



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

CRIMINAL APPEAL NO. 1980 OF 2017(A)

C/W

CRIMINAL APPEAL NO. 958 OF 2017 (A)

IN CRL.A No. 1980 OF 2017

BETWEEN:

STATE OF KARNATAKA,
BY NEW EXTENSION POLICE STATION,
TUMAKURU CITY,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU.

...APPELLANT

(BY SRI. RAJAT SUBRAMANYAM, HCGP)

AND:

- 1 . RAGHAVENDRA,
S/O LATE PUTTARAJU,
ANTHARASANAHALI,
TUMAKURU.
- 2 . DALI @ VENKATESHAMURTHY,
S/O GOVINDAPPA,
ANTHARASANAHALI,
TUMAKURU.
- 3 . PRAVEENA @ PRAVEEN NAIK,
S/O MANJANAYAKA,
ANTHARASANAHALI,
TUMAKURU.



- 4 . SHANTHAMMA,
WIFE OF LATE NARASIMHAPPA,
ANTHARASANAHALI,
TUMAKURU.
- 5 . CHARANNA,
SON OF LATE NARASEEYAPPA,
ANTHARASANAHALI,
TUMAKURU.
- 6 . KESHAVA,
SON OF EESHWARIAH,
BEHIND KEB,
ANTHARASANAHALI,
TUMAKURU.
- 7 . SHASHI,
SON OF HANUMANTHAIAH,
ANTHARASANAHALI,
TUMAKURU.

...RESPONDENTS

(BY SRI. K.B.K. SWAMY, ADVOCATE FOR R-1 & R-3,
SRI. A DERICK ANIL, ADVOCATE FOR R-4 AND R-5,
SRI. H.K. PAVAN, ADVOCATE FOR R-6 AND R-7,
VIDE ORDER DATED 19.04.2024, APPEAL
AGAINST R-2 STANDS ABATED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1)
AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST
THE JUDGMENT AND ORDER OF ACQUITAL DATED 07.04.2017,
PASSED BY THE COURT OF VI ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TUMAKURU, IN S.C.NO.167/2012, ACQUITTING
THE RESPONDENTS/ACCUSED OF THE OFFENCES PUNISHABLE
UNDER SECTIONS 366, 354, 506, 307, 109 READ WITH 149 OF IPC.

IN CRL.A NO.958 OF 2017:

BETWEEN:

KUM. SHILPA G.N.
D/O NARASIMHA MURTHY,
AGED ABOUT 24 YEARS,
OCC: STUDENT,
R/O ANTHARASANAHALI,



TUMKUR TALUK,
TUMKUR DISTRICT.

...APPELLANT

(BY SRI. VASANTH KUMAR K.M., ADVOCATE FOR
SRI. J.I. KITTUR, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA,
BY NEW EXTENSION POLICE, TUMKUR,
NOW REPTD. BY SPP,
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU – 560 001.
- 2 . RAGHAVENDRA,
S/O LATE PUTTARAJU,
AGED ABOUT 27 YEARS,
R/O ANTHARASANAHALI,
TUMKUR – 572 101.
- 3 . DAALI (ALIAS) VENKATESHA MURTHY,
S/O R. GOVINDAPPA,
AGED ABOUT 27 YEARS,
OCC: STUDENT ,
NRUPATHUNGA BADAVANE,
R/O ANTHARASANAHALI,
TUMKUR – 572 101.
- 4 . PRAVEEN (ALIAS) PRAVEEN NAIK,
S/O MANJA NAIK,
AGED ABOUT 27 YEARS,
OCC: STUDENT, R/O KADUR TOWN,
CHIKKAMAGALUR DISTRICT.
- 5 . SMT. SHANTHAMMA
W/O LATE NARASINHAPPA ,
AGED ABOUT 44 YEARS,
OCC: HOUSE WIFE
- 6 . CHARAN,
S/O LATE NARASINHAPPA,
AGED ABOUT 25 YEARS,
OCC: FACTORY WORKMAN,



- 7 . KESHAVA ,
S/O ESHWARAYYA ,
AGED ABOUT 24 YEARS,
OCC: STUDENT
R/O BEHING KEB.
- 8 . SHASHI,
S/O HANUMANTHAYYA,
AGED ABOUT 29 YEARS,
OCC: FACTORY WORKMAN,

RESPONDENTS 4 TO 7
ARE THE RESIDENTS OF
ANTHARASANAHALI,
TUMKUR TALUK,
TUMUKUR- 572 101.

...RESPONDENTS

- (BY SRI. RAJAT SUBRAMANYAM, HCGP FOR R-1,
SRI. K.B.K SWAMY, ADVOCATE FOR R-2 AND R-4,
SRI. A. DERICK ANIL, ADVOCATE FOR R-5 AND R-6,
SRI H.K. PAVAN, ADVOCATE FOR R-7 AND R-8,
VIDE ORDER DATED 22.06.2024, APPEAL
AGAINST R-3 STANDS ABATED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT/ORDER OF ACQUITTAL DATED 7.4.2017, PASSED BY THE LEARNED VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKURU, IN S.C.NO.167/2012, ACQUITTING THE ACCUSED NO.1 TO 3 AND 6 TO 9 (RESPONDENTS 2 TO 8 HEREIN) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366, 354, 307, 506, 109 R/W 149 OF IPC PASSED BY THE VI ADDL. DIST.AND S.J., TUMKURU AND TO CONVICT THE ACCUSED 1 TO 3 AND 6 TO 9/RESPONDENTS 2 TO 8 HEREIN IN S.C.NO.167/2012, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366, 354, 307, 506, 109 R/W 149 AND SENTENCE THEM SUITABLY IN TERMS OF SAID CONVICTION TO BE PASSED AGAINST THEM AND ETC.,

THESE APPEALS HAVING BEEN RESERVED FOR JUDGEMENT,
COMING ON FOR PRONOUNCEMENT THIS DAY,
UMESH M. ADIGA, J., PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV COMMON JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

Both these appeals arise out of the judgment dated 07.04.2017, passed by the learned VI Addl. District and Sessions Judge, Tumakuru, (for short 'trial Court'), in S.C.No.167/2012, acquitting the accused of the offences punishable under Sections 366, 354, 506, 307, 109 read with Section 149 of IPC.

State has filed Criminal Appeal No.1980/2017 and victim PW-2 – Shilpa G.N., has filed Criminal Appeal No.958/2017. Both these appeals are taken up together for disposal.

2. We refer to the parties as per their ranks before the trial Court for the sake of convenience.

3. It is the case of the prosecution that on 09.08.2011, around 3.00 p.m., PW-2 Ms.Shilpa was waiting for a bus at S.S.Puram road, Tumakuru, near DDPI



office, to go to her house situated at Antharasanahalli in Tumakuru. At that time, accused Nos.1 to 4 came to the said spot in a Tata Indica car bearing registration No.KA-02-B-8328. Accused No.1 came behind PW-2, closed her mouth by his hand and forcefully pushed her inside the car and kidnapped her. The accused Nos.2 to 4 were sitting inside the car and they proceeded towards Hiriyur side. Accused Nos.1 and 4 were sitting at the back seat of the car and they forced her to sit in-between them. Accused tied her hands and closed her mouth by keeping cloth. They threatened to kill her if she raises her voice. Due to which she kept quite. On the way, accused No.1 was insisting her to marry him, failing which he would kill her. Initially she refused to marry him.

4. It is the further case of the prosecution that Accused No.1 to 4 reached nearby Hiriyur; it appears that one of the tyre of the car got punctured; The accused got it repaired; Accused No.1 once again warned PW-2 that if she refuses to marry him, then he would kill her; PW-2



requested him to take back home she would convince her father and will give consent to marry him. Thereafter, accused were returning to Tumakuru. Around 9.00 p.m, they reached near MCL layout in Antharasanahalli and when the car was going slow PW-2 tried to escape. Hence, accused No.1 to 4 with an intention to kill her, accused Nos.2, 3 and 4 held her and accused No.1 stabbed her on left side chest and right ribs. Once again accused No.1 tried to assault on her chest; at that time PW-2 raised her hand, and the knife hit on her left thumb causing bleeding injuries; The wounds were bleeding profusely. She raised hue and cry and she loudly told to the people gathered at the spot, that the accused kidnapped her and also intending to kill her. She requested them to take her to hospital for treatment. When people gathered at the spot were attending her, accused Nos.1 to 4 fled away from the said spot in the car. The people gathered at the spot shifted her to Government hospital situated at Sira Gate. The incident had taken place at about 9.00 to 9.30 p.m. She gave mobile number



of PW-3 and asked the people gathered at the spot to inform him about the incident. When she was taking treatment at Sira Gate hospital, her father, PW-1 Narasimhamurthy, her mother and PW-3 came to the hospital. She narrated about the incident in short. In the meanwhile, due to bleeding, she was not fully conscious. When she regained consciousness, she was in Harsha hospital at Tumakuru. Thereafter, she had given details of the incident to PW-1.

5. PW-1 lodged the complaint as per Ex.P-1 and on that basis, the Station House Officer (SHO) of Tilak Park police station registered a case in Crime No.123/2011, for the offences punishable under Sections 363, 354, 506, 307, 109 read with Section 34 of IPC.

6. The SHO of Tilak Park police station has partly investigated the case. Thereafter, with the permission of the Court, handed over further investigation to New Extension Police Station, Tumakruru. Said police registered the case in Crime No.226/2011 and



investigated the case. On conclusion of investigation submitted the charge sheet against accused Nos.1 to 9 for the offences punishable under Sections 366, 354, 506, 307, 109 read with Section 149 of IPC.

The learned Magistrate took cognizance of the case and committed the case to the Court of Sessions Tumakuru for trial.

7. The learned Sessions Judge heard both the parties; framed the charges. The accused pleaded not guilty and claimed to be tried.

8. The prosecution to prove its case, examined PW-1 to PW-14 and got marked Exs.P-1 to P-28 and produced MO-1 to MO-5 and closed its evidence. The learned trial Judge examined the accused under Section 313 of Cr.P.C. The accused, examined DW-1 to DW-4 and got marked Exs.D-1 to D-14.

9. Learned Sessions Judge after hearing both the parties and appreciating evidence available on record,



acquitted the accused of all the charges leveled against them.

10. It appears, during pendency of these appeals, accused No.2 was dead. The accused Nos.4 and 5 were absconding; the case against them was split up and separate cases were registered against them. Accused No.1, 3, and 6 to 9 are prosecuting this appeal.

11. We have heard the arguments of the learned High Court Government Pleader and learned counsel for both sides.

12. The learned counsel for the appellants submit that the star witness in this case is PW-2 and others are not eye witnesses. PW-2 supported the case of the prosecution and stated the manner in which the incident had taken place. The injuries sustained by PW-2 was deposed by her as well as PW-13 - the Doctor who treated her. PW-2 identified the accused, as well as the weapon of offence used for causing the injuries by the accused. In the cross-examination of material witnesses, accused were



not able to demolish the evidence of PW.2, PW-13 and PW-12 – Investigating Officer. The prosecution proved its case beyond reasonable doubt. However, the learned trial Judge has not properly appreciated the evidence and erroneously acquitted the accused of the above said charges. Hence, prayed for interference in the said findings of the trial Court and reverse the findings.

13. Learned counsels for respondents/accused supported the impugned judgment and submitted that the learned trial Judge by well reasoned order, acquitted the accused and it does not call for any interference.

14. Learned counsel for accused Nos.1 and 3 vehemently contended that the case of prosecution is not at all believable. PW-2 contends that she was kidnapped in daylight from market place of Tumakuru. It is difficult to believe the said version and no eye witnesses were examined by the investigating officer, who have seen the incident. Even she did not raise her voice while returning to MCL layout and there is no explanation in this regard.



The evidences of PWs.1 and 3 are not consistent with the evidence of PW-2. The evidence of other witnesses does not help the case of the prosecution in proving the guilt against the accused. The timing of taking PW-2 to different hospitals is not consistent. The prosecution failed to prove that PW-2 was taken to the hospital at Sira Gate, Sridevi Hospital and Vinayaka hospital at Tumakruru as stated in her evidence. PW-2 was taken to the hospital situated about 40 Kms. away from the place of incidence. There is no explanation for the same. Evidence of PW-5 regarding treatment given to PW-2 is not corroborated by any materials.

15. The learned counsel further submitted that PW-4 is none other than the maternal uncle of the victim girl and brother of PW-3. During his evidence, he never stated before the police that injured PW-2 is his niece and stated before the police as if she was not all related to him. The said conduct of PW-4 creates serious doubt. The medical records at Ex.P-27 shows that PW-2 was admitted in the



said hospital on 10.08.2011, but according to the evidence of PWs.1 and 3, PW-2 was admitted in Harsha hospital on 09.08.2011, which is contrary to the records produced by the prosecution. Even the injuries sustained by PW-2 is not proved by the evidence of PW-13. It is the defence of the accused that accused No.5 and another daughter of PW-1 by name Vidya were loving each other and they intended to marry. Daughter of Nandeesh, who is brother-in-law of PW-1, is married to one Chandrashekar, relative of the accused. Accused Nos.1 and 3 are belonging to scheduled tribe and PW-1 belong to scheduled caste. PW-1 was upset by knowing both his daughters fell in love with boys belonging to other community. He brainwashed PW-2 and through her, filed a false complaint to take revenge against accused. PW-2 did not sustain any injuries and all these facts are created only with an intention to harass accused Nos.1 to 5.



16. The learned counsel further submitted that accused No.6 Shantamma is the sister-in-law of PW's 3 and 4. She demanded for partition of the family property from PWs.3 and 4. Accused No.7 is the son of accused No.6. PWs. 3 and 4 refused to effect partition, therefore, accused No.7 filed a suit for partition and it has been seriously contested by PWs.3 and 4. Therefore, to force accused No.6 to compromise the matter with PWs. 3 and 4, they were also made as accused in this case without any basis. The learned trial Judge considered all these points and rightly acquitted the accused. The said finding does not call for interference. With these reasons, they prayed to dismiss the appeals.

17. Following point emerges for our determination :

Whether the learned trial Judge is justified in acquitting the accused of the offences punishable under Sections 366, 354, 506, 307, 109 read with Section 149 of IPC?

We answer the above point partly in the Negative for the following reasons :



18. The material witness in this case is PW-2. In her evidence, she has stated the manner in which the incident had taken place. She also stated about the injuries sustained by her. According to her evidence, at the time of incident, she was studying in Diploma. Three years prior to the incident, accused No.1 told her that he loves her and intending to marry her. He used to follow her while she was going to college, as well as returning home. Sometime both Accused No.1 and 4 were forcing her to marry Accused No.1. She complained about the same to her parents and her maternal uncles. In spite of the warning given by them, accused No.1 continued his illegal act of harassing her and forcing her to marry him.

19. It is the further evidence of PW-2 that on 09.08.2011, she attended computer training centre and around 3.30 p.m., she was going towards city bus stand situated near DDPI office, at that time, a person closed her mouth and pushed her inside the car. They took her both hands towards her back and tied. They forced her to sit



at footrest. They were in all four persons and out of them she was familiar with accused Nos.1 and 4. Thereafter, during conversation between the accused, she came to know the name of other two persons as Dali and Praveena. Accused No.1 was threatening her to marry him, otherwise he would kill her. On the way, he received a call from Rajesha and one Smt.Shantamma encouraging him to do whatever he wants to do with her and they would protect him. PW-2 further stated that said vehicle went upto Hiriyuru. Accused No.1 once again threatened her to marry him and at that time, she told him to take her back to her house so that she would convince her parents for the marriage. Hence, they were returning back to Tumakuru.

20. PW-2 in her further evidence stated that when the car reached near MCL layout at Antharasanahalli, she tried to escape. At that time, accused Nos.2 to 4 held her and accused No.1 stabbed on the left side of the chest and right ribs. He once again he attempted to stab on her



chest, in the meanwhile, she raised her hands to prevent the assault, the knife hit her left thumb and caused bleeding injuries. The wounds were profusely bleeding. She told the accused to take her to hospital at Sira Gate. Accordingly, they took the vehicle near Sira Gate. She alighted from the car and rushed towards the people gathered at the spot and told them that accused were trying to kidnap her and caused injury. When people started gathering around the car, accused fled away from the spot. It was around 9.30 to 9.40 p.m. She also requested one of the person gathered at the spot to telephone to her maternal uncle giving his telephone number. When she was undergoing treatment at Sira Gate hospital, her father and uncle came to the hospital. Due to profuse bleeding from the wounds, she lost her consciousness and she regained consciousness at Harsha hospital at Nelamangala. She also stated about the treatment taken by her and the gravity of injuries sustained by her. She also deposed regarding seizure of her clothes which she was wearing at the time of the



incident under mahazar at Ex.P-2 and identified them as MOs.1 to 3. She identified the knife which was used to stab her by accused No.1 as MO-4.

21. PW-2 in her further evidence stated that on 21.08.2011, she was discharged from the hospital. On 28.08.2011, police called her to the spot of the incident. Accordingly, she went to the place of the incident and showed the spot. The police drew mahazar in her presence, as well as in the presence of the witnesses as per Ex.P-3. The police took her to the place wherein accused have kept the car, in which she was kidnapped. The said car was seized and mahazar was drawn as per Ex.P-4. She identified the car in Ex.P-5. She identified accused Nos.1 and 3 in the Court.

22. PW-2 was thoroughly cross-examined by the accused wherein she elaborated the facts which she had stated in her examination-in-chief.

At the cost of repetition, the defenses of accused are that PW-1 belongs to schedule caste and accused Nos.1



and 5 they belonging to Scheduled Tribes. Accused No.1 fell in love with PW-2; Accused No.5 fell in love with sister of PW-2. They were intending to marry against the wish of PW-1. Close relative of Accused No.1 and 5 had married one of the close relative of PW-1. Accused No.6 to 9 filed suit claiming share in joint family property of wife of PW-1 and her brothers. Therefore to take revenge against all of them, false case has been filed. No such incident had taken place. PW-2 did not sustain any injuries. In collusion with police and medical officers accused were falsely charge sheeted.

23. In the further cross-examination of PW-2, defenses of the accused were suggested to her and she denied them. The accused could not get any admission in their favour to make their defenses probable. PW-2 sustained severe stab injuries near chest, ribs and palm. She was inpatient in Harsha Hospital. Her condition was said to be critical while admission as per medical records. Treated doctors corroborated her evidence regarding



injuries and treatment. There are no materials to disbelieve their evidence. If PW-2 and her sister were loving accused No.1 and 5 and they were ready to marry the accused, then all of a sudden why both changed their mind is not explained. Hence, it is difficult to believe. If PW-1 was able to persuade both his daughters from not marrying accused No.1 and 5 respectively, then why he would lodge a false case against accused? Hence not probable. Accused have not produced any materials except the so called message sent by PW-2 to accused No.1, to show that both PW-2 and her sister were loving accused No.1 and 5 respectively and agreed to marry them.

24. PW-2 in her cross examination deposed contrary to the contentions of accused. She said that Accused No.1 was following her while she was going to college and returning home and forcing her to marry him. She also said that, sometime he was also following her



along with accused No.4. She stoutly refused to marry him.

The evidence given in the cross-examination of PW-2 strongly supports the case of prosecution and leads to an inference that PW-2 did not agree to marry accused No.1. Therefore, he must have kidnapped her to force her to marry him and when she tried to escape, he tried to kill her.

25. It is also the contention of the accused that PWs.1 and 4 influenced all the persons concerned of this case, including the police officers, medical officers and doctor in Harsha hospital and other witnesses and created records. According to the evidence of PWs.1 and 3, they are poor villagers, having a small land holdings. It was not brought out in their evidence that they are politically very influential persons and financially sound to spend huge money to purchase every one. Therefore, the defense of the accused that with an intention to file a false



case against the accused, PWs.1 and 3 used PW-2 as instrument and created all the documents, is not probable.

26. There are no eye witnesses who had seen the accused kidnapping PW-2. While kidnapping her, as per the evidence of PW-2, accused tied her hand and closed her mouth with cloth and made her to sit inside the car at footrest. Hence, it appears that she could not shout for help or outsiders could notice her. Accused were said to have threatened her of dire consequences if she shouts for help. When such was the situation, a poor girl could not resist and raise hue and cry for protection of herself. It does not create any doubt in the case of prosecution.

27. It is the case of the prosecution and evidence of PWs.1 to 3 that, initially PW-2 was taken to the Government Hospital at Sira Gate, for treatment. The Medical Officer of the said hospital gave her first-aid treatment and since wounds were bleeding profusely, he advised PWs.1 and 3 to take PW-2 to higher medical centre. It is the evidence of PWs.1 and 3 that PW-2 was



taken to Vinayaka hospital and Sridevi hospital at Tumakuru. In both the hospitals, the Medical Officers were not available, therefore they rushed to Nelamangala and admitted PW-2 to Harsha hospital on the very same day i.e., on 09.08.2011 and admitted her as an inpatient. PW-2 was unconscious and according to her, she regained consciousness on 10.08.2011. The learned trial Judge observing the discrepancies in the timing of admission of PW-2 in Harsha hospital as per evidence of PW-1 to 3 and medical records, disbelieved the case of the prosecution, which is erroneous.

28. Inpatient file of PW-2 was maintained in the Harsha Hospital at Ex.P-27. It appears that due to the mistake of the concerned staff of Harsha hospital, date and timing of admission was wrongly mentioned in Ex.P-27. PW-5 who was the Medical Officer in Government Hospital at Sira Gate, in his evidence has stated that on 09.08.2011, PW-2 was brought to the said hospital around 9.00 p.m. He also stated that PW-2 sustained stab injuries



and wounds were profusely bleeding. Therefore, he advised PW-1 to shift her to higher medical centre. He enquired with PW-2 regarding history of the injuries and she told that accused stabbed her. He also stated that police enquired him and recorded his statement. It appears that, he has not recorded treatment of PW-2 in MLC register.

29. In the cross-examination of PW-5, the defence highlighted the lapses of PW-5. Not recording the said facts of injury to PW-2 in the MLC register and failing to intimate to the nearest police station about the incident, are nothing but negligence and dereliction of his duty. That will not affect the merit of the case. In view of the same, the investigating officer recorded his statement and submitted along with charge sheet.

Evidence of PW-5 supports the case of prosecution that on 09.08.2011, PW-2 came to his hospital situated at Sira Gate and took treatment. Thereafter, she was referred to higher medical centre.



30. PWs.1 and 3 have stated that both of them went to Vinayaka hospital, as well as Sridevi hospital, at Tumakuru. Due to absence of doctors, the concerned person in the hospital did not admit PW-2 for treatment. That forced PW-1 and 3 to shift PW-2 to Harsha hospital. It is natural and that will not create any doubt in the case of prosecution.

31. The trial Court secured inpatient records of Harsha Hospital, that contains date of admission, treatment given to PW-2 etc., In the first page of the admission card, date of admission is mentioned as 10.08.2011 at 11.10 p.m. The second page of the file is regarding police intimation, which shows that victim girl was brought to the hospital on 09.08.2011 around 11.10 p.m., therefore, requested the police to take appropriate action. The said document appears to be having an endorsement of the concerned police station and receipt of the same.



Again in the operation records, the date of entry of patient is mentioned as 10.09.2011. At the end of the file, there are papers having a nomenclature "Nurses notes". It shows that patient was admitted to the hospital on 09.08.2011 at 11.30 p.m. Her temperature, BP, pulse rate prescriptions etc., are noted in the said sheet. In the next page of the said sheet, it is stated that on 10.08.2011 around 1.25 a.m., said girl was shifted to ICU from casualty ward. All the day-to-day treatments are mentioned in the said Nurses notes. These records reveals that due to mistake, dates were wrongly mentioned in the file. It appears, initially she was taken to casualty ward and hence date of admission was mentioned as 09.08.2011. When concerned medical officer found that admission of patient was required for treatment, she was referred to ICU. At that time, date was mentioned as 10.08.2021, since by that time, it might have crossed midnight 12 O'clock. Therefore, much importance cannot be given to the said inconsistency.



32. PW-13 Doctor gave wound certificate as per Ex.P-22. In his evidence he stated that on 09.08.2011, around 11.30 p.m., PW-2 was admitted in their hospital. One Dr.Raghavendra sent an intimation to police about the offence. She was treated by a team of doctors such as Dr.Manjappa, Dr.Jayanth, Dr.Raghavendra, Dr.Bhavani, Dr.Harsha and himself. She underwent three surgeries as she had three stab injuries, which are mentioned in the medical records i.e., one stab injury at left breast, another at abdomen and one more at left thumb. He operated on her chest and abdomen along with other doctors. According to him, the injuries suffered by PW-2 were grievous. She was discharged from the hospital on 20.08.2011.

In his cross-examination, the defence counsel has highlighted some of the mistakes crept in Ex.P-27.

33. The inconsistencies or lapses of staff of the hospital cannot be a ground to disbelieve the contents of



Ex.P-27 or evidence of PW-13. The evidence of PW-13 corroborates the evidence of PW-2.

34. PW-1 is the father of PW-2. He has stated on 09.08.2011, he went to attend his job at Bengaluru and his daughter went to computer centre to learn computer course. She did not return till 9.00 p.m. He searched here and there. He went to the police station to lodge a complaint, at that time, PW-3 received a call stating that PW-2 had sustained injuries and admitted in Government Hospital at Sira Gate. They rushed to the said hospital and on medical advise, shifted her to Harash hospital at Nelamangala since they could not find doctors at Vinayaka hospital, as well as Sridevi hospital at Tumakuru. Much of the cross-examination of PW-1 was pertaining to the dispute between accused No.6 with PWs.1, 3 and 4. The said evidence is not at all of much importance. It may be double edged weapon; It may be reason for filing complaint or due to said dispute, accused NO.6 to 8 might have committed the crime; PW-1 and 3 are not eye



witnesses; On the basis of information, they deposed before the court about incident. They have also stated about shifting of PW-2 to hospital for treatment.

35. The evidence of PW-4 is also not of much importance. He is one of the maternal uncles of PW-2. Much was argued that PW-4 suppressed his identity as maternal uncle of PW-2. It is true that his conduct is doubtful, but it will not affect the merits of the case. PW-4 is not an eye witness. For the sake of discussion, even if it is accepted that he is a planted witness, it does not affect the merits of the case.

36. Another important witness is PW-12. He deposed in detail about the investigation done by him and through him, documents were marked. In his detailed cross-examination, certain omissions or alleged improvements of the witness were suggested. They are not material to disbelieve the case of the prosecution. Some of the lapses of the investigation were also brought; It is settled principle of law that lapses in the investigation, do not



affect merit of the case. As suggested in the cross examination, PW-12 could have collected sufficient materials besides the evidence placed on record, to strengthen the case of the prosecution. The prosecution has the benefit of evidence victim- PW-2, who withstood in the cross-examination. Nothing was brought out to discard her evidence. She is strong pillar to the case of the prosecution. Under those circumstances, minor lapses committed by PW-12 does not affect the merits of the case.

37. From the above discussions, prosecution is able to prove beyond reasonable doubt that accused No.1 along with accused Nos.2 to 4, kidnapped PW-2 to persuade or force her to marry him. When she refused to marry him and tried to escape, accused No.1 stabbed her with an intention to kill her. PW-2 stated in her evidence that the accused No.1 intended to kill her when she refused to marry him. He told her that when he could not marry her, then none should marry her. With that intention, accused



No.1 stabbed her with knife on her chest, abdomen and at ribs and caused grievous injuries. The nature of injuries and weapon of offence indicates that accused No.1 was intended to murder PW-2. Accused Nos.2 and 3 helped accused No.1 to materialize his intention to kidnap PW-2 and also held PW-2 to facilitate accused No.1 to stab her. All these evidences prove that accused Nos.1, 2 and 3 have committed the offences punishable under Sections 366 and 307 read with Section 34 of IPC.

38. During the pendency of the case, accused No.2 was dead and case against him is abated. Accused No.4 is absconding and hence case against him is not considered.

39. Accused Nos.5 to 9 were said to be abetted accused No.1 to commit the crime and forcefully marry PW-2. Except the statement of PWs.1 and 3, there are no materials to connect them with the guilt. It may be an opinion of PWs.1 and 3 that other accused also intended to kidnap and murder PW-2. On the basis of such assumptions or presumptions, the accused cannot be



convicted. There are no sufficient materials to reverse the judgment against accused No.6 to 9.

40. The accused were also charge sheeted for the offence punishable under Section 354 of IPC. There are no sufficient material to attract the ingredients of Section 354 of IPC. The evidence of PW-2 is not sufficient to believe that the accused No.1 was intended to outrage her modesty.

41. PW-2 in her evidence has repeatedly stated that while going in the car from Tumakuru towards Hiriyuru, accused No.1 holding knife repeatedly threatened her to marry him and if she refuses to marry him, then, he will kill her. Later, accused No.1 to kill her, stabbed her with knife and caused bleeding injuries. Hence, it is proved that accused No.1 had committed an offence punishable under section 506 IPC.

42. The accused Nos.1 to 4 hatched a plan to kidnap and force her to marry accused No.1. They joined hands with accused No.1 and supported him till the end of the



incident. When PW-2 tried to escape, accused No.2 and 3 held her and accused No.1 stabbed her with MO-4. That was seized from the house of accused No.1 under mahazar in the presence of witnesses, by PW-12. Therefore, accused Nos.1 to 3 had common intention, to commit the offence. Therefore, they are liable to punishment for the offences punishable under Sections 506, 366 and 307 read with Section 34 of IPC.

43. The learned trial Judge acquitted the accused mainly on two grounds of inconsistencies in the evidence of Pw-1 and 3 with respect to admission of PW-2 to Harsha hospital, Nelamangala and inconsistencies with regard to Ex.P-27. This point is elaborately discussed in the above paras and the said inconsistencies are not material to disbelieve or discard the case of the prosecution. The learned trial Judge also doubted the case of the prosecution due to lapses of investigating officer in the investigation of the case. And also on the ground of inconsistencies in evidence of PWs.1 to 4, 12 and 13,



the learned trial Judge gave the benefit of doubt and acquitted the accused. The said reasons are not tenable. Except PW-2, other witnesses are hearsay witnesses. A young lady had sustained severe injuries and her condition was critical. She was struggling between life and death. Under such circumstances, her close relatives might be under lot of pressure and shock and they must have taken the victim to different hospitals, as such, the inconsistencies in the timings might be natural and much importance cannot be given to it. Even if there are such inconsistencies, it has to be ignored. Therefore, the reasons assigned by the learned trial Judge for acquitting the accused are not tenable in respect of the offences punishable under Sections 366, 506 and 307 of IPC, which requires to be interfered by this Court.

44. We are aware that while reversing the judgment of acquittal, the appellate court has to take proper care and caution. If the trial court has committed any grave error or findings are perverse, then only appellate court



can interfere in such findings of acquittal. If two views are possible, then, the view taken by the trial court or the view which is favourable to the accused, is to be accepted. In this case, as discussed above, only one view is possible; that is accused have committed above said offences. The reasons assigned by the trial court to acquit the accused are not in accordance with law. The Hon'ble Apex Court time and again held that in appropriate cases where injustice or miscarriage of justice has caused or the findings of the trial judge are against the provision of law and perverse, the appellate court shall interfere and reverse the said findings of acquittal.

45. In the case of **Guru Dutt Pathak –vs- State of Uttar Pradesh¹**, the Hon'ble Apex Court has held that:

" Each and every ground on which trial court acquitted accused was elaborately dealt with by High Court. On reappreciation of entire evidence on record, High Court specifically concluded that findings recorded by trial court were perverse. Therefore, High Court was right in interfering with judgment and

¹ (2021) 6 SCC 116



order of acquittal passed by trial court and convicting accused under Ss. 302/34 IPC. No interference with impugned judgment and order passed by High Court is warranted herein. Hence, conviction of accused under Ss. 302/34 IPC, stands confirmed".

46. In the case of ***Siju Kurian -vs- State of Karnataka²***, it is held that (we quote):

" 16. It need not be restated that it would be open for the High Court to re-appraise the evidence and conclusions drawn by the Trial Court and in the case of the judgment of the trial court being perverse that is contrary to the evidence on record, then in such circumstances the High Court would be justified in interfering with the findings of the Trial Court and/or reversing the finding of the Trial Court. In Gamini Bala Koteswara Rao v. State of Andhra Pradesh, (2009) 10 SCC 636, it has been held by this Court as under:

" 14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr.Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only

² 2023 SCC Online SC 429



in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

17. The Appellate court may reverse the order of acquittal in the exercise of its powers and there is no indication in the Code of any limitation or restriction having placed on the High Court in exercise of its power as an Appellate court. No distinction can be drawn as regards the power of the High Court in dealing with an appeal, between an appeal from an order of acquittal and an appeal from a conviction. The Code of Criminal Procedure does not place any fetter on exercise of the power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed.

18. In the case of Sheo Swarup v. King Emperor, AIR 1934 PC 227, the Privy Council held as under:

" But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:



- a) *The views/opinion of the trial judge as to the credibility of the witnesses;*
- b) *The presumption of innocence in favour of the accused;*
- c) *The right of the accused to the benefit of any doubt; and*
- d) *The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.*

47. In the case of **Chandrappa and others -vs- State of Karnataka**³ reiterated the legal position as under:

'42.... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an

³ (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325



appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

We have kept in mind the law laid down in this regard before reversing the judgment.

48. For the aforesaid discussion, we proceed to pass the following :



ORDER

The Criminal Appeals are ***allowed in-part.***

Acquittal of the accused No.3 for the offences punishable under Sections 354 and 109 read with Section 149 of IPC, is confirmed.

The acquittal of accused Nos.6 to 9 for the offences punishable under Sections 366, 354, 506, 307, 109 read with Section 149 of IPC, is confirmed.

The acquittal of accused Nos.1 and 3 for the offences punishable under Sections 366, 506, 307 read with Section 149 of IPC is reversed.

The accused Nos.1 and 3 are convicted of the offences punishable under Sections 366, 506, 307 read with Section 34 of IPC.

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

**Sd/-
(UMESH M ADIGA)
JUDGE**

bk/



SHKJ & UMBAJ :
07.11.2024

HEARING ON SENTENCE

49. Heard learned counsel appearing for respondents/accused Nos.1 and 3.

50. Learned counsel for accused Nos.1 and 3 submits that at the time of the incident, both the accused were students, aged about 20 to 21 years. Accused No.1 has aged mother. Both the accused belong to scheduled caste. Both accused Nos.1 and 3, after their acquittal, got married and are having children. Accused No.1 has been serving in a factory, having meager amount of salary. They are the bread earners for their respective families. They have no criminal antecedents.

51. Considering the facts and circumstances of the case, benefit of Probation of Offenders Act, 1958, may be extended to them. They also seek for lenient view while imposing the sentence. They may be directed to pay



reasonable amount of fine instead of sentencing to undergo imprisonment.

52. The accused are convicted for the offences punishable under Sections 366, 506, 307 of IPC. It is settled law that sentence imposed by the Court shall be proportionate to the gravity of the offence and it shall not be too harsh or too meager that may encourage others to commit such offences. The submission of learned counsel for respondent/accused is not seriously disputed by the prosecution.

53. Considering the facts stated by the learned counsel for the accused Nos.1 and 3, age of the accused, their educational, social and economic background and the nature of offences etc., lenient view needs to be taken while imposing the sentence. Accordingly, the accused Nos.1 and 3 are sentenced as under :



ORDER ON SENTENCE

[i] Accused No.1 – Raghavendra, son of late Puttaraju and accused No.3 – Praveena @ Praveen Naik, son of Manjanayaka, are sentenced to undergo rigorous imprisonment for a period of two years and each shall pay fine of Rs.25,000/- and in default of payment of fine, they shall undergo rigorous imprisonment for a period of six months for the offence punishable under Section 307 read with Section 34 of IPC.

[ii] Accused No.1 and 3 are sentenced to undergo rigorous imprisonment for a period of two years and each shall pay fine of Rs.25,000/- and in default of payment of fine, they shall undergo rigorous imprisonment for a period of six months for the offence punishable under Section 366 read with Section 34 of IPC.

[iii] The accused No.1 and 3 shall undergo rigorous imprisonment for a period of six months



and each shall pay fine of Rs.10,000/- and in default of payment of fine, they shall undergo rigorous imprisonment for a period of two months for the offence punishable under Sections 506 read with 34 IPC.

[iv] Substantive sentence of imprisonment shall run concurrently.

[v] The period of detention undergone by the accused Nos.1 and 3 shall be given set-off as per Section 428 of Cr.P.C.

[vi] The accused Nos.1 and 3 are directed to surrender before the trial Court to undergo sentence of imprisonment within 45 days from the date of this order.

[vii] Out of the fine amount, Rs.1,00,000/- is ordered to be paid to PW-2 – victim as compensation, as provided under Section 357 of Cr.P.C. and the balance amount of Rs.20,000/- shall be defrayed towards prosecution expenses.



Since split up case is pending for disposal, the trial Court shall keep the records, as well as material objects intact till disposal of the split up case.

Registry is directed to supply free copy of the judgment to the accused Nos.1 and 3.

Registry shall send back the records along with copy of this judgment to the concerned trial Court.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

bk/
List No.: 19 Sl No.: 3