



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

**DATED THIS THE 18<sup>TH</sup> DAY OF DECEMBER 2023  
BEFORE**

**THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR**

**CRIMINAL APPEAL NO. 100492 OF 2021 (A)**

**BETWEEN:**

STATE OF KARNATAKA,  
R/BY INSPECTOR OF POLICE,  
BALLARI WOMEN POLICE STATION,  
DIST. BALLARI, THROUGH THE ADDL.  
STATE PUBLIC PROSECUTOR,  
ADVOCATE GENERAL OFFICE,  
HIGH COURT OF KARNATAKA,  
DHARWAD BENCH.

... APPELLANT

(BY SRI. PRAVEEN DEVARADDIYAVAR, HCGP)

**AND:**

1. VENKATESH @ VENKAPPA  
S/O HULUGAPPA,  
AGE. 30 YEARS,  
OCC. LABOUR,  
R/O. VINAYAKA NAGAR,  
DIST. BALLARI.
2. J. SREERAMALU  
S/O. ERANNA,  
AGE. 38 YEARS,





R/O. INFRONT OF SELECT  
FUNCTION HALL BESIDE ICE FACTORY,  
COWL BAZAR,  
MAIN ROAD,  
BALLARI,  
DIST. BALLARI.

... RESPONDENTS

(BY SRI. ANWAR BASHA B., ADVOCATE FOR R1;  
MISS. SONU SUHEL, AMICUS CURIAE FOR R2)

THIS CRIMINAL APPEAL IS FILED U/S 378 (1) AND (3) OF THE CR.P.C., SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 01.12.2020 PASSED BY THE IST ADDITIONAL DISTRICT AND SESSIONS SPECIAL JUDGE BALLARI, IN SPL.CASE NO.684/2018 DATED 01.12.2020 AND TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL PASSED BY THE TRIAL COURT IN SPL.CASE NO.684/2018 DATED 01.12.2020 PASSED BY THE IST ADDITIONAL DISTRICT AND SPL.JUDGE BALLARI FOR THE OFFENCE PUNISHABLE IN SO FAR ITS RELATES TO ACQUITTAL OF RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE U/S 354A AND 354B OF IPC AND U/S 8 AND 10 OF POCSO ACT AND TO CONVICT THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE U/S 354A AND 354B OF IPC AND U/S 8 AND 10 OF POCSO ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07/09/2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:



## **JUDGMENT**

The appeal is filed by the State of Karnataka calling in question the judgment of acquittal passed in Special Case No.684/2018 dated 01.12.2020 by the Court of I Additional District and Special Judge, Ballari, (for short, hereinafter referred to as 'the POCSO Court').

2. Brief facts of the case are that, it is the case of the prosecution that on 20.02.2018 at 8.40 p.m. the daughter of the complainant (victim) while playing in front of their house which is located in front of Select Function Hall, Cowl Bazaar, Main Road, Ballary at that time, the accused in order to outrage modesty, called her, pulled her and also removed zip of her backside cloth and the accused indecently behaved with an intention to commit sexual assault on the victim. Therefore, the first information statement was lodged before the police and offences punishable under Sections 354A and 354B of the Indian Penal Code and under Sections 8 and 10 of the POCSO Act are foisted against the accused.



3. Upon filing charge sheet, the POCSO Court has framed charges against the accused for the offences under Sections 354A and 354B of the Indian Penal Code and under Sections 8 and 10 of the POCSO Act. The prosecution has got examined PW.1 to 10 and got marked documents and material objects. When the accused has examined under Section 313 Cr.P.C., he denied the prosecution case as false, pleaded not guilty and the accused has not let in any defence evidence both oral and documentary.

4. After full fledged trial, the POCSO Court has acquitted the accused for the offences foisted against him as above stated. Therefore, the State has preferred the appeal. The learned HCGP submitted that there is cogent evidence available from the victim, father, mother and grandmother of the victim that the accused has committed offences alleged but disbelieving their evidence is not correct, as contrary to law and evidence produced before the Court. Therefore, submitted the approach of the



POCSO Court is perverse and illegal. Hence, prays to reverse the judgment of acquittal and convict the accused for the offence charge levelled against him.

5. The accused is represented by the counsel and he submitted that the trial Court has rightly appreciated the evidence on record, as there is no cogent evidence revealed to convict the accused. Therefore, justified the judgment of acquittal. Further submitted that from the prosecution witnesses there are full of contradictions, omissions and embellishments going to the core of the prosecution case rendering prosecution witnesses are unbelievable. Therefore, submitted the innocence of the accused is proved upon appreciating the evidence on record. Hence, prays to dismiss the appeal.

6. As per Section 40 of the POCSO Act, the victim is entitled for free legal assistance and when upon enquiring respondent No.2-complainant present on 10.08.2023, he submitted that he has no means to engage advocate on his behalf. Therefore, a legal counsel is



appointed by name Kumari. N. Sonu Suhel as a counsel appearing for respondent No.2-complainant and also to assist the Court. Accordingly, learned counsel Amicus curiae-Kumari. N. Sonu Suhel argued on behalf of the complainant and submitted that the POCSO Court committed error in appreciating the evidence on record and hence, contrary to the evidence on record, the POCSO Court has acquitted the accused. Therefore, supported the appeal filed by the State and prayed for conviction of the accused.

7. Upon hearing the respective counsels and perusing evidence on record, the point would raise for my consideration is as follows:

- i) Whether the prosecution is able to prove that on 20.02.2023 at 8.40 p.m. when the victim was standing in front of their house which is located in front of Select Function Hall, Cowl Bazaar, Main Road, Ballari, the accused having intention of outraging modesty called the victim and hold her and also removed zip of her back side cloth and thus, behaved



indecently, thus, the accused has committed offences punishable under Sections 354A and 354B of the Indian Penal Code and under Sections 8 and 10 of the POCSO Act?

### **ANALYSES**

8. The prosecution has examined total 10 witnesses as PW.1 to 10. PW.1 is the father of victim who has lodged first information statement to the police as per Ex.P.1; PW.2 is the mother of the victim; PW.3 is the victim (minor child); PW.4 is a grandmother of the victim (minor child); PW.5 is the nephew of PW.1. PW.6 is a Pani Puri vendor vicinity to the house of PWs.1 and 2. PW.7 is the doctor who has given the medical report. PW.8 is the panch witness. PW.9 is the WPSI who has registered the crime. PW.10 is the CPI-investigating officer who has filed charge sheet.

9. The POCSO Court has assigned the following reasons for acquittal of the accused:



- i) The POCSO Court has acquitted the accused on the reason that PWs.1 to 5 are interested witnesses. Hence, they are not to be believed. Further the POCSO Court opined that PWs.1, 2 and 4 to 6 have not witnessed personally the incident. Hence, they are disbelieved. It is opined that no independent witnesses have been examined who has seen the incident.
  
- ii) PW.10-investigating officer has not collected any of the documents to show that the complainant was residing in the house located nearby Select Function Hall, Cowl Bazaar, Main Road, Ballari. The question herein where the alleged incident was taken place is a busy area and there are many houses situated, but the investigating office has not collected statements from neighbouring houses.





- iii) In the spot panchanama and spot sketch it was not mentioned that PW.6 was selling Pani Puri at the place of alleged incident.
  
- iv) From the evidence of the Doctor-PW.7 no injuries are found on the victim. There are no marks of injury even if the accused squeezed breast of the victim (minor girl). Finding fault with the manner of statement given by the victim under Section 164 (5) of Cr.P.C. that the victim has not stated that the accused put his hand upon her chest and has not put single word that accused has put his hand in her private part. The investigating officer has not seized cloth worn by the victim at the time of the incident.

10. Therefore, from the above stated reasons, the POCSO Court has acquitted the accused for the alleged offences.



11. Now this Court is constrained to appreciate the evidence of the prosecution once again in the back ground of appreciation of the evidence done by the POCSO Court. The POCSO Court has gone to appreciate the evidence on record too technically without appreciating the evidence on record in correct and true perspective manner and in a natural course of events what would have been occurred. In these types of cases, it cannot be expected eye-witnesses. The POCSO Court has expected eye-witness to the incident. This is completely erroneous, perverse and inhuman approach by the POCSO Court. The evidence in these type of cases are to be considered on all the circumstance in order to ascertain and to get impression what would have been occurred to the victim from the evidence produced by the prosecution before the Court. Hyper technical reasons are not permissible. Just find fault with prosecution witnesses that what is done by the POCSO Court. Appreciation of evidence, "beyond reasonable doubt" does not mean that adopting too much technicality in appreciating the evidence, rendering the



whole prosecution case as unbelievable. Beyond reasonable doubt means, the prosecution is required to place evidence at higher degree of preponderance of probabilities compared to what is degree of preponderance of probability in civil cases. The "theory of beyond reasonable doubt" means expecting higher degree of preponderance of probabilities and the natural conduct of human beings. On these principles of law, the evidence on record is to be appreciated. PW.1 is the father of the victim (minor child). He has stated regarding other witnesses i.e. wife, mother-in-law, nephew that on the day of incident on 20.02.2018 when all were in the house, the victim was playing out side of the house at night 8.30 p.m. the victim by weeping came inside the house and stated that a person had approached her and touched on the chest and private part and immediately, he along with other witnesses who were in the house have come out from the house and searched and the victim had identified the said persons. Therefore, the gathered people therein have assaulted accused and he was taken to the police



station and lodged complaint as per Ex.P.1. PW.1 has identified the accused that he was the person who was caught by the public at the place of incident. While considering cross examination, the thing is revealed that so as to disbelieve evidence of PW.1, just because in course of cross examination he has not seen victim playing out side of the house and does not know the name of the accused is not a ground to suspect the evidence of PW.1. The evidence of PW.1 is found to be in a natural course of way regarding the incident.

12. PW.2 is the wife of PW.1 and mother of the victim. She has stated that on 20.02.2018 her husband and daughter, her mother-in-law and brother were in the house and at that time, the victim was playing out side of the house and at night 8.30 p.m., the victim came inside the house by weeping and stated the incident that a person has touched her chest and private part and outraged modesty and immediately, all members came out from the house and saw the person who has been



identified by the minor victim and taken him to the police station and her husband-PW.1 has given complaint before the police. Further stated that a doctor has examined the victim in the hospital and also stated that police have conducted spot panchanama as per place shown by her daughter-victim. Upon considering her cross examination, nothing is revealed to disbelieve the evidence of PW.2. Just because PW.2 has deposed that she does not know whether the victim has shown the accused that does not discredit the evidence of PW.2. Therefore, evidence of PW.2 is found to be believable.

13. The evidence of PW.1 and PW.2 are found to be relevant and admissible as per Section 6 of the Indian Evidence Act, 1872 of principle of *Res gestae*.

14. PW.3 is the victim minor child of aged 8 years. The POCSO Court has tested her whether she is competent to give evidence before the Court with regard to the alleged incident stated to have been happened on her. Upon considering the evidence of PW.3-minor child, her



evidence is found to be in a natural course. PW.3 was studying 4<sup>th</sup> standard as on the date of the incident. She has stated the relationship of PWs.1, 2 and other witnesses. It is deposed that on 20.02.2018 at night she was playing in front of her house and a person had approached her and asked by showing the house belonging to whom and he approached victim and the said person had outraged of her modesty by putting hands on her chest and private parts. Then PW.3 pushed him and went inside the house with crying and narrated the incident to his uncle and parents. Thereafter, PWs.1, 2 and others have come out from the house and shown the said person and identified the accused and he was caught hold and handed over to the police. She has deposed that she has given statement before the learned Magistrate as per Ex.P.4. PW.3 had identified the accused that he has committed alleged offence on her. Upon considering the cross-examination the thing is revealed that PW.3 was not telling lie before the Court. Whatever, omissions tried to elicit from PW.3 are minor discrepancies not affecting the



core of prosecution case. Therefore, the evidence of PW.3 is found to be believable and trust worthy.

15. PW.4 is the grandmother of PW.3 and mother of PW.2 and mother-in-law of PW.1. She has narrated what PWs.1, 2, and 3 have stated. Upon considering cross-examination, her evidence is not found to be untruth and her evidence is found to be relevant and admissible as per Section 6 of the Indian Evidence Act, 1872, *Res gestae*. PW.5 is the nephew of PW.1. PW.5 has narrated the incident what PWs.1, 2, 3 and 4 have stated. From the evidence of PW.5, it is proved that the accused has outraged modesty of the minor child and upon considering cross-examination nothing is revealed to discredit the evidence of PW.5. Therefore, the evidence of PW.5 is also found to be relevant and admissible as per Section 6 of the Indian Evidence Act, 1872, *Res gestae*.

16. Therefore, upon analyzing and considering the evidence above discussed, it is proved that the accused has committed offences alleged. PW.3-minor girl has



identified the accused and the evidence of PWs.1, 2, 4 and 5 are found to be in natural course and it is convincingly proved that the accused has committed offences alleged. But the POCSO Court has committed gross error in disbelieving this evidence on the ground that they are interested witnesses. In these types of cases, the witnesses available are parents and relatives and minor victim. The POCSO Court wanted independent witnesses and eye-witnesses which is highly impossible. What is impossible the same is expected by the POCSO Court rendering unjustifiable judgment of acquittal. Therefore, for these reasons, when the evidence of PWs.1 to 5 above discussed are found to be trust worthy and believable. Then the prosecution is able to prove the guilt of the accused by the above stated witnesses. Hence, in this regard, the judgment of the POCSO Court acquitting the accused is liable to be set aside.

17. Further upon considering the evidence of PW.6 is a Pani Puri street vendor and had stated that on





20.02.2018 at night 8.30 p.m. there was nuisance in vicinity of his mobile shop and stated that the accused was caught hold and he was informed that the accused has committed alleged offence. In the cross-examination, it is revealed that PW.6 does not know Kannada Language that does not mean that the evidence of PW.6 is the false one. Therefore, from the evidence of PW.6 a circumstance that the accused was caught hold with the offences of outraging modesty of the minor child. Therefore, the evidence of PW.6 is also found to be relevant in proving the prosecution case.

18. PW.7 is the doctor who has medically examined PW.3-minor child. She has stated that the victim was brought to the hospital with history of sexual assault on her and she has examined and did not found any injury, marks on the victim child. Accordingly, she has given report as per Ex.P.3. In the cross-examination she has stated that she did not found injury, marks on the body of the chest part of the victim child. But just because the



injuries were absent that does not mean that offence has not been committed. The POCSO Court has committed serious error in rejecting this evidence on the reason that there are no visible injuries found on the chest part of the victim, when the chest part of the victim was squeezed. This observation and finding of the POCSO Court is palpably erroneous. When it is alleged that the accused had squeezed the chest part of the victim there could not be occurrence of injuries. The accused might have touched chest part of the victim and back portion of the victim or might have lightly squeezed, then there could not be chances of occurring injuries. Finding fault with this absence of injuries is nothing but the POCSO Court judge is not sensitive in appreciating the evidence on record. Expecting injury in these types of offences of outraging modesty is completely unwarranted and shocks conscience of the Court. It is not possible for the victim and other witnesses above discussed to say how degree of force is used on victim it cannot be measured. But in appreciating evidence, the POCSO Court is deciding degree of force



applied on the minor victim child, it is completely absurd on the part of the POCSO Court judge. Therefore, in this regard the observations and findings made by the POCSO Court are completely erroneous and liable to set aside. The evidence of PW.3-victim is corroborated by this witnesses regarding she has suffered of sexual assault and has taken her to the hospital for medial examination.

19. PW.8 is the panchnama witness of place of incident. PW.9 is the Woman Police Sub-Inspector and she has stated that on 20.02.2018 at night 9.45 p.m. when she was in the police station has received written complaint as per Ex.P.1 and accordingly, registered first information report and the victim was forwarded for medical examination. During course of cross-examination of these witnesses, nothing is revealed to disbelieve these witnesses and they have deposed what they have performed their part in the course of investigation is found to be a natural one.



20. PW.10 is the investigating officer, who has conducted investigation after taking over the file from PW.9. PW.10-investigating officer has narrated sequence of events in investigation. After completion of investigation, he has filed charge sheet. Upon analyzing the evidence of PW.10 of which cross-examination is not found to be any unnatural in the course of investigation. In what way the investigation has been done, the same is reflected as a genuine investigation and accordingly, filed charge sheet against the accused for the alleged offences above stated.

21. From all the above cited reasons, the prosecution is able to prove the guilt of the accused beyond all reasonable doubt. The POCSO Court while acquitting the accused has assigned flimsy reasons and has committed serious error in appreciating the evidence on record. Upon reading the reasons for acquittal in the judgment, the POCSO Court judge is highly insensible and in a casual way has appreciated the evidence on record.



The POCSO Court judge is found to be highly insensible in dealing with these types of cases. From the judgment of the POCSO Court, it is revealed that the POCSO Court judge has expected all the technicalities in appreciating the evidence on record by adopting much technicality in appreciating the evidence without understanding and getting impression in the mind what must have been happened in the case. Therefore, appreciation by the POCSO Court judge is highly unreasonable, shocks conscience of this Court. The POCSO Court judge has not understood properly what is meaning of the theory beyond reasonable doubt in appreciating the evidence in these types of cases. Appreciating evidence on the theory beyond reasonable doubt is not expecting 100% preponderance of probabilities. What is the theory beyond reasonable doubt means requiring high degree of probability. It is the natural phenomena to occur of minor discrepancies that cannot be exaggerated in reasoning, in acquitting culprit. Whatever may be the minor discrepancies, the Court has to assess whether they are



affecting core of the prosecution case rendering witnesses unbelievable or not. This vision has been lost sight by the POCSO Court judge. The appreciation of the evidence does not mean that finding fault with the prosecution case with an intention to search fault in the prosecution case. The appreciation of evidence means as per Section 3 of the Indian Evidence Act, 1872 upon considering, analyzing and appreciating the evidence on record, what normally would get impression regarding occurrence of incident whether there is any truth revealed or not and assessing the evidence what would have been happened on all its probabilities of high degree is the method of appreciation of evidence produced before the Court. Finding fault with prosecution witness at every line and adopted too technicality is nothing but travesty of justice that what is done by the POCSO Court judge in the present case. Therefore, from the evidence analyzed and appreciated as discussed the judgment of acquittal made by the POCSO Court is highly and seriously erroneous, shocking conscience of the Court and the POCSO Court judge is



found to be highly insensible way lacking professionalism in appreciating the evidence on record. Therefore, the POCSO Court judge who has delivered the judgment requires some training in the Karnataka Judicial Academy on handling these types of cases. Therefore, the Court is hereby recommending making the POCSO Court judge who delivered the judgment to undergo training in the Karnataka Judicial Academy.

22. The victim-PW.3 has given statement before the learned Judicial Magistrate First Class under Section 164(5) of the Cr.P.C. and also under Section 25 of the POCSO Act as per Ex.P.4. Ex.P.4-statement is proved to be relevant and admissible that the victim has given statement before the learned Magistrate. PWs.9 and 10- Investigating Officers have deposed that PW.3-victim has given statement before the learned Magistrate. PW.2 has also stated that the victim has given statement before the learned Magistrate. Therefore, the statement recorded as per Ex.P.4 of the victim by the learned Magistrate is



proved to be relevant, admissible and proved the fact that the accused has committed offences alleged.

23. The offences charged against the accused are under Sections 8 and 10 of the POCSO Court and under sections 354A and 354B of the IPC.

24. Section 8 is a provision for punishment for sexual assault. Section 7 is a definition of sexual assault. Section 7 reads as follows:

**“7. Sexual Assault.-** *“Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”*

25. In the present case, the accusation against the accused is that with sexual intent touched private part and breast of the child involving physical contact without penetration. Therefore, as per definition of Section 7, the accused has committed offence of sexual assault under





Section 7 of the POCSO Act and thus, is punishable under Section 10 of the POCSO Act. Following are the ingredients of sexual assault:

- i) The accused has sexual intent to touch the vagina, penis, anus or breast of the child.
- ii) Makes the child touch the vagina, penis, anus or breast of accused or any other person.
- iii) Doing any other act with sexual intent.
- iv) Involving physical contact without penetration.

26. Therefore, considering the prosecution evidence discussed above, it is proved that the accused has sexual intention touched the private part and breast of the child and also removed zip of back portion of the cloth of the child. Therefore, the accused is liable to be convicted for the offences under Section 7 R/w Section 8 of the POCSO Act, 2012.



27. Another charge levelled against the accused is of the offence under Section 10 of the POCSO Act. Section 10 is a punishment clause for aggregated sexual assault as defined under Section 9 of the POCSO Act. Section 9 of the POCSO Act is as follows:

**"9.Aggravated Sexual Assault.-xxxxxxx**

*(a) to (l) xxxxx*

*(m) whoever commits sexual assault on a child below twelve years; or*

*(n) to (u) xxxxx*

*is said to commit aggravated sexual assault."*

28. In the present case, the victim child was studying 4<sup>th</sup> standard as per evidence. Ex.P.8 is the school certificate in which victim was studying 3<sup>rd</sup> standard in the academic year 2017-18 and her date of birth is 16.09.2009. The offences committed on 20.02.2018. Therefore, as on the date of the commission of offence, PW.3-child is 8 and ½ years old. Therefore, as per clause (m) of Section 9 of the POCSO Act, the accused has



committed offence of aggravated sexual assault. Whoever commits sexual assault on child below 12 years of age is amounting to commission of offence under Section 9 of the POCSO Act, which is punishable as per Section 10 of the POCSO Act.

29. From the evidence on record above discussed, it is proved that the accused has committed offence of aggravated sexual assault. Thus, he is liable to be convicted for the offences punishable under Section 9 R/w Section 10 of the POCSO Act.

30. Section 354A deals with sexual harassment and punishment for sexual harassment. As per this provision, a man committing act of physical contact and advances involving and unwelcome and explicit sexual overtures is said to have committed offence of sexual harassment. The accused has touched private part and breast of the child. Therefore, is proved to have committed offences under Section 354A of the IPC.



31. Section 354B deals with assault or use of criminal force to woman with intent to disrobe. In the present case, the accusation is proved against the accused that by touching private part and breast of the child has opened the zip of cloth of the child. This proves the accused has assaulted with intention of disrobing the child. Thus, it is proved that the accused has committed offence under Section 354B of IPC.

32. Therefore, the accused has committed offences punishable as above discussed and thus, the accused is liable to be convicted for the offences under Section 7 R/w Section 8 and under Section 9 R/w Section 10 of the POCSO Act and under Sections 354A and 354B of IPC. Therefore, the judgment of acquittal recorded by the POCSO judge is liable to be set aside. Accordingly, the accused is convicted for the charges levelled against him as discussed above. Therefore, the appeal is liable to be allowed.



33. Kumari Sonu Suhel, amicus curiae, appearing on behalf of the complainant has argued the matter in a meritorious way and assisted the Court in a very well manner. Accordingly, the Court places its appreciation on record of valuable assistance made by the learned amicus curiae, Kumari Sonu Suhel. The Secretary of High Court Legal Services Committee is directed to pay professional fees of Rs.5,000/- to the Kumari Sonu Suhel, amicus curiae.

34. Hence, I proceed to pass the following:

ORDER

- i) The criminal appeal filed by the State of Karnataka is **allowed**.
- ii) The judgment of acquittal passed in Special Case No.684/2018, dated 01.12.2020, by the learned I Additional District & Special Judge, Ballari is hereby set aside.



- iii) The respondent/accused is convicted for the offences under Section 7 R/w Section 8 and under Section 9 R/w Section 10 of the POCSO Act and also under Section 354A and 354B of IPC.
  
- iv) To hear on sentence.

**SD/-**  
**JUDGE**

SSP  
List No.: 1 SI No.: 67

**HSJ**

19.12.2023

**ORDER ON SENTENCE**

Today the matter is set down for hearing on sentence. The accused is produced before the Court by Sri Ramesh Kulkarni, Police Inspector, Women Police Station, Ballari, upon execution of non-bailable warrant.

2. Heard on sentence.

3. Learned counsel for the accused-Sri Anwar Basha B., is present and submitted that leniency may be shown while awarding sentence for the reason that the accused is having wife and children and he is having responsibility of looking after old age parents. Therefore, prays to show leniency while awarding sentence.

4. Learned HCGP submitted that the accused has committed heinous offence against the child who is below age of 12 years old. Therefore, prays to award maximum punishment as prescribed in the law.

5. The accused has committed alleged offence as per the judgment of conviction which is found to be



heinous offence. The victim was 8 and ½ years old child. Against whom the accused committed heinous offence as above stated. Therefore, if leniency is shown while awarding sentence that would not deter the other culprits in the society. Therefore, the accused is awarded adequate sentence for the offence committed.

6. Therefore, following sentence is delivered.

7. The accused is sentenced to undergo 4 years rigorous punishment for the offence punishable under Section 8 of the POCSO Act and with fine of Rs.1,000/-.

8. The accused shall undergo rigorous punishment for a period of 5 years for the offence punishable under Section 10 of the POCSO Act with a fine of Rs.1,000/-.

9. The accused shall undergo rigorous imprisonment for a period of three years for the offence punishable under Section 354A of IPC.

10. The accused shall undergo rigorous imprisonment for a period of three years for the offence punishable under Section 354B of IPC.





11. In default to pay the fine amount as stated, the accused shall undergo another simple imprisonment for a period of 3 months.

12. All the substantive sentences shall run concurrently.

13. MO.1 is ordered to be destroyed.

14. The accused is entitled for set off as per Section 428 of Cr.P.C.

15. The District Legal Services Authority is directed to pay compensation of Rs.5,00,000/- to PW.3-minor child under the Karnataka Victim Compensation Scheme.

16. Learned counsel for respondent No.1/accused filed application under Section 390 of Cr.P.C. and prayed to admit him on bail.

17. The accused is convicted for the heinous offence as above stated aggravated sexual assault is on the child of 8 and ½ years old also it is the accusation that the accused disrobed by opening zip of back side cloth of



the child. Considering all these factors, the Court is of the opinion not to admit the accused on bail. Therefore, the learned counsel's submission on admitting the accused on bail is hereby rejected.

18. The accused is awarded maximum punishment of 5 years for the offence under Section 10 of the POCSO Act.

19. Issue conviction warrant and remit to the accused for suffering imprisonment as ordered.

20. Learned counsel for the accused is permitted to take signature of the accused on vakalath.

21. Office is directed to furnish free copy of the judgment of conviction and order of sentence to the accused.

**SD/-**  
**JUDGE**

SSP  
List No.: 3 Sl No.: 29