

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30th DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.524 OF 2018 (C)

BETWEEN:

CHRISTOPHER JASWANTH RAJ
@ CHRISTOPHER,
S/O JAYARAJ BERNARD,
R/AT. NO.3134, 6TH C MAIN,
13H CROSS, INDIRANAGAR,
HAL II STAGE,
BANGALORE-560038.

...APPELLANT

(BY SRI HASHMATH PASHA, SENIOR COUNSEL, FOR
SRI KARIAPPA N.A., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY BANASWADI POLICE STATION,
BANGALORE-560043.
(REPRESENTED BY LEARNED STATE PUBLIC
PROSECUTOR)

2. KAJAL RAJESH SONDAGAR
D/O. RAJESH B. SONDAGAR
AGED ABOUT 20 YEARS
RESIDING AT NO.324, 4TH 'B' CROSS
5TH MAIN, OMBR LAYOUT
CHIKKABANASWADI,
BENGALURU-560 043.
(AMENDED AS PER ORDER DATED 23-7-2024)

...RESPONDENTS

(BY SRI VIJAY KUMAR MAJAGE, SPP-II, FOR R-1;
SRI SAMPANGI RAMAIAH N.S., AMICUS CURIAE, FOR R-2)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 15-2-2018 PASSED BY THE LIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, IN SPL.C.C.NO.359 OF 2017, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 379 OF IPC READ WITH SECTION 5(I) R/W 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT AND ALSO UNDER SECTION 506 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED 24-3-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

The appellant has filed this appeal being aggrieved by the judgment of conviction and order of sentence dated 15.02.2018 passed by the LIII Addl. City Civil and Sessions Judge, Bengaluru, in Special C.C.No.359 of 2017, wherein the Sessions Court convicted and sentenced the appellant to undergo imprisonment for life for the offence punishable under Section 376 of Indian Penal Code, 1860 (for short, "IPC") read with Section 5 (I) of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and to pay fine of Rs.1,00,000/-.

2. The brief facts of the case are that:

The appellant was running a dance academy by name "Attitude Counts Dance Academy" at H.R.B.R Layout within the limits of Banaswadi Police Station, Bengaluru. Many persons had joined for dance training. In the year 2014, PW.3 - Karishma Singh underwent dance training at accused Dance Academy. Later, she was appointed as a dance instructor in the same dance academy till 01.04.2017. The first informant-victim - PW2 also joined for dance training in the academy of the appellant from April 2016. While she was attending the dance classes, the appellant became close to her. One day in the month of September 2016, she had gone to dance class at 9.00 a.m. and other students had not yet arrived. The appellant called her and while talking, the appellant kissed her. On 17.12.2016, there was Annual Day programme 'Infinity' and from next day onwards, there was vacation for dance classes on account of Christmas and New Year. But on the next day, PW.2-victim went to the dance academy and at that time, the appellant forcibly committed aggravated penetrative sexual assault on her, which she did not disclose to anyone. The accused also attempted to influence personal life and academics of the victim by advising her to take dance as a full

time career, join open school and not to interact much with her parents, family members, friends and also advised her to stay in a paying guesthouse, if there is any obstructions from her parents. When things stood thus, on 2nd April 2016, the mother of PW.3 called victim's father i.e. PW.1 and informed that accused had behaved inappropriately with her daughter and they are going to lodge a complaint against the accused. On the same day, in the evening, the victim told PW.3 as what was done to her by the accused. On the advice of PW.3, she decided to inform the matter to her parents and on 08.04.2017, she came along with her father PW.1 and lodged the complaint as per Ex.P2 against the accused. Thus, PW.8 received the complaint from the father of the victim (PW.1) at 2.05 p.m., registered an FIR-Ex.P8 for the offences punishable under Section 376 of IPC and Sections 4, 6 and 8 of POCSO Act, drew mahazar Ex.P1, subjected the victim for medical examination. Since the accused was arrested in the case lodged by PW.3, body warrant was issued and the accused was secured under body warrant in this case and later, he was subjected to medical examination. The statement of the victim under Section 164 of Cr.P.C. was recorded. The Investigating Officer, after completion of the investigation, filed charge sheet against

the accused. On receipt of the charge sheet, the Special Court took cognizance of the alleged offences, framed charges against the accused for the aforesaid offences. However, the accused denied the charges and claimed to be tried.

3. The prosecution in order to prove its case, examined in all 11 witnesses as PW.1 to PW.11 and got marked 10 documents as per Exs.P1 to P10. After examination of the prosecution evidence, the appellant/accused was examined under Section 313 Cr.P.C. The defence of the accused was of total denial. For the defence, the accused examined DW-1 to DW-3 and 40 documents as per Exs-D1 to D40 were marked.

4. Assessing the evidence of the prosecution witnesses and the defence, the trial Court convicted and sentenced the appellant for the offence punishable Section 376 of IPC read with Section 5(I) of POCSO Act, 2012. Being aggrieved by the same, the appellant has filed this appeal.

5. Sri. Hashmath Pasha, learned Senior Counsel appearing on behalf of the appellant/accused, vehemently contended that the trial Court has erred in convicting the accused for the offence punishable under Section 376 of IPC and Section 5(I) of POCSO Act, 2012, as the medical report

does not support the case of prosecution and the evidence of the victim is not supported by the medical evidence, since no stains of semen or blood were found on the clothes of the victim. Therefore, it creates serious doubt about the credibility of evidence of the victim. Further, there was delay in lodging the complaint. It is submitted that in view of the dispute between the accused and PW.3, at her instance, false case was registered and no independent witnesses have been examined by the prosecution and on account of non-examination of material independent witnesses, the case of prosecution suffers from serious doubts.

6. It is contended that even the doctor has categorically stated that there is no physical or pathological evidence of rape. In the FSL report/serological report, the blood and semen allegedly found on the clothes of the victim are inconclusive. Therefore, the serological report of blood and semen allegedly found on the clothes of victim does not help the prosecution. There are material contradictions in the deposition of the victim and in respect to lodging of FIR.

7. It is further contended that the prosecution failed to prove that that victim was aged below 18 years as on the date

of commission of the offence, which is most important ingredient of offence under POCSO Act. There should be substantive evidence to prove the age of the victim and in the absence of the same, no offence would constitute under the said Act.

8. It is further contended that, as per prosecution, the victim girl, joined the dance academy on 16.04.2016 and continued till 08.01.2017 and during this period, the accused committed aggravated penetrative sexual assault on four to five occasions on the victim, but she remained silent till lodging of complaint by PW.3 in another case.

9. It is further contended that only after due deliberations with the retired Assistant Commissioner of Police by name Munirathnam Naidu, who is a close friend of father of victim, on 08.04.2017, a complaint was lodged against the appellant/accused before the respondent-police, upon which, a crime was registered in Crime No.230/2017. Till such date, the victim has not informed anyone about any alleged act of forcible penetrative sexual assault on her by the appellant. If really, the incident of forcible penetrative sexual assault had been committed on the victim girl, aged '16' years, who was

having knowledge of worldly affairs, would not have remained silent about any atrocious act. However, the victim had remained silent till PW.3 prompted her father, which would suggest that either no such incident of forcible intercourse had occurred or that the victim girl on her own accord had indulged in such activities, which was not a forcible one, but with her own connivance and in the facts and circumstances of the case, there was no such act committed by the appellant.

10. It is further contended that in the Dance Academy of the appellant, more than 200 students had participated in the dance in different branches and in fact PW.3, P. Karishma, who joined as a trainee, underwent dance training and she became the instructor and along with her, many instructors were teaching dance classes to students of different age groups and the dance academy was being run with good appreciations. When such was the case and when PW.3, Karishma was noticed smoking *ganja* along with other boys in front of Jesus statue kept in the dance academy, the appellant got annoyed and decided to terminate her services. Being annoyed by the same, she decided to take revenge against the appellant and after due deliberations, lodged a false complaint on 02.04.2017 and thereafter, prompted the victim-PW.2 to lodge a complaint and

accordingly on 08.04.2017, a false complaint was lodged by the victim against the appellant/accused.

11. It is further contended that the appellant in his 313 Cr.P.C. statement and also by examining three defence witnesses has established that at no point of time, he indulged in any such act of sexual intercourse with any of the students of dance classes and this was a false allegation being made by the victim at the instigation of PW.3.

12. It is further contended that the accused has produced many photographs and Instagram conversations and messages, which were sent by the victim to one Abhishek Sawant and other boys and merely because the doctor has opined that the hymen of PW.2 is not intact, it cannot be inferred that it was because of forcible penetrative sexual assault on the victim by the appellant, the hymen was not intact. On the other hand, in the normal circumstances of playing or cycling, rupture of hymen cannot be ruled out.

13. It is further contended that as per the evidence of PW11-Dr. Thejaswini, who examined the victim and issued medical certificate as per Ex.P3, no external injuries were found on person of PW.2 and her opinion particularly during her

cross-examination is that, if really the victim girl was subjected to forcible intercourse, signs on her genital organs would have been different, but in the case of the victim girl, she had indulged in sexual activities many times. No signs of victim being subjected to forcible intercourse were noticed by said doctor. Therefore, the medical evidence totally negates any act of forceful intercourse on the victim by the appellant/accused.

14. It is further contended that none of the students of Dance Academy have been examined to prove the allegations made against the appellant. It is only PW.3, who prompted the victim to take revenge against the appellant, has been examined and only the oral testimony of the victim and PW.3, which are inimical in nature are taken on record.

15. It is contended that when the medical evidence corroborates with the case of the defence, it is hazardous to accept the prosecution case. If the trial Court had appreciated the evidence with strict scrutiny to ascertain the truth, i.e., the defence evidence and the admissions in the cross-examination of prosecution witnesses, more particularly, PW.1 to PW.3 and PW11 - the doctor, it could have been clear to the trial Court that a false case was foisted against the appellant with the sole

intention to see that his career in the Dance Academy would be seized off. The explanation of appellant in his 313 Cr.P.C. statement coupled with evidence of three witnesses viz., DW-1 to DW-3 and photographs produced in Exs.D1 to D29 and Exs.D35 to D38 and Ex.39 - CD, which are all electronic records and when it was confronted to the victim-PW.2 and PW.3, they were proved in evidence, which clearly suggests that the victim girl on her own accord indulged in such activities at other places, but not because of any forcible act said to have been committed by the appellant in the Dance Academy. Thus, the victim's silence in not informing anyone and only on provocation given by PW.3 and being unable to face the situation in order to conceal her own guilty act has given a false evidence implicating the appellant.

16. It is further contended that the trial Court committed an error by invoking presumption prevailing under Sections 29 and 30 of POCSO Act.

17. It is further contended that the appellant is suffering from bipolar disorder, due to which, he is under hallucination and delusion, for which, he was treated initially in Prison Hospital by a Psychiatrist and thereafter, he was referred to

NIMHANS, where he was treated for more than a month with electroconvulsive therapy treatment for 12 times and he was given medication. Further, when the appellant is suffering from mental disorder, conducting of trial is illegal and thereby, the entire trial is vitiated because of non-holding of inquiry as to incapacity to face trial by the appellant/accused.

18. It is further contended that there is delay in lodging the complaint, but no reason has been assigned in column No.8 of first information report for the delay. Further, the Investigating Officer has not seized any clothes of the victim. Further, the Investigating Officer has not examined any other instructor or students, who had joined the dance classes at the relevant point of time.

19. It is further contended that to substantiate the contention of the accused, he examined DW.1 and he has stated that the accused is innocent. Further, the evidence of DWs.1 to 3 clearly demonstrates that no such incident had taken place in the Dance Academy. On all these grounds, learned Senior Counsel prays to allow the appeal and set aside the judgment of conviction and sentence passed against the appellant.

20. Learned Senior counsel appearing for the appellant, in support of his submissions, relied upon the following decisions:

1. ***P. Yuvaprakash v. State Rep. by Inspector of Police*** reported in **2023 Supreme (SC) 641**;
2. ***Umesh Yadav v. State of Bihar*** reported in **2025 SCC Online SC 3048**;
3. ***Jayamala v. Home Secretary Govt. of JK*** reported in **1982 (2) SCC 538**;
4. ***Santosh Prasad v. State of Bihar*** reported in **2020 (3) SCC 443**;
5. ***Rajak Mohammad v. State of H.P.*** reported in **2018 (9) SCC 248**;
6. ***Manak Chand @ Mani v. State of Haryana*** reported in **2023 SCC Online SC 1397**;
7. ***Alamely v. State Rep. by Inspector of Police*** reported in **2011 (2) SCC 385**;
8. ***Manikanta @ Puli v. State of Karnataka*** reported in **2024 Supreme (Kar) 294**;
9. ***Dinesh @ Buddha v. State of Rajasthan*** reported in **2006(2) Supreme 363**;

21. *Per-contra*, the learned SPP-II appearing for respondent No.1-State supported the conviction and sentence recorded by the trial Court and vehemently contended that even though the victim and the appellant knew each other, the fact remains that the victim was below the statutory age and the consent is irrelevant. He further submitted that the findings of the trial Court with respect to the age of the victim is supported and corroborated by the bonafide/study certificate and the defence has not disputed the birth certificate issued by the competent authority. Hence, the age of the victim stood proved and in the appeal, the accused cannot dispute the age of the victim.

22. It is further contended that the victim has fully supported the case of prosecution. Therefore, the Court while evaluating the evidence of the victim remain alive of the fact that in a case of rape, no self-respecting woman will come forward before the Court just to make a humiliating statement against her own honour, such as commission of rape on her. The evidence of victim should not be suspected and should be believed and if the evidence is reliable, no corroboration is necessary. He further contended that Ex.P10, the certificate issued by the competent authority to prove the age of the

victim was not at all disputed by the defence and it was marked with consent. If Ex.P10 document had been disputed at the initial stage by the accused, then the prosecution would have placed the birth or admission register extract as contemplated in **P. Yuvaprakash's case** cited supra. Further, the oral testimony of victim PW.2 is corroborated by her 164 Cr.P.C. statement recorded by the Magistrate. Hence, the prosecution proved the ingredients of Section 376 of IPC and Section 5 (I) of POCSO Act, 2012.

23. Having considered in detail both oral and documentary evidence and also the impugned judgment passed by the trial Court, the following points arise for our consideration as under:

I. Whether the prosecution has proved beyond reasonable doubt that the accused committed aggravated penetrative sexual assault on the victim in the manner stated by the prosecution?

II. Whether the judgment of conviction and order of sentence passed by the trial Court is perverse and thus calls for any interference by this Court?

24. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of POCSO Act which reads as follows:

"Section 34. Procedure in case of commission of offence by child and determination of age by Special Court.

(1) xxxxxxxxxxxxxxxxxxxxxxxxx

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a personas determined by it under sub-section (2) was not the correct age of that person."

25. In view of Section 34(2) of the POCSO Act, Section 94 of the Juvenile Justice Act, 2015, becomes relevant and applicable. Section 94 of Juvenile Justice Act reads as follows:-

"Section 94. Presumption and determination of age.

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the

Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

26. It is evident from conjoint reading of the above provisions that wherever the dispute with regard to the age of a

person arises in the context of her or him being a victim under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the Juvenile Justice Act. The concerned Court has to determine the age by considering the three documents:

- i. The date of birth certificate from the school, or the matriculation, or equivalent certificate from the concerned examination board, if available; and in the absence thereof,
- ii. The birth certificate given by a corporation or a Municipal Authority or a Panchayat,
- iii. And only in the absence of (i) (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of Committee or the Board.

27. Section 94(2)(iii) of the Juvenile Justice Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board 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 such documents, the age is to be determined

through an Ossification Test or any other latest medical age determination test conducted on the orders of the concerned authority i.e. Committee or Board or Court.

28. We have read the evidence of PW.1, the father of victim, wherein, he has stated that victim is his daughter and during the year 2016, she was studying in 9th Standard. As per the evidence of PW.1, as on the date of incident, his daughter was aged 15 years and 9 months. We have also read the evidence of PW.2 victim, wherein, she has not disclosed her date of birth or her age as on the date of the incident, but she has only stated that during the year 2016 and 2017, she was studying in 9th Standard. What we find is lapse on the part of the learned Public Prosecutor in not eliciting the age or the date of birth of the victim, when he examined her in-chief and it was the main question, he ought to have put to her. The learned Public Prosecutor also should have elicited the age of the victim from the Investigating Officer, when the latter gave evidence in the Court or who recorded the evidence could have put a question to the victim about her age or date of birth. The prosecution, in order to prove the age of the victim, relied upon Ex.P8-Age Estimation Certificate issued by Department of Radiology, Bowring and Lady Curzon Hospital, Bangalore,

wherein the doctor has certified that according to radiograms taken, her (victim's) radiological age is above 16 years and below 18 years. The prosecution also relied upon bonafide/study certificate issued by Baldwin Girls' High School, Bangalore dated 25.04.2017, wherein the Principal of the Baldwin Girls' School has certified that the victim is a bonafide student of said institution and she is studying in Standard IX 'G' during the academic year 2016-2017. Her date of birth according to their admission register is 05.11.2001. Hence, Exs.P8 and P9 were marked with consent of the defence.

29. From the concepts of the above circumstances, it can be very well concluded that mere production and marking of a document does not amount to proof, which holds good in respect of private documents only and the same view cannot be taken in respect of proof of public document.

30. Ex.P10 is the bonafide/study certificate (Page No.222 of Paper book material) issued by the Principal, Baldwin Girls' School, Bengaluru. As Exs.P8 and P10 are marked with consent of the accused, hence those documents were marked in evidence. Therefore, the prosecution did not attempt to secure the Birth certificate or Ossification Test as required under

Section 34 of POCSO Act and 94 of Juvenile Justice Act. Under that context, CW.18, the Principal, who issued the bonafide certificate in the name of the victim, was given up. Exs.P8 and P10, undoubtedly, are the public documents within the meaning of Section 74 of the Indian Evidence Act. These documents were marked through the Investigating Officer. Except the suggestion that the victim was more than 18 years and the witness was not a competent witness to depose about the contents of Exs.P8 and P10, no other attempt was made to discredit or disprove the contents of Exs.P8 and P10. In fact, the Investigating Officer is a competent witness. He may not be having personal knowledge of the date of birth of the victim, but his evidence cannot be discarded because of this reason. The entries made in the school admission register cannot be disbelieved. If for any reason, the accused knew that 05.11.2001 was not the correct date of birth of the victim, he could have disproved Exs.P8 and P10, by producing any evidence available with him. The Investigating Officer should have been questioned in the cross-examination. Moreover, no objection was taken when Exs.P8 and P10 were marked before the Special Court. However, in ***P. Yuvaprakash's case*** (supra), it is observed in para 19 that "*a transfer certificate and*

extracts of the admission register, are not what Section 94(2)(i) of JJ Act 2015 mandates; nor are they in accord with Section 94(2)(ii)". This observation appears to have been made in the given set of facts and circumstances of that particular case. It may be stated here that date of birth certificate from the school as mentioned in Section 94(2)(i) of Juvenile Justice Act takes the meaning that it is none other than extract of an admission register, where the date of birth finds a place. It is doubtful that the School maintain a separate register for entering the date of birth of the students and therefore, if at all, the school authority is required to issue a document relating to date of birth of a student, it is issued on the basis of entry of the date of birth made in the admission register. In this view, Ex.P10, which stands fortified from the evidence of the Investigating Officer, it does not fall short of evidentiary value and it can be very much acted upon. For all these reasons, the argument of Sri Hashmath Pasha, learned Senior Counsel that Ex.P10 is inadmissible in evidence cannot be accepted.

31. In the light of the above, let us examine the evidence of the prosecution witnesses:

32. PW.1 is the father of victim girl (PW.2). He has stated that his daughter was studying in 9th Standard during 2016. Since she was having interest in western dance, during her holidays, himself and his wife got her admitted to accused's Dance Academy. PW.2(Victim) used to go to the said dance class during holidays and started continuing the dance class during evening hours when once her school started. After few months, they noticed changes in the attitude of the victim and she also started losing interest in academics. Thus, observing her attitude, PW.1 personally met accused during January 2017 and informed him that he has put his daughter to dance classes considering that she is having interest and that he does not want her to become a professional dancer and he wants his daughter to concentrate on studies and she is not at all showing any interest in her studies.

PW.1 also stated that during holidays, the accused used to call his daughter and asked her to teach dance to sub-junior batch on the guise of encouraging her and made her to spend more time in his academy. Thus, he questioned the accused even in this regard and also advised the victim to concentrate more on her studies and academics. One day, the victim started telling that she is not interested to pursue her studies in

regular school, which she has been already attending and she would take up studies in open school and concentrate more on her dance and if she is forced to continue her academics in the same school, she will leave the house and stay in a paying guesthouse. Therefore, PW.1 stated that the victim was brainwashed by the accused to that extent. When things stood thus, during April 2017, the mother of PW.3 met him and told that the accused has done bad thing with her daughter, who was initially a student of the accused's Dance Academy and who was later got appointed as an Instructor in the same Academy. He also informed her about changes noticed in their daughter's behaviour. Mother of PW.3 also told that they are going to lodge the complaint against the accused with the Police and after 2 days from the said interaction, the victim informed her mother that the accused has done similar thing with her also i.e., he had sexually abused her and threatened her and also told her that she would behave according to his tone. Later, they informed mother of PW.3 and also the concerned Police. PW.1 further stated that the accused being a married man having two children had forcible sexual intercourse with his daughter, aged about 15 years 9 months, and he has done all those sexual acts with the victim which

would be done on an adult woman and having come to know that the accused has all sort of sexual activities on the victim child like that of an adult woman, he informed the Police and later, the Police conducted mahazar vide Ex.P1 in the Dance Academy of the accused.

33. The victim girl was examined as PW2. She has stated that during 2016, she got admitted to the Dance Academy of the accused. One day, she went to accused's Dance Academy in the early morning. Accused told her to wait stating that others will come little late. She was waiting in the lobby. Accused was also sitting in the lobby. All of a sudden, the accused came and sat near her. He started kissing and also started behaving with her forcibly in spite of her telling that what he is doing is not correct and the accused removed her clothes and also his clothes and committed penetrative sexual assault on her. Though she was thoroughly cross-examined, there is no effective cross-examination to discredit the oral testimony of the victim with regard to the manner in which the accused behaved with the victim.

Further, the victim deposed that she was prevented from attending the dance classes from 01.04.2017. She, in a vivid

manner, has stated that she was subjected for penetrative sexual assault by the accused in the dance class and also she was taken to second floor of the house, which was vacant and the accused was holding the keys of the said house. She has narrated about the incident in her complaint-Ex.P2 and also before the learned Magistrate, while recording her statement under Section 164 of Cr.P.C. marked as Ex.P5 and before the Doctor, who was examined as PW.11 and also in Ex.P3 Medical Certificate of the victim.

34. From perusal of the entire material and also the statement given by the victim under Section 164 of Cr.P.C. before the Magistrate, the allegations made in the complaint-Ex.P2 and her evidence recorded before the Court, it can be gathered that there is consistency insofar as the penetrative sexual assault committed on her by the accused. It is also established in the evidence that the victim was a young girl of 15 and half years as on the date of alleged incident. Even if she has stated in her complaint, that after advice of PW.3, she decided to tell her parents and later, her father lodged the complaint, but it appears that there is natural tendency of informing the said aspect to her parents and the entire version of the victim cannot be brushed aside by the Court on the

pretext that PW.3 instigated the victim to lodge the complaint. In fact, PW.1, the father of victim, has stated that probably parent of PW.3 came to know about the sexual act committed by the accused on the victim girl, they approached him and informed about their daughter's story of sexual abuse. Thus, minute omissions would not make the evidence of material witnesses like PW.1 and victim-PW.2 untrustworthy.

35. Apart from the oral testimony of PW.1 and PW.2, the prosecution has also examined another material witness, PW.3, who was earlier a student of the accused and who later joined the accused's Dance Academy as an Instructor. She has corroborated the testimony of the victim and has stated that she has seen the accused calling the victim to second floor during her practice time. That apart, it has come in the evidence of the victim and PW.3 that they spoke to each other about the problem caused by the accused to them, and the victim, as per the advice of PW.3, informed her parents. Hence, PW.3 came to know about the incident through the victim.

36. Learned Senior counsel for the appellant contended that the oral evidence of the victim is not reliable and she was only acting to the tune of PW.3, who was present all along with

the victim right from lodging of the complaint. PW.3 was also present before the Special Court while recording victim's evidence. Hence, PW.1 has accompanied her on all occasions. Further, in the cross-examination of PW.3, it was elicited that the accused used to take the victim in between dance class to the said house situated on the top floor of the dance class and she has not noticed what she used to do after returning from said house. Thus, according to the evidence of PW.3, the victim used to take lot of time whenever she used to go with the accused and by the time she returned, PW.3 used to be busy with sub-junior batch and thereby, unable to notice what she used to do later.

37. PW.4 and PW.5 are the mahazar witnesses. PW6 is the owner of the building, where the Dance Academy was being run. She has stated that in her second floor of the house, her son and daughter-in-law were residing. Whereas in the cross-examination, she has stated that motor water supply were kept in second floor of the house. If really, her son and daughter-in-law were staying in that house, defence would have produced the keys of the said floor and it is not relevant whether her son and daughter-in-law were residing in the said house or it was kept vacant.

38. PW.7 is the Police Constable, who accompanied the victim to Bowring hospital, Bengaluru. PW.8, the PSI, has stated about the registration of FIR. PW.9 is the Investigating Officer, who investigated the matter and filed the charge sheet. PW.10 is Dr. B. M. Nagaraju, who examined the accused and issued report as per Ex.P10.

39. PW.11 is Dr. Thejaswini, who examined the victim and issued Ex.P3 report. According to the Doctor, the hymen of victim was not intact, when she examined her genital organ. As per Ex.P3 report, the victim was used to sexual act and if one is very active in sexual activity, there is chance of such person becoming pregnant. She further stated that the victim has given statement before her alleging that the accused had sexual intercourse with her six times. She admits that she has not examined about the boyfriends of the victim.

40. Learned Senior counsel vehemently contended that as per the evidence of PW.11-Dr. Thejaswini, who examined the victim and issued medical certificate as per Ex.P3, no external injuries were found on person of PW.2 and her opinion, particularly, during her cross-examination is that, if really the victim girl was subjected to forcible intercourse, signs on her

genital organs would have been different, but in the case of the victim girl, she had indulged in sexual activities many times. No signs of victim being subjected to forcible intercourse were noticed by the said doctor.

41. Medical evidence in rape cases hold high corroboration value and scientific support for the victim's testimony rather than as a sole determinant of guilt. It serves to establish the fact of sexual intercourse. Further, absence of injury marks does not always mean the sexual act was committed with victim's consent.

42. In this case, contents of the complaint and oral testimony of PW.1 clearly demonstrated that the victim was severely traumatized by the sexual assault and had difficulty in functioning of her day-to-day affairs with disruption of concentration, sleeping pattern and eating habits. After being sexually assaulted, the victim experienced acute stress disorder, sometimes unpredictable emotions, shock and humiliation. The victim lost concentration in her studies with low performance in school, which ultimately led her to join open-schooling. Thus, the offence of sexual assault impacted the victim both at her school and home.

43. Though the learned Senior Counsel contended that, no semen were detected and no injury was found on the private part of the victim, the fact remain that, there was delay in registering the case, examining the victim as well as accused and hence, no semen were detected. The evidence of doctor establishes that the victim was subjected to sexual assault. The same is corroborated by the oral testimony of PWs.1 to 3.

44. In order to rebut the evidence of the prosecution witnesses, the accused got examined three witnesses viz., DW.1 to DW.3. The defence evidence is essential to break the chain of evidence presented by the prosecution and create reasonable doubt. Further, defence evidence is critical in criminal trials to ensure a fair trial, rebut the prosecution's case and establish the accused's innocence or mitigating circumstances.

45. In the evidence, DW.1 Michael Arvind, earlier working as Dance teacher at Dance Academy has stated that during the relevant period, he was teaching dance in three batches i.e., for kids, junior and adults. Victim was in junior's batch and he was taking classes for victim's batch also. He further stated that during December 2016, there was Annual Infinity programme

and after this event, the Academy had declared Christmas holidays and it was reopened on 02.01.2017. Since there was no programmes held subsequent to 17th January, there was no practice programme. The accused never opened the Dance Academy either at 8.00 a.m. or 9.00 a.m. during his tenure in the Academy. He further stated that the accused never took the victim outside the class, since, in the second floor, the flat owner's son was staying and the said plot was always locked. According to DW.1, no incident had taken place as alleged by the prosecution. In the cross examination, he admitted that, the accused removed him from the job on the premise that, he misappropriated the amount and stole the jackets of some students. He further admits that he was not aware about the person who is in possession of the second floor plot.

46. DW.2 Chirsti another Dance teacher has reiterated the oral testimony of DW.1 and stated that the accused was running Dance Academy and he has been working as instructor and he has stated about the good conduct of the accused at the Dance Academy.

47. DW.3 Sendil Kumar, who knows the accused since six years, and his daughter was attending dance class at Dance

Academy. He has stated that his daughter joined for dance in sub-junior batch, there was no dance classes in the morning. At that time, the accused used to sit in the reception area and accused behaved with students and parents in a sober manner, he was polite and according to DW.3, no such incident occurred as alleged by the prosecution.

48. From the perusal of testimony of DWs.1 to 3, it appears that they are dance instructors or the friends of the accused. They have deposed as to the nature, character and good habits of the accused. It does not mean that the case of the prosecution is totally false and the accused has been victimized. Apart from the examination of DW1 to 3, the accused has not examined any other independent witnesses to prove his defence. Moreover, in rape cases, the defence witness evidence may be crucial for creating reasonable doubt. While, the victim's testimony is often treated as paramount, the credibility, consistency and reliability of a defence witness are scrutinised to determine, if the evidence is sufficient to rebut the prosecution's case. The oral testimony of defence witnesses do not satisfy the standard of evidence led by the prosecution witnesses.

49. The oral testimony of the victim is supported by the medical evidence. In the instant case, more importantly, the accused is not disputing that the victim was used to sexual activity as per the opinion of the doctor and the defence of the accused is that, he is not responsible for the same. The prosecution by examining 11 witnesses including victim PW.2, her father PW.1, friend of victim PW.3 and Doctor PW.11 established that the accused has committed aggravated penetrative sexual assault on the victim being her dance teacher. Apart from PW.1 to PW.3, what exactly transpired on the fateful days should have been within the exclusive knowledge of the accused. In the light of this evidence, the accused was rightly convicted by the Special Court for the offence under Section 376 of IPC read with Section 5(I) of POCSO Act. In view of a clear case being made out for conviction under Section 6 of POCSO Act, it is not necessary to impose separate sentence under Section 376 of IPC.

50. Therefore, we do not find any good grounds to interfere with the findings of the Special Court. However, we find that the sentence imposed is disproportionate, inasmuch as, the Special Court has failed to assign reasons for imposing maximum sentence of life imprisonment. The accused has to be

sentenced in accordance with law as it stood on the date of crime i.e., before amendment was given into effect from 16.08.2009. Section 6 of POCSO Act as it stood then permitted imposition of minimum sentence of 10 years' rigorous imprisonment to maximum of life imprisonment. To subject an accused to maximum sentence, it requires assessment of valid reasons, which are not forthcoming in the impugned judgment. Strict scrutiny of victim's oral testimony discloses a shadow of consent on her part, but her consent is immaterial. Moreover, her actual age going by Ex.P10, as on 02.04.2017 was 15 years and 5 months, but traces of consent militates against imposition of maximum sentence under Section 6 of the POCSO Act, 2012. It is, therefore, limited interference with impugned judgment is warranted.

Hence, we proceed to pass the following:-

ORDER

- i. The appeal is **partly allowed**.
- ii. The judgment dated 15.02.2018 passed by learned LIII Addl. City Civil & Sessions Judge, Bangalore in Spl.C.C.No.359/2017, convicting the accused for the

offence punishable under Section 376 IPC r/w Section 5 (I) of POCSO Act is confirmed and the sentence is modified and he is sentenced to undergo rigorous imprisonment for 10 years for the offence punishable under Section 6 of POCSO Act and to pay a fine of ₹25,000/- and in default to pay fine, he shall undergo simple imprisonment for one year.

- iii. The entire fine amount of ₹25,000/- shall be paid to the victim-PW.2 towards compensation under Section 357 Cr.P.C.
- iv. The accused is entitled to set off for the period of sentence, he has already spent in jail.
- v. The High Court Legal Services Committee shall pay honorarium of ₹10,000/- to the learned Amicus Curiae, Sri. Sampangi Ramaiah N.S., for the able services rendered by him before this Court on behalf of respondent No.2.

- vi. Send a copy of this judgment to the trial Court and also to the Prison, forthwith.

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

**Sd/-
(VENKATESH NAIK T)
JUDGE**

MN/-