



**IN THE HIGH COURT OF KARNATAKA,
AT DHARWAD**

R

**DATED THIS THE 17TH DAY OF NOVEMBER, 2025
PRESENT**

**THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

CRIMINAL APPEAL NO. 100313 OF 2025 (C)

BETWEEN:

ANAND S/O. DURGAPPA GOLLAR,
AGE: 22 YEARS, OCC: LABOURER,
R/O. MALAPRABHA NAGAR,
VADAGAONVI, BELAGAVI, PIN-590005.

...APPELLANT

(BY SRI. MAHANTESH S. HIEMATH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
THROUGH CPI, APMC POLICE STATION,
R/BY. ITS STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD BENCH,
AT: DHARWAD, PINCODE-580001.

2. DEEPA W/O. CHANDRU GURANNAVAR,
AGE: 37 YEARS, OCC: TEACHER,
R/O. HOSUR, HUBLI, NOW AT: OLD MAIN ROAD,
RAMDEV GALLI, KANGARALI K.H,
BELAGAVI, PIN CODE-590001.

...RESPONDENTS

(BY SRI M. B. GUNDAWADE, ADDL. S.P.P. FOR R1;
SRI V. P. VADAVI, ADV. FOR R2)





THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. READ WITH 415(2) OF BNSS ACT, 2023, PRAYING TO SET ASIDE THE CONVICTION AND SENTENCE IN RESPECT OF ACCUSED IMPOSED BY ADDL. DISTRICT AND SESSIONS JUDGE FTSC-1 BELAGAVI ON SPECIAL CASE NO.505/2023 BY HIS JUDGMENT DATED ON 19.02.2025 AND ORDER OF SENTENCE DATED ON 20.02.2025 FOR THE OFFENCE UNDER SECTIONS 452, 376AB, 506 OF IPC AND SECTION 4 OF THE POCSO ACT TO MEET THE ENDS OF JUSTICE.

THIS CRIMINAL APPEAL, HAVING BEEN HEARD AND RESERVED ON 28.10.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

1. The accused in Special Case No.505/2023 on the file of learned Additional District and Sessions Judge, FTSC-I, Belagavi (for short, 'the trial court') has maintained this appeal under Section 374(2) of the Cr.P.C. read with Section 415(2) of the B.N.S.S.. praying to set aside the judgment of conviction dated 19.02.2025 holding him guilty of the offences punishable under Sections 452, 376AB and 506 of IPC and Section 4 of the



POCSO Act, 2012 and the order of sentence dated 20.02.2025 passed therein, in the ends of justice.

2. The parties to this appeal are hereinafter referred to, as per their ranking before the trial court.

3. Brief facts leading to this appeal are as under:

On 03.08.2023 at 4.00 p.m., a complaint came to be lodged by a lady with APMC Yard Police of Belagavi city alleging that the accused herein has committed sexual assault on her minor daughter by trespassing into her house and that the accused has also threatened the victim with dire consequences if she revealed the incident to anyone else. Pursuant to such a complaint, APMC Yard Police registered a case against the accused in Crime No.123/2023 for the offences punishable under Section 4 of the POCSO Act and Section 506 of IPC and took up investigation in the case. They apprehended the accused on the same day and subjected him for interrogation. Later, on completion of the investigation, the jurisdictional police laid a charge sheet against the accused for the offences under Sections 452, 376AB and 506 of IPC and Section 4 of the POCSO Act.



3.1. Based on the prosecution papers, the trial court took cognizance of the alleged offences, secured the presence of the accused from custody, supplied him copies of the prosecution papers in compliance with Section 207 of Cr.P.C. and then, after hearing both side, framed charge against the accused for the alleged offences. The accused pleaded not guilty and claimed to be tried. As such, the trial court called upon the prosecution to adduce their evidence.

3.2. During the trial, the prosecution examined ten witnesses and got marked the documents at Ex.P1 to Ex.P46 and the material objects at M.O.1 to M.O.15. Afterwards, the trial court recorded the statement of the accused under Section 313 of Cr.P.C., wherein he denied all the incriminating evidence appearing against him. But, he has not adduced any defense evidence. Thereafter, the trial court heard the arguments of both side and passed impugned judgment holding that the accused is guilty of the alleged offences and passed the sentence as it deemed fit in the facts and circumstances of the case. Being aggrieved, the accused has directed this appeal challenging the impugned judgment of conviction and sentence.



4. During the course of argument, Sri Mahantesh S. Hiremath, learned Counsel for Accused has vehemently submitted that the impugned judgment is erroneous and perverse and it is contrary to well settled principles of law. He has submitted that in spite of clear cut contradictions in the case put forth by the prosecution, the trial court proceeded to hold him guilty for the alleged offences, without properly appreciating the facts and circumstances of the case and the evidence available on record. He has contended that though the materials on record do not prove commission of penetrative sexual assault on the victim, the trial court proceeded to hold the accused guilty of the offences punishable under Section 376AB of IPC and Section 4 of the POCSO Act. According to him, at the most the trial court could have held the accused guilty for the offences under Sections 7 and 8 of the POCSO Act and not for any other offence. Hence, he prayed to allow the appeal and set aside the impugned judgment of conviction and sentence, in the ends of justice.

5. *Per Contra*, Sri M.B.Gundawade, learned Additional State Public Prosecutor for the State, supported the findings and



the conclusion of the trial court and submitted that the trial court is justified in holding the accused guilty of the alleged offences. He contended that there is overwhelming evidence on record, placed by the prosecution in support of their case and they have proved the guilt of the accused beyond reasonable doubt. As such, he submitted that there is no reason to take a different view in the case than the one taken by the trial court and prayed for dismissal of the appeal.

6. Sri V.P.Vadavi, learned Counsel appearing for the defacto-complainant/ Respondent No.2 has also supported the findings recorded by the trial court and prayed for dismissal of the appeal.

7. Before proceeding further, it would be proper to have cursory look at the evidence adduced by the prosecution in the case. The prosecution has examined the de-facto complainant, who is the mother of the victim as PW-1. In her evidence, PW-1 has stated that on 03.08.2023 at 10.00 a.m. when she left her home for duty, the victim and her son was in the house and on that day at 12.20 p.m., the victim came to her work place and narrated the incident. She has stated that thereafter she tried to



search for the accused and as he was not found, she went to the Police Station and lodged a complaint as per Ex.P1. PW-1 has also deposed regarding further action taken by the jurisdictional Police in connection with the investigation in the case.

8. PW-2 Sri Siddappa Kadappa Malagi and PW-3 Sri Prashant Nagoji Patil are said to be the panchas to the panchanamas drawn as per Ex.P2, P6 and P7. During their evidence, PW-2 and PW-3 have admitted their signatures found in concerned panchanamas and the rough sketch marked at Ex.P3. However, they have denied their presence at the time of these procedures and claimed that no article had been seized in their presence. The prosecution has treated these witnesses as hostile and subjected them for cross-examination. Even then, these witnesses have reiterated that they were not present during these mahazars.

9. PW-4 Sri Chandrakant Prabhakar More and PW-5 Sri Yallappa Yashwant Balekundri are said to be the neighbors of the victim. During their evidence, both these witnesses have stated that they had no information about the alleged incident and that the police had not questioned them in connection with the said



incident. The prosecution has treated them as hostile witnesses and subjected them for cross examination. Even then, the prosecution has not succeeded in eliciting any favourable answer from their mouth, supporting the case of the prosecution.

10. The prosecution has examined two more witnesses namely Sri Rama Yallappa Bijapure and Sri Gurappa Durgappa Gollar as PW-6 and PW-7 respectively. In his evidence, PW-6 has stated that he had engaged the accused and PW-7 to the work of picking up the garbage from Kangrali K.H. of Belagavi. Similarly, PW-7 has stated that PW-6 had engaged him and the accused to pick up the garbage from Kangrali K.H. of Belagavi. However, both of them claimed that they he had no information about the alleged crime and that the Police had not enquired them in this regard.

11. The prosecution has examined the victim girl as PW-8. In her deposition, PW-8 has narrated in detail about the incident as well as the information given to her mother and the police. She has also stated about she having been taken to the hospital and before the judge at Belagavi.



12. PW-9 is the doctor before whom the victim was produced for medical examination. In his evidence, PW-9 has stated that on 03.08.2023 at 6.30 p.m., APMC Police had produced the victim girl before him with a history of sexual assault. PW-9 has stated that after examining her, he had got her examined through the dentist, radiologist, psychiatrist and gynecologist, obtained their reports and then he gave a provisional report as per Ex.P17. He has also stated that after going through the RFSL Report, he had given a final report as per Ex.P19.

13. PW-10 is the Investigating Officer in the case. In his evidence, PW-10 has stated that PW-1 had lodged a complaint before CW-23, where upon CW-23 registered a case in Crime No.123/2023, forwarded FIR to the concerned and then sent the victim girl to BIMS Hospital, Belagavi for medical examination. PW-10 has stated that thereafter he received the record of the case and conducted entire further investigation in the case. PW-10 has narrated in detail about various steps taken by him during the course of investigation till filing of the charge sheet.



14. We have carefully considered the submissions made on either side and perused all the materials available on record. In the light of the contentions put forth before this Court, the following points would arise for our consideration:

- (i) Whether the trial court is justified in holding that the prosecution has proved the guilt of the accused on all counts, beyond reasonable doubt?
- (ii) Whether impugned judgment of conviction and sentence needs interference by this Court?

15. This Court being the first appellate court, We have cautiously re-examined the entire evidence adduced before the trial court in the case and independently re-appreciated all the materials available on record in the backdrop of the legal principles governing the field and arrived at independent conclusion regarding correctness or otherwise of the findings recorded by the trial court. Our answer to the above referred points is partly in the affirmative, for the following reasons.

16. It would be beneficial to refer to the legal position before proceeding to appreciate the contentions of the parties and the materials available on record. In catena of decisions it is



held that the sole testimony of the prosecutrix/victim can form the basis for conviction in cases of sexual assault including rape, provided it inspires confidence and is free from serious doubt or material inconsistencies. The courts should remain alert for fabrication or false implication, especially where there are material inconsistencies.

16.1 In **State of Himachal Pradesh Vs Manga Singh, [(2019) 16 SCC 759]** Hon'ble Supreme Court of India has reaffirmed the legal principle that the conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. In this decision it is specifically observed that corroboration is not a sine qua non for conviction in a rape case and as a general rule, there is no reason to insist on corroboration except from medical evidence. It has further held that having regard to the circumstances of the case, medical evidence may not be available and in such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.

16.2 In **Raju @ Umakant Vs State of Madhya Pradesh (2025 SCC OnLine SC 997)** Hon'ble Supreme Court of India



has held that a woman or a girl subjected to sexual assault is not an accomplice but a victim of another person's lust and it will be improper and undesirable to test her evidence with suspicion. All that the law mandates is that the Court should be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of charge leveled by her and if after keeping that aspect in mind if the Court is thereafter satisfied that the evidence is trustworthy, there is nothing that can stop the Court from acting on the sole testimony of the prosecutrix.

16.3 In addition to the above, this case has been registered under the provisions of IPC and POCSO Act. Sections 29 and 30 of the POCSO Act permit the Court to draw a legal presumption of guilt and *mens rea* against the accused for the offences under Sections 3,5,7 and 9 of the Act. The Court is required to apply these presumptions once the prosecution proves the foundational facts of the case beyond reasonable doubt. The foundational facts primarily include the age of the victim as on the date of crime and the commission of alleged



offences. Once these basic facts are established, the burden shifts to the accused, to prove his innocence.

17. Coming to the case on hand, the case of the prosecution is that on 03.08.2023 at 12.00 p.m. when the victim girl was in her house along with her younger brother, the accused came near their house for collecting garbage and then the accused sent the younger brother of the victim to the shop to buy shampoo under the guise that he wants to wash his hands and legs. Later, he asked the victim to give some water to drink and when the victim went inside her house to bring the water, the accused entered the house and closed the door and windows, hugged and kissed the victim, squeezed her chest, when the victim started screaming the accused caught hold of her mouth tightly, removed her pant, inserted his private part into the private part of the victim and committed forcible sexual intercourse with her. It is further case of the prosecution that on hearing the sound of returning of the younger brother of the victim, the accused left the place by giving life threat not to reveal the incident to anyone else.



18. The materials on record go to show that though the prosecution has examined altogether 10 witnesses in the case, the depositions of PW-4 to PW-7 are not helpful in proving the guilt of the accused. The prosecution is mainly relying on the testimony of the victim, her mother and the doctor to prove the accusation made against the accused.

19. It is the case of prosecution that the victim was aged about 11 years at the time of the incident. In the complaint marked at Ex.P.1 the age of the victim is mentioned as 11 years and that she was studying in 5th standard at the relevant point of time. During her evidence, the de-facto complainant i.e. PW-1 has reiterated this aspect. The prosecution has examined the victim as PW-8. In her deposition PW-8 has stated that she is 11 years old and that her date of birth is 21-11-2012. During the cross examination of PW-1 or PW-8, the accused has not raised any dispute regarding the age of the victim at the relevant point of time. Added to the above, the prosecution has produced documents such as study certificate at Ex.P-34 and medico-legal examination report pertaining to the victim at Ex.P-17. In Ex.P-34 the date of birth of the victim is shown as 21.12.2012. In



Ex.P-17 the doctor concerned, based on dental and skeletal report, has opined about the approximate age of the victim as 11-12 years. Thereby, it becomes crystal clear that the victim was under the age of 12 years as on the date of incident i.e. 03.08.2023.

20. Now, the crucial aspect for consideration would be the proof regarding commission of penetrative sexual assault on the victim. Admittedly, the mother of the victim was not an eye-witness to the incident. She has deposed before the court in this regard based on the information said to have been narrated by her daughter i.e. the victim.

21. The victim – PW-8, during her examination-in-chief has stated that on 03.08.2023 at 12.00 p.m. when she was in her house along with her younger brother, the accused came to their house to collect the garbage and then he sent her younger brother to buy shampoo under the guise of washing his hands and legs and asked her to give water to drink. She has stated that when she went inside the house to bring the water, the accused followed her, closed the door of the house and committed sexual assault on her. She has stated that on hearing



the sound of returning of her younger brother, the accused left the place by giving threat of dire consequence if she revealed the incident to anyone else.

22. In her evidence, PW-8 has also stated that after the incident she had gone to the place of work of her mother and informed her mother about the incident. The said statement of PW-8 finds corroboration from the deposition of PW-1 and other materials on record such as lodging of a complaint as per Ex.P1, taking PW-8 for medical examination and the history of the incident mentioned in medico-legal examination report pertaining to the victim, which is marked at Ex.P17.

23. Learned Counsel for Accused has strenuously submitted that the materials on record do not suggest commission of a penetrative sexual assault on the victim but at the most, an act of sexual assault. In this regard, learned Counsel for Accused has drawn the attention of this Court to the statements made by the victim before the trial court on oath as well as the contents of the documents marked at Ex.P12, Ex.P13 and Ex.P16. On the other hand, learned Additional State Public Prosecutor, relying on relevant provisions of IPC and POCSO Act,



vigorously submitted that even the slightest penetration is sufficient to make out an offence of rape and to bring the act under Section 376AB of IPC and Section 4 of the POCSO Act. In view of the above noted rival contentions of the parties, it requires for Court to find out whether the act of the accused amounts to penetrative sexual assault or mere sexual assault.

24. Perusal of the deposition of PW-8 goes to show that during her examination-in-chief she has merely stated about the accused having kissed her and rubbed his private part to her private part apart from giving a life threat. PW-8 has not stated anything about the accused having committed forcible sexual intercourse with her or even having removed her clothes before rubbing his private part to her private part. The relevant portion of her testimony, reads as under :

“ಆರೋಪಿತ ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಕಸ ಕೇಳಲು ಬಂದಿದ್ದ. ನಾನು ಪಾತ್ರೆ ತೊಳೆದುಕೊಂಡು ಮನೆಯ ಒಳಗಡೆ ಹೋದಾಗ ಆರೋಪಿತ ನನ್ನ ತಮ್ಮನಿಗೆ ಕೈ ಕಾಲು ತೊಳೆಯಲು ಶಾಂಪೂ ತೆಗೆದುಕೊಂಡು ಬಾ ಎಂದು ಅಂಗಡಿಗೆ ಕಳುಹಿಸಿದ್ದ. ನಂತರ ನನಗೆ ಕುಡಿಯಲು ನೀರು ಬೇಕು ಎಂದು ಕೇಳಿದ ಕಾರಣ ನಾನು ನೀರು ತರಲೆಂದು ಒಳಗೆ ಹೋದಾಗ ಆತ ನನ್ನ ಹಿಂದೆ ಬಂದು ಬಾಗಿಲನ್ನು ಮುಚ್ಚಿ ಆತನ ನನ್ನ ಬಾಯಿಗೆ ಹಾಕಿದ್ದ, ನಂತರ ಆತನ ಮೂತ್ರ ವಿಸರ್ಜನೆಯ ಜಾಗವನ್ನು ನನ್ನ ಮೂತ್ರ ವಿಸರ್ಜನೆಯ ಜಾಗಕ್ಕೆ



ಹಾಕಿದ್ದ. ನನ್ನ ತಮ್ಮ ಬರುವ ಶಬ್ದ ಕೇಳಿ ನನ್ನನ್ನು ಬಿಟ್ಟಿದ್ದ. ನಂತರ ಆತ ಸದರಿ ವಿಚಾರವನ್ನು ಯಾರಿಗಾದರೂ ಹೇಳಿದಲ್ಲಿ ನಿನ್ನನ್ನು ಸಾಯಿಸುತ್ತೇನೆ ಎಂದು ಬೆದರಿಕೆ ಹಾಕಿದ್ದ.”

25. The prosecution has got marked the statement of the victim recorded under Section 164 of the Cr.P.C. at Ex.P16. The contents of Ex.P16 go to show that during her such statement, the victim has unequivocally stated that though the accused had tried to remove her pant, she did not allow him to do so.

26. At this stage, it is relevant to note that even the medical reports i.e., the provisional and final, marked at Ex.P17 and P19, indicate only commission of sexual assault on the victim than penetrative sexual assault as contended by the prosecution. It is because the final opinion marked at Ex.P19 stated that hymen was intact and no injuries were noted on genitalia of the victim.

27. Learned Additional State Public Prosecutor relying on the contents of Ex.P17 and Ex.P19 as well as the finding recorded by the trial court vehemently submitted that the seminal stains detected in the pant/leggings of the victim and the blood stains detected in her innerwear proves commission of



penetrative sexual assault on the victim. It is true that Ex.P19 contains a mention about detection of seminal stain in the pant/leggings and blood stain in the innerwear of the victim. However, it is to be noted in the very same document it is noted that the victim has attended menarche and opined the victim's genitalia being the source of blood stains found in her innerwear. Further, in Ex.P17 it is opined that an attempt of penetration, resulting in seminal ejaculation on the pant/leggings of the victim.

28. A careful analysis of medical evidence adduced in the case would indicate self contradictions. During his evidence PW-9 has stated that as per the report of the Gynecologist the hymen of the victim was torn. Whereas, Ex.P19 contains a specific mention that hymen was intact. Further, in Ex.P17 while mentioning relevant medical history in column No.14 it is noted that menarche not attained. Whereas, in Ex.P19 it is stated that the victim has attended menarche. In Ex.P19 it is further mentioned that an attempt of penetration by any object resulting in small minor injury causing bleeding, cannot be ruled out. It is



nobody's case that there was any attempt on the victim to penetrate her with any object, resulting in small minor injury.

29. Similarly, the document marked at Ex.P24 contains a mention about rubbing of penis against labia majora of the victim. Based on page numbers found in this document, it seems to be the part of Ex.P17. The above noted reference is found at the Column No.15 (vii) while recording the description of incident in the words of the narrator. As per its contents such a narration was given by the WPC, probably who accompanied the victim during the medical examination.

30. The materials on record indicate that during the evidence of PW-8, the prosecution has even got marked the statement and further statement of the victim, which were recorded under Section 161 of Cr.P.C., as Ex.P12 and Ex.P13 respectively. First of all, these statements recorded under Section 161 of Cr.P.C have no substantive evidentiary value and its restricted use is solely for contradicting or impeaching a witness's testimony. As such there is no question of considering these statements for the purpose of corroboration in the case. Even otherwise, if we carefully analyze these documents, a



genuine doubt arises regarding reliability of the version found in further statement marked at Ex.P.13. It is because the statement of the victim marked at Ex.P12 recorded on 05.08.2023 does not contain any mention about the accused having removed or attempted to remove her clothes while committing the sexual assault. The statement of the victim under Section 164 of Cr.P.C. was recorded on 10.08.2023, wherein she has categorically stated that she did not allow the accused to remove her clothes. The further statement marked at Ex.P13 bears the date of such statement as 25.09.2023, which is after a gap of more than one month from the date of statement recorded under Section 164 of Cr.P.C. Thus, in our considered view the prosecution has failed to prove the accusation of penetrative sexual assault on the victim beyond reasonable doubt. Accordingly, it is held that the finding recorded by the trial court regarding commission of penetrative sexual assault on the victim is not sustainable.

31. The victim has emphatically deposed before the trial court regarding the acts committed by the accused, which definitely amounts to sexual assault on her as well as trespass



into her house and having given life threat to her before leaving the place. The statements made by the victim on oath indicate that she has deposed naturally, which inspires confidence to accept her version as genuine and reliable. Added to it, the evidence of PW-1, PW-9 and the medical opinions marked at Ex.P17 and Ex.P19 corroborate her version. Thereby the prosecution has proved the basic foundation for invoking the legal presumption available under Section 29 of the POCSO Act. On the other hand, the accused has neither disputed the statements of the victim made on oath nor come up with any explanation in his defense. Thereby the accused has failed to rebut the presumption available to the prosecution under Sections 29 and 30 of the POCSO Act.

32. The materials on record clearly go to show that the victim was aged below 12 years as on the date of the crime. As per Section 9(m) of the POCSO Act, the sexual assault committed on the child below 12 years falls under the category of aggravated sexual assault, which is punishable under Section 10 of the POCSO Act. Under the said provision the offence of the aggravated sexual assault is punishable with imprisonment of



either description for a term which shall not be less than 5 years, but which may extend to 7 years and with fine.

33. Undisputedly, the accused herein was aged about 20 years and he was working as a labour in garbage picking vehicle at the relevant point of time. The thumb impressions of the accused person in the plea and the statement recorded under Section 313 of Cr.P.C., gives an impression that he is an illiterate and from poor family. The age of the accused and his background including the financial condition are definitely the mitigating circumstances, to be taken note of while dealing with issue of sentence. Thus, taking into consideration all relevant factors including absence of any injury on the person of the victim, this Court opines that it would be proper to sentence the accused to undergo rigorous imprisonment for a term of 5 years and to pay fine of Rs.5,000/- for the offence under Section 9 of the of the POCSO Act, punishable under Section 10 of the POCSO Act.

34. In the impugned judgment, the trial court has held the accused guilty even for the offence under Section 452 of IPC and sentenced him to undergo rigorous imprisonment for 7 years



and to pay fine of Rs.5,000/- for the said offence. First of all, the facts of the case go to show that Section 452 of IPC is not all applicable. It is because Section 452 of IPC deals with a case of house trespass after preparation for hurt, assault or wrongful restraint. Whereas, in the present case the prosecution has not alleged anything about the accused having committed the trespass into the house of the victim by making preparation for hurt, assault or wrongful restraint. As such it is to be held that the act of trespass committed by the accused falls under Section 451 of IPC. The offence under Section 451 of IPC is punishable with imprisonment of either description for a term which may extend to two years and a fine. Hence, this Court opines that it would be proper to award rigorous imprisonment of one year and a fine of Rs.1,000/- to the accused for the offence punishable under Section 451 of IPC.

35. The trial court has awarded simple imprisonment of two years and a fine of Rs.1,000/- to the accused for the offence punishable under Section 506 of IPC. Taking into consideration the facts and circumstances of the case and the manner in which the offence was committed, this Court opines that there is no



need of interfering with the sentence imposed by the trial court for the offence under Section 506 of IPC.

36. We find an error committed by the Investigating Officer and the trial court in failing to invoke correct provision of law while laying the charge sheet and at the time of framing the charge respectively. It is the definite case of the prosecution that the victim was aged 11 years at the time of crime. Accordingly, the charge sheet was laid against the accused by invoking Section 376AB of IPC. However, in the said charge sheet, Section 4 of the POCSO Act has been invoked against the accused along with Section 376AB of IPC. Section 5(m) of the POCSO Act makes it clear that whenever an offence of penetrative sexual assault is committed on a child below 12 years, such an offence falls under the category of aggravated penetrative sexual assault, which is punishable under Section 6 of the POCSO Act. This aspect has not been noticed by the trial court either at the time of framing charge or at the time of pronouncing the judgment in the case. On the other hand, the trial court has proceeded to hold the accused guilty for the offences under



Section 376AB of IPC and Section 4 of the POCSO Act and passed an order of sentence separately for these offences.

37. In ***Soundarajan Vs State represented by the Inspector of Police, Vigilance Anti Corruption, Dindigul*** (Criminal Appeal No.1592/2022, DD 17.04.2023) Hon'ble Supreme Court of India has held that under Section 464 of Cr.P.C., omission to frame a charge or any error in charge is never fatal unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. As already pointed out, in this case the prosecution has invoked Section 376AB of IPC, which relates to commission of rape on woman below 12 years of age. As such, it is to be held that the accused was not mis-lead on account of improper framing of the charge i.e. non-invoking of Sections 5(m) and 6 of the POCSO Act in the case. Thus, the materials on record indicate that the accused has not suffered any prejudice on account of such mistake. It is also relevant to note that the Accused has not raised this aspect as one of the grounds to challenge impugned judgment.

38. In the result, this Court proceeds to pass the following :



ORDER

- (I) The appeal is allowed in part.
- (II) The judgment of conviction dated 19.02.2025 and order of sentence dated 20.02.2025 passed in Special Case No.504/2023 on the file of the Additional District and Sessions Judge, FTSC-I, Belagavi is modified.
- (III) Consequently, the accused is held guilty for the offences under Section 9 of the POCSO Act and Section 451 of IPC apart for the offence under Section 506 of IPC as held by the trial court.
- (IV) The accused is sentenced to suffer rigorous imprisonment for a period of 5 years and to pay fine of Rs.5,000/- for the offence under Section 9 read with Section 10 of the POCSO Act and rigorous imprisonment for a period of one year and fine of Rs.1,000/- for the offence under Section 451 of IPC. In default of payment of the fine amounts, he shall undergo simple imprisonment for a period of six (6) and three (3) months respectively.
- (V) The sentence imposed by the trial court for the offence under Section 506 of IPC is maintained.
- (VI) All these sentences shall run concurrently.



- (VII) The accused is entitled for the benefit of set off under Section 428 of the Cr.P.C./Section 468 of BNSS.
- (VIII) The accused is entitled for refund of excess fine amount paid/deposited by him, if any, in pursuance of impugned judgment.
- (IX) The registry is directed to furnish a free copy of this judgment to the accused through concerned prison authority, forthwith.
- (X) The registry is directed to return trial court record to concerned court along with a copy of this judgment.

**Sd/-
(R.DEVDAS)
JUDGE**

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**