CRL.A NO.100548/2022

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 1st DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CRIMINAL APPEAL NO.100548 OF 2022

BETWEEN

THE STATE OF KARNATAKA
REPRESENTED BY THE POLICE INSPECTOR
ANKOLA POLICE STATION,
UTTAR KANNADA, KARWAR,
THROUGH THE
ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA
DHARWAD BENCH, DHARWAD.

...APPELLANT

(BY SRI M.B. GUNDAWADE, ADVOCATE)

AND

1. SRI GANESH DURGA AGER
   AGE. 20 YEARS, OCC. COOLIE,
   R/O. AMADALI,
   TQ. KARWAR-581302,
   DIST. UTTARA KANNADA.

2. BAGI AGER W/O UDAY
   KANTRI NEAR MARUTI KATTI, KANTRI,
   ANKOLA.

...RESPONDENTS

(BY SRI J.S. SHETTY, AMICUS CURIAE FOR R1;
SMT. ANURADHA DESHPANDE, ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED U/S 378 (1) AND (3) OF CR.P.C., PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 30.08.2021 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE -FTSC-1 U.K KARWAR

Digitally signed by MALLIKARJUN RUDRAYYA KALMATH
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2026.07.02 14:28:55 +0530

(SPECIAL COURT FOR TRIAL OF CASES FILED UNDER POCSO) ACT IN SPECIAL CASE NO.103/2020 AND TO SET ASIDE THE JUDGMENT AND ORDER DATED 30.08.2021 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE -FTSC-1 U.K. KARWAR (SPECIAL COURT FOR TRIAL OF CASES FILED UNDER POCSO) ACT IN SPECIAL CASE NO.103/2020. AND TO CONVICT AND SENTENCE THE RESPONDENT/ ACCUSED FOR THE OFFENCE PUNISHABLE U/S 376 (2)(F)(I) (N), 506 OF IPC AND SECTION 4 AND 6 OF POCSO ACT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE)

1. The appellant/State has filed this appeal under Sections 378(1) and 378(3) of the Code of Criminal Procedure, seeking the following reliefs:

> *"TO GRANT LEAVE to appeal against the Judgment and Order of acquittal dated 30.08.2021, passed by the Addl. District and Sessions Judge -FTSC-1 U.K. Karwar (Special Court for trial of cases filed under POCSO) Act in Special Case No.103/2020;*
>
> *b. To SET ASIDE the judgment and order dated 30.08.2021, passed by the Addl. District and Sessions Judge -FTSC-1 U.K. Karwar (Special Court for trial of cases filed under POCSO) Act in Special Case No.103/2020;*

c. TO CONVICT respondent/accused and sentence for the the offences punishable U/sec. 376(2) (f) (i) (n), 506 of IPC and Section 4 and 6 of POCSO Act in the interest of justice and equity."

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

3. The case of the prosecution, in brief, is as follows:

The accused, within the limits of Ankola Police Station at Kantri Village being aware that victim girl was a minor aged 14 years and 6 months and was related to him, in the month of March 2018, under the pretext of expressing love towards her, took her to the bathroom which is situated outside the house, hugged her, removed her clothes forcibly and took her behind the bathroom in an open space, committed sexual assault on her. Two months thereafter, accused again called the victim to the terrace which is under construction of the house belonging to PW.5 (CW8) and committed forcible sexual intercourse with her and accused has continually committed sexual intercourse with

her in the said place. Lastly, on 30.03.2020 in the open space, accused committed sexual intercourse with her, due to the said act, she became pregnant of 22 weeks. Accused after coming to know that victim girl was pregnant, threatened her, if she informed anyone about the incident, he would not spare her life. Thus, the accused is alleged to have committed offences punishable under Sections 376(2)(f), 376(2)(i), 376(2)(n), and 506 of the Indian Penal Code (IPC), and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

4. In order to prove the guilt of the accused, the prosecution examined PW-1 to PW-23 and relied upon documentary evidence marked as Exs.P-1 to P-42.

5. The learned Sessions Judge, after appreciating the oral and documentary evidence placed on record by the prosecution, proceeded to pass the impugned judgment by acquitting the accused of the aforesaid offences.

6. Being aggrieved by the impugned judgment and order of acquittal passed by the learned Sessions Court, the

State has preferred the present appeal on the following grounds:

a. The impugned judgment of acquittal is contrary to law, facts, and the evidence on record. The same is unsustainable.

b. The Trial Court, in paragraphs 13 to 21 of the judgment, held that the victim was a minor as on the date of the incident. However, it failed to consider the other aspects of the matter regarding the commission of the offence and thereby erroneously acquitted the accused.

c. PW-7, who is a member of the Mahila Santvana Kendra and an Apta Samalochaki, clearly deposed regarding the filing of the complaint by the complainant as per Ex.P-11.

d. PW-8, the doctor who examined the victim on 25.06.2020, issued the medical certificate marked as Ex.P-12. In the said certificate, the doctor has clearly recorded the case history and the victim's disclosure regarding the sexual assault committed on her. The evidence of PW-8 has not been controverted by the accused, nor has the accused disputed the contents of the medical certificate. The Trial Court failed to properly appreciate this material evidence.

e. PW-10 and PW-11 are the Headmasters of the different schools, they have issued school certificates

marked as Ex.P-16 and Ex.P-18 respectively, wherein the date of birth of the victim is recorded as 12.12.2015. Their evidence is corroborated by the testimony of PW-21, the Tahsildar, who issued the birth certificate marked as Ex.P-33. The Trial Court failed to properly appreciate the consistent and corroborative evidence regarding the age of the victim.

f. PW-20, the Assistant Director and Technical Manager of the DNA Section, FSL, Bengaluru, issued the DNA report marked as Ex.P-32, wherein it is clearly opined that the accused is the biological father of the child. This crucial scientific evidence has not been properly appreciated by the Trial Court. The Trial Court discarded the evidence of PW-20 and Ex.P-32 on the grounds that the report did not mention the quantity of blood collected, that PW-20 had not specifically stated the quantity of blood samples taken and the procedure followed during DNA examination, and that the blood samples were not sent to the laboratory within 24 hours. The said findings are contrary to the material available on record.

g. The Investigating Officer collected the blood samples of the accused in the presence of the learned Magistrate and with the assistance of a doctor on 08.02.2021. The samples were forwarded to the FSL on the very same day and were received by the FSL on 09.02.2021, as reflected in Ex.P-32.

h. The DNA test report specifically records that the seals on the articles received were intact and that the description of the articles corresponded with those mentioned in the forwarding invoice. The Trial Court failed to properly read and appreciate this evidence in its correct perspective and thereby erred in acquitting the respondent/accused. The findings recorded by the Trial Court are perverse and unsustainable in the eye of law.

i. The Hon'ble Supreme Court, in the case of ***Ravi Shankar @ Baba Vishwakarma v. State of Madhya Pradesh***, reported in ***2019 (4) Crimes 82 (SC),*** has held in paragraph No. 38 as follows: ***(2019) 9 SCC 689.***

> *"The findings of kidnapping, rape, resultant death and destruction of evidence have hence been proven beyond reasonable doubt, as evidenced by concurrent findings of the Courts below. Even this Court on 10th January, 2018 has confirmed the conviction of the appellant keeping in view the fact that DNA typing carries high probative value for scientific evidence. The said principal is not appreciated by the trial court and erroneously acquitted the accused.*

j. Though PW.12-victim is not supported the case of the prosecution, the Court can convict the accused by relying on the other material evidence available on record. The Hon'ble Apex Court in the reported case ***State through Police Station, Lodhi Colony, New***

Delhi v. Sanjeev Nanda, (2012) 8 SCC 480, at para No.101 it is held that:

> *"101. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."*

k. It is further submitted that, the Hon'ble Apex Court in the reported judgment, reported in ***(2019) 17 SCC 523*** at para No.10 it is held that:

> *"A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor can the victim be permitted to subvert a criminal trial by stating false hood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal."*

l. The Trial Court ought to have convicted the respondent/accused by taking into consideration the evidence of PWs.7, 8, 10, 11, 20 and 21, as well as that of the Investigating Officers. Failure to properly appreciate and consider the said evidence has

resulted in a miscarriage of justice and has seriously prejudiced the case of the prosecution.

m. The learned Special Judge has completely ignored the provisions of Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Under Section 29 of the POCSO Act, where a person is prosecuted for offences punishable under Sections 3, 5, 7 and 9 of the Act, the Court shall presume that such person has committed the offence unless the contrary is proved. This is a statutory presumption that is mandatorily required to be drawn against the accused. The burden of rebutting such presumption lies upon the accused. The Trial Court has failed to draw the statutory presumption as required by law. The said provision creates an exception to the general rule of presumption of innocence applicable in ordinary criminal trials and casts a burden upon the accused to establish his innocence.

n. It is further submitted that Section 30 of the POCSO Act raises a presumption regarding the culpable mental state of the accused. The expression "culpable mental state" includes intention, motive, knowledge of a fact, and the belief in, or reason to believe, a fact. The provision requires the accused to prove the absence of such culpable mental state beyond reasonable doubt. The Trial Court has failed to give due effect to this statutory presumption.

o. The learned Sessions Judge has not properly appreciated the mandatory presumptions available under Sections 29 and 30 of the POCSO Act and has failed to evaluate the evidence in the light of these provisions. Instead, the case has been decided as though it were an ordinary criminal trial, without considering the special statutory scheme enacted under the POCSO Act. Consequently, the respondent/accused has been mechanically acquitted. On these grounds, the appellant/State has prayed for allowing the appeal, setting aside the impugned judgment of acquittal, and convicting the accused for the offences charged against him."

7. Heard the learned Additional SPP for the appellant-State and the learned counsel appearing for the respondent-accused.

8. While considering the evidentiary value and reliability of DNA evidence, this Court has taken note of the following judgments:

a. *Badal @ Prince Malhotra Vs. State of (NCT of Delhi) IN Crl.A.No.240/2023 and Crl.M.(Bail) 375/2023.*

b. *Prakash Nishad Vs. State of Maharastra* reported in *MANU/SC/0613/2023.*

c. *Jayantibhai Chaturbhai patel Vs. state of Gujarat in Crl.A.No.890-891 of 2017.*

9. The submissions advanced by the learned Additional State Public Prosecutor on behalf of the appellant-State are as follows:

a. Though the victim and several other prosecution witnesses turned hostile, the prosecution has relied upon the medical evidence, namely Ex.P-12, and the DNA Test Report marked as Ex.P-32. The DNA report reveals that the blood samples of the accused, the victim, and the child born to the victim were subjected to scientific examination, and it was concluded that the accused is the biological father of the child and the victim is the biological mother. Therefore, Ex.P-32 constitutes material and scientific evidence. The Trial Court erred in rejecting the DNA report and acquitting the accused.

b. It is contended that the DNA report conclusively establishes the paternity of the child and, therefore, the learned Trial Judge ought to have convicted the accused. Accordingly, the learned Additional SPP prayed that the appeal be allowed, the impugned judgment of acquittal be

set aside, and the accused be convicted for the offences charged against him.

10. *Per contra*, the learned counsel appearing for the respondent-accused submitted that the DNA report cannot be treated as conclusive evidence in the facts of the present case. It was contended that there were serious lapses on the part of the Investigating Officer in collecting, preserving, and forwarding the blood samples to the Forensic Science Laboratory. Therefore, according to the respondent, the DNA report cannot be safely relied upon for recording a conviction. It was further submitted that the Trial Court was justified in rejecting the DNA evidence on the ground that there existed a possibility of manipulation or tampering with the samples. Accordingly, it was prayed that the appeal be dismissed and the judgment of acquittal be affirmed.

11. We have heard the submissions of the learned counsel appearing on both sides. We have also carefully perused the Trial Court records, the evidence relating to the collection and forwarding of blood samples for DNA analysis, the DNA report, and the impugned judgment.

12. In the present case, all the material witnesses examined by the prosecution, including the victim, have turned hostile and have not supported the prosecution case.

13. Therefore, the principal question that arises for consideration is whether the DNA evidence, by itself, can form the sole basis for recording the guilt of the accused.

14. PW-20, the Assistant Director, DNA Section, Forensic Science Laboratory, Bengaluru, deposed that on 09.02.2021, a police constable from Ankola Police Station produced three sealed articles in connection with Crime No.97/2020, which was registered in the DNA Section as DNA Case No.141/2021. Upon verification, the following articles were received:

> *(i) Article No.1 – Blood sample collected from the accused, Ganesha;*
>
> *(ii) Article No.2 – Blood sample collected from the victim girl;*
>
> *(iii) Article No.3 – Blood sample collected from the female child.*

15. PW-20 further deposed that all the articles were received in sealed condition and were transported in a

temperature-controlled thermocol box. The descriptions found on the articles tallied with the sample seal and the forwarding invoice accompanying the case file.

16. PW-20 further stated that she subjected the samples to DNA profiling by adopting the prescribed scientific procedure. DNA was extracted from all three blood samples and analysed. Upon examination, it was found that the DNA profile of the female child matched with the DNA profile of the accused. Accordingly, PW-20 concluded that the accused is the biological father of the child and that the victim is the biological mother. The said opinion is reflected in Ex.P-32.

17. The learned Additional SPP contended that Ex.P-32 clearly establishes that the accused is the biological father of the child born to the victim and that the said scientific evidence ought to have been given due weight while deciding the case.

18. On the other hand, the learned counsel for the respondent submitted that, although Ex.P-32 indicates a DNA match with the accused, PW-20 admitted during cross-examination that there was a gap of approximately two

months before the DNA examination was conducted. PW-20, however, clarified that the samples were preserved in a cold-storage facility and that no deterioration would occur if the blood samples were properly stored.

19. The respondent further relied upon the evidence of PW-23, the Investigating Officer-Krishnananda Naik, who deposed that a requisition for DNA examination was submitted before the Court on 13.01.2021 and permission was granted. Blood samples were collected before the learned Magistrate on 08.02.2021 and were forwarded to the FSL, where they were received on 09.02.2021.

20. It was argued on behalf of the respondent that the samples were not immediately forwarded for examination and that there existed a possibility of tampering. It was also contended that the prosecution failed to establish that the samples were continuously preserved in a proper cold-storage facility during transit.

21. In support of the said contention, reliance was placed upon the decision in ***Nagappa S/o Manappa v. State of Karnataka, Criminal Appeal No.1933/2019, decided on 19.12.2019***. In the said case, where the

victim and other material witnesses had turned hostile and the prosecution primarily relied upon DNA evidence, the Court observed that it would be unsafe to base a conviction solely upon DNA evidence in the absence of supporting evidence and that a balance must be maintained between scientific evidence and oral testimony.

22. Reliance was also placed on the observations made in ***Shaktiman v. State of Maharashtra***, reported in ***2019 SCC OnLine Bom 139***, wherein it was observed that a challenge to DNA evidence can arise only if there is material on record suggesting the possibility of tampering with the blood samples at any stage.

23. Reference was further made to State of ***Gujarat v. Jayantibhai Somabhai Khant,*** reported in ***2015 Cri LJ 3209***, wherein it was observed that where DNA evidence constitutes the sole piece of evidence, a positive DNA match may not by itself be sufficient to conclusively establish the guilt of the accused, particularly when all material witnesses, including the prosecutrix, have not supported the prosecution case.

24. In the present case, all the material witnesses, including the victim, have turned hostile. Though scientific evidence is undoubtedly relevant and carries significant evidentiary value, the defence has pointed out certain discrepancies regarding the collection, preservation, and forwarding of the blood samples. The evidence of the Investigating Officer indicates that the samples were transported in a thermocol box, and the prosecution has not adduced detailed evidence regarding continuous cold-storage preservation during transit.

25. Having regard to the fact that the material witnesses have not supported the prosecution case, and considering the doubts raised with respect to the handling of the samples, this Court is of the opinion that the DNA report, in the peculiar facts and circumstances of the present case, cannot by itself form the sole basis for recording a conviction. Consequently, the contention of the learned Additional SPP that the accused should be convicted solely on the basis of the DNA evidence cannot be accepted.

26. The learned Trial Court has rightly come to the conclusion that the prosecution has failed to prove the guilt

of the accused beyond reasonable doubt and has, accordingly, acquitted the accused.

27. In view of the above discussion, this Court is of the opinion that the judgment of the Trial Court does not call for any interference.

28. Accordingly, the point for consideration is answered in the negative.

29. Hence, I proceed to pass the following:

ORDER

a. The appeal is ***dismissed***.

b. The judgment and order of acquittal dated 30.08.2021 passed by the Additional District and Sessions Judge, FTSC-1, Uttara Kannada, Karwar (Special Court for trial of cases under the POCSO Act) in Special Case No.103/2020 is hereby confirmed.

c. The respondent/accused stands acquitted of the offences punishable under Sections 376(2)(f), 376(2)(i), 376(2)(n) and 506 of the Indian Penal Code and Sections 4 and 6 of the

Protection of Children from Sexual Offences Act, 2012.

d. Registry shall transmit the Trial Court Records forthwith along with a copy of this judgment.

e. The assistance rendered by the *amicus curiae*, namely, Sri J.S. Shetty and Smt. Annuradha R. Deshpande, in the disposal of this appeal is appreciated. The High Court Legal Services Authority, High Court of Karnataka, shall pay an honorarium of Rs.5,000/- each to the *amici curiae*.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

AC
CT-CMU