# BEFORE THE CHILD FRIENDLY COURT, BENGALURU URBAN DISTRICT.

Dated this the 3<sup>rd</sup> day of July 2020.

Present: SMT.R.SHARADA,B.A. M.L LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55] SITTING IN CHILD FRIENDLY COURT, BENGALURU URBAN DISTRICT.

# SPL CC NO.152/2014

**COMPLAINANT:** State by Basaveshwaranagara Police,

Bangalore City.

(By Learned Public Prosecutor)

-Vs -

ACCUSED: Jagadish,

Son of Somashekar,

Aged 20 years,

No.126, 2<sup>nd</sup> Main, 2<sup>nd</sup> Cross,

Kamalanagar, Bangalore-79.

[By Advocate Sri.Balagangadhara]

1.	Date of commission of	10.1.2014
	offence	
2.	Date of report of	10.1.2014
	occurrence of the offence	

3.	Date of arrest of accused	10.01.2014
	Date on which the accused was released on bail	04.08.2014
	Period undergone by the accused in the judicial	6 Months and 25 days
	custody	Again the accused was taken to the judicial
		custody on 9.9.2019 and he was released on
		bail on 24.9.2019 .
4.	Date of commencement of evidence	12.2.2015
5.	Date of closing of evidence	28.8.2019
6.	Name of the complainant	Smt.Jameela, complainant as well as the
		mother of the victim girl
7.	Offences complained of [as per the charge-sheet]	Secs. 366(A), 376 of IPC, and under Secs. 3, 4, 7 and 8 of POCSO Act 2012.
8.	Opinion of the Judge	Acting under Sec.235(2) of Cr.P.C, I
		hereby convict the accused for the
		offences punishable under Secs.366
		and 376 of IPC and also Sec. 4 of
		POCSO Act, 2012.
		The bail bond and surety bond of the
		accused stands cancelled.

#### **JUDGEMENT**

The Police Inspector, Basaveshwaranagara police station has filed charge-sheet against the accused for the offences punishable under Secs. 366(A), 376 of IPC, and under Secs. 3, 4, 7 and 8 of POCSO Act 2012.

2. It is the case of the prosecution that, the complainant who is none other than the mother of the victim girl lodged a complaint stating that, on 10.1.2014 in the morning at 8.30 A.M., her daughter aged 15 years left the house telling that she is going to school, but, she did not go to the school nor returned back to the The complainant suspected that the accused herein might have kidnapped her daughter. Hence, the complainant requested the police to trace out her daughter and to take action against the On the basis of the said complaint, the complainant accused. registered a case against the accused police have Cr.No.19/2014 for the offence punishable under Sec.366(A) of IPC and commenced investigation. During the course of investigation, on 10.1.2014 the victim girl was traced out and on her enquiry, she revealed that, the accused was following her when she was going and coming from school and was telling that he is loving her and that he will marry her. So, on 10.1.2014 in the morning at 8.30 A.M., the accused enticed her [CW2/victim girl] and took her Gangadheswara School, situated at Kamalanagar, coming within the limits of Basaveshwaranagara police station friend's house by name Kiran situated at No.654, Kamalanagar 1<sup>st</sup> Main Road, Shankarnag Bus stop, Bengaluru and in the said house, the accused committed rape/ penetrative sexual assault on CW2/ victim girl. On the basis of the statement given by the victim girl, the complainant police have inserted Sec.376 of IPC and Sec.4 of POCSO Act 2012 and continued with the investigation by arresting the accused and taking him to remand and remanded him to the judicial custody. After completion of investigation, the Investigation Officer has submitted charge-sheet against the accused which is numbered as Spl CC No.152/2014 for the offences punishable under Secs. 366(A), 376 of IPC, and under Secs. 3, 4, 7 and 8 of POCSO Act 2012.

- 3. During the course of investigation, the accused was arrested on 10.01.2014. Thereby he was taken to the judicial custody. As per the orders of this court dated:04.08.2014, the accused was released on bail. Thereafter, copies of the charge-sheet were furnished to the accused under Sec.207 of Cr.P.C. Thereafterwards Charges are framed and read over and explained to the accused, to which, the accused pleaded not guilty and claims to be tried. Accordingly, summons issued to the charge-sheet witnesses.
- 4. In support of its case, the prosecution has examined as many as 11 witnesses as PWs-1 to 11 and got marked 20 documents as per Exs.P1 to P20 , besides marking MOS-1 to 9. Thereafter Statement of the accused recorded under Sec.313 of Cr.P.C. The accused has denied all the incriminating evidence told to him, but he has not examined any witnesses on his behalf and no documents are marked.

- 5. Heard the arguments of the learned Public Prosecutor and the learned counsel for the accused. On perusal of the oral and documentary evidence, at this stage, following Points arise for my consideration:
  - 1) Whether the prosecution proves that, on 10.1.2014 in the morning at 8.30 A.M., the accused enticed CW2/victim girl by telling that he will marry her and kidnapped her from Gangadheswara School, situated at Kamalanagar, coming within the limits of Basaveshwaranagara police station, thereby the accused has committed an offence punishable under Sec.366 of IPC?
  - Whether the prosecution further proves that, on the said date, time and place the accused not only kidnapped CW2/ minor Victim girl, but, took her to his friend's house by name Kiran situated at No.654, Kamalanagar 1<sup>st</sup> Main Road, Shankarnag Bus stop, Bengaluru and in the said house, the accused committed rape/ penetrative sexual assault on CW2/ victim girl thereby the accused has committed the offences punishable under Sec.376 of IPC and Sec.4 of POCSO Act 2012?
  - 3) What Order?
  - 6. My findings on the above points are as under:

Point Nos.1 and 2: IN THE AFFIRMATIVE

**Point No.3**: As per the final order, for the following:

#### **REASONS**

- 7. **POINT NOS.1 AND 2:-** Since these Points are interlinked, they are taken up for common discussion in order to avoid repetition of facts.
- 8. During the course of arguments, the learned Public Prosecutor submitted that, the prosecution has proved the guilt of the accused beyond all reasonable doubts, because the Victim girl during the course of examination in chief clearly deposed before the court that the accused has enticed her, took her with him to his friend's house and there inspite of her resistance committed penetrative sexual assault. OF course, in the cross-examination conducted by the Learned counsel for the accused the Victim girl has not supported her chief examination evidence but it is settled law in these types of cases, the chief evidence of the Victim girl has to taken into consideration to convict the accused if there are other corroborative evidence. In the present case, the other witnesses ie., the medical officer, Investigating Officer and also other circumstantial witnesses have supported the case prosecution, thereby, the accused is liable for conviction. With the learned Public Prosecutor prays to convict the all these, accused for the alleged offences, in the interest of justice and equity.
- 9. Per contra, the learned counsel for the accused has submitted that, the prosecution failed to prove the guilt of the accused, as provided under law. The Victim girl in the

cross-examination clearly deposed that, the accused and herself are the residents in one area thereby she knows the accused. On 1.1.2014 the accused came to her house to greet her for New year thereby, some quarrel was arose in her family because of that reason, the complainant ie., her mother has lodged a complaint only to cause hardship to the accused. When this kind of evidence elicited from the mouth of the Victim girl, is in the cross-examination, the validity of her chief evidence cannot be considered to convict the accused. Apart from that, PW2 mother of the Victim girl also not supported the case of the prosecution and she has specifically stated that the accused has not committed any sexual assault on her daughter. Under these circumstances only on the basis of the evidence of official witnesses, accused cannot be convicted. Further he submitted the Investigating Officer during the course of investigation, has collected the clothes of the Victim girl as well as the accused and sent them for forensic examination, but the said FSL Report is not produced before the court and got marked on behalf of the When such kind of grave discrepancy is occurred in prosecution. the trial of the prosecution, the accused cannot be convicted on this With all these, the Learned counsel for the accused ground also. prays to acquit the accused in the interest of justice and equity.

10. I have perused the entire records once again carefully. During the trial of this case, prosecution in all examined 11 witnesses as PWS-1 to 11 and got marked 20 documents as per Exs.P1 to P20 besides marking MOS-1 to 9. The accused has not led any defence evidence. In order to understand the nature of

the evidence given by each of the above witnesses, and the extent of reliability and usefulness of their evidence, I find it necessary to refer in brief to the witnesses examined. Out of the 11 witnesses examined by the prosecution, PW1 is the victim girl who has been examined under Sec.33 (2) of POCSO Act, 2012 in the presence of her mother. PW2 is the mother of the victim girl as well as the complainant who has set criminal law into motion by lodging a PW3 is the police official deposed to had taken the complaint. accused to the hospital for medical examination. PW4 is the Head Master of the school where the victim girl was studying in 10<sup>th</sup> standard during the period of the offence deposed to had given document in proof of the age of the victim girl. PW5 is the doctor deposed to had subjected the accused to physical examination. PW6 is the doctor who stated to had subjected the victim girl for physical examination. PW7 is the PSI deposed to had received the complaint from PW2 as per Ex.P2 and deposed to had registered as PW8 is a a crime and the other procedures he had followed. woman HC deposed to had taken the victim girl for medical examination to the hospital along with the mother of the victim girl. PW9 is a police official stated to had carried the seized articles to the FSL and handed over them for examination. PW10 is another police official deposed to had gone with another police personnel for tracing the accused and the victim girl and deposed to had apprehended them and produced them before the Investigation Officer. PW11 is the Investigation Officer stated to had taken up further investigation and filed charge-sheet against the accused. In support of its case, the prosecution has also produced the

following documents: Ex.P1 is the statement of the victim girl given to the complainant police under Sec.161 of Cr.P.c. Ex.P2 is the complaint dated: 10.1.2014 lodged by the complainant .Ex.P3 is the Report. Ex.P4 is the Spot Panchnama. Ex.P5 is the Study Certificate of the victim girl. Ex.P6 is the Medical Report of the Ex.P7 is the Medical Report of the victim girl. Ex.P8 is accused. Ex.P9 is the PF No.7/2014 dated: 11.1.2014 Ex.P10 is the FIR. the Seizure Panchanama. Ex.P11 is the voluntary statement of the accused. Ex.P12 is the Medical report of the victim girl. Ex.P13 is the Report. Ex.P14 is the Report. Ex.P15 is the Acknowledgement issued by FSL, Madiwala, Bangalore. Ex. P16 is the Report. Ex.P17 is the Passport. Ex.P18 is the Report. Ex.P19 is the Report and Ex.P20 is the PF No.20/2014 dated: 28.1.2014. MOS-1 to 9 are the sealed articles belonging to the victim girl and the accused of this case.

- 11. As referred to above in brief the nature of the evidence given by PWS-1 to 11, I find that the evidence of PWS-1 and 2 warrants more attention and analysis to know the veracity of the prosecution version and to find out whether the prosecution has been successful in bringing home the guilt of the accused as charge-sheeted with the supporting evidence of PWs-6 and 5 and evidence of the police personnel.
- 12. PW2 is the complainant being the mother of the victim girl found to had set the law into motion by filing the complaint to the police as per Ex.P2 on 10.1.2014 complaining that the

her daughter/ victim girl who was studying in 10th standard in a school at Kamalanagar who had gone to the school at 8.30 A.M., on that day telling that she was going to special class. On that day, the teacher from the school at 10.40 A.M., sent an Aya of that school to her house telling that the victim girl has not gone to school, then she realized that this accused was following her daughter, felt that the accused must have taken the victim girl with him and requested the police to search for her daughter and bring her safely, as she was a minor. In furtherance of the contents of this complaint, PW2 in the witness box during trial has reiterated the same and admitted to had given complaint to the police as per Ex.P2 and identified her signature as per Ex.P2(a). She has further stated that, she had come to know that this accused was following her daughter and she was also talking to him and therefore deposed to had suspected him and filed complaint against him. She has further stated that on the same day of giving the complaint in the afternoon at 3.30 P.M., her daughter came alone weeping and when she enquired with her daughter, her daughter stated to had told her that the accused on that day went near her school and despite her refusal, he took her to a film, from there he took her to the house of his friend but when she refused to go, the accused forced her to go with him and took her to a house of his friend at Shankarnag bus stop and as there were none in the said house, despite of her resistance telling that he will marry her daughter, committed penetrative sexual assault on her. The witness further stated to had gone to the spot of crime along with her daughter when the police prepared the spot Mahazar.

- 13. PW1 is the victim girl. In her evidence she has stated that she knows the accused that he following her when she was going to her school at Kamalanagar; that he is in love with her and when she told him that his elders do not allow her but after a week she also started loving him then the accused told her that, he will take her to Dharmasthala and marry her but she refused then the accused took her to a film and then to the house of his friend namly Kiran at Kamalanagar where there were none in the said house, then the accused removed her duppatta but when she declined the accused telling her that he will marry her then she kept quite and the accused committed sexual act on her and further stated that she then and there went to her house, then her mother took her to police station and there she deposed to had given a statement to the police as per Ex.P1 and identified her signature as Ex.P1(a). She has also stated that, the police arrested the accused, then she was sent to the hospital and stated that as on that day, she was 15 years old as she was born on 3.1.1999. The witness further stated to had given her clothes in the hospital which are as per MOS-1 to 3. The witness also spoken to had assisted the police in the investigation and drawing of the mahazar by showing the place of the crime and identified to had attested the Mahazar as per Ex.P4(a).
- 14. The two witnesses namely PWS-1 and 2 have been examined in Chief on 12.2.2015 and 15.12.2015 respectively but the defence since took adjournment on that day to cross-examine

them. Thereafter, the defence did not subject them cross-examination until 16.10.2019 and 30.12.2019 respectively. When PW1 subjected to cross-examine by the learned counsel for the accused, this witness found to have turned hostile answering all these suggestions made by the learned counsel for the accused stating that she cannot say exact date of birth, that she was participating in long jump and Koko (ಖೋ ಖೋ) and that herself and the accused were friends and further cross-examination reads that the defence has not disputed that the accused was known to the victim girl and her mother and he was according to the defence was moving with her. It is further suggested as if the accused had even wished new year on 1.1.2014 and that is why what is written in the complaint is false and that the accused had taken her to his friend's house is also false. The witness answered to have made signature to the false complaint etc.

15. The court after the cross-examination by the learned defence counsel put some court questions and questioned to know the age of the victim girl, the witness [victim girl] has answered her age as 20 years that she has studied upto II PUC. That when the court put question to the victim girl whether she knows that she should give true version or falsehood in the court, the witness has answered that she knows the same and stated that she speaking the truth. The witness further to the court question has answered on the earlier occasion when she came to the court there was no any force or fear while giving evidence. These answers given by the victim girl to the court questions, the witness has clearly stated

that she is aware of the fact that she should give true version in the court and she is speaking the truth only and further categorically stated when she deposed on the earlier occasion that is when she was examined by the learned Public Prosecutor, there was no force or she had any fear in giving the evidence.

16. The learned defence counsel except suggesting that the victim girl signed to the false complaint, he has not at all referred to the statement she has got marked as Ex.P1. The contents of examination in chief of PW1 and the contents of Ex.P1 go in-conformity with each other. Further the witness has fortified that when the victim girl gave evidence before the court on 12..2.2015 she had no sort of any force or fear. Therefore, the question that arise is whether the evidence of PW1 given on 12.2.2015 is to be relied upon or the cross-examination of the learned defence counsel to be believed rejecting her first version. This apart I have the evidence of PW2 the mother of the victim girl. The same thing has developed in the cross-examination by the learned defence counsel. PW2 also who had given evidence before this court on 15.12.2015 gave in-consonance with the complaint she had given to the police as per Ex.P2, but, in the crossexamination of learned defence counsel, at later stage, she has answered all the suggestions of the learned defence counsel giving a go-bye to her earlier statement by answering as if the accused was residing in their area and the accused and the victim girl were friends and he was talking to her daughter, that the accused had not taken her daughter and there is no connection whatsoever

between the accused and the victim girl and she had given the complaint at the instance of Rakshana Vedike.

17. In the cross-examination by the learned Public Prosecutor after treating PW2 as hostile, she has stated that she will not lie and she knows that she should tell truth in the court. The witness further admitted to had given evidence before this court on 15.12.2015 and she has spoken to the true facts. These answers elicited by the learned Public Prosecutor points to the fact that the witness [PW2] is aware of the fact that she should tell truth only in the court and stated that she do not lie and further explicitly admitted the evidence given by her on 15.12.2015 and whatever she was told is the truth. Further the evidence of PW2 given in the witness box on 15.12.2015 goes in-conformity with the complaint allegations and the same has remained unrebutted as the learned defence counsel has not at all put any questions questioning PW2 as to the facts she has spoken. Similarly in the evidence of PWS-1 and 2 given in the chief examination has not been touched, by subjecting them to cross-examination on the relevant facts touching the overt-acts committed by the accused, except in the cross-examination of these two witnesses the learned defence counsel making his own suggestions and getting positive answers from PWS-1 and 2 which in my view are the questions, which do not go to the extent of contradicting the evidence of the above two witnesses. Further the learned defence counsel has not elicited any answer from PWS-1 and 2 specifically as to how and why or what made them to give the facts as stated

in the chief examination. Further the gap in between their chief examination, cross-examination and the suggestions with the answers given by these 2 witnesses [PWS-1 and 2] the learned defence counsel points some unethical development had stepped in to misdirect the judicial processes. But further considering the answers given by PW1 to the court questions and the answers given by PW2 in the cross-examination of learned Public Prosecutor points that the witnesses are well aware of the court proceedings and that PW2 categorically affirmed having said truth. That being so, in the absence of any attributions to PWS-1 and 2, their evidence given in chief examination stands the test of Judicial scrutiny and impress upon the court and that cannot be for any reason discarded. Therefore, I accept the evidence of PWS-1 and 2 that I hold it merits consideration. This view of mine is supported by the decisions reported in State of Punjab Vs. Gurmit Singh (1996) 2 SCC 384 and Ranjit Hazarika Vs. State of Assam 1998 (8) SCC 635, in which the Hon'ble Supreme Court has held that:

- "Corroborative evidence is not an imperative component of Judicial credence in every case of rape..... It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but it is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice".
- 18. Now coming to the evidence of PW4-G.R.Uma, Head Mistress of Sri.Gangadheswara English School, Kamalanagara, Bangalore where the victim girl was studying. In her evidence

before the court, PW4 has deposed that, during the year 2014, CW2/ victim girl was studying in 10<sup>th</sup> standard. As the parents of the victim girl had requested for issuing the details of the date of birth of the victim girl, she has issued the Study certificate of the victim girl showing the date of birth of the victim girl as 3.1.1999. The said Study Certificate of the victim girl is as per Ex.P5 and her signature is as per Ex.P5(a). She has handed over the said Certificate to the Investigation Officer. The witness in the crossexamination of the learned counsel for the accused has denied the she has not obtained any details about the date suggestion that, of birth of the victim girl, but has issued Ex.P5. She has also denied the suggestion that, to assist the police, she is deposing Thereby there is no dispute that the victim girl was a minor at the time of the incident.

19. Now coming to the evidence given by the Medical Officers, among them, PW6-Dr.Tulasidevi in her evidence before the court has deposed that, she has examined the victim girl on the same day of the crime at 9.15 P.M., and stated that the mother along with the victim girl was taken to her with the history of kidnap and sexual assault by one Jagadish. The witness deposed to had examined the victim girl with consent of her mother/ PW2 and found that the victim girl was 15 years old and on genital examination, she found bleeding from vaginal part and hymen ruptured and the witness has deposed to had given the Medical Certificate as per Ex.P7 and her signature is as per Ex.P7(a) and collected 7 articles at the time of examination. The witness in the

cross-examination of the learned counsel for the accused admitted that, the rupture of the hymen may be for the reasons of the girls cycling and involving in other physical activities. She has also answered in the affirmative to the suggestion of the learned defence counsel that the hymen will be not be intact in case of She has also admitted that during menstruation forceful rape. period, there will be bleeding in the private part but the witness volunteers that in the present case the victim girl stated to had told her that she had menstruation 7 days earlier to the date of medical examination, which suggests that the victim girl had fresh bleeding and that was not because of menstruation. It is not the case of the accused that the victim girl had bleeding even after 7 days after menstruation period. He could have also suggested PW1 but he has not chosen to do so. Then the evidence of this witness goes in support of the evidence of PW1 that on 10.1.2014 she [PW1] was subjected to penetrative sexual assault and the evidence of the material witness has not been contradicted by making any negative suggestions in PW2 having taken PW1 and subjected her to physical examination through this witness with the history of sexual assault by the accused.

20. PW5-Dr.C.N.Sumangala in her evidence before the court deposed that, on 11.1.2014 in between 2.15 to 3 P.M., the accused was brought before her for physical examination by PC of Basaveshwaranagara police station. With the consent of the accused, she has examined the accused and accordingly given Report which is as per Ex.P6 and her signature is as per Ex.P6(a).

This witness was not cross-examined by the learned counsel for the accused.

- 21. Now coming to the evidence given by the police officials ie., PWS-3, 7, 8, 9, 10 and 11. Among them, PW3-K.H.Prasanna Kumar, Head constable in his evidence before the court has deposed that, on 11.1.2014, as per the orders of PSI, he has taken the accused to Victoria Hospital for medical treatment and thereafter produced him before the PSI and accordingly given a Report as per Ex.P3 and his signature is as per Ex.P3(a). Thereby this witness has performed his statutory duty. In his cross-examination, by the learned counsel for the accused this witness has denied that, he has not taken the accused for medical test. He has also denied the suggestion that, as per the say of his higher officers, he has given a false Report.
- 22. PW7-Siddalingaiah, Police Inspector /Preliminary Investigation Officer of this case. In his evidence before the court he has deposed that, on 10.1.2014, in the evening at 4.15 PM., when he was incharge of the station, the complainant came and lodged a complaint before him. He received the Complaint which is as per Ex.P2 and his signature is as per Ex.P2(b). After receipt of the complaint, he prepared FIR and registered a case in Cr.No.19/2014 and sent the FIR to the jurisdictional court and copy of the same to his higher officers. The FIR is as per Ex.P8 and his signature is as per Ex.P8(a), on the same day ie., on 10.1.2014, he deputed his officials ie., CWS-8 and 9 for tracing out the

accused and the victim girl and on the same day, CWS-8 and 9 apprehended the accused and the victim girl and produced them before him, thereafter he has recorded the statement of the victim girl and also the accused has given his voluntary statement before him. Later he sent both the accused and the victim girl for Further he deposed that, on 11.1.2014, he medical tests. conducted the spot mahazar and CW1 was present and shown the spot. The said Spot Mahazar is as per Ex.P4 and his signature is as per Ex.P4(b). On 12.1.2014, he has handed over the case file of this case to CW15 for further investigation. He has also conducted the seizure mahazar of the clothes of the accused which are as per MOS-4 and 5 and his signatures are as per MOS-4(a) and 5(a). He has identified the accused who was present in the court hall. Thereby, this witness has performed his statutory duties. In his cross-examination by the learned counsel for the accused, this witness has denied the suggestions that, the complainant has not lodged any complaint before him and that he has not prepared FIR. He has also denied that he has not gone to the spot and conducted mahazar. He has also denied the suggestion that in order to assist his higher officers, he has created the documents. He has also denied the suggestion that, he is deposing falsely at the instance of his higher officers.

23. PW8-Kavitha, Woman Head constable in her evidence before the court has deposed that, on 10.1.2014, as per the instructions of Police Inspector-CW14, she took the victim girl to K.C. General hospital for medical examination accompanied by the

mother of the victim girl. After the medical examination, she has brought back the victim girl and produced her before the Police Inspector and given Report which is as per Ex.P13 and her signature is as per Ex.P13(a). The Requisition given by her is as per Ex.P14 and her signature is as per Ex.P14(a). Thereby this witness has performed her statutory duties. In her cross-examination by the learned counsel for the accused, she has denied that, she has not taken the victim girl to the hospital for medical examination. She has also denied that, as per the say of the Investigation Officer, she has given Reports as per Exs.P13 and P14.

24. PW9-Raghumurthy, Police constable in his evidence before the court has deposed that, on 18.2.2014, as per the orders of CW15, he has taken the 10 sealed articles to FSL, Madiwala, for chemical examination and received acknowledgement and produced it before the Police Inspector and given Report in that regard. The said Acknowledgement is as per Ex.P15 and the Report is as per Ex.P16 and his signature is as per Ex.P16(a). The Passport issued to him is as per Ex.P17. Thereby this witness has performed her statutory duties. In his cross-examination by the learned counsel for the accused, he has denied that, he has not taken the the articles to FSL. He has also denied that, as per the say of his higher officers, he has given false Report.

- 25. PW10-Sheela, Woman Head constable in her evidence before the court has deposed that, on 10.1.2014 as per the orders of CW15, herself and CW8 went in search of tracing out the accused and the victim girl of this case, as such, when they were coming near Kamalanagar Market, a boy and a girl started running by seeing them, CW1 who had accompanied PW10 and CW8 identified those persons as the accused and the victim girl, they apprehended the accused and the victim girl and produced them before the Investigation Officer, in this regard, CW8 has given Report which is as per Ex.P18 and the signature of CW8 is as per She has identified the accused who was present before Ex.P18(a). the court hall. Thereby this witness has performed her statutory In her cross-examination by the accused himself, she has denied the suggestion that, she was not deputed by CW15 for tracing out the victim girl and the accused. She has also denied that, she has not apprehended the victim girl and the accused. She has also denied that for the purpose of this case, she is deposing falsely. She has also denied the suggestion that, some boys from Rakshana Vedike had brought the accused. She has also denied the suggestion, she has not gone to trace out the accused. She has also denied that, as per the say of PSI, she is deposing falsely.
- 26. PW11- Poornachandra Tejaswi.M.S, is the Final Investigation Officer of this case. In his evidence before the court he has deposed that, on 12.1.2014, he has received the case papers of this case from CW14 and verified it and continued with the further investigation by sending CW10 to KC General Hospital

for collecting the articles belonging to the victim girl and as such, CW10 has collected the articles and given Report before him, which is as per Ex.P13 and his signature is as per Ex.P13(b). He has identified MOS-1 to 7 articles. He has further deposed that, on 28.1.2014, he sent CW12 to Victoria Hospital for collecting the medical report and articles of the accused and accordingly, CW12 has collected the medical report and articles of the accused and produced them before him, and CW12 has given Report in this regard which is as per Ex.P19 and his signature is as per Ex.P19(a). He has further deposed that, on 18.2.2014, he sent the articles to FSL, Madiwala for chemical examination. On 6.3.2014, he has obtained the school documents of the victim girl as per Ex.P5 and his signature is as per Ex.P5(b). As the investigation was completed, he has filed charge-sheet against the accused. Thereby this witness has performed her statutory duties. In his cross-examination by the learned counsel for the accused, he has denied that, he has not collected any documents pertaining to the victim girl, he has also denied that, he has not obtained any Report pertaining to the accused. He has also denied that, he has prepared all the documents in the police station itself. He has also denied that, he has filed false charge-sheet against the accused.

27. Considering the evidence given by the above referred prosecution witnesses, specifically the evidence of PWS-1 and 2, it is clear that, the accused has eloped the victim girl and committed penetrative sexual assault on her. This evidence is supported by

the evidence of other material witnesses including the Lady doctor who has examined the victim girl and the evidence of the police officials who have traced out the victim girl and the accused, subjected them for medical examination and recorded the statements of the witnesses and finally the evidence of the Investigation Officer who after collecting the materials against the accused, has submitted charge-sheet against the accused.

- 28. The accused when examined under Sec.313 of Cr.P.C except denying all the evidence that is appearing against him, he has not set any defence to the prosecution case that he has not denied nor complained against anybody aggrieved by the police action of arresting him and producing him before the Learned Magistrate, subjecting him to medical test and seizure of MOS-4 and 5. With this having held that evidence of PWS-1 and 2 on the earlier occasion cannot be discarded and to be accepted having all the sanctity of giving evidence before a court during the trial and that having remained uncontraverted and unrebutted.
- 29. No doubt there is some lapse on the part of the Investigation Officer -PW11 and the learned Public Prosecutor so far as not getting the clothes of the victim girl and the accused sent to FSL and producing them before the court with the opinion of the FSL. PW11- Investigation Officer in his cross-examination by the learned defence counsel admitted to had not attempted to collect the report of the FSL. PW11 having known the seriousness of this offence why he did not took seriously is not understandable,

leaving this lapse by PW11 at this stage even the learned Public Prosecutor also has failed to discharge his duties to direct the Investigation Officer to get the Report of FSL and in not making any efforts to get them, is another vital evidence before this court. This should not be mis-understood here that this court having observed that, it is not satisfied with the evidence on record. If the clothes of the victim girl and the accused had stains of blood and sperms because of the incident, it would have thrown an additional light on the prosecution case for further reinforcing, but this observation is only made to point out the dereliction of duty of two Officers and to make them understand the seriousness of the cases. This apart, I have held that the evidence of PW1 particularly cannot be disbelieved, the act committed by the accused as it merits consideration and for no reason it could be discarded.

30. The learned counsel for the accused argued as if there is discrepancy in the age of the victim girl. I do not find so, because PW1/ victim girl has categorically given her age and date of birth and in support of it, PW4 also deposed to the date of birth of the victim girl as 3.1.1999 and got marked the Study Certificate of the victim girl as per Ex.P5. This has not been impeached and that stands the proof of age of the victim girl that she was 15 years and plus as on the date of the offence and therefore, I find no merits in the arguments of the learned counsel for the accused.

- 31. Considering all the facts and circumstances of the case, I am of the view, that the prosecution has proved the guilt of the accused beyond all reasonable doubts. Apart from that, the presumption available under Sec.29 of the POCSO Act, 2012 also not rebutted by the accused, hence, the accused is liable to be convicted for the offences punishable under Secs.366 and 376 of IPC and also Sec. 4 of POCSO Act, 2012. With these I answer Point Nos. 1 and 2 in the AFFIRMATIVE.
- 32. **POINT NO.3**:- In view of my findings on POINTS-1 AND 2, I proceed to pass the following:

#### <u>ORDER</u>

Acting under Sec.235(2) of Cr.P.C, I hereby convict the accused for the offences punishable under Secs.366 and 376 of IPC and also Sec. 4 of POCSO Act, 2012.

The bail bond and surety bond of the accused stands cancelled.

[Dictated to the Stenographer directly on the computer, corrections carried out and then pronounced by me in the open court on this the  $3^{rd}$  day of July 2020]

[R.SHARADA]
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]
SITTING IN CHILD FRIENDLY COURT,
BENGALURU URBAN DISTRICT.

#### 27.7.2020 ORDER ON SENTENCE

The accused has appeared through VC. The Learned Public Prosecutor was present. The accused is heard regarding sentence to be imposed on him. He submitted that, he is aged about his father is died, he is 26 years, was working as a painter, mother who is a widow. having aged Further the accused submitted that, his mother undergone Brain Tumour surgery, hence, his presence is very much necessary to take care of his mother, except himself there is no other person to take care of her, he has no any bad antecedents, he has no any immovable properties. Hence, he prayed for leniency while imposing the sentence. The Learned counsel for the accused has appeared through V.C and submitted that, there are no antecedents to the accused, the accused has lost his father having widowed mother and a sister who are depending on him, thereby, the Learned counsel for the accused prayed for to show leniency in awarding sentence against the accused. The learned Public Prosecutor submitted that, Secs.366, 376 of IPC and under Sec.4 of POCSO Act, 2012 under which the accused stood convicted is heinous offence, thereby prayed for imposing maximum sentence.

The accused and his counsel though in their submissions have pleaded that, the accused is the only son to his mother, his father is dead, his mother is suffering from brain tumour and having a sister and his service is very much necessary to take care of his ailing mother and sister and thus prayed for leniency in imposing

the sentence, but the accused in support of his statement that his mother is suffering from brain tumour has not produced material before this court therefore, that statement is not supported with any medical proof. That apart the accused since has been held guilty for the offences punishable under Secs.366 and 376 of IPC and also Sec. 4 of POCSO Act, 2012, this court has no option and that the accused cannot be avoided imposition of minimum sentence provided under Sec.4 of POCSO Act, 2012. Further the Victim girl has been held that she was in her 15 years of age as on the date of commission of crime and the accused since has committed above referred crime against her for which Sec. 4(2) of POCSO Act, 2012 provides minimum sentence of imprisonment of 20 years with minor punishment for the remaining offence punishable under Sec.366 of IPC. Thus this court has to award sentence accordingly for the offences committed by the accused as referred supra. With this observation, I proceed to pass the following:

#### SENTENCE

(a) I hereby sentence the accused to undergo Simple Imprisonment for a period of 3 years and he shall also liable to pay a fine of Rs.5,000/- [Rupees Five Thousand only] for the offence punishable under Sec.366 of IPC. In default of payment of fine amount, the accused shall further undergo simple imprisonment for a period of 6 Months.

(b) Further, I hereby sentence the accused to undergo Simple Imprisonment for a period of 20 Years and he shall also liable to pay a fine of Rs. 50,000/-[Rupees Fifty Thousand only] for the offences punishable under Sec.376 of IPC read with Sec.4 of POCSO Act 2012. In default of payment of fine amount, the accused shall further undergo simple imprisonment for a period of 2 Years.

The substantive sentence of imprisonment in (a) and (b) as stated above, shall run concurrently.

Acting under Sec.428 of Cr.P.C, the whole period of detention undergone by the accused both as UTP as well as from the date of Judgment pronounced ie., from 3.7.2020 till date, is set-off against the sentence of imprisonment imposed.

Out of the fine amount collected, a sum of Rs.40,000/- shall be paid to the Victim girl towards compensation as provided under Rule 7 of POCSO Rules, 2012 which is just and reasonable. The remaining fine amount shall be remitted to the State. In case, if the accused failed to pay the fine amount and prefers to suffer the default sentence, then the

compensation of Rs.40,000/- shall be paid by the DLSA, Bengaluru City as provided under Sec.357(A) of Cr.P.C, to the victim girl.

MOS-1 to 9 being worthless are ordered to be destroyed after the appeal period is over.

Copy of this Judgement shall be given to the accused free of cost forthwith.

A copy of this Judgement shall be forwarded to the DLSA, Bengaluru City, Bengaluru for further needful.

[Sentence dictated to the Stenographer directly on the computer, corrections carried out and then , pronounced by me in the open court on this the  $27^{th}$  day of July, 2020 ]

# [R.SHARADA] LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55] SITTING IN CHILD FRIENDLY COURT, BENGALURU URBAN DISTRICT.

#### ANNEXURES:

## Witnesses examined for the prosecution:

PW.1	Victim girl	CW2	12.2.2015
PW.2	Jameela	CW1	15.12.2015
PW.3	K.H.Prasanna Kumar	CW11	15.12.2015
PW.4	G.R.Uma	CW7	14.6.2019
PW.5	Dr.C.N.Sumangala	CW6	29.6.2019
PW.6	Dr.Tulasidevi	CW5	29.6.2019

DW 7	0:44-1:	OW114	2.0.0010
PW.7	Siddalingaiah	CW14	3.8.2019
PW.8	Kavitha	CW10	14.8.2019
PW.9	Raghumurthy	CW13	14.8.2019
PW.10	Sheela	CW9	14.8.2019
PW.11	Poornachandra Tejaswi.M.S	CW15	28.8.2019

# Documents marked for the prosecution:

Ex.P1	Statement of PW1/ victim girl given before the complainant police under Sec. 161 of Cr.P.C	
Ex.P1(a)	Signature of PW1/ victim girl	
Ex.P1(b)	Signature of PW7	
Ex.P2	Complaint dated: 10.1.2014 lodged by PW2/complainant/mother of the victim girl to the complainant police	
Ex.P2(a)	Signature of PW2	
Ex.P3	Report given by PW3 to the PSI of the complainant police station regarding taking the accused to Victoria Hospital for medical examination	
Ex.P3(a)	Signature of PW3	
Ex.P4	Spot Panchanama	
Ex.P4(a)	Signature of PW1/ victim girl	
Ex.P4(b) Ex.P5	Signature of PW7 Study certificate issued by Head Master,	
DA.1 O	Sri.Gangadheswara English High School,	
	Kamalanagar, Bangalore wherein PW1/ victim	
	girl was studying showing the date of birth of	
	PW1/ victim girl as 3.1.1999	
Ex.P5(a)	Signature of PW4	
Ex.P5(b)	Signature of PW11	
Ex.P6	Medical Report of the accused	
Ex.P6(a)	Signature of PW5	
Ex.P6(b)	Signature of PW11	
Ex.P7	Medical Report of PW1/ victim girl	
Ex.P7(a)	Signature of PW6	
Ex.P8	FIR	
Ex.P8(a)	Signature of PW7	

Ex.P9 Ex.P9(a) Ex.P10 Ex.P10(a) Ex.P11	PF No.7/2014 dated: 11.1.2014 Signature of PW7 Seizure Panchanama Signature of PW7 Voluntary statement of the accused
Ex.P11(a)	Signature of PW7
Ex.P12	Medical Report of PW2/ victim girl
Ex.P12(a)	Signature of PW6
Ex.P12(b)	Signature of PW11
Ex.P13	Report of PW8 regarding collecting the sealed articles from KCG Hospital and handing over it to the Police Inspector of the complainant police
	station
Ex.P13(a)	Signature of PW8
Ex.P13(b)	Signature of PW11
Ex.P14	Report of PW8 given to the Police Inspector of
	the complainant police station regarding taking PW1/ victim girl to the K.C.General Hospital for medical examination
Ex.P14(a)	Signature of PW8
Ex.P15	Acknowledgement issued by FSL, Madiwala, Bangalore
Ex.P16	Report of PW9 given to the Police Inspector of complainant police station regarding taking the sealed articles to FSL, Madiwala, Bengaluru
Ex.P16(a)	Signature of PW9
Ex.P17	Passport
Ex.P18	Report given by CW8-Rajanna-PC 6333 for having apprehended the accused and the victim girl and producing them before the PSI of the complainant police station
Ex.P18(a)	Signature of CW8
Ex.P19	Report of CW12 for having collected the sealed articles of the accused and handing them over to Police Inspector of the complainant police station
Ex.P19(a)	Signature of PW11
Ex.P20	PF No.20/2014 dated: 28.1.2014
Ex.P20(a)	Signature of PW11

## Material Objects marked for the prosecution:

MO-1	Chudidhar Top
MO-2	Thides
MO-3	Chudidhar Pant
MO-4	Shirt
MO-5	Pant
MOS-4(a)	Signatures of PW7
and 5(a)	
MO-6	Pubic hair
MO-7	Nail
MO-8	Vaginal swab
MO-9	Swab from cervix

Witness examined, documents and MOs marked for the accused: NIL

[R.SHARADA]
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]
SITTING IN CHILD FRIENDLY COURT,
BENGALURU URBAN DISTRICT.

3.7.2020

Judgment pronounced in open court: [Vide separate detailed Judgment]

Acting under Sec.235(2) of Cr.P.C, I hereby convict the accused for the offences punishable under Secs.366 and 376 of IPC and also Sec. 4 of POCSO Act, 2012.

The bail bond and surety bond of the accused stands cancelled.

[Dictated directly on the computer, corrections carried out and then pronounced by me in the open court on this the 3<sup>rd</sup> day of July 2020]

[R.SHARADA]]
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]
SITTING IN CHILD FRIENDLY COURT,
BENGALURU URBAN DISTRICT.

27.7.2020

Sentence pronounced in open court: [Vide separate detailed Sentence]

- (a) I hereby sentence the accused to undergo Simple Imprisonment for a period of 3 years and he shall also liable to pay a fine of Rs.5,000/- [Rupees Five Thousand only] for the offence punishable under Sec.366 of IPC. In default of payment of fine amount, the accused shall further undergo simple imprisonment for a period of 6 Months.
- (b) Further, I hereby sentence the accused Simple Imprisonment to undergo period of 20 Years and he shall also liable fine of Rs. 50,000/to pay [Rupees Fifty Thousand only] for the offences punishable under Sec.376 of IPC read with Sec.4 of POCSO Act 2012. In default of payment of fine amount, the accused shall further undergo imprisonment for a period of 2 Years.

The substantive sentence of imprisonment in (a) and (b) as stated above, shall run concurrently.

Acting under Sec.428 of Cr.P.C, the whole period of detention undergone by the accused both as UTP as well as from the date of Judgment pronounced ie., from 3.7.2020 till date, is set-off against the sentence of imprisonment imposed.

Out of the fine amount collected, a sum of Rs.40,000/- shall be paid to the Victim girl towards compensation as provided under Rule 7 of POCSO Rules, 2012 which is just The remaining fine and reasonable. amount shall be remitted to the State. In case, if the accused failed to pay the fine amount and prefers to suffer the default sentence, then the compensation of Rs.40,000/- shall be paid by the DLSA, Bengaluru City provided as under Sec.357(A) of Cr.P.C, to the victim girl.

MOS-1 to 9 being worthless are ordered to be destroyed after the appeal period is over.

Copy of this Judgement shall be given to the accused free of cost forthwith.

A copy of this Judgement shall be forwarded to the DLSA, Bengaluru City, Bengaluru for further needful.

[R.SHARADA]
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]
SITTING IN CHILD FRIENDLY COURT,
BENGALURU URBAN DISTRICT.