



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 16TH DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

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

CRIMINAL APPEAL NO. 100150 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA,
REP.BY THE INSPECTOR OF POLICE,
MURGOD POLICE STATION,
DIST: BELAGAVI, THROUGH THE ADDL.
STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...APPELLANT

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

AND:

RAYAPPA YALLAPPA KULMOOR,
AGE: 21 YEARS, OCC: STUDENT,
R/O. TAVALGERI, TQ: SAVADATTI,
DIST: BELAGAVI - 590001.

...RESPONDENT

(BY SRI JAGADISH PATIL, ADVOCATE FOR ACCUSED;
NOTICE TO PW1 AND PW2 SERVED)

THIS CRIMINAL APPEAL IS FILED U/S.378(1) AND (3) OF CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 14.11.2019 PASSED BY THE III ADDL. DISTRICT AND SESSIONS SPECIAL JUDGE UNDER POCSO AND SC/ST (POA) ACT AT BELAGAVI IN SESSIONS CASE NO.207/2016 AND CONVICT THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE U/S.363, 376(2) (N) OF IPC AND SECTION 3(1) (XI), 3 (2) (V) OF SC AND ST (POA) ACT, 1989 AND SEC.5(1) 6 OF POCSO ACT, 2012, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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

ORAL JUDGMENT

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

In this appeal, the State has challenged acquittal judgment dated 14.11.2019 in S.C.No.207/2016 on the file of III Addl. District and Sessions Judge and Special Court under POCSO and SC/ST (POA) Act at Belagavi. The accused faced trial for the offences punishable under Section 363, 376(2)(n) of IPC and Section 3(1) (xi), 3(2) (v) of SC & ST (POA) Act, 1989 and Section 5(1) (6) of POCSO Act, 2012.

2. The parties shall be referred to as per their status before the Trial Court.

3. Brief facts of the prosecution case are, on 19.08.2015, FIR was registered at the instance of PW1 who is the father of the victim on the basis of his complaint under Ex.P1. Perusal of Ex.P1 discloses that the accused is the resident of their village namely Tavalgeri. PW2 is the minor daughter of PW1 and was studying 1st year B.A. in Bhogaraj Desai Degree College Tavalageri at Yaragatti. The accused



was also a student; he came in contact with PW2 and he tried to speak to her. She brought it to the notice of her parents who advised her not to talk with him. In spite of it, the accused was repeatedly making attempts to contact her. On 17.08.2015 at 10.30 a.m., when PW2 had gone to the college, she did not return home. Enquiry with their relatives showed that he had not visited their houses and PW1 suspected the hand of the accused that between 10.30 a.m. to 4.00 p.m. on 17.08.2015, he might have kidnapped PW2 from her college. Hence, they filed the kidnapping case against the accused and thereby a case was registered in Crime No.182/2015 for the offence under Section 363 of IPC, Section 3(1)(xi) of SC and ST (POA) Act, 1989 and Section 11(iv), 12 of POCSO Act, 2012.

4. The police investigation led to tracing of the accused as well as PW2 in the house of PW16 and they were brought to the police station on 22.08.2015. During the course of investigation, PW2 revealed that the accused kidnapped her with a promise of marriage and forcefully took her from Yaragatti to Saundatti, Hubballi, Tumkur, Hosapete,



Koppal and then to Challare, the residence of PW16 and wrongfully confined her from 17.08.2015 to 20.08.2015. He, knowingly that she belonged to Bedara caste committed forcible sexual assault on her for a period of four days and later the police brought both of them to the Murgod Police Station. The victim as well as the accused were subjected to medical examination which led the filing of the charge sheet against the accused for the charged offences. During trial, the prosecution examined 17 witnesses as PWs1 to 17 and got marked 39 documents as per Exs.P1 to 39. M.Os.1 to 15 were the material objects marked by the prosecution. The accused did not lead any defence evidence though he denied the prosecution version when he was examined under Section 313 of Cr.P.C.

5. On appreciation of evidence, the Trial Court recorded acquittal giving reasons that the age of PW2 as on the date of alleged incident was more than 18 years, that she was quite intelligent to understand the consequences of the act she had indulged in with the accused. She voluntarily went with the accused, gave consent for sexual intercourse,



there was no coercion or threat given by the accused. Even the victim admitted that she gave a false statement before the police as well as the Magistrate that she had closely associated with the accused, they were generally talking to each other and her parents suspected her free movement with the accused. PW2 admitted while giving statement under Section 164 of Cr.P.C. that she herself went along with the accused, the accused had not committed sexual assault on her and she was a consenting party for the consensual physical relationship. There is no evidence regarding accused abusing or insulting the victim by taking the name of her caste. The prosecution evidence does not inspire the confidence of the Court.

6. We have heard the arguments of Sri M.B. Gundawade, learned Addl. SPP and Sri Jagadish Patil, learned counsel for the respondent/accused.

7. It is contended by the learned Addl.SPP that inspite of positive evidence placed before the Court through PW2 that the accused had forcefully committed sexual assault, the accused had taken forcefully to the various



places and committed sexual assault 3-4 times by confining her in the house of PW16. She being the minor was forced to indulge in the act of sexual intercourse with the accused. The circumstances would clearly indicate that the accused had an intention to commit sexual assault against PW2 and thereby the ingredients of the offence under Section 376 is explained. Instead of appreciating the evidence of victim and medical evidence from this angle, the Trial Court has given findings which are not forthcoming from the evidence, unnecessary benefit of doubt is extended and therefore it is a case for interference with the impugned judgment.

8. *Per contra*, learned counsel for the accused has contended that the medical records clearly point out that the PW2 is aged about 18 years on the date of alleged incident. That Transfer Certificate of 10th standard is produced which explains the victim is a student of 1st year B.A. aged more than 17 years. No evidence is placed such as school admission record for the 1st standard or the matriculation certificate. When the medical evidence speaks the age of between 18-20 no weight can be attach Ex.P5-the Transfer



Certificate. Even if prosecution version is accepted that the victim traveled with the accused from Yaragatti-Saundatti-Hubballi-Tumkur-Hosapete-Koppal-Challare, it clearly goes to show that she accompanied him voluntarily as she was in love with the accused. She was threatened by her parents not to love the accused as they were about to perform her marriage with some other person. There is no evidence about insulting PW2 taking the name of her caste; there is no evidence that PW2 was humiliated within the public views. The act of the PW2 is voluntary, consensual having regard to her age, the Trial Court is justified in recording acquittal.

9. We have given our anxious consideration to the arguments addressed by the learned counsel on both sides and perused the material on record.

10. On perusal of the averments made in Ex.P1-complaint and also the testimony of PW1-father, it is forthcoming that he gathered the information of kidnapping of and sexual assault on her daughter by the accused when he interacted with the police. The averments made in the complaint did not point out any sexual assault or humiliation



by the accused by taking the name of the caste of PW2. When the complainant was called PW1 was not aware of his sexual assault committed against PW2 by the accused. The evidence of PW2 that though she met her father in the police station, she declined to go with him inspite of advice by the elders as well as the Magistrate. She has admitted of having given a statement under Section 164 of Cr.P.C. before the learned Magistrate which is marked as per Ex.P2.

11. On perusal of Ex.P2, it is pertinent to note that she herself voluntarily went along with the accused and stayed at Challare village for about three days till Murgod Police brought them to the police station. From 17.08.2015 till she was brought back to the police station, the accused never ill-treated her, misbehaved with her nor committed any sexual assault. Infact, she wanted to marry him and settle her future life with him only. Ex.P2-statement was recorded on 25.08.2015. Till then, she had not interacted with her father, but father says that information about sexual assault was given to him by PW2. When she had no



interaction with her father, how can he come to know about the alleged sexual assault by the accused is not explained.

12. PW16 is the person who gave shelter to the accused and PW2. In the witness box, he turned hostile denied having allowed the accused and PW2 staying in his house and his giving any statement before the police as per Ex.P38.

13. PW15 is the eyewitness who had witnessed the accused carrying away the victim whose testimony did not point out anything in support of the prosecution as he is not aware of anything about incident involving the accused and PW2. He turned hostile and denied his previous statement before the police as per Exs.P36 and 37.

14. PW6 is the cousin of PW1 who accompanied PW1 to the police station and scribed Ex.P1-complaint as per the say of PW1. Two days after filing the complaint, PW2 was traced. He has no personal knowledge about the alleged incident.



15. PW3 is the panch where the alleged incident took place in the house of PW16 as per Ex.P15. PW4 though supports, PW3 did not support the prosecution and pleaded ignorance. PW5 and 7 who have witnessed the seizure of articles of the accused as well as the victim under Exs.P7 and 8 at Murgod Police Station. PW11 is the PWD Engineer who had prepared the Ex.P14-sketch at Sattige Cross, the place where the alleged incident took place.

16. PW9 is the Headmaster of the school where the accused had studied and who has issued the study certificate of the accused as per Ex.P10 that the accused was born on 08.06.1995 and he belongs to the Kuruba caste.

17. PW8 is the Headmaster of the high school who issued the copy of the Transfer Certificate as per Ex.P5 to the effect that the victim was born on 08.11.1997 and she belongs to Bedara caste. The prosecution failed to secure the matriculation certificate or the school admission register extract where the PW2 was admitted to the primary school. In view of the medical evidence suggesting the age of the



victim 18-20 on the basis of the dental report and x-ray report, the evidence of PW8 loses importance.

18. PW10 is the Medical Officer who issued the report as per Ex.P12 that the victim was subjected to sexual assault as her hymen was ruptured. According to him, the victim was subjected to dental examination as well as x-ray examination. Dental examination suggests the age of the victim between 18-20, the x-ray examination suggests the age between 18-19. He has issued Ex.P12-report only based on the report of gynecologist. This goes to show that PW10 is not the doctor who examined the victim and his report is based on the report of an expert doctor. Unless the prosecution places the evidence of expert doctor, it is very difficult to accept the opinion evidence of PW10 that the victim was subjected to sexual assault. The cross-examination of PW10 brought out that the rupture of hymen might cause for other reasons. Hence, the medical evidence of PW12 based on some other reports only suggest the age of the victim between 18-20 and the rupture of hymen might be due to other reasons. PW2 did not furnish history to the



doctor who examined her that accused was committed forceful sexual assault that takes support from Ex.P2-164 statement of the victim recorded on 25.08.2015.

19. PW17 is the PSI. On receipt of Ex.P1-complaint on 19.08.2015 at 9.45 p.m. registered the Ex.P39-FIR and thereafter he handed over the investigation to PW14.

20. PW14 is the Investigating Officer who is the Dy.S.P., whose evidence explains formality of the investigation from spot inspection, securing the accused and the victim from near the house of PW16, subjecting them to medical examination.

21. PW12-the incoming Investigating Officer who has got the sketch as per Ex.P14, utar extract pertains to the house of PW16 and Ex.P16-RFSL report. PW13 another Investigating Officer who has collected the caste certificate of the victim as per Ex.P11 and also FSL report as per Ex.P16 and P15 in filing the charge sheet.

22. As we have appreciated the evidence of the prosecution, it is therefore very clear that when the victim



was brought before the Magistrate on 25.08.2015, there was no allegation of kidnapping or sexual assault. After the investigation, only on the basis of the medical evidence, the alleged sexual assault is made. Though the victim has given statement before the Trial Court, but in the cross-examination she makes a categorical admission that whatever the statement she has given before the police as well as Magistrate are totally wrong. Her cross-examination clearly demonstrated that she had fallen in love with the accused, she voluntarily accompanied the accused and she was a consenting party for the physical relationship with the accused. The testimony of PW2 clearly goes to explain that she is not a trustworthy witness and the age of PW2 being used to prevent her from contacting the accused and ultimately the evidence on record clearly goes to show that nothing in favour of the prosecution.

23. Conversely the defence has demonstrated from the prosecution evidence itself that the victim was aged 18-20 at the time of alleged incident, she voluntarily accompanied the accused, there was no harassment or



humiliation in the hands of accused in the name of her caste. Her entire act is voluntary and the Trial Court has rightly observed all these aspects. Even if it is assumed that the accused carried the victim since she is aged more than 18 years and her entire act is consensual, the evidence of PW2 is not trustworthy, we do not find any good ground to interfere with the well reasoned judgment of the Trial Court. When the prosecution failed to explain the ingredients of the charged offences, there are no reasons to appreciate the grounds urged by the prosecution are supported with legal evidence.

24. In view of the above discussion, we are of the considered view 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**

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