



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO.822 OF 2018

BETWEEN:

THE STATE OF KARNATAKA
BY RURAL POLICE, DAVANAGERE,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU – 01.

... APPELLANT

(BY SRI HARISH GANAPATHY, HCGP)

AND:

1. ANILKUMAR
S/O RAJAPPA,
AGED ABOUT 23 YEARS,
2. SHIVAMURTHY
S/O NAGAPPA,
AGED ABOUT 53 YEARS,
3. MALLIKARJUNA
S/O NAGAPPA,
AGED ABOUT 49 YEARS,
4. JAGADEESHA
S/O NAGAPPA,
AGED ABOUT 39 YEARS,

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA



5. MALLIKARJUNA
S/O MAHADEVAPPA,
AGED ABOUT 43 YEARS,
R/O. EECHAGATTA VILLAGE,
DAVANAGERE.

6. SHANTAMMA
W/O SHIVAMURTHAPPA,
AGED ABOUT 36 YEARS,

RESPONDENTS 1-4 AND RESPONDENT NO.6
ARE R/O. KODIHALLI VILLAGE,
DAVANAGERE TALUK-577001.

7. SMT. LATHA
W/O. NAGARAJ,
AGED ABOUT 33 YEARS,
R/AT MANDALUR VILLAGE,
DAVANAGERE TALUK,
DAVABAGERE DISTRICT.

(R-7 HAS BEEN SUBSTITUTED VIDE
COURT ORDER DATED 16.04.2024)

... RESPONDENTS

(BY SRI D.P. MAHESH, ADVOCATE FOR R-1 TO R-6;
SRI ANTONY IGNATIUS M.J., ADVOCATE FOR R-7)

THIS CRL.A. IS FILED UNDER SECTION 378(1) AND (3)
CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE
JUDGMENT AND ORDER DATED 30.11.2017 PASSED BY THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE IN
S.C.NO.167/2014 IN SO FAR AS IT RELATES TO ACQUITTING THE
ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER
SECTIONS 366, 114 R/W 34 OF I.P.C. AND SECTION 6 OF POCSO
ACT, SECTION 3(1)(x), 3(1)(xi) & 3(2)(v) OF SC/ST (POA) ACT.

THIS APPEAL COMING ON FOR FINAL HEARING, 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 MRS JUSTICE K.S. HEMALEKHA)

The State has preferred this Criminal Appeal challenging the judgment of acquittal for the offences punishable under Sections 366, 114 read with Section 34 of Indian Penal Code (IPC), Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) and Sections 3 (i) (x), 3 (1) (xi) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST (PA) Act' for short).

2. Heard the learned HCGP appearing for the State and learned counsel appearing for the respondents and perused the material on record.

3. PW.2-father of the victim girl (PW.4) lodged a missing complaint under EX.P9 on 22.10.2014 that PW.4 was missing since 11.10.2014. The case was registered under Sections 363, 114 read with Section 34 IPC. Based on the complaint PW.4 was traced after 4 to 5 days and her statement was recorded. The case of the prosecution is that



PW.4, aged about 17 years belonging to scheduled caste, was residing with PW.2, PW.5, mother and sister. Accused No.1 befriended PW.4, when she used to go to her aunt's house-PW.6. On 11.10.2014, accused No.1 telephoned PW.4 to come to Mandalur bus stand. When she went there, accused No.1 took her in a motor cycle to the house of Mallikarjun-accused No.5 at Eechghatta village. When accused Nos.4 and 5 objected, accused No.1 took PW.4 to the house of accused No.2 and on the same day committed sexual assault on her. Further when she was with accused No.1, accused Nos.2 to 5 abused her, stating that she belonged to a lower caste and they did not intend to perform the marriage of accused No.1 with her, instead they were ready to pay some amount and that she should leave accused No.1. It is stated that PW.4 the victim girl was taken to the house of CW.16- Veena and accused No.1 again committed penetrative sexual assault and threatened to kill her, if she revealed the same to anybody. Case was registered in Crime No.341/2014, charges were framed against accused Nos.1 to 6 for the offences punishable



Sections 366, 114, read with Section 34 of IPC, Section 6 of the POCSO Act and Sections 3 (i) (x), 3 (1) (xi) and 3(2)(v) of the SC/ST (PA) Act.

4. The prosecution in order to prove their case, examined 19 witnesses as PW.1 to PW.19, marked documents at Exs.P1 to P44 and MO.1 to MO.7, the accused denied all the incriminating evidence, however, did not choose to lead any evidence but got marked Exs.D.1 to D3.

5. The Trial Court found the evidence of PW.4, her parents-PW.2 and PW.5, her uncle and aunt-PW.3 and PW.6 disbelievable, taking support of the evidence of PW.13-the doctor who examined PW.4. The trial Court observed that there is delay in lodging the complaint and, the age of PW.4 being below 18 years and she being abused in the name of her caste, were not established by the prosecution.

6. Argument advanced by the State is that the testimony of PW.4 alone is sufficient to convict the accused. She was minor as on the date of incident finding support with the evidence of PW.14-the Headmaster of the school



who had issued the certificate regarding the date of birth of the PW.4 marked at Ex. P21. PW.4 being a minor, sexual intercourse has to be considered as a rape even if it is consensual. Ignoring the crucial evidence acquitting the accused by the Trial Court and giving benefit of doubt to the accused is unsustainable. Viewed from any angle, the order of acquittal passed by the Trial Court deserves to be set aside.

7. Counsel for the accused submits that the prosecution has placed reliance on the study certificate- Ex.P21, the entry recorded in the certificate is not a conclusive proof, as there is no supporting evidence based on which such an entry was recorded. The non-production of the birth certificate by the prosecution weakens their case. PW.4 being below the age of 18 years is not established and therefore the accused was rightly acquitted by the trial Court under Section 366 IPC. Further, the unexplained delay in lodging the complaint makes the case of the prosecution weaker, doubting the false implication. The evidence of PW.4 if perused, clearly indicates that she left willingly, there was



no force for sexual intercourse and the allegation of abusing PW.4 in the name of caste does not corroborate the statement recorded before the Magistrate.

8. We have carefully given our anxious consideration to the submissions made by the learned counsel on both sides and perused the material on record. Charge leveled against accused No.1 is that accused No.1 kidnapped PW.4 with intention to marry and commit penetrative sexual assault on her, and accused Nos.2 to 6 instigated accused No.1 and they abused and insulted PW.4 by referring to her caste.

9. To establish an offence under Section 366 IPC, the prosecution must prove that the accused had the specific intent to compel the woman to marry or force her into illicit relationship. If the girl is under 18 years the law presumes she cannot give valid consent either to leave home or to marry or for sexual relations. Even if she says she "went willingly" or "wanted to marry the boy" the Courts have often held the consent of a minor is not valid in law. Hence



Section 366 IPC can be attracted easily when a minor is involved, especially if there's evidence of intent to marry her or any physical/sexual relationship has taken place. The age is a crucial factor when applying Section 366 IPC. Hence the prosecution has to prove that the victim girl was below 18 years and must prove that the accused had specific intent to compel the victim girl to marry or force her into illicit intercourse. Mere abduction without such intent does not constitute an offence under this Section.

10. The prosecution's case is that PW.4 was under 18 years and produced Ex.P21-the study certificate issued by PW.14-the Headmaster, which records that the date of birth of PW.4 is 26.03.1998. The study certificate issued is not supportive of any evidence, the basis on which the date of birth is recorded. The study certificate alone cannot be a conclusive proof to prove the age of PW.4.

11. Rule 12 of the Juvenile Justice (Care And Protection Of Children) Rules, 2007 (for short "JJ Rules") provides the procedure to be followed in determination of



age of Juvenile, sub-rule (3) of Rule 12 envisages the evidence that could be relied to determine the age of the minor i) matriculation or equivalent certificates, if available; and in the absence whereof; ii) the date of birth certificate from the school (other than a play School) first attended; and in the absence whereof; iii) the birth certificate given by a corporation or a municipal authority or a panchayat. In the context of sub-rule (3) of Rule 12, we need to peruse whether the prosecution has proved the age of PW.4 to be below the age of 18 years.

12. Rule 12 (3) of the JJ Rules envisages that the matriculation or equivalent certificates if available, the same will be the highest rated option for the Courts to rely upon while determining the age of a child. Only in the absence of such a certificate, the birth certificate issued from the school first attended is to be taken into consideration. When such a birth certificate from the school is also not available, then the birth certificate issued by the Corporation or a Municipal Authority or a Panchayath may be considered. In the instant case, the prosecution is relying on Ex.P21-the study



certificate issued by the headmaster, which cannot be conclusive proof to prove the age of the victim to be below 18 years.

13. Additionally, PW.14 categorically admitted in his cross-examination that when PW.4 was admitted to school, the birth certificate was not produced. The prosecution has not placed cogent and coherent evidence to prove the age of PW.4 to be below the age of 18 years as on the date of the incident. Having held that PW.4's age being below 18 years is not established, what remains for this Court is to ascertain whether there was a consensual act or force committed by accused No.1.

14. The complaint was lodged ten days after the daughter was found missing. It is stated that his daughter was missing from 11.10.2014 and the complaint was lodged only on 22.10.2014. It is stated that on information received from Haleshappa-PW.3 that accused No.1 has taken away PW.4, the complaint is said to be lodged. The complaint indicates the name of other accused, and the information



received by the complainant was that his daughter was seen with accused No.1. Implicating the other accused in the complaint which was filed after ten days was an afterthought to strengthen the case of the prosecution to fit into the provisions of Sections attributing offences punishable under the SC/ST (PA) Act. After meticulously examining and going through the complaint lodged by PW.1-the first informant, it is forthcoming that the complainant mentioned his caste and the caste of the accused person. The statement of PW.4 recorded before the Magistrate also does not indicate that she was abused with reference to their caste; on the other hand, the statement recorded indicates that she was scolded by the uncle of accused No.1 for being with him. The evidence of PW.1 or PW.4 does not indicate the insult or intimidation made with reference to caste, a *sine qua non* to attract the offences scheduled under the provisions of the SC/ST (PA) Act.

15. PW.4 deposes that she got acquainted with accused No.1 when she was visiting her aunt's house at Kodihalli, the acquaintance led to talking frequently. On



11.10.2014, accused No.1 called her on her cell phone and asked her to come to the bus stand. She went to the bus stand. She along with accused No.1 went to Eechaghatta, where the grand-mother of accused No.1 resided. On the said day, accused No.1 committed penetrative sexual assault. She states that accused Nos.2 to 6 were also present. When she went to the house of accused No.2 in Davangere, accused No.1 committed penetrative sexual assault on her on that day also. Her evidence suggests that she was in the company of accused No.1, she went to the grand-mother's house, his uncle's house and also to his aunt's house, in all three places, accused No.1 committed penetrative sexual assault. If the entire version of PW.4 is assessed, it falsifies the case of the prosecution for us to safely hold that it is a case of consent and PW.4 voluntarily accompanied accused No.1.

16. In support is the medical evidence at Ex.P19 and P20 demonstrating that there are no injuries found on *vulva*, *no bleeding per vagina*, *no injuries found on the body*, *hymen not intact*. The report at Ex.P19 and Ex.P20 is



supported by the evidence of PW.13 who examined PW.4, on appreciation of evidence of PW.4, PW.13, and the medical evidence confirms the relationship was consensual and the prosecution has failed to prove the lack of consent. The conduct of PW.4 indicates willingness and negates the rape charges.

17. On careful appreciation of the evidence on record it is clear that PW.4 accompanied the accused voluntarily and of her own freewill. There is no material that suggests that the accused induced or compelled her to leave her home or nor is there any evidence of force, deceit or threat. Furthermore, the prosecution has failed to prove that PW.4 was below 18 years of age at the relevant time. In the absence of proof of age and without establishing the essential ingredients of coercion or intent to compel marriage or illicit intercourse, the offence under Section 366 IPC is not made out. Therefore, the trial Court's order of acquittal is based on sound reasoning and does not warrant interference. Finding no perversity of fact or law in the



judgment of the Trial Court for this Court to overturn the findings recorded, this Court pass the following:

ORDER

Criminal appeal is ***dismissed.***

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE

MBM/YKL
List No.: 1 Sl No.: 5