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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1435 OF 2025 (C)

BETWEEN:

RAMLAKHAN YADAV,
S/O LATE DOODNATH YADAV,
AGED ABOUT 53 YEARS,
R/AT NO. 90, 1st CROSS,
12th MAIN, PEENYA INDUSTRIAL AREA,
3rd PHASE, KAVERI NAGAR, LAGGERE,
BENGALURU-560 058.

...APPELLANT

(BY SRI. ABHISHEK HUDDAR., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY NANDINI LAYOUT,
POLICE STATION,
REP BY S P P,
HIGH COURT OF KARNATAKA,
BENGALURU-560 001.

2. MRS. PRASANNA KUMARI,
AGED ABOUT 42 YEARS,
W/O GOPAL KUMAR,
R/AT NO. 43/B,
NEAR DUGGALAMMA TEMPLE,
NEAR RAJAGOPALANAGARA POLICE STATION,
RAJAGOPALANAGARA,
BENGALURU-560 058.

...RESPONDENTS

(BY SRI. B. LAKSHMAN, HCGP FOR R1/STATE,
R2 SERVED, UN-REPRESENTED)





THIS CRL.A IS FILED U/S 374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 05.02.2024 PASSED BY THE COURT OF ADDL. CITY CIVIL AND SESSIONS JUDGE, FTSC I BENGALURU FOR THE OFFENCE P/US/ 4(2),5(m),6 AND 8 OF POCSO ACT 2012 IN SPL.C.NO.1659/2022 AT ANNEXURE A AND CONSEQUENTLY ACQUIT THE ACCUSED AND ETC.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellant/accused has preferred this appeal against the judgment and conviction and order on sentence passed by the FTSC-I Addl. City Civil and Sessions Judge, Bengaluru in Spl.C.No. 1659/2022 dated 05.02.2024.

2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.

3. The brief facts leading to this appeal are that the Police Inspector of Nandini Layout Police Station filed a charge sheet against the accused for the offences punishable under Sections 4(2), 5(m), 6, and 8 of the POCSO Act, 2012. It is alleged by the prosecution that the



victim, aged 6 years, is the daughter of CWs 1 and 5, and they were residing in Rajagopalanagar. CW5, the father of the victim, was running Sree Sai Fab Welding Shop in his building, where the appellant/accused was working under him and used to speak to CW5's children. On 09.05.2022, at about 1.30 p.m., the accused took CW2, the victim girl, to the shop of CW6, where he purchased some snacks for her, and from there he took her to House No. 12, situated in 1st Cross, 1st Main, Lakshmidevi Nagar, Cauvery Nagar, Nandini Layout. There, he made the victim lie down, undressed her, slept on her, and penetrated his index finger into the private part of the victim, thereby committing the offences punishable under Sections 4(2), 5(m), 6, and 8 of the POCSO Act, 2012.

4. The accused has been in judicial custody, since the date of arrest. After hearing on the charges, charges were framed against the accused for the commission of offences under Sections 4 and 8 of the POCSO Act on 17.11.2022, and the same were read over and explained



to the accused. The accused pleaded not guilty. Thereafter, additional charges were framed against the accused on 15.09.2023 for the commission of offences under Sections 5(m) and 6 of the POCSO Act. The same were read over and explained to the accused, who, having understood them, pleaded not guilty and claimed to be tried.

5. The prosecution, in order to establish the guilt of the accused, examined eighteen witnesses as PWs.1 to 18, marked twenty-nine documents as Exhibits P1 to P29, and produced seven material objects as MOs.1 to 7.

6. Upon the closure of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. The accused denied all incriminating evidence brought against him and did not choose to adduce any defence evidence.

7. After hearing both sides, the trial court convicted the accused for the offences punishable under



Sections 4(2), 5(m), 6 and 8 of the Protection of Children from Sexual Offences Act, 2012. The court sentenced him to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.1,00,000 for the offence under Section 4(2) of the Act; further rigorous imprisonment for twenty years and fine of Rs.1,00,000 for the offence under Section 6; and rigorous imprisonment for five years and fine of Rs.50,000 for the offence under Section 8. Being aggrieved by the judgment of conviction and the order on sentence, the accused/appellant has filed the present appeal.

8. The learned Counsel, Sri Abhishek Huddar, appearing on behalf of the appellant, submitted that the judgment of conviction and order of sentence passed by the Sessions Court are contrary to law and the material on record. He contended that the learned Sessions Judge failed to properly examine the victim's statement recorded under Section 164 of the Code of Criminal Procedure as well as the examination-in-chief. He further submitted that



the trial court did not appreciate the evidence on record in accordance with law and facts. It is also contended that the trial court did not afford an opportunity to the accused to cross-examine the prosecution witnesses, thereby violating the right to a fair trial guaranteed under Articles 21 and 22 of the Constitution of India. Hence, he prayed that the case be remanded to the trial court with directions to provide the accused an opportunity to cross-examine the material witnesses. On all these grounds, he sought to allow this appeal.

9. To substantiate his argument, he relied on the judgment passed by this Court in ***Crl.A No.1023/2022*** decided on ***01.09.2023***.

10. The learned HCGP, Sri B. Lakshman, appearing for the respondent-State, initially argued for time and later submitted that he has no objection to remanding the matter to the trial Court to provide the accused an opportunity to cross-examine the material witnesses.



11. Having heard the arguments on both sides, the following points would arise for my consideration:

1. Whether the appellant/accused has made out grounds to remand the matter to the trial Court with a direction to provide opportunity to the appellant for cross-examination of prosecution witnesses?
2. What order?

12. I have examined the materials placed before this Court. Before appreciating the materials on record, it is essential to consider the judgment of the Hon'ble Apex Court in ***Sovaran Singh Prajapati Vs. State of Uttar Pradesh, reported in 2025 SCC OnLine SC 351***. In this decision, the Hon'ble Apex Court discussed the right to a fair trial guaranteed under Article 21 of the Constitution of India. The Court also followed the three-judge Bench decision in ***Vinubhai Haribhai Malaviya Vs. State of Gujarat (2019) 17 SCC 1*** and referenced other



landmark rulings such ***as Zahira Habibulla H. Sheikh Vs. State of Gujarat ("Best Bakery Case") (2004) 4 SCC 158; Sidhartha Vashisht Vs. State (NCT of Delhi) (2010) 6 SCC 1; J. Jayalalithaa Vs. State of Karnataka (2014) 2 SCC 401; and Asha Ranjan Vs. State of Bihar (2017) 4 SCC 397***, at paragraph 10.6 of the judgment, the Hon'ble Apex Court has laid down the following principles on the meaning and significance of a fair trial:

"10.6. From a studied analysis of the above decisions, the following principles as to the meaning and import of fair trial, can be illustratively deduced:

- (1) Fair and Just investigation is the starting point of the fair trial process.*
- (2) This process is a triangulation of the rights of the accused, the victim and the community that acts through the state and prosecuting agencies.*
- (3) Process of investigation and trial must be completed with promptitude.*



- (4) *The trial Judge has to play an active role in the search for truth, which a trial, undoubtedly has to be.*
- (5) *Bias of all nature, against the accused, the victim, the witnesses; or the cause of/at trial, has to be eliminated.*
- (6) *The process of fair trial is to be done to maintain public confidence & uphold the majesty of law.*
- (7) *The atmosphere in which a trial is to be conducted in a fair manner has to be in an atmosphere of 'judicial calm'.*
- (8) *Unfair prolongation of trial is an affront to the ideal of fair trial.*
- (9) *The ideal of fair trial has protection in the Constitution and in the international legal framework, as a basic human right.*
- (10) *The centripodal purpose of fair trial is to ensure that injustice is avoided as far as possible, but equally 'fair trial' is not leveraged to a point which would hinder the established procedure of Cr. P.C. In other words, the command of the Code cannot be ignored at the behest of the*



prosecution or defence, in the name of fair trial."

13. It is also relevant to mention here as to the directions regarding the role of Public Prosecutors and appointments of counsel through legal process. In this regard, Hon'ble Apex Court, in the case of **Ashok V. State of Uttar Pradesh** reported in **2024 SCC OnLine SC 3580**, has pointed out as to the role of the Public Prosecutors and appointments of counsel through legal aid processes. At paragraph 23 of the judgment, it is observed thus:

"23. Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:

- a. It is the duty of the Court to ensure that proper legal aid is provided to an accused;*
- b. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;*



- c. Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;*
- d. It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the accused under Section 313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;*
- e. An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every*



accused has the right to get legal aid, even to file bail petitions;

- f. At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused;*
- g. As held in the case of Anokhilal⁵, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid*



advocates to work with senior members of the Bar in a requisite number of trials;

- h. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;*
- i. It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice;*

14. In the case on hand, the accused has been in judicial custody since the date of his arrest, i.e., from 09.05.2022. The evidence of PWs 1 and 2 was recorded by the trial Court on 27.01.2023. On that day, the trial Court passed the following order:

"Case called. Accused not produced from JC. CW2 and 5 examined as P.W.1 and 2. P.W.1 also present but she cannot speak kannada. PP filed application U/s 282 of Cr.P.C to appoint a translator



who knows Telugu language. Office is hereby directed to issue letter to DLSA to appoint translator who knows Telugu language.

Call for evidence of C.W.1 by 15.02.2023."

15. The trial Court recorded the depositions of PWs 1 and 2; however, since the learned counsel for the accused remained absent, no cross-examination was conducted. On 23.03.2023, the Court recorded the statement of PW3, Pramod R. Naik, and on the same day, passed the following order:

"Case called. Accused is in judicial custody. Sri. BNR filed vakalath for Accused (DLSA). Since already Sri. AK counsel for DLSA is on record, Sri BNR is directed to file NOC vakalath.

PP filed application U/s 282 Cr.P.C for appointment of translator as witness speaks only Telugu. Application allowed. Advocate Smt. Meenakshi is appointed as translator.

C.W.1 examined as P.W.3.

Counsel for Accused no representation. Hence, cross of P.W.3 taken as nil.



*Issue summons to C.W.3 and 4 by
13.04.2023."*

16. It was also noted that due to the absence of the accused's counsel, no cross-examination of the witnesses took place, "cross-examination of the witnesses is taken as nil".

17. On 13.04.2023, the trial Court recorded the statement of PW4. On that date, the accused was absent and was not produced from judicial custody, and the counsel for the accused was also absent. Nevertheless, the trial Court proceeded to record the evidence of PW4 in the absence of both the accused and his counsel, with cross-examination being recorded as nil.

18. The statements of PW5 Raghu and PW6 Ravi were recorded by the trial Court on 22.06.2023. The accused was produced from judicial custody on that day, and his counsel was present, submitting that no cross-examination would be conducted as both PW5 and PW6 had turned hostile and on 17.07.2023 the statement of



PWs7 & 8 was recorded .However , the cross-examination was taken as nil as the counsel for the accused remained absent.

19. The trial Court has recorded the statements of PW9, PW10 and PW11 on 11.08.2003. On that day accused was not produced from judicial custody. However, the trial court has recorded the statement of the witnesses in the absence of the accused and accused counsel.

20. On 29.08.2023 and 30.08.2023, the accused was produced through video conference; however, the trial Court recorded the statements of PW12 and PW13 in the absence of the counsel for the accused, and the cross-examination on the respective dates was recorded as nil.

21. On 15.09.2023 in the absence of accused counsel the trial Court has recorded the statement of PW14 and PW15 and cross-examination of the witnesses was taken as nil. However on the same day, the counsel for the



accused filed an application under Section 311 of Cr.P.C to summon the witnesses and the same was allowed.

22. On 25.09.2023 and 22.11.2023, the accused was produced through video conference; however, the trial Court recorded the statements of PW12 and PW13 in the absence of the accused's counsel, and the cross-examination on the respective dates was recorded as nil.

23. Upon careful scrutiny of the entire order sheet and the depositions of the prosecution witnesses, it is manifestly clear that the trial Court recorded the statements of material prosecution witnesses in the absence of the accused and his counsel. This procedure is in direct contravention of the provisions of Section 273 of the Code of Criminal Procedure, 1973. Section 273, contained in Chapter XXIII, mandates that except where expressly provided otherwise, all evidence taken during the course of trial or any other proceedings must be recorded in the presence of the accused or, if the



accused's personal attendance is dispensed with, in the presence of his pleader.

24. The trial Court has not assigned any reasons for recording the statement of material witnesses in the absence of accused and his counsel. The reasoning given by the trial Court in para No.29 and 30 reads as under:

"29. Before going to the merits of the case, it would be pertinent to note that, on 10.05.2022 this, accused was produced before the court for the first time in Crime No.99/2022 and he was remanded to J.C. Till filing of the charge sheet he did not engaged any counsel and whenever this court orally asked the accused he said he will engage counsel. On 14.07.2022 this court took cognizance and on 21.07.2022 when accused was produced from J.C. the wrote a letter to DLSA to engage a defense counsel. On 02.09.2022 one counsel Anand K. from DLSA appeared and prayed time to file Vakalath and on 21.09.2022 Sri.A.K. filed vakalath for accused and case was posted for framing charge. On 17.11.2022 charge was framed. Trial was fixed and summons were issued to C.W.1, 2 and 5. On 13.12.2022, 10.01.2023 witnesses were not appeared and on 27.01 2023 though P.W.1 mother of victim was present her evidence was not recorded as she knows



only Telugu language and public prosecutor prayed time to get a translator appointed. Thereafter, on 23.03.2023 another counsel Sri.BNR filed Vakalath for accused but, as already Sri.A.K. was on record Bri.BNR was directed to file NOC Vakalath which he did not done. Anyhow on 23.03.2023 with the help of translator public prosecutor examined C.W.1 as P.W.3 and the trial proceeded. During the trial this court observed that, Sri.A.K. who was appointed by DLSA since not appearing regularly, same was communicated to DLSA and it was directed to withdraw the counsel from record. Thereafter whenever this accused was produced, accused submitted that, he has engaged counsel and he needs no free legal aid from DLSA. On 04.12.2023 again accused submitted that, he has engaged counsel. One Sri.BJL appeared and submitted that, he will file Vakalath for accused and also application to recall prosecution witnesses. On 08.12.2023 though accused was produced from J.C. no counsel appeared. Hence, this court concluded the trial and upon hearing the prosecution posted for Judgment by 29.12.2023. Till this date counsel for accused did not appeared to recall prosecution witnesses. If we carefully peruse the evidence of prosecution along with Ex.P.1 to 30, Ex.P.7 is the complaint lodged by the mother of the victim on 09.05.2022 at 6.00 p.m. Ex.P.1 is the statement of victim recorded by the learned magistrate under Sec. 164 Cr.P.C. where



victim categorically deposed the manner in which accused misbehaved with her. Ex.P.2 is the spot mahazar dtd: 10.05.2022. Ex.P.3 to 6 are the photographs taken during the spot mahazar. Ex.P.8 is the 164 statement of mother of the victim, Ex.P.12 is the MLC report issued by K.C.General Hospital pertaining to accused dtd:09.05.2022. Ex.P.17 is the MLC pertaining to victim dtd:09.05.2022. Ex.P.21 is the sketch of place of incident prepared by the Investigating Officer. Ex.P.5 is the sexual offense report of the victim issued by K.C.General Hospital. Ex.P.26 is the final medical report of the victim. Ex.P.27 and 28 are 65-B certificates, Ex.P.29 is the acknowledgment issued by FSL, M.O.3 is the C.D. which shows the CCTV Footage where it shows accused taking the victim.

30. If we carefully peruse the allegations made against the accused, the alleged incident was committed on 09.05.2022 and as on that date accused was aged 50 years and victim was aged 6 years. If we peruse the chief-examination of victim which was in question and answer form victim by identifying the accused before the court categorically deposed that, when she was playing near the welding shop of her father accused took her to a shop and got purchased some snacks and took her to a house, undressed her. During the chief-examination victim shown her private



part through sign by hand and deposed accused touched her private part and also bite her breasts and also penetrated his finger to her private part as a result of which she suffered pain and started crying. Thereafter, he brought her back near her house and left her there. Apart from the evidence of victim her parents P.W.2 and 3 categorically deposed about the fact that, accused was working in their welding shop, and they came to know about the alleged incident from their daughter. c.w.7/PW.7 Vasanthkumar who works in a lathe shop in the building of C.W.5 categorically deposed before the court that, on the alleged date of incident accused came to his shop with victim and asked for change for Rs.500/- so as to get biscuits to the child and thereafter he took the victim with him. His evidence clearly shows that, when both himself and C.W.5 went in search of victim people gathered near a house and they saw accused there and they came to know about the accused committing sexual assault on the victim child. Similarly, C.W.10 / P.W.8 in his evidence clearly stated that, one day in the month of May 2022 at about 1.30 p.m. to 2.00 p.m. when he was working in his welding shop some ladies came to his shop and informed about the alleged incident. These witnesses further deposed that, when he went to the house of accused he saw accused partly naked and victim child was fully naked and accused was lying on the floor facing upwards and he was made the victim



child to sleep on him. The evidence of these witnesses plays a vital role to prove the guilt of the accused. C.W.11/P.W.11 Meena Yadav who is none other than the elder sister of the accused supported the case of the prosecution and deposed that, accused was staying in her house and she came to know about accused committing sexual. assault on the victim child from her neighbors and she has given statement before the police. The evidence of these witnesses including the victim child proves that, this accused who was aged 50 years took advantage of the innocence of a child aged hardly 6 years and by inducing the child that he will get snacks, he took her to his house belonging to C.W.11 where he committed penetrative sexual assault by inserting his finger to the private part of the child and also he bite the breasts of the victim which was evident from the medical reports and the evidence of Doctor who examined the victim. According to this C.W.7 Vasanth Kumar and C.W.10 Shafi, when the father of the victim and this Vasanth Kumar went in search of victim they saw people gathering near a house and this accused was assaulted by some people as he misbehaved with the victim child this is corroborated by the contents of Ex.P.12 medical report of the accused where the Doctor has mentioned "C/o. injury to right let due to fall on 09.05.2022". The history is shown as "brought by H.C.711 of Nandini Layout Police... Sec.4 and 8 of POCSO ACT, 2012. No doubt it is true that, the



Doctor who examined the victim did not observed any external injuries on the body of the victim or on the external genitalia but, the Doctor who gave final report Ex.P.26 has clearly mentioned that, since victim was child aged 6 years and the history was only fingering of vagina, to rule out sexual act specimens were collected. It is quite obvious that, since victim was aged hardly 5 years at the time of incident and accused penetrated his finger none cannot expect injuries as it is not always mandatory. In many cases of penetration through finger Doctors will not observe any injuries on the wall of vagina or or labia majora. In many cases court has witnesses that, the Doctors will give their opinion that, sustaining injury at the time of fingering depends on the size of finger and pressure applied. Hence, even there are no injuries on the vagina, court cannot held that, there was no penetration of the victim who was aged 6 years clearly deposed before the court that, accused penetrated his finger. Apart from this, no previous animosity between the parents of the victim and accused has been proved to believe that, accused has been planted in a false case."

25. On the meticulous observation of the order-sheet of the Trial Court , it reveals that the Trial Court has not followed the mandatory provisions of Code of Criminal Procedure and also Articles 21 and 22 of the Constitution



of India and also guidelines issued by the Hon'ble Apex Court in the case of **Ashoka** (supra), and the trial Court has also ignored the decision of Hon'ble Apex Court in the case of **Brijesh Kumar Vs. State of Uttar Pradesh** reported in **(2021)19 SCC 177** as to the duty of the Court to appoint legal aid counsel/amicus curiae or refer to appropriate Legal Services Committee, to appoint an advocate, when accused appears before the Court without legal representation.

26. It is discerning to note that despite clear guidelines laid down by the Hon'ble Apex Court in the case of **Ashoka** (supra), there has been a consistent failure on the part of certain members of the judiciary and prosecuting agencies to adhere to these directives. Such negligence in not following established guidelines has led to a miscarriage of justice, undermining the integrity of the judicial process. To prevent recurrence and ensure adherence to the rule of law, it is imperative that all stakeholders strictly comply with the guidelines.



27. Appreciating the arguments urged by the appellant counsel Sri Abhishek Huddar and also viewed from any angle, prima-facie it appears that the trial Court has failed to conduct fair trial as guaranteed under Articles 21 and 22 of Constitution of India and also the guidelines issued by the Hon'ble Apex Court. Therefore, the impugned judgment of conviction and order on sentence passed by the trial Court is not sustainable under law. Accordingly, the appellant/accused has made out a ground to remand the matter to the trial Court with a direction to provide an opportunity to the accused to cross-examine the material witnesses who are not cross-examined by the accused. Accordingly, I answer Point No.1 in the affirmative.

Regarding Point No.2:

28. For the foregoing reasons and discussions, I proceed to pass the following:



ORDER

- i) Appeal is partly allowed;
- ii) Judgment of conviction and order on sentence passed by the FTSC-I Addl. City Civil and Sessions Judge, Bengaluru in Spl.Case No.1659/2022 dated 05.02.2024 / 06.02.2024, is set aside.
- iii) The case is remitted to the trial Court with a direction to provide the accused an opportunity to cross-examine all the material witnesses examined by the prosecution, who have not yet been examined by the accused and to proceed with the case ,strictly following the due procedure of law .
- iv) The trial Court shall abide by the guidelines issued by the Hon'ble Apex Court referred to in the body of the judgment.



- v) If the accused is unable to engage the counsel, the trial Court shall refer the matter to District Legal Services Authority to appoint defense counsel to prosecute the case on behalf of the accused.
- vi) The Registry is hereby directed to ensure that the copy of judgment be circulated to all the Judicial Officers in the State of Karnataka, the Member Secretary of the respective District Legal Services Authorities, and the Directorate of Prosecution, Karnataka, for the strict implementation and compliance of the same.

Sd/-
(G BASAVARAJA)
JUDGE