

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1695/2025

C/W

CRIMINAL APPEAL NO.2122/2024

IN CRIMINAL APPEAL NO.1695/2025:

BETWEEN:

[REDACTED]

(BY SMT. RASHMI JADHAV, ADDL. SPP)

AND:

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.

... RESPONDENTS

(BY SRI. PREMA KUMAR G.A., ADVOCATE FOR R1;
R2 IS SERVED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 31.08.2024 PASSED BY THE LEARNED ADDL. CITY CIVIL AND SESSIONS JUDGE - FTSC-II, BENGALURU IN SPL.CC NO.2945/2023, IN SO FAR AS ACQUITTING THE RESPONDENT-ACCUSED FOR CHARGED OFFENCES PUNISHABLE UNDER SECTIONS 363, 366, 376 OF IPC AND SECTIONS 5(L), 6 OF POCSO ACT, 2012.

IN CRIMINAL APPEAL NO.2122/2024:

BETWEEN:

... APPELLANT

(BY SRI. A.V.RAMAKRISHNA, ADVOCATE)

AND:

1.

■

■ RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDL. SPP FOR R1;
SRI. G.A.PREMA KUMAR, ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 31.08.2024 PASSED BY THE ADDL. CITY CIVIL AND SESSIONS JUDGE, FTSC-II, BENGALURU, IN SPL.C.C.NO.2945/2023 THEREBY ACQUITTING THE RESPONDENT NO.2/ACCUSED OF THE OFFENCES PUNISHABLE UNDER SECTIONS 363, 366, 376 OF IPC AND UNDER SECTION 5(L) AND 6 OF POCSO ACT 2012 BY ALLOWING THIS CRL.A AND CONVICT AND SENTENCE THE RESPONDENT NO.2/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 363, 366, 376 OF IPC AND SECTIONS 5(L) AND 6 OF POCSO ACT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.02.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

These two appeals are filed by the State and P.W.2, mother of the victim girl, respectively, challenging the judgment of acquittal dated 31.08.2024 passed in Spl.C.C.No.2945/2023, on the file of the Additional City Civil and Sessions Judge, FTSC-II, Bengaluru and praying this Court to set aside the acquittal order passed for the offences punishable under Sections 363, 366 and 376 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) and to convict the accused for the above offences.

2. The factual matrix of the case of the prosecution is that the victim girl is the daughter of P.W.2 and the victim girl was a resident of Ralahalli Village, Madakasira Taluk, Ananthapur, Andhra Pradesh. The accused is also a native of the same place, where the victim girl is residing. During the

month of April 2023, the accused came in contact with the victim girl and forced her to love him, but the victim girl refused his proposal by saying that she is still minor. But the accused told that he will marry her and made her to love him and thereafter, they both started roaming. It is the further case of the prosecution that 1½ months prior to the date of lodging of the complaint, the fact of love affair between the accused and the victim girl came to the knowledge of P.W.2 and she advised the accused not to continue such an act and she sent the victim girl to the house of P.W.1. That P.W.1 was residing at Mallasandra, T.Dasarahalli, Bangalore. This fact came to the knowledge of the accused and he used to come near the house of P.W.1 and he used to talk with the victim girl. On 16.10.2023, the accused kidnapped the victim girl from the house of P.W.1 and took her to the house of Bharatha S/o Muniyappa, which is situated at Kamakshipalya, Bangalore and in that room, the accused had forceful sexual act with her repeatedly against her wish. Thereafter, the accused took her to Tirupathi and Hyderabad and later

dropped her near Jalahalli Cross. In the meanwhile, P.W.1 had already lodged the complaint and the case was registered in Crime No.369/2023 for the offence punishable under Section 363 of IPC. On the return of the victim girl, her statement was recorded before the police and also she was taken to the Magistrate and her statement was recorded under Section 164 of Cr.P.C. and the Investigating Officer conducted the investigation and filed the charge-sheet for the offences punishable under Sections 363, 366 and 376 of IPC and Section 6 of the POCSO Act. The accused did not plead guilty and claimed trial and hence, the prosecution examined P.W.1 to P.W.15 and got marked the documents at Exs.P.1 to 23 and material objects of M.O.1 to M.O.7 were marked. On closure of the evidence, 313 statement of the accused was recorded and he did not lead any defence evidence, except marking of Ex.D.1 confronting the same in the cross-examination of P.W.9.

3. The Trial Court having assessed both oral and documentary evidence available on record, answered all the

points in the negative coming to the conclusion that the age of the minor was not proved, though relied upon Exs.P.11 and 12 and the same is not admissible and the same is not sufficient to determine the age of the victim girl as required under sub-Section (2) of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act' for short). The evidence of the doctor was also taken note of and the same is coupled with the evidence of P.W.3 victim girl and comes to the conclusion that the doctor's evidence is very clear that hymen was intact and there were no any injuries and no sign of subjecting her for sexual act and medical report Ex.P.9 was also taken note of and comes to the conclusion that in the absence of medical evidence, the question of convicting the accused does not arise and the prosecution has failed to prove the case against the accused.

4. Being aggrieved by the judgment of acquittal, Crl.A.No.1695/2025 is filed by the State and Crl.A.No.2122/2024 is filed by the mother of the victim girl.

5. The learned Additional SPP appearing for the appellant/State in Crl.A.No.1695/2025 would vehemently contend that the accused with the knowledge that the victim is a minor girl, has forcibly abducted and committed rape on her. The victim girl has supported the case of the persecution in her statement before the police and also before the doctor and also before the Magistrate under Section 164 of Cr.P.C. The statement of the victim itself is sufficient to prove the guilt of the accused. It is also contended that the provisions of POCSO Act are enacted to provide legal protection to children, who are victims of sexual assault or outraged her modesty. These factors point towards different procedures required to be adopted. The overturning of well conducted case of the prosecution on the ground like non-examination of other witnesses, when the case against the accused otherwise establishes the case beyond reasonable doubt, is erroneous. The Trial Court committed an error in acquitting the accused, which leads to miscarriage of justice and the learned Judge has ignored the reliable and acceptable evidence on record

and thereby committed an error and erroneous conclusion was given and hence, it requires interference.

6. The learned counsel for the appellant/mother of the victim, in Crl.A.No.2122/2024, would vehemently contend that the Special Judge grossly erred in holding that the prosecution failed to prove the case against the accused even though there is a positive evidence of P.W.1 to P.W.3 coupled with documentary and oral evidence of other witnesses. The learned Special Judge grossly erred in not accepting Exs.P.11 and 12 holding that these documents does not fall under the criteria of sub-Section (2) of Section 94 of JJ Act, even though the procedure prescribed under sub-Section (2) of Section 94 of JJ Act is to determine the age of an individual when the age of an individual is not definite. But in the case on hand, the victim's age is definite as per Exs.P.11 and 12 and P.W.2, mother of the victim, clearly stated that the victim is aged about 16 years and before the doctor also the age was stated. Exs.P.11 and 12 was supported by the evidence of the Head Master of MPP school, who has been examined as P.W.11 and

he identifies his signature on Exs.P.11 and 12. The defence did not dispute the school. When such being the case, ought not to have rejected Exs.P.11 and 12. The learned counsel would submit that the victim made the statement under Section 164 of Cr.P.C. and also made the statement before the doctor in terms of Ex.P.9 and categorically stated that she is a minor and when she was taken away by the accused from the custody of legal guardian, ought to have examined the same, but committed an error in not relying upon the vital evidence. Even the evidence of P.W.9, who is the owner of the building wherein the accused was residing, is very clear. The case of the prosecution is that she was subjected to sexual act in the said room and the Trial Court fails to take note of oral and documentary evidence in a proper perspective and it requires interference of this Court and reverse the judgment of acquittal.

7. Per contra, the learned counsel appearing for the accused submits that the Trial Court having taken note of Exs.P.11 and 12, in paragraph Nos.14 and 15 comes to the

conclusion that the same has now been proved under the JJ Act. The learned counsel would submit that the medical evidence is very clear that she was not subjected to sexual act. The evidence of doctor P.W.10 is very clear. The learned counsel would submit that there is no FSL report evidencing the fact that she was subjected to sexual act. The learned counsel would submit that even the victim girl has categorically admitted that she was always outside and roaming along with the accused and she only gave the address of P.W.1 to the accused. The learned counsel would submits that sister i.e., P.W.1's wife was not examined and father of the victim was not examined and Exs.P.11 and 12 are not proved and once Exs.P.11 and 12 are not proved that she is a minor, the question of invoking the offences, which are invoked against the accused does not arise.

8. In reply to this argument, the learned counsel appearing for the complainant/P.W.2 mother of the victim, would vehemently contend that the Court has to take note of the ingredients of Sections 361 and 363 of IPC and when the

age of the victim is proved that she is a minor and taking the victim from the custody of the guardian without the consent amounts to an offence and ought to have invoked Section 361 ingredients and penalised under Section 363 of IPC.

9. The learned Additional SPP appearing for the State also reiterated that the documents of Exs.P.11 and 12 are marked and if the documents of Exs.P.11 and 12 are accepted, there is a case to invoke the penal provision under Section 363 of IPC and hence, it requires interference.

10. Having heard the learned counsel for the appellants in both the cases and the learned counsel appearing for the accused and considering both oral and documentary evidence available on record and on re-appraisal, the points that would arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in not accepting the case of the prosecution and whether acquittal order amounts to

miscarriage of justice, as contended in both the appeals?

(ii) What order?

Point No.(i):

11. We have given our anxious consideration to both oral and documentary evidence available on record. This Court has already mentioned that the case of the prosecution is that there was an allegation of kidnapping of minor girl by the accused and subjecting her for sexual act. Having made a glance of the prosecution witnesses' evidence, it is clear that law was set in motion by registering a case against unknown person based on the complaint of P.W.1 and the same is a missing complaint, wherein it is stated that the victim girl went to go to the tailor shop, but she did not return. Hence, the complaint was lodged in terms of Ex.P.1 and signature of P.W.1 is identified as Ex.P.1(a). Thereafter, the victim came back and narrated what had happened. P.W.1 is a witness to Ex.P.2 panchanama. P.W.1 only speaks about missing of the victim from his house and details are given that she was

pursuing her education. He came to know that the accused was having a house at Kamakshipalya and except lodging of the complaint and reiterating the statement of the victim, nothing is elicited and hence, it is clear that P.W.1 is a hearsay witness.

12. The other witness is P.W.2, mother of the victim girl. In her evidence, she says that she is running a hotel. The accused was visiting her hotel and later she came to know that the accused was telling her daughter that he is loving her and hence, she advised him not to do the same. Her first daughter i.e., wife of P.W.1 was not keeping well and hence, she sent the victim girl to Bangalore. Her evidence is that on 16.10.2023, the accused came near the house of P.W.1 and made hand signal and called her and her daughter left the house stating that she is going to tailor shop, but she did not turn up. Hence, complaint was given by P.W.1 and they did not find her and ultimately on 23.10.2023, she came back and she revealed about the role of the accused that he took her to his room and forcibly had sexual intercourse and thereafter,

they went to Tirupathi and then to Hyderabad and then the accused dropped her near Jalahalli Cross. Hence, the victim was taken to the police station and her statement was recorded and she was also subjected to medical examination and identified her signature giving consent for medical examination in terms of Ex.P.3.

13. This witness was subjected to cross-examination. In the cross-examination, it is admitted that they belong to Vokkaliga community and the accused belongs to Scheduled Caste. She admits that she came to know about the love affair and advised the accused and her daughter. The evidence of this witness is also hearsay evidence based on the statement of the victim girl.

14. P.W.3 is the victim girl and in her evidence she says that her date of birth is 10.06.2008 and she is pursuing first PUC. She says that the accused used to visit their hotel and she was having acquaintance with him and he forced her to love him, but she refused. But both of them were roaming

with each other and when the same came to the knowledge of her parents, she was sent to the house of P.W.1. The accused came to know about the same and he came near the house of P.W.1 and called her and she refused, but he forced her and then both of them went to the room at Kamakshipalya, wherein the accused forcibly had sexual intercourse with her. Thereafter, he took her to Tirupathi and then to Hyderabad and on 23.10.2023, he brought her back and left her in Jalahalli Cross. Thereafter, she gave the statement before the police and also her statement was recorded in the Magistrate Court.

15. In the cross-examination, she admits that both accused and herself belong to the same village. It was suggested that she was loving the accused, but she says that he was forcing her, but admits that both of them were roaming together. She says that only because of fear, she was roaming along with him. She says that she only gave the address of P.W.1. Based on that, accused came near the house of P.W.1. When a question was put to her that when

the accused came near the house, why she did not inform the same to P.W.1, she says that due to fear she did not inform the same. She says that when the accused forced her, she went along with him. Once again she says that she went with fear, but the same was not disclosed to the police. It is also her evidence that the accused came along with his friend in two wheeler and she also went in the same bike along with the accused and his friend and they travelled for about 45 minutes in the very same vehicle and she cannot give the vehicle number. When a question was put that when she was taken to the room, why she did not inform the neighbours, she says that she was having fear. She says that they were in the room for about 1½ hour.

16. The other witnesses P.Ws.4, 5, 6, 7 and 8 are the panch witnesses.

17. P.W.9 is the son of the owner of the building where the accused lived. He says that for one day both the accused and the victim were there in the room. But the evidence of

P.W.3 victim girl is that they were there in the house for only 1½ hour. P.W.9 says that the accused informed him that he is loving the victim and going to marry her. The evidence of P.W.9 is not helpful to the prosecution.

18. The other witness is P.W.10 doctor, who conducted the medical examination of the victim girl. P.W.10 in her evidence says that the personality of the victim girl was grown as per her age. She did not find any external injuries on the private part or over the body of the victim and the hymen was intact and given the certificate in terms of Ex.P.9. She says that the seized articles were sent to the FSL. In the cross-examination, she admits that in Ex.P.9 she has stated that she has not found any sign of subjecting the victim for sexual act.

19. The other witness is P.W.11 School Headmaster. He produced the documents at Exs.P.11 and 12 and says that the date of birth of the victim girl is 10.06.2008 as per the

school records. He admits that the police requested through whatsapp and issued Exs.P.11 and 12 and no letter was given.

20. The other witnesses are police witnesses for recording statement and conducting the investigation.

21. The other documentary evidence before the Court are Ex.P.1 complaint lodged by P.W.1, Ex.P.2 is the spot mahazar. Ex.P.3 is the consent for examination i.e., for age estimation and also for evidence of sexual intercourse. Ex.P.4 is the 164 statement of the victim girl. Ex.P.5 is the medical examination report of the accused. Ex.P.6 is police notice to panch witnesses. Ex.P.7 is the spot mahazar. Ex.P.8 is the police notice. Ex.P.9 is the document of opinion given by the doctor, wherein it is stated that there is no sign of intercourse and that there are no signs of an act like that of sexual intercourse. Ex.P.10 is the letter given to the doctor. Exs.P.11 and 12 are the admission register and school admissions record of the victim girl. Ex.P.13 is the letter given to the headmaster. Ex.P.14 is the office memorandum invoking of

Sections 363, 366 and 376 of IPC against the accused. Ex.P.15 is a letter for apprehending the accused. Ex.P.17 is the FIR. Ex.P.18 is a letter given to P.W.2 for taking consent to subject the victim girl for medical examination. Ex.P.19 is in respect of recording the statement of the victim. Ex.P.20 is electricity bill. Ex.P.21 is the letter addressed to the FSL. Ex.P.22 is the letter given to the Inspector for recording statement and Ex.P.23 is the certificate under Section 65(B) of the Indian Evidence Act. Ex.D.1 is the statement of the owner of the building.

22. Having considered both oral and documentary evidence available on record, it is clear that P.W.1 is the brother-in-law of the victim girl and he had lodged the missing complaint as per Ex.P.1. The evidence of P.W.2, mother of the victim girl, is very clear with regard to missing of her daughter and later on she came back and narrated what had happened. Hence, she was taken to the police station and her statement was recorded. The main evidence before the Court is with regard to the evidence of the victim girl. The evidence of the

victim girl, particularly when she was taken to the Magistrate after giving the statement before the police, she categorically says that she fell in love with him and they used to roam around the city every now and then. When the parents came to know about their love affair, she was sent to the house of P.W.1. On 16.10.2023, both of them eloped and then first went to Kamakshipalya, where they had sexual intercourse, even though she says she had resisted. Thereafter, they went to Tirupathi and to Hyderabad and came back and the accused only dropped her to Jalahalli Cross and forced to tell that she was with her friends. Having considered this, it is very clear that both of them were loving each other and they used to roam around the city every now and then. The admission on the part of P.W.1 is clear that when she was sent to the house of P.W.1, she only gave the address of the house of P.W.1 to the accused and thereafter she eloped along with the accused. Hence, the question of invoking the ingredients of Section 361 of IPC as contended by the learned counsel appearing for the appellants cannot be accepted. It is clear that both of them

were loving each other and even roamed everywhere and only on her instance, the accused came near the house of P.W.1 and both of them eloped. It is important to note that to invoke Sections 361 and 363 of IPC, there must be an ingredient of forcibly taking her i.e., kidnapping the minor girl and no such forcibly taking of her from the custody of the guardian. It is also the evidence of P.W.1 that she left the house telling that she is going to the tailor shop, but did not turn up. The Court has to take note of the conduct of the victim and she only called the accused and went along with him. The ingredients of Section 361 of IPC is missing. Even though the learned counsel appearing for the appellant/mother of the victim and the learned Additional SPP appearing for the State would contend that it attracts Section 361 ingredients and also the penal provision of Section 363, the same cannot be accepted.

23. The next question before the Court is with regard to subjecting her for sexual act. No doubt, P.W.3 victim girl says that she was taken to Kamakshipalya room and the

accused had continuous sexual act. But the evidence of the doctor P.W.10 is very clear that there is no any sign of subjecting her for sexual assault and no injuries are found and there was no any sign of sexual intercourse. The medical evidence not supports the evidence of P.W.3 and also there were no any external injuries found on the genital area or anywhere in the body of the victim and the hymen was intact and hence, the question of invoking the offence under Section 376 of IPC and Section 6 of the POCSO Act does not arise.

24. In cases under the POCSO Act, where the victim does not support the prosecution and medical evidence does not corroborate the allegations, the case generally face a high probability of acquittal due to lack of evidence. In such cases, the Court looks for independent corroborative evidence, such as testimony from other circumstances viz., FLS report etc.

25. Now the question before the Court is whether she was taken with the consent of guardian. The case of the prosecution is that she was a minor and no doubt, the specific

age is also mentioned in the evidence and also relies upon the document of Exs.P.11 and 12. Ex.P.11 is in Telugu language and the same is not translated into Kannada language and the same is not accepted by the Trial Court. Ex.P.12 discloses the date of birth of the victim girl as 10.06.2008 and studying year is mentioned as 2013 to 2018 from 1st standard to 5th standard. It has to be noted that the Trial Court while considering the age of the victim girl, considered Exs.P.11 and 12 in paragraph No.14 and also the evidence given by the school Headmaster and particularly in paragraph No.15, in order to prove the age is concerned, taken note of proving of the age under sub-Section (2) of Section 94 of JJ Act. The Hon'ble Apex Court in the case of **P.YUVAPRAKASH v. STATE REPRESENTED BY INSPECTOR OF POLICE**

reported in **(2024) 17 SCC 684**, held that as per Section 94(2)(iii) of the JJ Act, the date of birth certificate from the school or matriculation or equivalent certificate by the examination board concerned has to be firstly preferred in the absence of which the birth certificate issued by the

Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents that the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the authority concerned i.e., Committee or Board or Court.

26. When there is a dispute with regard to the age is concerned, it should be proved in accordance with law. No document of birth certificate is placed before the Court and Exs.P.11 and 12 does not come within the purview of criteria of sub-Section (2) of Section 94 of JJ Act. Though the Headmaster speaks about the admission record, the same is based on the information given by the parents of the victim at the time of admission and the same is not the age proof. Apart from that, the document Ex.P.3 is very clear that consent was given to examine the victim for age estimation and also for evidence of sexual intercourse. But the doctor has not opined the age of the victim and only it is mentioned as she is 16 years and that is only a consent for examination and

no age estimation record is placed before the Court. Ossification test is also not conducted in order to come to a conclusion with regard to the age of the victim is concerned. When such being the case, the Trial Court has not committed any error in coming to the conclusion that the entry made in the school records cannot be believed in the absence of proof of the date of birth under the provisions of JJ Act and the same is discussed in paragraph Nos.14 and 15 and comes to the right conclusion that the same has not been proved. It is important to note that the victim herself eloped with the accused and there was no any force of kidnapping and she herself called the accused and went along with him. Apart from that, the age of the victim is also not proved. The Court has to take note of the fact that at the first instance she accompanied the accused and his friend in a motorcycle and travelled for about 45 minutes and then went to the house of the accused and in the said house she was there for about 1½ hour, according to her and then they went to Tirupathi and thereafter to Hyderabad and then she came back along with

the accused and the accused only dropped her near Jalahalli Cross. Having taken note of all these factors into consideration, the question of invoking Sections 361 and 363 of IPC does not arise as contended by the learned counsel for the appellants and hence, we answer the point accordingly.

Point No.(ii):

27. In view of the discussions made above, we pass the following:

ORDER

Both the appeals are dismissed.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

MD