

**2023 LiveLaw (SC) 170**

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**B.R. GAVAI; J., SANJAY KAROL; J.**  
**CRIMINAL APPEAL NO. 295 OF 2021; 22 February, 2023**  
**SIDDARUDA @ KARNA versus THE STATE OF KARNATAKA**

**Indian Penal Code 1860; Section 375 Exception 2 - Sex with minor wife aged 16 years - Supreme Court acquits husband relying on exception 2 to Section 375 IPC.** [Offence took place in 2012 before the judgment in *Independent Thought v. Union of India*, (2017) 10 SCC 800 was passed, which had read '15 years' in Exception 2 as '18 years']

For Appellant(s) Mr. Lakshmeesh S. Kamath, AOR Ms. Samriti Ahuja, Adv.

For Respondent(s) Mr. V. N. Raghupathy, AOR Mr. Manendra Pal Gupta, Adv.

**ORDER**

1. The appeal challenges the judgment and order dated 18.11.2017 passed by the learned single Judge of the High Court of Karnataka at Bengaluru vide which the learned Judge has altered the conviction under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POSCO Act') to conviction under Section 376 of the Indian Penal Code ('IPC').
2. The appellant was tried and convicted by the learned III Additional Sessions Judge, Tumakuru for the offence punishable under Section 6 of the POSCO Act and was sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-.
3. It is pertinent to note that the learned trial Judge also had tried the appellant for the offences punishable under Section 366-A and 376 of the IPC, but he was acquitted for the said charges.
4. In appeal, the High Court found that since the POSCO Act came into force on 14.11.2012 and the alleged incident had taken place in August-September, 2012, conviction under POSCO Act was not tenable.
5. However, the High Court found that since the victim was a minor and was aged below 16 years as on the date of subjecting her to medical examination, the question of consent was irrelevant and the appellant was liable to be convicted for the offence punishable under Section 376.
6. We have heard Mr. Lakshmeesh S. Kamath, learned counsel appearing for the appellant. Learned counsel submits that from the perusal of evidence of the prosecutrix, it is clear that they are married to each other and as on the date on which the incident took place, the prosecutrix was above 15 years of age and as such, the case was covered by Exception 2 to Section 375 of the IPC.
7. Mr. V.N. Raghupathy, learned counsel appearing for the State vehemently opposes the appeal. He submits that as a matter of fact, the High Court was not justified in acquitting the appellant for the offence punishable under Section 6 of the POSCO Act, and the High Court ought to have maintained the conviction under Section 376 of the IPC. He further submitted that the High Court has given sound reasons which warrant no interference. He therefore, prays for dismissal of the appeal.

**8.** We have perused the evidence of prosecutrix so also the parents of the prosecutrix, namely, Lingappa PW-1 and Muddamma-PW-3. The perusal of their evidences would clearly show that they have not supported the prosecution case. The prosecutrix has specifically denied that she was kidnapped forcibly.

**9.** Apart from that, the prosecutrix has filed an affidavit stating therein that she is married to the appellant and that they have also begotten a child out of the said wedlock. It is a specific case of the appellant that the appellant had married the prosecutrix and their relationship was consensual.

**10.** It will be apposite to refer to Exception 2 to Section 375 of the IPC which reads thus :

“Exception 2- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

**11.** It is thus, clear that the sexual act by the appellant with the prosecutrix, who are husband and wife, with the latter being above 15 years of age would not amount to rape as per Exception 2 to Section 375 of the IPC.

**12.** From the evidence placed on record, it would be clear that the prosecutrix was above the age of 15 years when the sexual act was alleged to have taken place as a result of which the prosecutrix conceived.

**13.** In the result, the conviction is not sustainable. The appeal is allowed in aforesaid terms. The appellant is acquitted of the charges charged with. He is directed to be set at liberty, if not required in any other case. The bail bonds of the accused shall stand discharged.

**14.** Pending application(s), if any, shall stand disposed of.

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