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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2019

PRESENT

THE HON'BLE MR.JUSTICE B.A.PATIL

AND

THE HON'BLE MR.JUSTICE S.G.PANDIT

CRIMINAL APPEAL NO.662/2016

BETWEEN:

Venkatesh
S/o Naganna @ Nagaraja K.,
Aged about 35 years
R/o Behind PWD Quarters
Koratagere Taluk
Tumakuru District-572 129.

... Appellant

(By Sri Venkatesh P Dalwai, Advocate)

AND:

State of Karnataka
through Koratagere Police Station, Tumakuru,
Represented by State Public Prosecution
High Court Building,
Bengaluru-560 001.

... Respondent

(By Sri Vijayakumar Majage, Addl. SPP)

This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the judgment dated 19.03.2015 passed by the Special/Sessions Judge (III Additional Sessions Judge, Tumakuru) in Spl.C.No.312/2014 convicting the appellant/accused for the offence punishable under Section 4 of POCSO Act.

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This Criminal Appeal coming on for hearing this day, **B.A.PATIL J.** delivered the following:-

J U D G M E N T

The present appeal has been preferred by the appellant/accused challenging the judgment of conviction and order of sentence passed by the Special/III Additional Sessions Judge, Tumkur, in Special Case No.312/2014 dated 19.3.2015.

2. We have heard the learned counsel for the appellant Sri Venkatesh P.Dalwai and the learned Additional SPP Sri.Vijayakumar Majage for the respondent/State.

3 The brief facts of the case of the prosecution are that the accused being the father of the victim, on 2.3.2014 at about 12.00 noon, took her to the house of his father Naganna and on the same day at about 10.00 p.m. when he was sleeping along with his daughter victim he sexually assaulted her. Thereafter, after one day victim went to the school

and there she informed the alleged incident to the teacher. The teacher called the mother of the victim and a complaint has been registered. On the basis of the complaint a case has been registered in Crime No.70/2014. Thereafter, after investigation the charge sheet was filed against the accused. The Special Court took the cognizance and after following the formalities under Section 207 of Cr.P.C. and after hearing the learned Public Prosecutor and the learned counsel for the accused, charge was prepared and read over to the accused. Accused pleaded not guilty and he claimed to be tried. As such the trial was fixed.

4. In order to prove the case of the prosecution, it has got examined 8 witnesses and got marked 15 documents and also MOs.1 to 3. After closure of the prosecution evidence, accused was questioned by putting the incriminating material as against him. Accused denied the same and thereafter he has not led evidence on his behalf. Thereafter, after hearing

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the arguments the impugned judgment of conviction and the order of sentence came to be passed. Challenging the legality and correctness of the said judgment the appellant is before this Court.

5. It is the submission of the learned counsel for the appellant that the evidence of PW2- victim is not trustworthy and reliable. She being a child witness she has deposed as per the say of the mother and she is a tutored witness. It is his further submission that the medical evidence which has been produced also clearly goes to show that there are no external injuries found over the private part of the victim. It is his further submission that the FSL report and the evidence of the doctor corroborate that there is no sexual assault committed on the victim. Without considering the said material placed on record, the Court below has come to a wrong conclusion and has wrongly convicted the accused. It is his further submission that there are so many improvements and contradictions in the case of the

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prosecution. They throw strong doubt and suspicion in the case of the prosecution. Under such circumstances, the Court below ought to have given the benefit of doubt and acquitted the accused. On these grounds he prayed to allow the appeal and to set aside the impugned judgment of conviction and order of sentence.

6. *Per contra*, the learned Additional SPP vehemently argued and submitted that PW1 is the complainant and PW2 is the victim. They have categorically deposed about the act of the accused who is none other than the father of the victim. Even the evidence of PW3 the doctor who examined the victim clearly goes to show that when victim was examined, she noticed there were signs of vaginal injury and age of the injury was more than 24 hours and she has opined that it shows the presence of sexual intercourse symptoms. Even the victim has also clearly stated the overt acts of the appellant/accused. Even nothing has been elicited in

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the evidence of any of the prosecution witnesses that for what reason the case has been falsely registered against the appellant/accused. The trial Court after considering the evidence on record has rightly come to a right conclusion and convicted the accused. There are no good grounds to interfere with the judgment of the trial Court. On these grounds he prayed to dismiss the appeal.

7. We have carefully and cautiously gone through the submissions made by the learned counsels appearing for the parties and perused the records including the trial Court records which were made available.

8. After giving our thoughtful consideration to the material available on record we have considered the submissions. In order to prove the case of the prosecution, prosecution has got examined 8 witnesses.

PW1 is the teacher where the victim was studying. She has deposed that on 3.3.2014 the

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victim has not attended the class and on 4.3.2014 when the grand mother of the victim came to leave the victim to school, she questioned the victim as to why she has not attended the class on 3.3.2014. At that time, victim told that on 2.3.2014 at about 12.30 p.m. accused took her to his grand father's house by saying that there is non-vegetarian food and on that night he did not bring her back and they slept and she is not keeping well. When she was asked that why she was not keeping well, victim told that on 2.3.2014 his father by sleeping by the side of her has committed sexual assault on her and she is having pain in her private part and she is having burning sensation. Immediately she called PW4 and she got the complaint prepared and filed the complaint as per Ex.P1. During the course of cross-examination nothing has been elicited so as to discard her evidence.

PW2 is the victim she has also deposed what has been stated before PW1. Though during the course of cross-examination it has been suggested

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that she is deposing before the Court as tutored by mother and elders, the said suggestion has been denied.

PW3 is the doctor who examined the victim and in her evidence she has deposed that there were signs of sexual assault on the victim and she has given her opinion as per Ex.P2. During the course of cross-examination nothing has been elicited so as to discard the evidence of PW3.

PW4 is the pancha to spot mahazar Ex.P3 where the victim has been sexually assaulted and the said place has been shown by CW2.

PW5 is the grand-mother who took the victim to the school and she has also deposed about the accused taking the victim to the grand father's house and she telling about the pain in her private part and she took the victim to the hospital. During the course of cross-examination nothing has been elicited so as to discard the evidence of this witness.

PW6 is the spot mahazar pancha to Ex.P3.

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PW7 is the social worker, he is the witness to the seizure of the articles MOs.1 to 3 as per Ex.P11.

PW8 is the Investigating Officer who investigated the case and filed the charge sheet against the accused.

9. On close reading of the evidence which has been produced, the main material witness is the victim PW2. PW2 in her evidence has clearly deposed what act has been done by the appellant/accused when he was sleeping along with her. It is the submission of the learned counsel for the appellant that PW2 is the child witness and her evidence has to be considered carefully and there are so many omissions and contradictions, the same is not reliable. As per Section 118 of the evidence Act the deposition of the child witness may require corroboration. But in case his or her deposition inspires the confidence of the Court, the Court may rely upon the evidence of the child witness and only in case there is evidence on record to show that the

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child has been tutored, the Court can reject the statement of the said witness. This proposition of law has been laid down by the Hon'ble Apex Court in the case of **State of Madhya Pradesh Vs. Ramesh and Another** reported in **(2011) 4 SCC 786**, wherein at paragraph 14 it has been read as under:

14. In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

10. On close scrutiny of the evidence of PW2 she has categorically stated about the overt acts of the appellant/accused and there are no grounds to reject the evidence of PW2. The said evidence is convincing and reliable and on the basis of the said evidence the Court can convict the accused. This proposition of law has also been laid down by the Hon'ble Apex Court in the case of **Golla Yelugu Govindu Vs. State of Andhra Pradesh** reported in **AIR 2008 SC 1842**.

11. When the evidence of PW2 is cogent and acceptable and it is also corroborated with the evidence of PWs.1 and 3, PW3 the Doctor who examined the victim has clearly stated in her evidence that swelling present, tenderness present near the private part and on local genital examination there is signs of vaginal injury and age of the injuries is more than 24 hours and it shows presence of sexual intercourse symptoms. Even nothing has been

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elicited during the course of cross-examination that why the victim is deposing against her own father, the evidence which has been produced before the Court below is trustworthy and reliable.

12. Though it is contended by the learned counsel for the appellant/accused that there are contradictions and omissions, the said contradictions and omissions are not so grave so as to take away the case of the prosecution.

13. Now it is contended by the learned counsel for the appellant that the FSL report and other material is not substantiating the case of the prosecution, but when a cogent and acceptable evidence of the victim herself is there and if it is corroborated with the evidence of the doctor who examined the victim immediately thereafter, then under such circumstances not finding the seminal stains and other material, will not weaken the case of the prosecution. In the absence of seminal stains if there is penetration then it attracts the provisions of

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POCSO Act as well as IPC. In that light the evidence of PW3 the Doctor corroborates the evidence of PW2 victim. She has deposed that she was having pain in her private part and she narrated the said fact to PW1 Teacher. All these evidence points out the guilt of the accused.

14. Be that as it may, accused is none other than the father of the victim, victim is seven years old. She has deposed before the Court the act of the accused. When father has sexually assaulted the victim daughter it cannot be looked very lightly. Court has to deal such persons with iron-hand, no doubt some minor contradictions may happen, when a minor victim aged about seven years deposes before the Court. But when we peruse the evidence of PWs.1, 2 and 3 they repose the confidence of this court that accused has committed the said serious act on PW2. Now a days such incidents are happening if they are not snubbed at the beginning, it will become big problem in the society in future.

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Courts cannot ignore such aspects while passing the orders. In that light submission of the learned Counsel for the appellant/accused is not having any force, same is liable to be rejected.

15. Looking from any angle, the appellant has not made out any good grounds so as to interfere with the judgment of the trial Court. The same deserves to be confirmed.

16. We have carefully and cautiously gone through the judgment of the trial Court. The trial Court after considering the material on record has passed the impugned order in accordance with law. There is no perversity or illegality in passing the impugned order. Hence, we pass the following order:

The appeal is devoid of merits is liable to be dismissed, accordingly the same is *dismissed*.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

ap