



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL APPEAL NO.200044 OF 2019

(374(Cr.PC)/415(BNSS))

BETWEEN:

AMEEN @ AMEENSAB S/O RAZAKSAB,
AGE: 20 YEARS, OCC: DRIVER,
R/O SUMBAD VILLAGE, TQ.JEWARGI,
DIST. KALABURAGI-585 325.

...APPELLANT

(BY SRI. SHIVASHARANA REDDY, ADVOCATE FOR
SRI. USTAD ZAKIR HUSSAIN, ADVOCATE)

AND

1 . THE STATE THROUGH
YADRAMI POLICE STATION,
TQ. JEWARGI, NOW TQ. YADRAMI,
DIST. KALABURAGI-585 103
REPT. BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH.

2. LALITA W/O GUNDAPPA,
AGED ABOUT 48 YEARS,
OCC: HOUSEHOLD,
R/O SUMBAD VILLAGE, TQ. YADRAMI,
DIST. KALABURAGI-585 325.

...RESPONDENTS

(BY SRI. SIDDALING P. PATIL, ADDL. SPP FOR R1;
V/O DATED 23.03.2026 R2 IS DEAD)





THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C., PRAYING TO ALLOW THIS CRIMINAL APPEAL, SET ASIDE THE JUDGMENT DATED 18.01.2019 PASSED BY THE II ADDITIONAL SESSIONS JUDGE AT KALABURAGI IN SPL. CASE (POCSO) NO.19/2018 CONVICTING AND SENTENCING THE APPELLANT AND ETC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.03.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, DR. CHILLAKUR SUMALATH J, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
and
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CAV JUDGMENT

(PER: HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA)

Assailing with the judgment that is rendered by the Court of II Additional Sessions Judge, Kalaburagi in Special Case (POCSO) No.19/2018 dated 18.01.2019, accused therein preferred this appeal.

2. Appellant (hereinafter be referred to as 'accused' for the sake of convenience of discussion) having found guilty of the offences punishable under Sections 450, 366-



A, 376(2)(i) & (n) and 506 of Indian Penal Code (hereinafter be referred to as 'IPC' for brevity) and also under Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter be referred to as 'POCSO Act' for brevity), was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,00,000/- for the offence punishable under Sections 376(2)(i) & (n) of IPC and Section 6 of POSCO Act. He was sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- for the offence punishable under Section 450 of IPC. He was further sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- for the offence punishable under Section 366-A of IPC. Also, he was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.25,000/- for the offence punishable under Section 506 of IPC.

3. Heard Sri Shivasharana Reddy, who represented Sri Ustad Zakir Hussain, learned counsel on record for the



appellant as well as Sri Siddaling P. Patil, learned Additional Special Public Prosecutor.

4. The case of the prosecution if narrated in a narrower compass is that, the accused was following the victim girl expressing that he is in love with her. He was frequently meeting the victim girl and was threatening her. On 11.02.2018 at 12.00 noon when the victim was alone at her house, accused trespassed into the house, pushed her down and committed rape. On 25.02.2018 accused asked the victim to come out of the school. On 26.02.2018 when the victim came out of the school in which she was studying, accused asked her to accompany him to Bangalore and when she refused, he threatened her, took her to Bangalore by bus, from there to Kolar and from Kolar to Ajapanalli where he kept her in a room for two days and committed rape.

5. Five charges were framed against the accused. Firstly, that he trespassed into the house of the victim with an intention to commit rape and thereby committed such



offence and thus has committed an offence punishable under Section 450 of IPC. Secondly, that he kidnapped the victim by taking her out of the lawful guardianship of her parents with an intent to compel her or knowing it to be likely that she will be forced or compelled to love him and that she was forced or seduced to illicit intercourse and thereby committed an offence punishable under Section 366 of IPC. Thirdly, that he repeatedly committed rape on the victim girl and thereby committed an offence punishable under Section 376(2)(i) and (n) of IPC. Fourthly, that he committed an act of criminal intimidation punishable under Section 506 of IPC. Fifthly, that he committed the offence of aggravated penetrative sexual assault as defined under Section 5(1) of POCSO Act and thereby committed an offence punishable under Section 6 of the said Act.

6. Prosecution in order to establish the guilt of the accused examined as many as 19 witnesses, produced 30 documents and 09 material objects.



7. Arguing on merits of the matter, learned counsel for the appellant submitted that appellant has not committed any offences whatsoever. Prosecution miserably failed to establish the age of alleged victim as on the date of alleged incident. Medical evidence does not favour the case of prosecution. No material is on record to show that the alleged victim girl was subjected to sexual assault by the accused. Also prosecution failed to establish that said girl was a minor by the date of alleged incident. There are many lacunae in the case of the prosecution and prosecution failed to connect the accused with the crime in question. Without analyzing the evidence brought on record properly, only because case is registered against the accused that he committed the offence of rape as well as penetrative sexual assault which are heinous offences, Trial Court passed the judgment of conviction. Learned counsel further submitted that the so called victim girl subsequently got married and beget three children. Accused is in jail since the date of conviction. The



judgment of conviction is nothing but a moral conviction. Learned counsel thereby sought to allow the appeal.

8. On the other hand, learned Additional Special Public Prosecutor submitted that the prosecution emerged successful in establishing the guilt of the accused beyond all reasonable doubt. Though there are minor deficiencies in the case of prosecution and discrepancies in the evidence of witnesses, they will not come in the way, as the other evidence clearly establishes the guilt of the accused beyond all reasonable doubt.

9. Case of the prosecution is that two different incidents occurred which resulted in commission of different offences against the victim girl by the accused. First incident is the one where accused entered into the house of victim girl while she was alone and committed rape. Second incident is the one where accused kidnapped the victim girl by threatening her, took her to Bangalore, from Bangalore to Kolar and from Kolar to Ajapanalli



village where he kept her for two days and committed rape.

10. For the sake of proper appreciation of evidence and coming to a conclusion with regard to merits in prosecution version, discussion on each incident is made separately.

11. The evidence of PW.1/victim is that she was studying 9th standard at Gnyana Bharathi School, Yadrami. She was going to school in a school van. House of the accused is situated two houses after her house. Since six months from the date of incident, accused was meeting her and was talking to her when she was going to canal to wash clothes. He asked her to accompany him to Bangalore for which she refused. 15 to 20 days prior to the date of incident (date of incident being 26.02.2018) accused entered into her house at 12.00 noon when she was alone, pushed her down and committed rape despite her resistance. Accused threatened her and asked her not to disclose the matter to anybody and therefore she did



not disclose that fact to anyone. To strengthen and corroborate the testimony of PW.1 in respect of this incident, prosecution produced the evidence of PW.6. The evidence of PW.6 is that his house is situated about 4 to 5 houses away from the house of PW.1. About 4 to 5 months back at about 3.00 or 4.00 p.m. he saw the accused going inside the house of victim. 4 to 5 days later he came to know that accused took away the victim.

12. When PW.1 stated that accused entered into her house and committed rape 15 to 20 days before the incident, the evidence of PW.6 is that the said incident occurred 4 to 5 days prior to the date of the actual incident. Also when the version of PW.1 as per her evidence is that accused entered into her house at 12.00 noon, the evidence of PW.6 is that he saw the accused entering into the house of PW.1 at about 3.00 or 4.00 p.m. That apart, PW.6 during the course of cross-examination admitted that he goes to work at 10.00 a.m. and come back at 5.00 p.m. PW.6 nowhere stated that he did not



attend work on the said day and thereby he could notice accused entering into the house of PW.1. Nowhere PW.1 stated that she raised cries when the accused attacked her. At which place of the house, she was pushed down and rape was committed is not stated in clear terms. If such act was committed by the accused upon PW.1 either on cot, on sofa or anything of that sort, there will be some change in the position of either bedspread, pillows or mats whatsoever. If it was done on floor, there might have been presence of certain marks. It is not the case of the prosecution or the evidence of PW.1 that soon after the incident, accused had set right all the things and took care to erase any marks of violence. Admittedly, there is no evidence to show that the inmates of the house observed or suspected happening of anything of that sort. Therefore, it is to be concluded that such a thing might not have happened at all or if it has happened, PW.1 herself might have set the things right so that the inmates of the house will not come to know about happening of such an



incident. Even if PW.1 had done thus, it does not mean that accused should be set free and left without punishment. However, it is for the prosecution to establish beyond all reasonable doubt that such a thing happened. Without *prima facie* proof of happening of the incident of that sort, presumption cannot be drawn so as to connect the accused with the crime.

13. The evidence of PW.1 is that the accused threatened her and asked her not to disclose the incident to anybody. Therefore, she did not disclose. It is not her version or the version of her father i.e., PW.2 that she was not communicating to anybody nor going to school from the date of such incident. Therefore, it has to be inferred that her behaviour was normal. Hence, it cannot be presumed that due to threat of the accused, she has not disclosed about the assault committed on her body by the accused to anybody including her parents.

14. Coming to the subsequent events i.e., kidnapping from the school, taking the victim to different places and



committing the act of penetrative sexual assault, as per the evidence of PW.1, on 25.02.2018 accused asked her to come out of the school to go to Bangalore. On 26.02.2018 at 11.30 a.m. somebody informed her that one of her relatives died at Nilkod village and therefore she went out of the school after giving information to one Prabhu sir (PW.5). When she was near the gate, accused approached her and asked her to come along with him to Bangalore and when she refused, he threatened to throttle her neck and kill her. Accused took her to Jewargi Bus stand in a bus. From there he took her to Bangalore and then to Kolar. From Kolar he took her to Ajapanahalli village to a room situated above a garage. He kept her in that room for two days and committed rape three times. From there he took her to Bangalore Bus stand. Don Bosco people came there and took them to their institution. She stayed at Don Bosco institution for one day and thereafter her father and Yadrami police brought her and the accused to Yadrami Police Station.



15. Thus, as per the evidence of PW.1, when she was informed by somebody that one of her relatives died, she gave that information to PW.5, came out of the school and while she was near the gate, accused approached her and forcibly took her away. PW.1 during the course of cross-examination stated that she did not scream or cry when the accused took her from the gate. The evidence of PW.5 is that he is working as teacher in Gnana Bharathi Primary and High School and during the year 2017-2018 PW.1 was studying 9th standard and he was the class teacher of 9th standard students. On 26.02.2018 at 12.15 the bell rang after the interval and at that time the victim went back home stating that some of her relative died. The victim went outside the compound crying. He tried to contact the father of the victim but he was not reachable for one hour. The evidence of PW.2 who is the father of PW.1 is that his daughter went to school on that day and at 12.00 noon, PW.5 telephoned and informed that somebody took his daughter stating that one of their relatives died.



16. As per the evidence of PW.1, on 25.02.2018 accused asked her to come out of the school to go to Bangalore. On the very next day on 26.02.2018 she came out of the school informing PW.5 that one of her relatives died. As per the evidence of PW.1, somebody came and informed that one of her relatives died. Who is that 'somebody' is not stated anywhere. Even other material witnesses failed to disclose the particulars of that person. PW.1 during the course of cross-examination stated that she wears uniform to the school, but on the date of incident she was in colour dress. PW.5 during the course of cross- examination clearly stated that the victim was not in uniform. He further stated that except the victim other students were in uniform. For what reason she was not in uniform on the said day and was in colour dress is not clarified. The evidence of PW.4 is that on the date of incident at 11.35 a.m. he noticed accused and PW.1 standing and talking together in front of Yadrami school. If at all PW.1 was threatened of throttling her neck if she



does not accompany him, she would have raised cries and would have drawn the attention of PW.4 who was passing on road at that time and who is known to her. But nothing of that sort happened. All these facts and circumstances goes to show that the accused and PW.1 hatched a plan together and executing that plan, PW.1 left the school, accompanied the accused and they travelled together. Undoubtedly, taking a minor from lawful guardianship is an offence. But in the case on hand the evidence produced by the prosecution itself goes to show that it is PW.1 who voluntarily left the school and accompanied the accused. No element of coercion, false promise or threat were established by the prosecution on part of the accused.

17. Now coming to another crucial aspect that is in respect of committing of rape by the accused, as per the evidence of PW.1, accused kept her in a room for two days at Ajapanahalli village and committed rape on her three times. The evidence of PW.1 is also that her Chudidar Top, Leggings, Panty, Slip (Petticoat) and Duppatta marked as



MOs.1 to 5 were seized by police. PW.1 during the course of cross-examination stated that she did not take bath and she has not changed her cloths. She denied the suggestion that she washed her cloths at Ajapanahalli. She also denied the suggestion that she attended the calls of nature. She further stated that she did not go to toilet and bathroom during her stay at Ajapanahalli. Her version is that accused committed rape on her for three times. If the evidence of PW.1 has to be believed, certainly there would have been such material left after sexual intercourse if not on the body of PW.1, but over her cloths. But Ex.P17 - Report of Regional Forensic Science Laboratory goes to show that no seminal stains were detected on articles 1 to 5 i.e., Chudidar Top, Chudidar Bottom (Leggings), Panty, Slip and Duppatta. No such stains were detected even on Pubic Hairs, Cervical Swab, Vaginal Swab, Cervical Smear and Vaginal Smear. The evidence of PW.14 is that she examined the victim and found no external injuries on any parts of body. She further stated that the victim informed



her that after last episode she has taken bath but has not changed the cloths. PW.14 also deposed that after verifying the FSL report she is of the opinion that there is no evidence of recent sexual intercourse.

18. For connecting the accused to the crime in question, Courts should not base on volume of evidence. The evidence produced should be convincing. In the case on hand, prosecution miserably failed to establish that the accused committed rape on the victim girl either at the house of the victim or at Ajapanahalli. Prosecution also failed to establish that due to inducement or threat of the accused, PW.1 accompanied him to different places. Only because the victim is a minor girl, without there being any convincing evidence produced by the prosecution, accused cannot be convicted. Therefore, we have no hesitation to hold that the Trial Court went wrong in convicting the accused for the charges levelled. Prosecution failed to establish the guilt of the appellant for the charges levelled.



Therefore, the resultant conclusion is that the appeal is required to be allowed. Hence, the following:

ORDER

- i) Appeal is allowed.
- ii) Appellant/accused is found not guilty of the charges levelled against him and thereby he is acquitted of all the charges.
- iii) Appellant/accused shall be set at liberty forthwith.
- iv) Amount if any paid towards fine be refunded to the appellant/accused.
- v) Registry to forward copy of this judgment immediately through approved electronic mode to concerned jail authorities.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

**Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE**