



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 9TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

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

CRIMINAL APPEAL NO. 100513 OF 2021 (A)

BETWEEN:

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

...APPELLANT

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

AND:

AKSHAYKUMAR S/O BASAVARAJ CHOUGULA,
AGE: 24 YEARS, OCC: ELECTRICIAN,
R/O. BASTAWAD, TQ: HUKKERI,
DIST: BELAGAVI,
NOW AT PRABHUNAR,
HONNAPUR, DHARWAD,
DIST: DHARWAD-580001.

...RESPONDENT

(BY SRI RAM P.GHORPADE, ADVOCATE)

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 13.03.2020 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE AT DHARWAD IN SPL.S.C. NO.13/2019 AND CONVICT AND SENTENCE THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE U/S. 376 OF IPC AND SECTION 6 OF POCSO ACT IN THE INTEREST OF JUSTICE AND EQUITY.



THIS APPEAL, COMING ON FOR FURTHER ARGUMENTS, 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)

The acquittal judgment dated 13.03.2020 in Special S.C. No.13/2019 on the file of II Additional District and Sessions and Special Judge, Dharwad, has given rise to this appeal by the State. Accused faced trial for the offences punishable under Section 376 of Indian Penal Code (for short, 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

2. Brief facts of the prosecution case are that, on 14.02.2019, the father of the victim who is examined as PW2 filed the complaint as per Ex.P1 which led to registration of a case in Crime No.5/2019 against the accused for the offences under Section 376(2) of IPC and Section 4 of the POCSO Act. The complaint discloses that the victim was aged 16 years, she is the daughter of the complainant, accused is their relative who resided in his house since 5-6 years. The



victim was studying first year PUC at Dharwad and she was commuting to Dharwad by bus. On 12.02.2019, he received a phone call from his wife i.e. PW3 that the victim was complaining of stomach pain and she had to be taken to SDM Hospital, Dharwad for treatment. Accordingly on the very day, he took the victim to SDM Hospital. The Medical Officer informed him that his daughter was pregnant. Since she was a minor, an intimation was already sent to the police from the hospital. Through his wife he got enquired the victim, who informed that she fell in love with the accused since three years, they were chatting together, in the absence of parents, she and the accused in the bedroom came in contact physically, due to which the victim became pregnant. In this regard on 13.02.2019, the Police Inspector of Women Police Station, Dharwad came to the hospital and enquired the victim and for this reason he gave complaint to the police on 14.02.2019.

3. The investigation led to filing of the charge sheet against the accused. During trial, the prosecution examined 21 witnesses as PWs.1 to 21 and got marked 38 documents



as Exs.P1 to P38. MOs.1 to 12 were the material objects marked by the prosecution. The accused except denying the version of the prosecution while examining under Section 313 of Cr.P.C. did not led any defence evidence.

4. On appreciation of the evidence, the Trial Court recorded acquittal giving reason that the prosecution has placed the contrary evidence in respect of proof of the age of the victim, though DNA report showed that the victim and the accused are the biological parents of the fetus terminated from the womb of the victim. There are no incriminating evidence against the accused that he had committed sexual assault against the victim. DNA report is not a conclusive evidence. The victim as well as other material witnesses have turned hostile to the prosecution denying the very incriminating circumstances and benefit of doubt is extended to the accused. Aggrieved by the order of acquittal, the State is before this Court.

5. We have heard the arguments of Sri M.B.Gundawade, learned Addl.SPP for the State and Sri Ram



P.Ghorpade, learned counsel for the respondent and perused the material on record.

6. Learned Addl.SPP has submitted that inspite of concrete evidence placed in the form of DNA profile, the Trial Court did not believe the same. It is the father of the victim who filed the complaint to the police, the fetus in the womb of the victim was terminated by order of the Court was subjected to DNA examination. The DNA report has not been disputed by the accused which clearly point out that the accused is the biological father of the said fetus. The scientific evidence is sufficiently explained that the accused has committed sexual assault against the victim. School records are produced to show that on the date of alleged incident, the victim was a minor and the Trial Court has wrongly appreciated the evidence. Without giving valid reasons discarded the DNA report, which establishes the ingredients of the charged offences. Therefore there is a case for interfering with the impugned judgment.

7. Per contra, learned counsel for the accused has contended that the father of the victim never went to the



police station to file the complaint. The victim was brought to the hospital for stomach pain treatment. Without taking consent of the parents, the hospital authorities informed the police. Police themselves came and enquired with the victim and forcefully took the complaint from PW1 on the next day of the incident, tailored the evidence to suit the charged offences. The evidence deposed before the Court did not point out anything incriminating that the accused had committed sexual assault on the victim. The father of the victim himself admitted that there was no proof of date of birth, the school teacher who is examined by the prosecution clearly admitted that the age of the victim approximately mentioned in the school records and on the date of alleged incident, there is no proof that the victim was minor.

7.1 It is further contended that the victim and the accused fell in love and they are very close relatives also. The family members were intending to perform their marriage and they were waiting for the victim to complete her age of 18. During this interregnum period, the alleged pregnancy had been brought out by the prosecution and the



accused is prosecuted without the consent of the victim as well as the parents.

7.2 It is also contended that the victim has attained the age of majority so also the accused. The marriage of the victim and the accused has already performed because of the interference of the doctor and the police, the victim was forced to come before the Court. The Trial Court has rightly held that the DNA report is not a conclusive proof and there is no incriminating evidence brought before the Court against the accused. Since the marriage of the accused as well as victim has already been performed, the order of acquittal is perfect and there is no need for interference.

8. We have perused the entire evidence. Not for the reason that the accused has now married the victim, it is for the reason that the prosecution has failed to establish the case, we have to concur with the reasons given by the Trial Court.

9. PW1 is the father of the victim whose evidence clearly points out that the accused is the son of his sister. His



daughter was studying in PUC; he never carried his daughter to the hospital on the pretext of stomach pain and his daughter was never become pregnant nor anybody informed this aspect to him. Even he has gone to the extent of denying the complaint averment in Ex.P1. He admits that at the time of admitting the child, he has given only approximate age and he has no proof of date of birth of his daughter.

10. PW3 is the mother who stands in support of her husband, but she admits that she has carried the victim to the Civil Hospital, Dharwad and she came to know that the child was pregnant and she got the treatment for abortion and her husband got filed the complaint to the police. Her testimony did not find out reason for the pregnancy of her daughter. Her cross-examination clearly demonstrated that the victim never informed her that the accused was responsible for her pregnancy.

11. PW2 is the brother of PW1 who too followed the suit of PW1. The victim in the witness box disowns her pregnancy. She was taken to Government Hospital, Dharwad



by her mother because of she had vomiting. There the police came and enquired, she never disclosed to the police that the accused has committed any sexual assault on her. Her cross-examination by the prosecution brought out that she was in love with the accused, her parents are waiting her to complete 18 years of age to perform her marriage with the accused. According to her, the accused was not responsible for her pregnancy.

12. PW12-Mahaveer Dharennavar, the relative, PW10-Smt.Rajashri Chougale, PW8-Veerappa Goudar, PW9-Prakash Dharennavar, PW7-Appasaheb Amate, PW6-Kempanna Kamati, PW5-Bharamanna Kammar, PW4-Nagappa Kubihal are the other relative witnesses. They did not support the prosecution version.

13. As regards the age of the victim is concerned, PW13-Nutan Soja, Headmaster of Convent High School, Keshwapur, deposed about schooling of the victim and issuing of certificate regarding age. Cross-examination demonstrate that there was no age proof produced at the time of school admission. Only on the approximate age



furnished by the parents, the date of birth was recorded in the school. This clearly goes to show that there is no conclusive proof in respect of date of birth of the victim. Even if it is accepted that the victim is aged minor less than 18 years, the incriminating circumstances did not point out that the accused had committed sexual assault against her.

14. PW16-Dr.Sahana Nayak, the Medical Officer who examined the victim on 13.02.2019 brought by the mother complaining of victim had not undergone menstrual course. On examination, she confirmed three months' pregnancy. Since victim was a minor, she informed the same to the Women Police Station, Dharwad and as per the request of the police, she made sampling. On 15.02.2019 after receipt of order of the Court, the pregnancy was terminated and fetus was preserved for DNA examination and it was sent accordingly.

15. PW17-Dr.Prabhu is the Medical Officer who has sampled the blood of the accused and PW15-Dr.Ashrafulla Abdulhaksab who examined the accused to know his physical capacity to perform sexual intercourse. PW18-



Smt.Pushpalata is the Investigating Officer, she narrated the procedure of investigation and filing of the charge sheet. PW19-Dr.Raghavendra Kulkarni who has examined the dry smear to know about the sexual intercourse against the victim. PW20-Dr.Mahadeshwarswami Y.H., Assistant Director of RFSL, Belagavi has examined the material objects which were collected from the victim as well as the accused.

16. PW21-A.Purushottam is the DNA expert who subjected the fetus collected from the womb of the victim after abortion and issued DNA report as per Ex.P21 to confirm that the victim and the accused are biological parents of the fetus. The cross-examination brought out that since the accused and victim both hail from same family, there is a chance of DNA matching.

17. Now from the entire evidence of the prosecution except the evidence of PW21 and Ex.P21-DNA report, there is no other incriminating circumstances. The victim herself disclose that she had not become pregnant, the parents of the victim as well as the close relatives who were not knowing about the victim become pregnant and the sampling



of the fetus in the womb of the victim was not known to anybody. It is the case by the Medical Officer and the police officials.

18. Infact the evidence clearly point out that the accused was residing in the house of the victim since 5-6 years, he was taking care of management of the family as per the advice of PW1 and family members have decided to perform marriage of the accused with the victim. Since the victim was under aged, they were waiting for her to complete age of 18. By the time she completed the age of 18, her pregnancy came out and for this reason she was taken to hospital where certain procedure have been followed and after termination of pregnancy, fetus was subjected to DNA. Except DNA is matching, there is no other evidence which would able to explain that the victim was become pregnant.

19. As on the date of incident, the age of the victim was more than 17 years. There is no evidence in proof of correct age of the victim. Under such circumstances on the basis of the approximate age, the victim cannot be declared



a minor and therefore in the circumstances consent on the part of the victim cannot be ruled out and in persuasion of such consent, the accused as well as the victim have already married and they are residing together. The accused is none other than the son of sister of PW1. For the reason of the victim brought to the hospital, prosecution was lodged against the accused. Ultimately the Trial Court after appreciating all relevant materials rightly held that DNA report is not a conclusive evidence, other circumstances regarding proof of age, sexual assault by the accused is not forthcoming and rightly extended the benefit of doubt. We do not find any error or illegality in the order of the Trial Court. In the result, the following:

ORDER

Appeal is dismissed.

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

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

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