



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 1799 OF 2018

Between:

Noor Sharieff
S/o Fakruddin
Aged about 41 years
R/at Near Vinayaka Theatre
Muniyappa Block
D.J.Halli , Bengaluru-560045.

...Appellant

(By Sri Prabhugouda B.Tumbigi, Advocate)

And:

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA

1. State of Karnataka by
SHO, D.J.Halli Police Station,
Bengaluru-560045.
Represented by
The State Public Prosecutor,
High Court of Karnataka,
High Court Building,
Bengaluru-560001.
2. xxxxx
xxxxx
R/O No.34/2, Rafiq House,
Near Vinayaka Theatre,
Muniyappa Block,
D.J.Halli, Bengaluru-560045.



(R2 impleaded as per the
court order dated 31.07.2023)

...Respondents

(By Sri Vijaykumar Majage, SPP-II for R1;
Smt. B.V.Nidhishree, Advocate for R2)

This Criminal Appeal is filed u/s.374(2) Cr.P.C. praying to set aside the judgment and order of conviction and sentence dated 04.09.2018 passed by the LIII Additional City Civil and Sessions Judge, Bengaluru in Spl.C.C.No.190/2017 - convicting the Appellant/Accused for the offence P/U/S 120B, 376 R/W 34 Of IPC and Sections 5(L) and 6 Of POCSO Act.

This Criminal Appeal is appeal, coming on for hearing, this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

Accused no.1, convicted for the offences punishable under Section 376 and Section 5 (I) r/w Section 6 of Prevention of Children from Sexual Offences Act (POCSO) and sentenced to life imprisonment with fine of Rs.50,000/- has preferred this appeal.



2. The accused faced trial on the allegation that he forcefully subjected PW1, his step daughter to sexual abuse. Accused no.2 is the mother of PW1 and second wife of accused. PW1 was residing with grandfather after the death of her mother. About six months before registration of FIR she went to the house of her mother i.e., accused no.2. Accused stopped PW1 from going to school. She remained in the house attending household works. Accused started harassing PW1 whenever accused no.2 had gone out of house. Accused insisted on PW1 to marry him, but she refused. And for this reason he subjected her to sexual intercourse forcibly. He had intercourse with her once in a month, and he also told her that he was not satisfied and therefore he would have intercourse twice in a month. He also told her that she should sleep with him till she would get married or else she should leave his house. On 16.01.2017, when she was menstruating, he called her inside the room to have sexual intercourse. As she had severe stomach ache, she went to a place called 'Mother's Home' situate at Dasappa



Garden, R.T.Nagar and from there to police station. Thus FIR came to be registered on 20.01.2017. Investigation led to filing of charge sheet. Mother of PW1 was also charge sheeted on the allegation that she supported her husband and used to punish PW1 if she refused to have intercourse with him. But she remained absconding and only accused no.1 faced trial.

3. PWs1 to PW8 are the witnesses who deposed on behalf of prosecution. Of these witnesses, the oral testimonies of PW1 and PW6 are very important. Having found that the oral testimony of PW1 is believable and finds corroboration from medical evidence adduced by PW6, the trial court recorded conviction.

4. Sri. Prabhugouda B. Tumbigi, learned counsel for appellant raised a few points which are thus: It is highly impossible that accused No.1 who is in fatherly position to PW1 would exploit her. A false complaint was foisted against accused No.1 in the background of some land dispute. PW1 admitted Ex.D1 shows her relationship with



a boy, and this would rule out allegations against accused No.1. Medical evidence also does not disclose signs of recent sexual intercourse and it cannot be relied upon. Information was given to police four months after, the delay falsifies version of PW1. In Ex.P.4, it is mentioned that PW1 had consented for sexual intercourse. He also argued that the trial court disposed of the case hurriedly by denying opportunity to cross examine many witnesses including PW6.

5. But Sri. Vijayakumar Majage, SPP-II arguing for sustaining the impugned judgment submitted that PW1, who is the victim, is a trustworthy witness. She has narrated in detail the manner in which she was misused by accused. She was a girl of fifteen years, her testimony is fully corroborated by PW6, the doctor who examined her. PW6 noticed signs of recent sexual intercourse. The defence that accused No.1 is sexually incompetent is found to be false, and PW3, the doctor who examined accused no.1 has stated that the latter was sexually



competent. Therefore the prosecution was able to prove its case beyond reasonable doubt.

6. Smt. B.V.Nidhishree, counsel for respondent No.2 argued that sentence cannot be reduced. Accused No.1 deserves no sympathy. He has been rightly convicted and punished. PW1 has a younger sister. If accused comes out of jail, the life of sister of PW1 will be spoiled by accused No.1. Hence appeal is to be dismissed.

7. Now if the evidence is reassessed, it is found that PW1 has emerged as trustworthy witness. She has given a detail narration of how accused no.1 sexually abused her. If the cross-examination of PW1 is seen, though an attempt was made to bring to fore that she had love affair with a boy called Yaseen, and it is disclosed in Ex.D.1, that attempt does not tarnish the testimony of PW1. Even if it is assumed that she had a liking towards that boy, it is a fact that their marriage had not taken place; it is not defence version that she had a sexual affair with the boy



whom she wanted to marry. Therefore her oral testimony is fully believable.

8. The medical evidence though PW6 corroborates her testimony, Ex.P.6 is the medical report issued by PW6. History is mentioned that the victim girl was subjected to sexual intercourse by her step father. It is true that PW6 was not cross examined. The trial court refused adjournment to cross examine PW6. Note made in the deposition sheet shows valid reasons for refusal of adjournment. Merely for the reason that adjournment was refused, it cannot be said that there was denial of opportunity. To state, the defence counsel should have cross examined PW6 very soon after her examination in chief. Nothing prevented the defence counsel from filing an application to recall the witness. Sri. Prabhugowda B. Tumbigi did not submit that an application to recall PW6 was made and it was also rejected. Therefore this line of argument cannot be accepted.



9. In Ex.P.4, the medical report pertaining to accused, it is recorded that accused was not unfit to involve in sexual activity. It is true that history is written that accused no.1 used to have sexual intercourse with the consent of PW1. As regards this, it may be stated that such kind of history was given by accused no.1 probably with a view to saving his skin. And even if sexual intercourse was consensual, consent of PW1 was immaterial. Accused no.1 being step father cannot take such a stand.

10. In regard to delay in registration of FIR, it has to be stated that delay in these type of matters cannot be viewed seriously. Whenever sexual abuse occurs inside the house by a family member, it will not be reported to police immediately. Ultimately what is to be examined is whether there are traces of falsehood in the report given to police. If the evidence brought on record in regard to incident appears to be trustworthy, delay becomes



insignificant. For this reason, delay of four months in this case can be ignored.

11. Therefore the conclusion is that the conviction recorded by the trial court against accused no.1 is not incorrect; it is to be sustained.

12. The trial court has imposed punishment of life imprisonment and fine of Rs.50,000/- which is to be paid to PW1 towards compensation. Besides, the State Legal Services Authority is also directed to compensate PW1 by a sum of Rs.3,00,000/-.

13. Sri. Prabhugouda B. Tumbigi submitted that the punishment of life imprisonment is harsh, the trial court could have imposed minimum term prescribed in the statute. But the accused deserves maximum punishment. Accused no.1, being in a fatherly position, exploited his step daughter to gratify his sexual instincts. PW1 was a minor girl. This situation does not warrant taking a lenient view. The trial court is justified in imposing life



imprisonment and awarding compensation. There is no scope for reduction of sentence.

14. From the above discussion, no merit is found in the appeal, hence it is dismissed.

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

**Sd/-
(K. V. ARAVIND)
JUDGE**

SD
List No.: 1 Sl No.: 19