



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 7<sup>TH</sup> DAY OF JULY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE K.NATARAJAN**

**CRIMINAL APPEAL NO. 1167 OF 2023**

**BETWEEN:**

HARISH KUMAR. A

...APPELLANT

(BY SRI. H.K. PAVAN, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY MALLESHWARAM POLICE STATION,  
BENGALURU,  
THROUGH THE STATE PUBLIC PROSECTOR,  
HIGH COURT BUILDING,  
BENGALURU-560 001.

2. XXX, MINOR,

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...RESPONDENTS

(BY SRI. S VISHWA MURTHY, HCGP FOR R-1/STATE)

THIS CRL.A IS FILED UNDER SECTION 374(2) CR.P.C BY  
THE ADVOCATE FOR THE APPELLANT/S PRAYING THAT THIS



HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 06.06.2023 PASSED BY THE FTSC-1, ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN SPL.C.NO.901/2019, FOR THE OFFENCE P/U/S 12 OF POCSO ACT.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### **JUDGMENT**

Though the appeal has come up for arguments on I.A.No.1/2023, but with the consent of both the learned counsel for the parties, the matter is disposed of finally.

2. This appeal under Section 374(2) of Cr.P.C., is filed, challenging the judgment of conviction and order of sentence dated 6.6.2023, passed in the Spl.C.No.901/2019, by the Court of FTSC-1, Additional City Civil and Sessions Judge, Bengaluru arising out of Crime No.63/2019 registered by the Malleshwaram Police Station, Bengaluru, convicting the appellant-accused for offence punishable under Sections 354(A) of IPC and Section 12 of POCSO Act, 2012 and sentencing the appellant-accused to undergo rigorous imprisonment for 2 years and to pay fine of Rs.25,000/- and in default to undergo 4 months of rigorous imprisonment.



3. Heard the learned counsel for the appellant-accused and learned HCGP for the respondent-State.

4. The case of the prosecution is that, on the complaint of the victim girl P.W.1, the Police registered the FIR alleging that, on 5.6.2019, at about 3.30 p.m., when she was walking on the footpath at Malleshwaram 18th Cross, Opposite to Shashikiran Apartments, at that time accused came and caught hold of her and touched her private part and started to run, at that time, victim girl followed him from 18th cross to 15th cross till Himamshu School and caught hold of him and handed over to the Police. After registering the case, the Police arrested the accused. Further he was tried by the Sessions Judge, wherein the prosecution has examined 10 witnesses P.W.1 to P.W.10 and got marked the documents at Exs. P.1 to P.12. The counsel for the accused did not choose to cross examine the witnesses and the Trial Court passed judgment finding the guilt of the accused.

5. Learned counsel for the accused contended that though the prosecution has examined 10 witnesses, but none of the witnesses were cross examined by the accused counsel



as the counsel remained absent. He further contends that, Even, legal services was not provided by the Trial Court by appointing the counsel to defend the accused in order to provide fair trial which is guarded under Article 21 of Constitution of India and nothing but denial of fair trial. Hence, he submits that, evidence of the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and as such the findings recorded by the learned Sessions Judge suffers from perversity and arbitrariness and prays to allow the appeal.

6. Per contra, the learned HCGP fairly admits that an opportunity was not provided to the accused to defend his case.

7. Considered the submission made by the learned counsel for the parties and perused the records.

8. Perusal of the judgment of the Trial Court at para No.19 clearly reveals that, the accused has not cross examined the prosecution witnesses P.W.1 to P.W.10 and their evidence was not challenged by the accused as they have not been cross-examined by the accused. Though, it is stated by the



earlier Court that it had asked the accused for legal aid for appointing the counsel, but the accused said to have refused in this regard and as such the Trial Court did not appoint any counsel on behalf of the accused. Therefore, due to non examination of the evidence, the Trial Court has drawn adverse inference and proceeded to convict the accused which is not sustainable in law.

9. Fair trial is the main object of the criminal procedure and so also the Fundamental Right guaranteed under Article 21 of the Constitution of India mandates the same, which is denied by the Trial Court by not allowing the accused to appear through the counsel for cross examining all the witnesses.

10. Of course, speedy trial is mandatory, however, denial of providing an opportunity to cross-examine the prosecution witnesses, which is nothing but denial of fair trial under Guaranteed Article 21 of the Constitution of India and in similar cases the Division Bench of this Court has remanded the matter back to the Special Trial Court for fresh consideration.



11. Trial Court judgment also reveals that earlier learned Sessions Judge has given several opportunities for the accused to cross-examine the prosecution witnesses. When the matter is came up before the Court, it is duty of the Court to afford an opportunity for cross examination of the witnesses by giving some time to engage his own counsel for advancing his case. The Trial Court without providing an opportunity for cross-examination of the prosecution witnesses ought not to have convicted the accused. Hence, the impugned judgment of conviction and order of sentence requires to be set aside and matter is remanded back to the Trial Court for fresh consideration.

12. In view of the same, I proceed to pass the following:

**ORDER**

- i) The criminal appeal is allowed;
- ii) The impugned judgment of conviction and order of sentence dated 6.6.2023 passed in Spl.C.No.901/2019 by the FTSC-1, Additional City Civil & Sessions Judge, Bengaluru, is hereby set aside and the matter is remanded back to the Trial Court for fresh consideration;



iii) The appellant is ordered to be released on bail by executing a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with a surety for the likesum to the satisfaction of the Trial Court;

iv) The Trial Court is directed to provide an opportunity to the accused to engage a counsel to cross examine the prosecution witnesses and to proceed in accordance with law;

v) Operative portion of this order shall be supplied to the Trial Court and the same may be intimated to the Trial Court.

**Sd/-**  
**JUDGE**

HR