



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO. 1459 OF 2024

Between:

State by Ullal Police Station,
Dakshina Kannada District,
Represented by The State Public Prosecutor,
High Court Building, Bengaluru-560001.

...Appellant

(By Sri Vijaya Kumar Majage, SPP-II)

And:

1. Lava Kumar @ Savan @ Shravan,
Aged about 24 years,
R/at Near Naga Nagini Temple,
Srinivasa College Road,
Valachil Padavu, Arkula Village,
Mangaluru Taluk-574143.

2. Malathi,
W/o Kandappa
Aged 44 years
Occupation Canteen,
R/o Kapikad Ullal,
Mangaluru-575017.

...Respondents

(By Sri Vikram Raj A., Advocate for R1;
Sri J.M.Sharath, Advocate for R2)



This Criminal Appeal is filed u/s 378(1)(3) of Cr.P.C. praying to (1) grant leave to appeal against the impugned judgment and order dated 03.07.2023 passed by the Hon'ble Court of Additional District and Sessions Judge FTSC-II at Dakshina Kannada, Mangaluru in Spl.Case (POCSO) No.151/2020 acquitting the accused/respondent for the offence p/u/s 376 of IPC and section 6 of POCSO Act and etc.

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

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

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

The State has preferred this appeal questioning the correctness of the judgment of acquittal dated 03.07.2023 in Spl.C.No.151/2020 on the file of Additional District and Sessions Judge, Dakshina Kannada, Mangaluru.

2. The respondent/accused faced trial for the offences punishable under Sections 376 and 506 of IPC, and Section 6 of the POCSO Act on the



allegation that he committed penetrative sexual intercourse on PW1 while he was working in the hotel belonging to her parents. PW1 became pregnant and gave birth to a male baby.

3. Assessing the evidence, the trial court has recorded reasons that the allegation of forcible sexual intercourse on PW1 cannot be believed for the reason that PW1 kept quiet for a long time till she became pregnant. Her testimony that she was subjected to intercourse by the accused for the first time at about 08.30pm by giving her chocolate and making her unconscious is difficult to be believed. The court has found discrepancy in the testimony of PW1 before the court with reference to her statement under Section 164 of Cr.P.C., where she stated that she became unconscious after eating the food brought from the canteen being run by her father. When she regained consciousness she noticed bleeding but



she thought that she was menstruating. Two days later accused told her that he had committed rape on her and that he would kill her parents if she disclosed the same to anybody. So far as this aspect is concerned, there is no statement to that effect. That apart, when she was taken to hospital, she stated before the doctor that the accused had intercourse with her in the months of November and December, 2019, and that in the month of January, 2020 also he used to have intercourse with her at least two times in a week. So considering this kind of evidence the trial court held that it is difficult to believe that accused subjected her to forcible sexual intercourse.

4. So far as date of birth of PW1 is concerned, the prosecution produced Ex.P5 where her date of birth is mentioned as 05.04.2004. The trial court has held that Ex.P5 is not the primary proof for establishing the date of birth. PW4 who



was examined to prove Ex.P5 was not the one who had made entries in the school admission extract at the time of admission of PW1 to the school. The trial court is of the opinion that the date mentioned in the admission register may not be a correct date of birth, rather some approximate date might have been entered. It is further held that even if 05.04.2004 is accepted to be the correct date of birth for argument sake, her age at the time of intercourse would be 17 years, and she having attained the age of discretion was aware of the consequences of what she was doing. The age of the accused was around 22 or 23 years. In this backdrop it is improper to hold the accused guilty of the offence as both of them indulged in sexual intercourse because of influence of age.

5. Though consent of a minor girl is immaterial, whenever evidence discloses that consensual intercourse had taken place between a



boy and a girl whose ages are in the margin of attaining majority, it is better to give benefit of doubt to the accused. It is not a case where a very tender aged girl was subjected to intercourse by a major boy. So we do not find a good ground to interfere with the impugned judgment. There are no grounds to convict the accused. Hence appeal is ***dismissed***.

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

**SD/-
(K.S. HEMALEKHA)
JUDGE**

KMV
List No.: 1 Sl No.: 8