



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 12TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100360 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA,
REPRESENTED BY
THE POLICE SUB-INSPECTOR,
BETAGERI POLICE STATION,
DISTRICT: GADAG,
THROUGH THE ADDL.STATE
PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

- APPELLANT

(BY SRI. M.B.GUNDAWADE, ADDL. SPP.)

AND:

RAMAPPA URF. RAMANNA,
S/O. YALLAPPA MAYANNAVAR
URF. TIRAKANAGOUDAR,
AGE: 55 YEARS, OCC: WATCHMAN,
R/O. HARLAPUR, TQ: GADAG,
DIST: GADAG-582115.

- RESPONDENT

(BY SRI N.M.PATIL, ADV. FOR SRI J.S. SHETTY, ADV.)

THIS CRIMINAL APPEAL FILED UNDER SECTION 378(1) AND (3) OF THE CPC., PRAYING TO, GRANT LEAVE TO APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 08.01.2020 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE, GADAG IN S.C.NO.45/2016 (POCSO) AND CONVICT AND SENTENCE THE RESPONDENT / ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 376 (2) (I) OF IPC AND SECTION 4 AND 6 OF POCSO ACT 2012, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.10.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, T.G.SHIVASHANKARE GOWDA J., PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, the State has challenged the acquittal judgment dated 08.01.2020 in S.C.No.45/2016 (POCSO) on the file of the Addl. District and Sessions Judge, Gadag. The accused faced trial for the offences punishable under Section 376(2)(i) of IPC and Section 4 and 5 of POCSO Act, 2012.

2. Briefly stated the prosecution case is, PW1 is the mother and PW2 is the father of the victim. The victim was aged 3 and ½ years female child baby. PWs.1 and 2 were labours, working in an under construction building as watchmen at Harlapura Extension Bovipal of Gadag and stayed nearby the building itself. The accused was also working nearby as a watchman in another building under construction belonging to PW10-Praveen.



2.1 On 12.05.2016, PW18-WPSI of Betageri Extension Police Station of Gadag on receipt of intimation from the District Hospital, Gadag, visited the Hospital and recorded the statement of PW1 as per Ex.P1 and registered the case in Crime No.84/2016 and submitted the FIR to the jurisdictional Court as per Ex.P11.

2.2 On perusal of Ex.P1, it is pertinent to note that, the accused while working as a watchman in the building belonging to PW10 carried away the victim child at about 7.30 a.m., offering to provide her snacks. At about 10.00 a.m., the bar benders i.e. PWs.6 and 9 rushed to PWs.1 and 2 informing that at about 9.00 p.m., the accused had committed sexual assault on the victim child and they rescued her and requested them to take care of victim child. PWs.1 and 2 rushed to the said building, where they saw victim was weeping, blood was dropping from her thighs, they saw the bloodstains on the spot. They made an enquiry with the child, who informed that the accused had committed sexual assault on her. PW1 checked the genital of the child and found bleeding in the genital. After confirming that the



accused had committed alleged sexual assault, the child was brought to the Government Hospital. On arrival of the police in the hospital, statement under Ex.P1 was given to the police. PW24-Investigating Officer took up the matter, the investigation led to filing of the charge sheet against the accused. During investigation, the accused was arrested and subjected to judicial custody. During trial, the prosecution examined 23 witnesses and got marked 40 documents as Exs.P1 to P40. M.Os.1 to 13 were the material objects marked by the prosecution. The accused did not lead any defence evidence.

3. On appreciation of the evidence, the Trial Court recorded acquittal giving reasons that the injury/bleeding noticed by PW1 was not noticed by the doctor who treated the victim. It is not possible to believe that the accused had worn the same cloth from 12.05.2016 to 14.05.2016. PWs.1, 6 and 9 had not stated about the clothes worn by the accused at the time of incident. They also did not identify the said clothes. It is not coming in the evidence that at the time of arrest, the accused was wearing the same clothes which



were worn at the time of incident. The prosecution failed to establish sexual assault on the victim beyond reasonable doubt. Two versions were possible, one which was in favour of the accused and accordingly benefit of doubt was extended to the accused.

4. We have heard the arguments of Sri M.B. Gundawade, learned Addl. SPP and Sri N.M.Patil, advocate appearing on behalf of Sri J.S.Shetty, learned counsel for respondent/accused.

5. Learned Addl.SPP submitted that the prosecution has placed concrete evidence through PWs.1, 6 and 9. That the accused was assailant, the victim was last found in the company of the accused and she was bleeding from her - genital at that time. The medical evidence supports their testimony. The victim is aged 3 and ½ years. The accused being aged more than 55 years committed sexual assault on victim child. On the nail clippings and on the cloth of the accused, bloodstains of the child was identified as per the FSL Report. The medical examination report of the accused clearly pointed out the injuries on his genital. The medical



evidence corroborates the testimonies of PWs.1, 6 and 9. Instead of appreciating the evidence from this angle, the Trial Court has given reasons which are not forthcoming from the evidence and therefore there is a case for interference with the impugned judgment.

6. *Per contra*, learned counsel for the accused has contended that PWs.6 and 9 saw the child with bleeding on her thighs, they informed the same to PW1 who carried the child to the hospital immediately. Medical evidence clearly point out that there was no injuries found on the body of the child including the genital. Opinion of the Medical Officer clearly shows that the child was very sensitive even a little light touch bleeding is inevitable. Medical evidence is totally against the prosecution. If really there was sexual assault against the child, there ought to have been any physical injury on the vulnerable part of the child. PWs.6 and 9 though claims that they are the eyewitnesses, cross-examination demonstrate that they did not see the accused and child in privacy. The seizure of underwear in MO1 belonging to the accused was a make believe as the arrest of



accused was on 14.05.2016. Even if the evidence of PWs.6 and 9 is believed that the accused was caught hold at the spot on 12.05.2016, how the Investigating Officer arrested the accused on 14.05.2016 is not explained. The Trial Court has rightly observed that the injury proposed by PWs.1, 6 and 9 is not at all available on the body of the child. There are no circumstances which able to explain that the child was subjected to sexual assault. Hence, the Trial Court has rightly accepted that the defence is more probable, the prosecution has not proved the alleged sexual assault on the victim beyond reasonable doubt and extended the benefit of doubt and he supported the impugned judgment.

7. We have perused the entire evidence. PW1 is the complainant-mother and Ex.P1 is her statement. On perusal of the statement of complaint, it is pertinent to note that the averments about sexual assault were gathered from the victim. The victim was not brought before the Court. The victim was brought before the Magistrate for recording her statement under Section 164 of Cr.P.C. Ex.P3 is the statement of PW1 and also it is accompanied by the



statement of the victim. On perusal of the 164 statement of PW1, she states that she gathered the information from the victim herself, but victim did not open her mouth and she was silent before the Magistrate. For the reason of the victim was 3 and ½ years vulnerable child, she was not examined before the Court, but the endorsement made by the learned Magistrate on 13.05.2016 clearly point out that the child was silent and it was not aware of anything. This clearly point out that the averments made in Ex.P1 are not based on the information that was given by the victim, but it was the information invented by PW1.

8. PW2 is the father of the victim, PW11 is the goldsmith under whom the accused was working as watchman. PW12-Head Constable who is working in the S.P. Office, Gadag. Infront of the S.P. Office, PWs.1 and 2 were working under construction building as watchmen. PW13 is the mother of PW1. All these witnesses are hearsay witnesses; they came to know about the said incident said to have been committed by the accused. Their cross-



examination clearly demonstrates nothing except they being heard and deposed before the Court.

9. PW10 is the owner of the building with whom the accused was working as a watchman. His evidence is of no consequence. PWs.3 and 5 are the panch witnesses to Ex.P3 mahazar. PW4 is the panch witness to seizure of MO1-underwear under Ex.P6-mahazar. PWs.7 and 8 are the panch witnesses to the seizure of clothes brought from the hospital belonging to the accused as well as the victim under Ex.P7. PW14 is the Constable who scribed these mahazars. PW3 though supports the spot inspection by the police, his cross-examination demonstrated that he is unreliable as he signed the mahazar without knowing its contents at the police station. PWs.7 and 8 have turned hostile regarding seizure of the material objects.

10. The star witnesses to the case are PWs.6 and 9 who claim to be the eyewitnesses. We have carefully perused the testimony of PWs.6 and 9. Though they have supported that near the under construction building of PW10, they saw the victim weeping with bloodstains on her cloth and also



blood was dropping from her legs, it appears that they caught hold of the accused on the pretext that he had committed sexual assault against the victim child. They informed the same to PWs.1 and 2 and accordingly they stated before the police. The cross-examination of PW6 demonstrates that he was not able to say the clothes worn by the accused when he was caught hold of. PW9 came to the spot later on the information of PW6. Nothing brought out other than what is so recorded. PWs.6 and 9 admit in their cross-examination that they were not seen the sexual assault committed by the accused against the victim. PWs.6 and 9 only made an imagination that the accused might have committed sexual assault against the victim. Accordingly, they informed to PW1 and PW1 put the same to Ex.P1 while setting the law into motion.

11. In view of above, the prosecution was required to prove and establish the child was the victim of sexual assault. In this regard, the medical evidence is very much relevant. PW20-Dr.Amruta S.Patil was the Medical Officer who has examined the victim on 12.05.2016 and issued



Ex.P13-report. Her testimony goes to show that though she observed bloodstains on the underwear of the child, there were no scratches and bruises on the body of the victim. On genital examination of the victim, she did not see any external injuries. Hymen was intact with minimal bloodstain. No significant finding was found. Hence, she gave the opinion that there was no sign of recent sexual intercourse and the child was not used to sexual act. Accordingly Ex.P13 is her opinion report. All of a sudden PW20 gives Ex.P14-opinion report with a different version after seeing the Ex.P15-FSL report regarding bloodstains found on the sample nailing of the accused and his cloth that, there is a sign of sexual assault.

12. PW22 is the doctor who examined the accused. He has noticed the injuries on the glans penis of the accused with red in colour and issued Ex.P16-report that if the accused came in contact with physical object; he might have sustained such injuries. The examination of the accused was on 14.05.2016 whereas the alleged incident was on 12.05.2016 after 48 hours.



13. PW21 is the FSL Expert who examined 12 articles. His report is as per Ex.P15 to the effect that there was 'B' group blood belonging to the victim on one panty, one dhoti, banyan and finger clippings of the accused. It is pertinent to note from the evidence of PWs.6 and 9 that it is the accused who washed bloodstains of the victim. Quite natural he might have come in contact with the bloodstains on his finger nailing and also his dhoti. That will not go into incriminating in support of the prosecution as the accused might come to the rescue of the victim when the child was found bleeding on her legs. The opinion of PW20 clearly point out that even if the child came in local touch or disturbance which can lead to bleeding. When there is no injury on the genital of the child, nor any scratch or bruises on the body of the child that the opinion of PW20 probablises that the child might have had local touch or disturbance when it was playing near under construction building where the building materials had been kept. Hence the evidence of PW20-Medical Officer clinches the issue.



14. Interesting to note that PWs.6 and 9 apprehended the accused on 12.05.2016 at 10.00 a.m. whereas PW23-Investigating Officer arrested the accused on 14.05.2016 at 6.00 a.m. near Abdul Kalam Shadi Mahal near Ring Road of Gadag. This evidence of PW23 cannot be believed as the accused was in the custody of PWs.6 and 9 on the date of alleged incident itself. Hence the manipulation cannot be ruled out.

15. We have carefully perused the impugned judgment. The Trial Court has rightly observed that the injury noticed by the mother was not found on the body of the victim when the child was examined by PW20. PW20 himself says that if the child came in local touch, she may bleed because of vulnerability. The child was playing near the under construction building and she might have come in contact with the under construction materials. For the reason of the accused cleaned the bleeding of the child, dhoti might have stained with blood and it gave rise to the suspicion in the mind of PWs.6 and 9 and alarmed the mother that the child was subjected to sexual assault by the accused. The



Trial Court has rightly observed that the alleged sexual assault was not established beyond reasonable doubt. Medical evidence probablises the defence. Trial Court has rightly extended the benefit of doubt. We do not find any illegality or irregularity in the impugned judgment. We are persuaded to hold that, the appeal is devoid of merits, in the result, the following:

ORDER

Appeal is dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**