



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 23RD 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.100511 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA R/BY THE POLICE INSPECTOR,
SAVANUR POLICE STATION, DISTRICT. HAVERI,
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE, HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

- APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDL. S.P.P.)

AND:

1. SHIVAREDDY S/O MALLAPPA HORAKERI
AGE. 26 YEARS, OCC. AGRICULTURE,
2. VIJAY S/O SIDDALINGAPPA SOMASAGAR
AGE. 24 YEARS, OCC. STUDENT,
3. FAKKIRESH S/O BASAPPA TALAWAR
AGE. 25 YEARS, OCC. COOLIE,

ALL ARE R/O. HIEMUGADUR, TQ. SAVANUR,
DIST. HAVERI-581110.

- RESPONDENTS

(BY SRI. VIDYASHANKAR G. DALWAI, ADVOCATE FOR R1;
SMT. NANDINI SOMAPUR AND SRI. B.V. SOMAPUR,
ADVOCATES FOR R2 & R3)

THIS CRIMINAL APPEAL IS FILED U/S. 378(1) AND (3) OF
CR.P.C., AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL
DATED 06.02.2020 PASSED BY THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE AND SPECIAL JUDGE AT HAVERI IN SPL. S.C. NO.
30/2016 & ETC.

THIS CRIMINAL APPEAL, COMING ON FOR 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 SREENIVAS HARISH KUMAR)

This appeal is preferred by the State challenging acquittal judgment dated 06.02.2020 in Special S.C. No. 30/2016 on the file of First Addl. Dist. & Sessions Judge and Special Judge, Haveri.

2. On account of death of accused no.2, case against him was abated.

3. The prosecution case is about kidnapping a minor girl PW4, and subjecting her to sexual assault by accused no.1. PW2, the father of the PW1 made a report to the Police on 17.04.2016 that his daughter did not return home on 13.04.2016 after writing her S.S.L.C. examination. He received this information from his brother in law Basavaraj. It is stated that PW4 was residing in the house of her grandparents and pursuing her



school education. Immediately after receiving the information PW2 came to Hiremagaduru and enquired his brother in law. He came to know that his daughter was moving friendly with accused no.1 and for this reason she was warned also. They all suspected the involvement of accused no.1 in the missing of PW4. The investigation revealed that on 13.04.2016 when PW4 came out of examination hall at about 1.00 p.m., accused no.1 kidnapped her with the help of accused 2 to 4 in a car and then brought her to Shiggaon bus stand. From there accused no.1 brought PW4 to Hubballi and from there he took her to Udupi. They both stayed in a shed situated in the garden land of PW8. It is alleged that during that time accused no.1 subjected PW4 to forcible sexual intercourse. Therefore the Police filed chargesheet for the offences under Section 366, 376(2)(n), 506 of IPC and Sec. 4 and 6 of POCSO Act r/w Sec. 34 of IPC.

4. The trial court framed the charge for the offence under section 363, 366-A, 506 and 376(2)(n) of IPC and



Sec. 4 and 6 of POCSO Act. After appreciating the evidence of the prosecution witnesses the trial court came to conclusion that the prosecution was not able to prove its case for any of the charged offences and therefore acquitted all the accused. The trial court is of the opinion that in view of the fact that PWs.7, 9, 10, 11, 12 turned hostile and that the evidence of PW4 being untrustworthy, the accused cannot be convicted.

5. We have heard the arguments of Sri M.B. Gundawade, Addl. SPP for the State, Sri Vidyashankar G. Dalawai, for respondent no.1 and Smt. Nandini Somapur, for respondents 2 and 3.

6. It is the argument of Sri M.B. Gundawade that the trial court has utterly failed to appreciate the evidence of PW4 in particular in as much as she has fully supported the prosecution case by deposing that accused no.1 kidnapped her with the help of accused 2 to 4 when she came out of the examination hall. She has stated that when she was made to stay in the shed belonging to PW8,



she was subjected to penetrative sexual assault by accused no.1. Her testimony is supported by medical evidence. PW8 has clearly deposed that accused no.1 and PW4 stayed in his shed for a few days. PW4 was a minor at the time of incident. This much of evidence was sufficient to convict all the accused. Merely for the reason that PW4 deposed contrary to what she had deposed earlier in the examination in chief when she was recalled for cross examination after a long gap of time, the trial court has drawn conclusion that her testimony is not trustworthy. It is to be noted here that her contrary stand was due to a sort of compromise between accused no.1 and PW2 who has clearly admitted to have received Rs.1,00,000/- for settling the case. The trial court ought to have noticed this aspect of the matter. In this view it is quite clear that the trial court has not appreciated the evidence properly and therefore the acquittal judgment needs to be set aside and the accused, convicted.



7. Learned counsel for respondent no.1 argues that the prosecution was not able to prove the age of the girl. That apart, the testimony of PW4 which is very important, is untrustworthy. Though in the examination in chief she stated that she was subjected to sexual assault by accused no.1, in the cross examination she clearly admitted that accused no.1 did not subject her to sexual intercourse. Medical evidence may indicate rupture of hymen but hymen would be ruptured for many reasons. Moreover when PW2 gave statement before the Magistrate u/S 164 Cr.P.C. she did not state that she was raped by accused no. 1. If she was really raped or subjected to sexual assault, nothing prevented her from disclosing it before the Magistrate. In this view, her evidence in examination in chief cannot be believed. The appreciation of evidence by the trial court is proper. Since this is an appeal against acquittal judgment, there cannot be interference unless the appellate court finds perversity in appreciation of evidence. Appeal is devoid of merits and it should be dismissed.



8. Smt.Nandini Somapur argued that so far as accused 2 and 3 are concerned, the allegation against them was that they helped accused no.1 in the kidnapping PW4. No witness has supported this. Therefore they were rightly acquitted.

9. We have perused the entire evidence. Firstly we find that the prosecution failed to prove the age of the girl. Unless it is proved that age of the victim was less than 18 years as on date of the incident, the prosecution cannot invoke the provisions of POCSO Act. She may have stated her age as 16 years, but in proof of age the prosecution has not produced evidence.

10. PW2 is the father of PW4. In the examination in chief he deposed that PW4 was studying in a school at Hiremagadur and she had been to Hattimattur for writing S.S.L.C. Examination. On the last day of her examination, when she came out of the examination hall, the first accused who was loving her, took her in a car with the help of accused 2 to 4. After coming to know this incident



he searched for her 2 or 3 days and then made a report to the Police as per Ex.P.3. After tracing of the girl and the first accused he came to know from his daughter that accused no.1 had subjected her to sexual intercourse. But in the cross examination he totally took a different stand even denying the complaint made by him to police station. In the cross examination by the public prosecutor he admitted the suggestion that he received Rs.1,00,000/- for settling the scores with the accused. The other witnesses to the prosecution have almost turned hostile.

11. The evidence of PW4 is important. In the examination in chief she fully supported the prosecution case and stated that when she was living in a room at Kadatal, accused no.1 had sexual intercourse against her will. Her testimony was that for about six days he had intercourse with her. When she was cross examined for the first time, she supported the prosecution and denied the suggestion that after the incident she was given in marriage to one Basavaraj Herur. When she was recalled



for cross examination again 25.10.2019, she prevaricated from her earlier evidence and admitted the suggestions that she was in love with the accused no.1 which her parents opposed and for this reason her father made a false complaint against the accused to separate both of them. She admitted his suggestion that the accused did not have sexual intercourse with her. She also admitted another suggestion that she was given in marriage to Basavaraj Herur.

12. PW8 has stated that first accused brought a girl with him and requested for accommodation. Therefore he allowed them to live in a shed situate in his garden land. He also stated that police came to his garden land in search of the first accused and the girl and he showed both of them to the Police.

13. PW15 is the Doctor who examined PW4 and found the hymen of PW4 being ruptured. She also opined that there were no signs of recent sexual intercourse.



14. Now it is the evidence of PW4 that needs to be put to strict scrutiny. Although she supported the prosecution case when she was examined in chief, she went back upon her testimony when she was cross examined for the second time stating that first accused did not have intercourse with her. It is possible to draw an inference from the evidence of PW2 that on account of settlement between him and the accused, PW4 might have taken a decision to depose contrary to her earlier version. This inference can be of course drawn. But this alone cannot be the reason for upsetting the acquittal judgment in so far as the offences under Sec. 376(2)(n) of IPC or the POCSO Act.

15. Though it is possible to draw an inference that PW4 and accused no.1 might be in love with each other, if at all she had been subjected to forcible intercourse, she was expected to disclose the same when she was made to appear before the Magistrate. Ex.P.7 is her statement u/S 164 Cr.P.C. At that time she never stated that accused



no.1 had intercourse with her. All that she stated was that the first accused took her to a village near Udupi and both of them lived in a room. Accused no.1 used to go out for work and at that time she was confined in a locked room. Her statement does not indicate that accused no.1 sexually exploited her. For this reason, her testimony in examination in chief cannot be so easily believed. Even if her conduct is taken into consideration, firstly she denied the suggestion of her marriage with Basavaraj Herur and later admitted it. Therefore she has rendered herself an untrustworthy witness. Merely because medical evidence indicates rupture of hymen no inference can be drawn that she was sexually exploited by accused no.1. Therefore neither the offence u/S 376(2)(n) of IPC nor offences under Sec. 4 and 6 of POCSO Act would get established. The judgment of the trial court is very cryptic but its conclusion cannot be said to be wrong to this extent.



16. But the evidence discloses that an offence u/S 363 IPC being committed. It is true that there is no evidence against accused 2 to 4. But so far as accused no.1 is concerned, it may be stated that from the evidence of PW8, the kidnapping of PW4 from lawful custody gets established. While giving statement u/S 164 Cr.P.C. PW4 stated about her being taken to a village near Udupi by accused no.1. PW4 was a student of S.S.L.C. Her evidence clearly discloses that she was taken away from the lawful guardianship of PW2 or her grandparents and therefore what is found is that the trial court could have convicted accused no.1 for the offence u/s 363 of IPC. The appreciation of evidence in this regard is not forthcoming and hence to this extent interference is required. Of course there is no evidence for the offence u/S 506 IPC.



17. From the above discussion, we are of the opinion that the judgment of the trial court is to be modified to record conviction against accused no.1 for the offence u/S 363 IPC.

18. We have heard Sri Vidyashankar G. Dalawai, learned counsel for respondent no.1 on the sentence to be imposed. His submission was that it is not in dispute but accused no.1 and PW4 were in love with each other. In these circumstances, instead of imposing maximum sentence for the offence u/s 363 IPC, the custody period undergone by accused no.1 before his release on bail can be set of.

19. We find force in the submission of Sri Vidyashankar G. Dalawai. Accused no.1 was in custody for 8 months 11 days before he was released on bail. Having regard to overall circumstances of the case, we are of the opinion that if his custody period is set of for the sentence of imprisonment to be imposed, it meets the ends of justice. Sec. 363 IPC states that fine should also be imposed in



addition to imprisonment. Therefore, it is enough to impose fine of Rs.5,000/-. For these reasons, the following order is passed.

ORDER

Appeal is partly allowed.

Acquittal of accused 3 and 4 for the offences u/s 363, 366, 506 r/w 34 ICP is confirmed.

Acquittal of accused no.1 for the offences u/s 376(2)(n), 366 and 506 of IPC and 4 and 6 of POCSO Act is confirmed.

Acquittal of accused no.1 for the offence u/s 363 is set aside. He is found guilty of this offence and sentenced to imprisonment for 8 months 11 days, and fine of Rs.5,000/-. In default of payment of fine, he shall undergo imprisonment for a period of 15 days.

Fine shall be deposited before the trial court within a period of two weeks from the date of receipt of copy of this judgment.



Accused no.1 is entitled for set of for the period he has already spent in jail.

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

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

BVV
LIST NO.: 1 SL NO.: 19