



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 14TH 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.100522 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA R/BY THE POLICE INSPECTOR,
HIREKERUR POLICE STATION, HAVERI DISTRICT,
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:

RIYAZKHAN S/O GULAMSAB MALAGIMANI,
AGE. 25 YEARS, OCC. GOUNDI WORK,
R/O. KODAMAGGI, TQ. HIREKERUR,
DIST. HAVERI-581111.

- RESPONDENT

(BY SRI. K.M. SHIRALLI, ADVOCATE)

MANJANNA
E


Digitally signed by
MANJANNA E
Location: High Court of
Karnataka, Dharwad Bench
Date: 2024.10.16 10:16:28
+0530

THIS CRIMINAL APPEAL IS FILED U/SEC.378(1) AND (3)
OF CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST
THE JUDGMENT AND ORDER OF ACQUITTAL DATED 21.10.2020
PASSED BY THE I ADDL. DISTRICT AND SESSIONS JUDGE AND
SPL. JUDGE, HAVERI IN SPL. SC/STC NO.2/2017 & ETC.,

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 SREENIVAS HARISH KUMAR)

This appeal is preferred by the State challenging the judgment of acquittal passed by the First Additional District & Sessions Judge and Special Judge at Haveri in Special SC/ST Case no. 2/2017. The respondent being the accused faced trial for the offences punishable under Section 376 and 506 of IPC, Sec. 4 and 12 of the POCSO Act and Sec. 3(i)(r) of the SC/ST (POA) Act.

2. PW1 gave a written report to the Police at 5.30 p.m. on 18.11.2016 stating that she was subjected to forcible sexual intercourse by the accused around 4.00 a.m. on 09.10.2016. Ex.P.1 is the report made by her. In the said report it is stated that accused was her neighbour living in a house situated on the opposite side of her house and whenever she used to go out of the house he was teasing her. He was also asking her to meet him and when she refused, he had put a threat that he would kill her father. On 09.10.2016 around 4.00 a.m. she went out of the



house to attend calls of nature. When she was washing her legs, the accused came from behind, held and dragged her to the thrashing ground situated nearby his house. In spite of resistance from her, he had forcible sexual intercourse with her. As he put threat to her at that time that she should not disclose the incident to anybody, she did not disclose it to anyone. Even after this incident the accused used to send messages to her. She had become mentally depressed. At last, she informed the matter to her brother-in-law, Hanumanthappa, who later-on took her to police station. Thus FIR came to be registered in Crime No. 184/2016.

3. Investigation led to filing of charge sheet for the aforementioned offences. The prosecution examined 14 witnesses as per PW1 to 14 and relied on 19 documents as per Ex.P.1 to 19. M.O.1 to 11 are the material objects marked from the prosecution side. While PW1 was being cross-examined, 6 documents as per Ex.D.1 to 6 were confronted to her.



4. Assessing the evidence, the trial Court found that PW1 was an untrustworthy witness. The trial Court is of the opinion that PW1 had filed a false complaint against the accused. These are the main reasons for recording acquittal.

5. We have heard the arguments of Sri M.B. Gundawade, learned Addl. SPP and Sri K.M. Shiralli, learned counsel for respondent.

6. It is the argument of Sri M.B. Gundawade that the trial Court has failed to appreciate the evidence of PW-1, PW-2 and PW-10. On the date of incident, PW-1 was a minor girl, her date of birth being 09.09.1999. She belongs to Scheduled Tribe. Accused does not belong to Scheduled Caste or Scheduled Tribe and knowing that PW-1 was a Scheduled Tribe, he subjected her to forcible sexual intercourse. Though there is some delay in registering FIR, it is quite usual in cases of this type because the victim girl does not disclose the incident to



anybody immediately. As soon as she disclosed, without there being delay, FIR was registered. In the examination-in-chief she has completely narrated the incident. Her testimony finds corroboration from medical evidence. Ex.P-11 is the opinion given by the doctor examined as PW-8 who has clearly stated that the hymen of PW-1 was found to be torn and that she was used to an act of sexual intercourse. This much of evidence was sufficient for convicting the accused. In spite of convincing evidence being available, the Trial Court has gone wrong in acquitting the accused and therefore this appeal deserves to be allowed and the accused to be convicted for the offence with which he was charged.

7. Sri K.M. Shiralli, learned counsel for respondent argued that the Trial Court has rightly come to an opinion that PW-1 is untrustworthy witness. Exs.D-1 to D-6 unfold the entire incident. There was a love affair between the two. Ex.D-6 indicates very well that PW-1 resorted to making a false complaint against accused yielding to the



force put by her brother-in-law, PW-4. The entire incident of forcible sexual intercourse is therefore not at all believable. For this reason, there is no scope for interfering with the well reasoned judgment of the trial Court.

8. We have perused the entire evidence. PW-1 is the star witness. Though in the examination-in-chief she narrates the incident said to have taken place on 09.01.2016, if answers given by her in the cross-examination are perused, we find that whatever she has stated in the examination-in-chief is difficult to be believed. She has clearly admitted in the cross-examination that she was in love with the accused. They used to converse over the phone and exchange messages. She admitted six letters marked as Exs.D-1 to D-6 when they were confronted to her in the cross-examination. In para 14 of the cross-examination she has clearly admitted that she was forced to make a complaint against the



accused at the instance of her brother-in-law/PW-4, Hanumanthappa.

9. Ex.P-11 is the opinion given by PW-8 who examined PW-1. In Ex.P-11 it is clearly mentioned that the hymen of PW-1 was torn, that there was no evidence of recent sexual intercourse and that PW-1 was used to an act like that of sexual intercourse. If we peruse the evidence of PW-8, what is found is that though she denied the suggestion that PW-1 was used to an act like other than sexual intercourse. She also stated that PW-1 might be using artificial materials to satisfy her sexual desire. This gives an indication that probably PW-1 might not have come in contact with the accused rather she was gratifying her desire in the other mode. Above all, Exs.D-1 to D-6 are very important to mention here. Exs.D-1 to D-5 are the letters addressed by PW-1 to the accused. These letters are full of her love expression towards the accused. One or two letters appear to have been written poetically. If we peruse Ex.D-6, it becomes very clear that her



brother-in-law put pressure on her to write against the accused as he directed. She has admitted that she was compelled to lie that the accused committed rape on her. Delay of nearly 40 days in registering FIR was due to this deliberation. Since Ex.D-6 is admitted by PW-1, entire story revealed by her in Ex.P-1 becomes difficult to be believed. Thus, she herself proved to be untrustworthy witness. Her age as on the date of incident depicted by prosecution might be around 17 years, but her testimony being not at all reliable, we find it difficult to interfere with the well reasoned judgment of the trial Court which has discussed the evidence threadbare. Accordingly, we find that there are no merits in the appeal, same is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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

BVV – para nos.1 to 4
NAA – para no. 5 till end
LIST NO.: 1 SL NO.: 47