-563104.

...APPELLANT

(BY SRI. TIGADI VEERANNA GADIGEPPA, ADV.)

AND:

1. STATE OF KARNATAKA BY
KOLAR WOMEN POLICE STATION,
KOLAR,
R/P B SPP, HCK, BENGALURU
BANGALORE CITY.

2. PADMAVATHI @ PADMAMMA
W/O N. NARAYANSWAMY,
1ST MAIN, 14TH CROSS,
GANDHINAGAR,
KOLAR TOWN-563104.

...RESPONDENTS

(BY SRI. VIJAY KUMAR MAJAGE, SPP-II FOR R-1,
SRI. N.S. SAMPANGIRAMIAH, ADV. FOR R-2 V/O
DTD:23.09.2024 - APPOINTED AS AMICUS CURIAE.)



[CAUSE TITLE AMENDED VIDE COURT ORDER
DTD:31.03.2021.]

THIS CRL.A IS FILED U/S 374(2) CR.P.C. PRAYING TO SET ASIDE THE ORDER OF CONVICTION DATED 20.10.2020 AND SENTENCE DATED 21.10.2020 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR IN SPL.S.C.NO.11/2019, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 363, 376(2)(n) OF IPC AND SEC.6 OF POCSO ACT AND SEC.3(2)(V) OF SC/ST (POA) ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.08.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE G BASAVARAJA)

This appeal is preferred by the Appellant/accused against the judgment of conviction and order on sentence dated 20.10.2020 passed in Special SC No.11/2019, by the Additional District and Sessions Judge, Kolar (for short "the trial Court") whereby the accused was convicted and sentenced for the offences punishable under Section 363, Section 376(2)(n) of Indian Penal Code, Section 6 of

Protection of Children from Sexual Offences Act (for short "POCSO Act") and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the "SC/ST (PoA) Act").

2. For the sake of convenience, the parties herein are referred to with their status and rank before the trial Court.

3. The facts giving rise to this appeal are that, the appellant/accused came into contact with the victim girl while he was deputed for maintaining law and order in Gandhinagar, Kolar. Acquaintance during this period developed into conversations between them, and they fell in love. On 08.05.2019, the accused called the victim to the Court Circle in Kolar and enticed her to accompany him to Bengaluru. From Bengaluru, he took her to Thoranagal in Bellary District by the Hampi Express. On 09.05.2019, he took her to the house of CW-9 Ramaswamy and had sexual intercourse with her, despite being aware that she was a minor. Thereafter, the victim's father, suspecting the accused's involvement,

lodged a missing person complaint, pursuant to which investigation commenced. The accused and the victim were traced and found together. The victim's statement was recorded by the Investigating Officer under Section 161 Cr.PC, and she was subjected to medical examination, during which she narrated her history to the Medical Officer. She subsequently deposed before the jurisdictional Magistrate under Section 164(5) Cr.PC. The Investigating Officer, along with the victim, visited Ramaswamy's house at Thoranagal Village, where she pointed out the place at which she was subjected to sexual intercourse by the accused, and the requisite mahazar was drawn up accordingly. Upon collecting all necessary material, including a caste verification certificate obtained from the concerned Executive Magistrate, the Investigating Officer filed the charge sheet.

4. Upon receipt of the charge sheet, the Court took cognizance of the offences alleged. The Accused was arrested and remanded to custody on 22.05.2019. Subsequently, he was enlarged on bail by this Court by

Order dated 04.03.2020 passed in Criminal Petition No.7260 of 2019. Upon hearing, charges were framed. The charges were read over and explained to the accused in the language known to him. However, he pleaded not guilty and claimed to be tried. To establish the guilt of the accused, the prosecution examined 19 witnesses as PWs1 to 19, marked 33 documents as Exs.P1 to P33 and sixteen material objects as MOs.1 to 16. On closure of prosecution side evidence, statement of accused under Section 313 Cr.PC was recorded, wherein he denied all incriminating evidence and did not present any defence evidence. Having heard the arguments on both sides, the trial Court convicted the accused and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.5,000/- for the offence punishable under Section 363 of IPC and in default to pay fine, to undergo simple imprisonment for a period of six months. The accused is further sentenced to undergo rigorous imprisonment for a period of ten years with fine of Rs.25,000/- for the offence punishable under Section 6 of

POCSO Act read with Section 376(2)(n) of IPC and in default to pay fine, to undergo simple imprisonment for a period of six months. The accused is further sentenced to undergo imprisonment for life with fine of Rs.5,000/- for offence punishable under Section 3(2)(v) of SC/ST (PoA) Act. In default to pay fine, to undergo simple imprisonment for a period of three months. Further, the trial Court ordered to pay compensation of Rs.32,000/- to victim under Section 357(A) of Code of Criminal Procedure. Being aggrieved by the impugned judgment of conviction and sentence, the appellant/accused is before this Court in this appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT-ACCUSED

5. Sri Tigadi Veeranna Gadigeppa, the learned counsel appearing for the appellant/accused assailed the impugned judgment of conviction on the following grounds:

5.1. The impugned judgment of conviction and order on sentence passed by the Court below are against the

law, facts, circumstances and probabilities of the case. He further contended that the learned Sessions Judge committed a serious error in recording the conviction based on the most incredible and unreliable testimonies, and in interpreting the contradictions elicited by the defence.

5.2. It was submitted that the learned Sessions Judge failed to consider the inordinate delay in lodging the complaint, which, it was contended, was fatal to the case of the prosecution.

5.3. It was contended that the learned Sessions Judge erred in appreciating the evidence of PW14 on the question of the age of the prosecutrix. PW14 has stated that the victim was aged more than 15 and less than 17 years. The report at Ex. P20 is not conclusive to prove her age. The radiology report and x-ray are not produced. Even otherwise, two years ought to be added to her age. It was also pointed out that PW14 had admitted in cross-

examination that variation in age assessment was possible. On this basis, it was submitted that the minority of the victim at the time of the incident stood unproved, rendering the conviction unsustainable.

5.4. It was submitted that the learned Sessions Judge erred in holding that PW2 had no intention to falsely implicate the accused. It was pointed out that PW2 and victim's brother-PW3 have categorically admitted in their cross-examination, the existence of a quarrel between PW3 and the family of accused over a financial chit transaction, as also the existence of prior enmity between the parties. It was contended that, having regard to this admitted animosity, the learned Sessions Judge ought not to have proceeded to convict the accused on the strength of such interested testimony.

5.5. It was submitted that, as per the victim's own statement recorded under Section 164 Cr.PC, she had left her house of her own volition and voluntarily accompanied the appellant. It was argued that, had the appellant enticed or forcibly abducted the victim, she would, in the

ordinary course, have resisted or raised an alarm. The absence of any such resistance, negatives the very ingredients of the offence under Section 363 IPC.

5.6. It was further argued that the evidence of PW11-Dr. Shanti, disclosed no injury on the private parts of the victim, and that the absence of any injury mark on the person of the prosecutrix, which is necessary to establish the commission of rape, entitled the appellant to the benefit of doubt.

5.7. Learned counsel drew attention to the discrepancy in mahazar Ex.P5, which records that the accused and the victim stayed in the house of Ramaswamy, as against the victim's own version that it was the house of Narayanaswamy. It was emphasized that although the mahazar was conducted at the house of Ramaswamy, the officials conducting it did not obtain the signature of Ramaswamy or any member of his family. It was further submitted that the trial Court, having itself noted the discrepancies in the evidence of the official witnesses, nevertheless proceeded to hold that such

discrepancies were not fatal to the prosecution case, which finding contended to be unsustainable in light of the very discrepancies the Court had itself recorded.

5.8. It was contended that the learned Sessions Judge failed to appreciate the material contradiction between the statement recorded under Section 164 Cr.PC and the evidence subsequently led before the Court, inasmuch as the victim, in her Section 164 statement, had made no mention whatsoever of the appellant having committed rape upon her. It was further submitted that the learned Sessions Judge failed to appreciate the contradiction in the statement of PW3 regarding the travel said to have been undertaken, and that the absence of any injury to the victim's genital organs, was, by itself, insufficient to establish the guilt of the accused.

5.9. It was contended that the learned Sessions Judge committed an illegality in convicting the accused twice for the same offence. It was additionally argued that the prosecution had failed to establish that the appellant committed rape upon the victim on account of

her belonging to the Scheduled Caste community, and that the trial Court, therefore, erred in convicting the accused under Section 3(2)(v) of the SC/ST (PoA) Act.

5.10. Lastly, it was submitted that the learned Sessions Judge erred in holding the prosecution case proved beyond reasonable doubt, when the very factum of sexual intercourse remained under a cloud, and that the conviction, resting on such evidence despite the numerous discrepancies and inconsistencies noted above, was rendered in serious error. On the cumulative effect of these grounds, it was prayed that the appeal be allowed.

6. As against this, the learned HCGP appearing for the respondent-State and the learned Amicus Curiae, appearing for respondent No.2, would submit that the trial Court has appreciated the evidence on record in accordance with law. There are no materials to interfere against judgment of conviction and sentence passed by the trial Court. Accordingly, sought for dismissal of the appeal.

7. Having heard the arguments on both sides and on perusal of materials placed before us, the following points would arise for our consideration:

1. Whether the prosecution has proved beyond reasonable doubt that the victim was a child as defined under Section 2(d) of POCSO Act as on the date of alleged commission of offence?
2. Whether prosecution has proved beyond reasonable doubt that the accused has committed an offences punishable under 376(2)(n) r/w Section 6 of POCSO Act?
3. Whether the prosecution has proved beyond reasonable doubt that the accused has committed an offence punishable under Sections 363 of Indian Penal Code?
4. Whether prosecution has proved beyond reasonable doubt that the accused has committed an offence punishable under

Section 3(2)(v) of SC/ST (POA) Act?

5. What Order?

8. Our answer to the above points are:

Points No.1 to 4: in the negative;

Point No.5: as per final order.

Regarding Point No.1:

9. The offences alleged in the case on hand implicate a class of victims whom the law regards as especially vulnerable — a child, a woman, and a member of a depressed class entitled to the protective umbrella of the SC/ST (PoA) Act. It is well-settled that in cases of this nature, Courts must be sensitive to the peculiar difficulties attending the prosecution's task, victims of tender age or of vulnerable social status rarely possess the sophistication to give a perfectly consistent account, may be reluctant or delayed in reporting the offence owing to fear, shame, or social pressure, and are seldom in a position to procure independent corroboration of what is, by its very nature, an offence committed in privacy. The law has accordingly

evolved special safeguards in their favour, i.e. presumptions under Sections 29 and 30 of the POCSO Act, the rule that the sole testimony of a credible victim requires no corroboration, and the heightened obligation on Courts to view with suspicion any facile explanation offered by the accused.

10. At the same time, it is equally well settled that these protections are not licence for a Court to relax the standard of proof or to substitute sympathy for evidence. The presumption of innocence is a human right, and the burden of proving guilt beyond reasonable doubt remains, at all times, on the prosecution; the special presumptions under the POCSO Act operate only after and not in substitution of proof of the foundational facts of the offence. An accused, howsoever grave the accusation, is entitled to a fair trial, to know the precise charge he is called upon to meet, to have that charge tested on legally admissible and reliable evidence, and to the benefit of every reasonable doubt that genuinely arises from the record. The graver the offence and the greater the

resultant stigma and sentence, the more scrupulous must be the Court's scrutiny of the evidence before conviction for it is equally true that a wrongful conviction is no less a miscarriage of justice than a wrongful acquittal. It is with this dual obligation in mind, to protect the vulnerable without diluting the rigour of proof and to convict only on evidence that withstands the fullest judicial scrutiny that we proceed to examine the evidence on record.

11. The case of the prosecution is that the appellant/accused came into contact with the victim during the course of his deputation for maintenance of law and order at Gandhinagar, Kolar, in the course of which the two developed affection for each other. On 08.05.2019, the accused summoned the victim to the Court Circle, Kolar, and enticed her away to Bengaluru. From Bengaluru, he took her further to Thoranagal in Bellary District by the Hampi Express. On 09.05.2019, at the house of CW9-Ramaswamy, the accused had sexual intercourse with the victim, despite being fully aware that she was a minor and belonged to a Scheduled Caste. It

was upon the victim's father lodging a missing person complaint, suspecting the accused's complicity, that the matter came to light. On this factual foundation, the prosecution alleges that the accused committed the offences with which he stands charged.

12. The prosecution has, in support of its case on the age of the victim, produced Ex.P1 (certificate issued by the Headmaster of the School (*shaale dakhale patra*), Ex.P12 (extract of the School Admission Register), and Ex.P2 (age certificate issued by the Radiologist, SNR District Hospital, Kolar). As per the entries in Ex.P11 and Ex.P12, the date of birth of the victim is recorded as 01.10.2003. The alleged offence took place on 08.07.2019, and computed on the basis of the date reflected in Ex.P11, the victim would have been aged 15 years, 7 months and 7 days as on the date of the alleged offence.

13. Ex.P2, the Radiologist's report, opines that the age of the victim was between 15 and 17 years. Learned counsel for the appellant has drawn our attention to the

deposition of PW-10, the Headmaster of the School, examined by the prosecution to prove Ex.P11 and Ex.P12. In the course of cross-examination, PW10 candidly admitted that, at the time of a student's admission, the School obtains the student's birth certificate or the document issued by the Municipality or the concerned Hospital, and further admitted that such documents pertaining to the victim's birth details had indeed been received by the School. However, PW10 did not produce the said documents that were furnished to the School at the time of the victim's admission, and the Investigating Officer has offered no explanation whatsoever for the non-production of the birth certificate or hospital certificate that had been produced before the School authorities at the time of the victim's admission.

14. PW2, the victim, has deposed in her evidence that she studied up to the 10th standard and failed in the SSLC examination. However, the Investigating Officer has failed to collect the SSLC marks card, which would have reflected the victim's date of birth as recorded by the

Education Board, which document ordinarily regarded as reliable and authoritative proof of age. It is a settled principle that where the best evidence is available but is withheld by the investigating agency, an adverse inference is liable to be drawn against the prosecution under Illustration (g) to Section 114 of the Indian Evidence Act, 1872, whereunder the Court may presume that evidence which could be, and is not, produced would, if produced, be unfavourable to the person withholding it. In the present case, the non-collection of the SSLC marks card, despite the victim's own admission that she had appeared for the SSLC examination, constitutes precisely such a withholding of the best available evidence. In these circumstances, the material placed by the prosecution falls short of establishing, to the standard required in law, the age of the victim as on the date of the incident.

15. The prosecution has mainly relied on the school certificate. The Hon'ble Supreme Court in the case of SATPAL SINGH v. STATE OF KARNATAKA reported in (2010)8 SCC 714, relying on the decision of VISHNU v.

STATE OF MAHARASHTRA, reported in (2006)1 SCC 283, has observed that for determining the of age of child, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the School Register/Certificate, stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home, etc., the entry in the School register is to be discarded. Further, the Court has observed that '*the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the Court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal Case.*'

16. In the case on hand, as already discussed above, the Investigating Officer has failed to collect the best evidence available to prove the age of the victim. Further, the ossification certificate has also not been duly proved, inasmuch as the underlying materials, such as the X-ray report and the Radiologist's report, have not been placed on record. Viewed from any angle, the prosecution has failed to place sufficient legal evidence to establish that the victim was a "child" as defined under Section 2(d) of the POCSO Act at the time of commission of the alleged offence. We, accordingly, answer Point No.1 in the negative.

Regarding Point No.2:

17. Since the prosecution has failed to prove that the victim was a child as defined under section 2(d) of POCSO Act as on the date of commission of offence, the question of committing offence under the provisions of POCSO Act does not arise at all. Accordingly, Point No.2 is answered in the negative.

Regarding Point No.3:

18. As regards the commission of offences punishable under Sections 363 and 376(2)(n) of the Indian Penal Code, it is seen that the Investigating Officer submitted the charge-sheet against the accused for offences punishable under Sections 363 and 376 IPC, Section 6 of POCSO Act and Section 3(2)(v) of SC/ST (PoA) Act. The trial Court, too, framed charges only for offences under Sections 363 and 376 IPC and Section 6 of POCSO Act. However, the trial Court proceeded to convict the accused for the offence punishable under Section 376(2)(n) IPC, Section 6 of POCSO Act and Section 3(2)(v) of SC/ST (PoA) Act, a distinct and more aggravated category of the offence, attracting an enhanced minimum sentence, without any charge having been framed in respect thereof.

19. The ingredients of Section 376(2)(n) IPC:

The accused must have committed the act of rape, as defined under Section 375 IPC, upon the prosecutrix.

The act must have been committed more than once, upon the same victim.

The repetition must be established by evidence — it is not sufficient for the prosecution to allege a single occurrence and seek to invoke clause (n) merely on the strength of a prolonged period of association between the accused and victim; the prosecution must specifically establish that multiple, distinct acts of rape occurred.

Punishment: *Under Section 376(2) IPC, an offence falling under clause (n) is punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life — which, in this context, means imprisonment for the remainder of that person's natural life — and shall also be liable to fine.*

20. It is a fundamental postulate of criminal jurisprudence, rooted in the maxim *audi alteram partem* — that “no person shall be condemned unheard”. An accused is entitled to know, with precision, the exact nature of the accusation he is called upon to meet, so that he may shape his defence accordingly. This principle finds statutory expression in Sections 211 and 228 Cr.PC.

(corresponding to Sections 234 and 251 of the BNSS, 2023), which mandate that a charge must state the specific offence with which the accused is charged. Section 464 Cr.PC. (corresponding to Section 465 of the BNSS, 2023) ordinarily cures a mere omission or defect in the framing of a charge unless prejudice or failure of justice is demonstrated, a principle affirmed by the Hon'ble Supreme Court in WILLIE (WILLIAM) SLANEY v. STATE OF MADHYA PRADESH reported in AIR 1956 SC 116, and reiterated in ANNAREDDY SAMBASIVA REDDY v. STATE OF ANDHRA PRADESH reported in (2009) 12 SCC 546. In paragraph 42 of the judgment, the Hon'ble Supreme Court observed thus:

"42. The aforesaid legal position holds good after enactment of the Code of Criminal Procedure, 1973 as well in the light of Sections 215, 216, 218, 221 and 464 contained therein. In unmistakable terms, Section 464 specifies that a finding or sentence of a Court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because

of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been adversely affected thereby. If the ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned. A fair trial to the accused is a sine quo non in our criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hyper-technicalities. Every case must depend on its own merits and no straightjacket formula can be applied; the essential and important aspect to be kept in mind is: has omission to frame a specific charge resulted in prejudice to the accused."

21. In STATE OF UTTAR PRADESH v. PARAS NATH SINGH reported in (2009) 6 SCC 372, it is held that curative principle presupposes that the ingredients of the graver offence were nonetheless implicit in, or fairly traceable to, the charge as actually framed. Whereas here, the conviction is for an aggravated offence carrying a distinctly higher

minimum sentence than the one for which the accused stood charged and defended himself, the accused is deprived of the very opportunity to meet that specific accusation, a prejudice that goes to the root of the trial and cannot be cured as a mere irregularity. Convicting an accused for an offence graver than the one notified to him, without affording him a chance to defend against its specific ingredients, offends the fair-trial guaranteed under Article 21 of the Constitution of India and renders the conviction, to that extent, unsustainable.

22. With regard to offence under Section 363 of Indian Penal Code is concerned, it is the duty of the prosecution to prove the following essential ingredients which constitute the offence:

"An offence under Section 363 has following essentials:

(i) That the accused did:

- (a) Forceful compulsion or inducement by deceitful means;*
- (b) The object of such compulsion or inducement must be the going of a person from any place;*

(ii) That such kidnapping of any person was done from India or from the lawful guardianship."

23. In the case on hand, the complainant, Padmamma (PW1), mother of the victim, lodged a complaint on 11.05.2019, alleging that the victim had left home on 08.05.2019 at 7.00 p.m., stating that she was going to the shop, and had thereafter not returned. In the said complaint Ex.P1, it was alleged that the victim might have been taken away by one Ambarish at the instance of Channappa, Ratnamma, and Somashekhar (elder brother of the accused). Acting on this complaint, the Women Police Station, Kolar, registered Crime No.11/2019 against Ambarish, Ratnamma, and Somashekhar for the offence under Section 363 IPC, and forwarded FIR to the jurisdictional Court as per Ex.P22 on 11.05.2019 at 8.00 p.m. On 21.05.2019, the Investigating Officer secured the victim and recorded her statement, marked as Ex.P2. Based thereon, the Investigating Officer, on 29.05.2019, sought insertion of offences under Section 376 IPC, Section 4 of the POCSO Act, and Section 3(2)(v) of the SC/ST (PoA) Act. The victim was thereafter produced

before the Principal Senior Civil Judge and CJM, Kolar, for recording of her statement under Section 164(5) of Cr.PC.

Her statement on oath, marked as Ex.P4, reads as under:

"ನಾನು ನಮ್ಮ ತಂದೆ ತಂಗಿಯ ಜೊತೆ ಕೋಲಾರದ ಗಾಂಧಿನಗರದಲ್ಲಿರುವ ಮನೆಯಲ್ಲಿ ವಾಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. 10ನೇ ತರಗತಿಯವರೆಗೂ ನಾನು ವಿದ್ಯಾಭ್ಯಾಸ ಮಾಡಿರುತ್ತೇನೆ. ಆದರೆ ಉತ್ತೀರ್ಣಗಾರಿರುವುದಿಲ್ಲ.

ದಿನಾಂಕ 21.05.2019 ರಂದು ನಾನು ನನ್ನ ತಾಯಿ ಹಾಗೂ ಅಣ್ಣ ಪ್ರಭಾಕರ ಮತ್ತು ಎ.ಎಸ್.ಎ. ಶ್ರೀಮತಿ ಮಂಜುಳಮ್ಮ ರವರ ಜೊತೆಗೆ ಕೋಲಾರದ ಮಹಿಳಾ ರಾಣಿಗೆ ಹೋಗಿದ್ದೆವು. ನಾನು 10ನೇ ತರಗತಿಗೆ ಶಾಲೆಗೆ ಹೋಗುವಾಗ ನಮ್ಮ ಸ್ನೇಹಿತರ ಮನೆಯ ಬಳಿ ಅಂಬಲಿಶ್ ಎಂಬವರ ಪರಿಚಯವಾಗಿತ್ತು. ಪರಿಚಯ ಬೆಳೆದ ನಂತರ ನಾನು ನಮ್ಮ ತಾಯಿಗೆ ಸೇರಿದ ಮೊಬೈಲ್ ಸಂಖ್ಯೆಯನ್ನು ಆತನ ಜೊತೆ ಹಂಚಿಕೊಂಡಿದ್ದೆ. ಆತ ದಿನಾಲು ನನಗೆ ಫೋನ್ ಮಾಡುತ್ತಿದ್ದ ಪ್ರಶ್ನೆಕ ಕೊರಡಿಯಲ್ಲಿ ಕುಳಿತುಕೊಂಡು ಆತನ ಜೊತೆ ದಿನ ಸ್ವಲ್ಪ ಹೊತ್ತು ಮಾತನಾಡುತ್ತಿದ್ದೆ. ಕಂಪ್ಯೂಟರ್ ಕ್ಲಾಸ್ ಗೆ ನಾನು ದಿನ ಹೋಗುತ್ತಿದ್ದು ಒಂದು ದಿನ ಅಂಬಲಿಶ್ ಆತನ ಜೊತೆಗೆ ನಾನು ದೇವಸ್ಥಾನಕ್ಕೆ ಭೇಟಿ ಕೊಟ್ಟು ಅಲ್ಲಿ ಸೆಲ್ಫಿ ಚಿತ್ರ ಭಾವಚಿತ್ರವನ್ನು ತೆಗೆದುಕೊಂಡಿದ್ದು ಅದರ ಪ್ರತಿ ಅಂಬಲಿಶ್ ನನಗೆ ಕೊಟ್ಟಿದ್ದನು. ಅದನ್ನು ನಾನು ನನ್ನ ಶಾಲೆಯ ಬ್ಯಾಗ್ ನಲ್ಲಿ ಇಟ್ಟಿದ್ದು ಇದು ನನ್ನ ತಂಗಿಯ ಗಮನಕ್ಕೆ ಬಂದಿದ್ದು ಆಕೆ ಈ ವಿಷಯ ನನ್ನ ಅಣ್ಣ ಪ್ರಭಾಕರನಿಗೆ ತಿಳಿಸಿರುತ್ತಾಳೆ.

ನಂತರ ನನ್ನ ಅಣ್ಣ ನನ್ನ ಬಳಿ ಅಂಬಲಿಲಿನ ದೂರವಾಣಿ ಸಂಖ್ಯೆ ಪಡೆದುಕೊಂಡು ಆತನ ಜೊತೆ ಮಾತನಾಡಿ ಎಲ್ಲರುತ್ತಾನೆ ಎಂದು ತಿಳಿದುಕೊಂಡು ಹೋಗಿ ಆತನ ಮೇಲೆ ಹಲ್ಲೆ ಮಾಡಿರುತ್ತಾನೆ. ಮಾರನೇ ದಿನ ಮಧ್ಯಾಹ್ನ ಅಂಬಲಿಲಿನ ನನಗೆ ದೂರವಾಣಿ ಕರೆ ಮಾಡಿ ಕೋರ್ಟ್ ಸರ್ಕಲ್ ಬಳಿ ಬರುವಂತೆ ಹೇಳಿದನು . ಅದರಂತೆ ಸಾಯಂಕಾಲ 6:00ಗೆ ನಾನು ಕೋರ್ಟ್ ಸರ್ಕಲ್ ಬಳಿ ಬಂದೆ. ಅಂಬಲಿಲಿನ ಸಹ ಅಲ್ಲಗೆ ಬಂದಿದ್ದರು ಹಾಗೂ ನಾವಿಬ್ಬರೂ ಬಸ್ಸಿನಲ್ಲಿ ಬೆಂಗಳೂರಿಗೆ ಹೋದೆವು. ಮೆಜಿಸ್ಟ್ರೇಟ್ ಬಳಿ ಇಳಿದು ಟ್ರೈನ್ ಹತ್ತಿ ಬೆಂಗಳೂರಿಗೆ ಹೋದೆವು .

ಮಾರನೇ ದಿನ ಬೆಂಗಳೂರಿನ ತೋರಣಗಲ್ ನಲ್ಲಿರುವ ಅಂಬಲಿಲಿನ ಅವರ ಅಣ್ಣ ರಾಮಸ್ವಾಮಿಯವರ ಮನೆಗೆ ಹೋದೆವು. ಅಲ್ಲಿ 13 ದಿನಗಳು ಇದ್ದೆವು. 12 ದಿನಗಳ ನಂತರ ನಮ್ಮ ದೊಡ್ಡಪ್ಪನ ಮಗಳು ಪಲ್ಲವಿಗೆ ನಾನು ಫೋನ್ ಮಾಡಿದೆ. ಎಲ್ಲರಿಗೂ ಎಂದು ಆಕೆ ಕೇಳಿದಾಗ ನಾನು ಬೆಂಗಳೂರಿನ ತೋರಣಗಲ್ ನಲ್ಲಿ ಇರುವುದಾಗಿ ತಿಳಿಸಿದೆ. ಮತ್ತೆ ಮಾರನೇ ದಿನ ಪೊಲೀಸರು ತೋರಣಗಲ್ ಗೆ ಬಂದು ನಮ್ಮನ್ನು ಕರೆದುಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ.

ಬೆಂಗಳೂರಿನಲ್ಲಿ ನನಗೆ ರಾಮಸ್ವಾಮಿ ಹಾಗೂ ಆತನ ಕುಟುಂಬದ ಸದಸ್ಯರು ಹಾಗೂ ಅಂಬಲಿಲಿನ ಜಿನ್ನಾರಿ ನೋಡಿಕೊಂಡಿರುತ್ತಾರೆ. ನನಗೆ ಇನ್ನೂ ಏನು ಹೇಳುವುದು ಬಾಕಿ ಇರುವುದಿಲ್ಲ."

24. During the trial, the victim was examined as PW2. She has clearly stated that she had deposed before the Court as per Ex.P4, and that her signature thereon was marked as Ex.P4(a). During the course of

examination-in-chief, the victim did not deny the statement recorded by the Magistrate under Section 164(5) Cr.PC as per Ex.P4. While recording the said statement, no whisper was made by the victim against the accused as to any alleged kidnapping or alleged rape said to have been committed by him. However, for the first time before the Court, on oath, the victim deposed that the accused had taken her to the house of his elder brother, Narayanaswamy, where she stayed from 09.05.2019 to 21.05.2019, and that during this period the accused committed rape on her in Narayanaswamy's house.

25. It was submitted by learned counsel for the appellant that the copy of the statement recorded under Section 164(5) Cr.PC. was not furnished to the accused, as required under Section 207(iv) Cr.PC which is corresponding to Section 230(iv) of BNSS, 2023. In this regard, examination of the index attached to the charge-sheet filed by the Investigating Officer before the trial Court reveals that, at Column 21, the statement under

Section 164(5) Cr.PC, recorded by the Principal Senior Civil Judge and CJM, is shown as being in the custody of the Court. During the recording of the victim's statement at trial on 30.11.2019, the trial Court observed that the sealed cover had been opened and the statement under Section 164(5) Cr.PC. taken therefrom, the same being marked as Ex.P4. This material on record clearly reveals that the copy of the said statement was not produced by the Investigating Officer at the time of filing the charge-sheet before the trial Court. It is thus evident that the contents of Ex.P4 — the statement under Section 164(5) Cr.PC. corresponding to Section 183(5) of the BNSS, 2023 — were never perused by the Investigating Officer prior to filing the charge-sheet against the accused. Where the victim has stated before the Court, on oath, that no offence, as alleged by the prosecution was committed against her, it was incumbent upon the Investigating Officer to explain how the charge-sheet came to be filed without perusal of the statement recorded under Section 164(5) Cr.PC, corresponding to Section 183(5) of the

BNSS, 2023, an explanation conspicuously absent from the record.

26. Now we have to analyse whether furnishing of statement under Section 164(5) of Code of Criminal Procedure to the accused, which is corresponding to Section 183(5) of BNSS, 2023, is mandatory or not. In view of provision 207(iv) of Code of Criminal Procedure, corresponding to Section 230(iv) of BNSS, 2023, it is mandatory on the part of the Magistrate to supply the copy of the statement under Section 164(5) of Code of Criminal Procedure corresponding to Section 183(5) of BNSS, 2023, to the accused. In JESSICA LAL murder appeal in Criminal Appeal No.179 of 2007 along with connected appeals, the accused challenged the Delhi High Court's reversal of acquittal, in which, the Hon'ble Court has held thus:

"-- The accused has a right to receive copies of all documents and statements relied upon by the prosecution, and to move an application for production of any record or witness in support of the defence.

-- *The constitutional mandate under Article 21 and the statutory rights conferred on the accused place an implied obligation on the prosecution to make fair disclosure of material in its possession."*

27. In *P. GOPALAKRISHNA @ DILEEP v. STATE OF KERALA* reported in (2020)9 SCC 161, the Hon'ble Supreme Court has held as under:

- "i. The contents of an electronic record (memory card/pen drive) fall within the definition of 'document' under Section 3 of Indian Evidence Act, 1872, and are therefore covered by Section 207 CrPC, not excluded as a mere 'material object'.*
- ii. Section 207 casts an obligation on the prosecution to furnish, free of cost and without delay, copies of all documents mentioned therein, including those forwarded under Section 173(5).*
- iii. Furnishing of documents under Section 207 is a facet of the accused's right to a fair trial under Article 21 of the Constitution, and compliance must ordinarily be ensured on the first date of appearance, since Section 238 CrPC requires the Magistrate to be satisfied that Section 207 has been complied with.*

iv. The right is not absolute - the Court balanced it against the victim's privacy in sensitive matters, permitting conditional/regulated access rather than unrestricted copying, without diluting the general mandate of disclosure."

28. With regard to relevance of Section 164 and Section 207(iv) Cr.PC (correspond to Section 183(5) and Section 230(iv) of BNSS, 2023), it was held that the obligation under Section 207(iv) of Cr.PC extends broadly to all prosecution material (including electronic records) and is constitutionally grounded, while also recognizing that Courts may mould the manner of compliance (eg. inspection instead of copies) in appropriate cases.

29. In *Miss. 'A' v. STATE OF UTTAR PRADESH AND ANOTHER* rendered in Criminal Appeal No.659 of 2020 (arising out of SLP (Cri.) No.10401 of 2019 decided on 08.10.2020), it was held as under:

"-- The mere filing of a charge-sheet, by itself, does not entitle an accused to copies of any of the documents referred to in Section 207 Cr.PC, including a statement recorded under Section 164.

-- The right to receive a copy of the Section 164 statement arises only after cognizance is taken by the Magistrate and at the stage contemplated by Sections 207 and 208 Cr.PC - not before.

-- The High Court had erred in relying on Raj Janki Yadav without considering the Supreme Court's subsequent directions in State of Karnataka v. Shivanna (2014)8 SCC 913, which stressed confidentiality of victim statements to prevent witness tampering/intimidation until the appropriate procedural stage."

30. In TARUN TYAGI v. CENTRAL BUREAU OF INVESTIGATION reported in (2017)4 SCC 490, the Hon'ble Supreme Court has held as under: "*-- Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay, including documents/relevant extracts forwarded by the police to the Magistrate under Section 173(5). -- Such compliance must be made on the first date the accused appears before the Magistrate at the commencement of the trial, since Section 238 Cr.PC requires the Magistrate to satisfy himself of compliance*

with Section 207. -- Where documents are voluminous, the proviso permits inspection in lieu of furnishing copies."

31. A careful examination of the aforesaid decisions makes it crystal-clear that Section 207(iv) Cr.P.C., corresponding to Section 230(iv) of the BNSS, 2023, is mandatory in character. Non-compliance in furnishing the statement recorded under Section 164(5) Cr.P.C. to the accused violates the accused's fair-trial right guaranteed under Article 21 of the Constitution of India. The learned Special Judge has virtually no discretion to withhold documents under Section 173(5) Cr.PC, save where exclusion is exclusively sought by the accused under Section 170(6) or Section 161(3) Cr.PC, or in respect of copies where the document falling under clause (v) is voluminous.

32. In the case on hand, the prosecution has failed to comply with the mandatory requirement of Section 207(iv) Cr.PC. (corresponding to Section 230(iv) of the BNSS, 2023). Even at the time of marking Ex.P4, the trial

Court failed to ensure compliance with the said provision. This non-compliance with the mandatory requirement of Section 207(iv) Cr.PC, has resulted in violation of the valuable right of the accused under Article 21 of the Constitution of India.

33. It is a settled principle of law that a statement recorded under Section 164(5) Cr.PC may be used either for corroboration or for contradiction. In the case on hand, Ex.P4, admitted by the victim in her own evidence,** falsifies the version deposed by her before the Court on oath during trial. Given the material omissions and contradictions thus appearing in the evidence of the victim (PW-2), her evidence cannot be regarded as trustworthy and reliable.

34. Additionally, the evidence of PW-2 is inconsistent even as to the place of the alleged crime. In Ex.P-2, the statement of the victim recorded by the Women Police, she stated that the accused committed rape on 09.05.2019 in the house of Ramaswamy at

Thoranagal. The charge framed against the accused likewise alleges that the rape was committed in the house of CW-9 Ramaswamy at Thoranagal, Bellary District. Ex.P-3, the Spot Mahazar, similarly records that the accused committed rape on the victim on 09.05.2019 in the house of Ramaswamy — the very place pointed out by the victim herself at the time the mahazar was conducted.

35. PW-1, Padmamma, mother of the victim, has stated that the accused committed rape on the victim at Thoranagal, near Ballari. PW-2, the victim, has stated that she and the accused stayed at the house of Narayanaswamy — the elder brother of the accused — at Thoranagal. However, in her cross-examination, she has stated that the accused did not commit rape in the house of Narayanaswamy at Thoranagal at any point in time.

36. PW-3, Ramaswamy, the owner of the house, and his wife, PW-8, Hanumanthamma, have not supported the case of the prosecution. Even upon being treated as hostile witnesses and cross-examined by the prosecution,

they categorically denied the statements recorded by the police under Section 161 Cr.P.C., marked as Ex.P-6 and Ex.P-7 respectively.

37. PW-9, Basavaraj, the attesting witness to Mahazar Ex.P-3, has not supported the case of the prosecution. There is, therefore, no cogent, corroborative, or consistent evidence as to the place of the crime. As regards the medical evidence, Dr. S. Shanthi, who issued the said certificate, has been examined as PW-11 and has deposed as to the contents of Ex.P-14 to Ex.P-17. She has clearly deposed that no evidence of forcible sexual intercourse was found, the Ex.P-14, the examination report of the victim dated 21.05.2019, wherein the history furnished by the victim is recorded as under:

"As per the victim, she knew the accused by name Ambarish aged 23 years S/o Venkateshappa residing at Gulpet and working as Homeguard at Rural Police Station. Since 1 year through common friends they use to meet near school and computer class. On 07.05.19 at around 2-2.30 p.m. he had called her on her mother's mobile and mother had picked up the call. Later his

sister had called her mother to talk about marriage. On 8th May at around 6-6.30 p.m. She met accused near Court Circle, from there by two wheeler they both went to Hoskote, from there went to Majestic by Auto. From there by Hampi Express Train to Thorangal, Bellary reached there at 6.30 a.m. From there by auto went to his brothers house (by name Ramaswamy) and stayed in their house. He is married and has 2 children. They stayed there till 20.05.19. On 09.05.19 they had sexual intercourse in the night once. On 19.05.19 they went to Bagalkot by 2 wheeler from there she had called her cousin sister (Pallavi) over phone."

38. The Senior Scientific Officer Dr. Lingegowda has issued Exhibit P16 which is as under:

"Seminal stains were not detected on item Nos. 1, 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16

Skin tissue was not detected on item Nos. 6

Spermatozoa was not detected on item Nos. 3 and 5"

39. Though PW-11, Dr. S. Shanthi, the Medical Officer, has recorded the history furnished by the victim to the effect that she and the accused stayed in the house of

Ramaswamy and that they had sexual intercourse on one occasion during the night, a material discrepancy emerges when this history is set against the victim's subsequent statement. The history was recorded by the Medical Officer on 21.05.2019, whereas the victim's statement under Section 164(5) Cr.P.C. was recorded on 29.05.2019 — subsequent to the medical examination — and in that statement, the victim did not whisper a word as to the alleged sexual intercourse. Had the victim in fact narrated the incident of sexual intercourse to the Medical Officer, she would, in the ordinary course, have disclosed the same when her statement was recorded on oath before the Court shortly thereafter. However, she deposed nothing in this regard. As already discussed above, even at the stage of her deposition during trial, her evidence remained inconsistent with her statement under Section 164(5) Cr.P.C. Viewed from any angle, in the absence of corroborative evidence, the testimony of PW-2, the victim, cannot be believed. Even proceeding on the assumption that the accused had sexual intercourse with the victim,

the same would appear to be consensual. Accordingly, Point No. 3 is answered in the negative.

Regarding Point No.4:

40. Since the prosecution has failed to prove the guilt of the accused for commission of offences punishable under Sections 363 and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the POCSO Act, the question of the accused having committed an offence under the penal provisions of the SC/ST (POA) Act does not arise. Additionally, in the case on hand, the Investigating Officer, at the first instance, submitted the FIR against the accused for commission of offence under Section 363 IPC alone. It was only after recording the statement of the victim that the Investigating Officer inserted the offences under Section 376 IPC, Sections 4 and 6 of the POCSO Act, and Section 3(2)(v) of the SC/ST (POA) Act, 1989. None of the prosecution witnesses has deposed before the Court that the accused had knowledge, at the time of commission of the alleged offence, that the victim belonged to the Scheduled Caste community. Viewed from

any angle, we do not find any material to convict the accused for the offence alleged. The trial Court has failed to properly appreciate the evidence and record the same in accordance with law and facts, and in proper perspective. Hence, Point No. 4 is answered in the negative.

41. Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court wherein we find that in many cases copy of the statement under Section 164(5) of Cr.PC is not furnished by the prosecution as required under Section 207(iv) of Cr.PC. Even the investigating officer also fails to get the certified copy of the same from the Court before submitting the final report. We have noticed, in number of cases, the Investigating Officer fails to produce the statement recorded under Section 164(5) Cr.P.C. along with the charge-sheet/final report, often merely recording in the index that it remains in the custody of the Court. It is, however, the bounden duty of the Investigating Officer, before submission of the final

report, to obtain a certified copy of such statement and, upon due application of mind thereto, arrive at an informed decision as to whether sufficient material exists to proceed against the accused, as contemplated under Section 169 Cr.P.C., corresponding to Section 189 of the BNSS, 2023. Having heard and disposed of a considerable number of criminal appeals of a similar nature — involving offences under the Indian Penal Code, the POCSO Act, and the SC/ST (Prevention of Atrocities) Act — this Bench has repeatedly noticed recurring infirmities in this regard, bearing directly on the fairness of trial and the correctness of the resultant conviction. These include a consistent failure on the part of Investigating Officers to properly deal with statements under Section 164(5) Cr.PC — whether in perusing such statements before filing the charge-sheet, in furnishing copies thereof to the accused as mandated under Section 207(iv) Cr.PC, or in ensuring that any omissions or contradictions between such statements and the evidence led at trial are properly placed before the Court.

42. In numerous cases though the victim, while deposing under Section 164(5) Cr.PC, has not uttered a word in support of the accusations levelled against the accused, the Investigating Officer, acting mechanically and without application of mind, proceeds to file the charge-sheet without recording any reasons for having discarded or overlooked the statement so recorded. Such conduct is squarely contrary to the mandate of Section 169 Cr.PC, corresponding to Section 189 of the BNSS, 2023. It bears reiteration that the Investigating Officer functions, in essence, as a pre-trial judge, and is under a solemn legal obligation, before submission of any final report, to satisfy himself as to the existence of sufficient material to proceed against the accused. It is only thereafter, upon due application of mind, that a charge-sheet or final report may properly be filed. Once the charge-sheet is submitted and cognizance is taken by the Court, it becomes the duty of the learned Sessions Judge, Special Judge, or Magistrate, as the case may be, to furnish to the accused all documents as mandated under Section 207 Cr.P.C.,

corresponding to Section 230 of the BNSS, 2023 — including, specifically, the statement recorded under Section 164(5) Cr.P.C., as contemplated under Section 207(iv) Cr.P.C., corresponding to Section 230(iv) of the BNSS, 2023.

43. We have noticed that, in a considerable number of cases, this mandatory requirement under Section 207(iv) Cr.P.C. is left uncomplied with, without any reasons being assigned therefor; equally, defence counsel have, in several instances, failed to bring such non-furnishing to the notice of the Court. It is only at the stage of recording the evidence of the victim or other witnesses that the document comes to be marked as an exhibit, without the copy having ever been furnished to the accused. Where such a procedure is followed, the accused stands deprived of the valuable right to question the correctness or veracity of the statement recorded under Section 164(5) Cr.P.C. Where omissions or contradictions exist between the statement under Section 164(5) Cr.P.C. and the evidence of the victim or other witnesses recorded

during trial, the accused is entitled, in law, to put the same to the witness by way of contradiction under Section 145 of the Indian Evidence Act, corresponding to Section 164 of the Bharatiya Sakshya Adhiniyama, 2023. Non-furnishing of the copy of the statement recorded under Section 164(5) Cr.P.C. thus constitutes a violation of the accused's fundamental right to a fair trial guaranteed under Article 21 of the Constitution of India. Having regard to the mandatory character of Section 207(iv) Cr.P.C., corresponding to Section 230(iv) of the BNSS, 2023, and in light of the decisions of the Hon'ble Supreme Court referred to above, we consider it necessary to issue the following guidelines for the guidance of officers conducting criminal trials.

44. Having regard to the mandatory character of Section 207(iv) Cr.P.C., corresponding to Section 230(iv) of the BNSS, 2023, and in light of the decisions of the Hon'ble Supreme Court referred to above, we consider it necessary to issue the following guidelines for the guidance of officers conducting criminal trials:

- (i) Upon recording of the statement under Section 164(5) Cr.P.C., corresponding to Section 183(5) of the BNSS, 2023, it shall be the duty of the Magistrate to preserve the same in safe custody;
- (ii) Before submission of the charge-sheet or final report, it shall be the duty of the Investigating Officer to peruse the statement of witnesses recorded under Section 164(5) Cr.P.C., corresponding to Section 183(5) of the BNSS, 2023;
- (iii) Upon an application being made by the Investigating Officer for a certified copy of the statement recorded under Section 164(5) Cr.P.C., corresponding to Section 183(5) of the BNSS, 2023, it shall be the duty of the concerned Magistrate/Special Judge to issue the same without delay;
- (iv) Upon obtaining the certified copy of the statement recorded under Section 164(5) Cr.P.C., corresponding to Section 183(5) of the BNSS, 2023, it shall be the duty of the Investigating Officer to apply his mind as to whether the said statement supports or is contrary to the case of the prosecution;

- (v) Where the witness has not deposed anything against the accused in the statement recorded under Section 164(5) Cr.P.C., corresponding to Section 183(5) of the BNSS, 2023, it shall be the duty of the Investigating Officer to satisfy himself that sufficient material, independent of such statement, exists to justify filing of the charge-sheet against the accused.
- (vi) Upon appearance of the accused before the learned Magistrate/Sessions Judge/Special Judge, it shall be the duty of such Judge to furnish all documents as required under Section 207(iv) Cr.P.C., including the copy of the statement recorded under Section 164(5) Cr.P.C., corresponding to Section 183(5) of the BNSS, 2023.

45. We have further noticed that, in several cases, the Magistrate or Sessions Judge fails to put any question to the accused, while recording his statement under Section 313 Cr.PC, in relation to the statement recorded under Section 164(5) Cr.PC, corresponding to Section 183(5) of the BNSS, 2023. In such circumstances as well,

the accused stands deprived of his valuable right to explain or question the validity of the statement so recorded. Magistrates and Special Judges are, therefore, directed to ensure strict compliance with the aforesaid provisions without exception.

46. The Registry is directed to circulate this judgment to all Officers presiding over criminal trials. The Registry is further directed to place this judgment before the President of the Karnataka Judicial Academy, with a request that the Director of the Judicial Academy to ensure compliance by and dissemination among, all trainee Judges. The Registry is further directed to forward a copy of this judgment to the Additional Chief Secretary to Government, Home Department, Government of Karnataka, with a request that the same be circulated, through the Director General and Inspector General of Police, Karnataka, to all Investigating Officers in the State, for strict compliance with the guidelines set out herein while investigating offences of this nature.

Regarding Point No.5:

47. For the foregoing reasons and discussions, we proceed to pass the following:

ORDER

- i) Appeal is allowed;
- ii) Judgment of conviction and order on sentence dated 21.10.2020 passed by the II Additional District & Sessions Judge, Kolar in Spl.SC.No.11 of 2019, is set aside;
- iii) Accused is acquitted of the offence punishable under Section 363, 376(2)(n) of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act; and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act;
- iv) Bail bond of accused shall stand cancelled;

- v) Registry to communicate the copy of this judgment to the concerned jail authority to release the accused forthwith, if he is not required in any other case;
- vi) Registry is directed to pay an amount of Rs.10,000/- to Sri N.S. Sampangi Ramaiah, Amicus Curiae who assisted the Court on behalf of respondent No.2.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn