



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND 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. 630 OF 2020

C/W

CRIMINAL REFERRED CASE NO. 9 OF 2018

In CrI.A No. 630/2020

Between:

T.N.Suresh Babu @ Babu @ Soori
Aged about 26 years,
S/o Narayanaswamy
R/o Besides Anjaneyaswamy Temple
Melina Tekal Village
Malur Taluk-563130.

...Appellant

(By Sri Nagaraja Reddy D., Advocate)

And:

State of Karnataka
By Malur Police
Represented by
Special Public Prosecutor,
High Court Building
Bengaluru-560001.

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

This Criminal Appeal is filed u/s.374(2) Cr.P.C. praying to set aside the judgment of conviction and order of sentence

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Location: HIGH
COURT OF
KARNATAKA



dated 15.09.2018 passed by the II Additional District and Sessions Judge, Kolar in S.C.No.130/2018 - convicting the appellant/accused for the offence punishable under section 341, 302, 376, 511 of IPC and Section 8 of POCSO Act.

In Crl.RC No. 9/2018

Between:

II Additional District and Sessions Judge
Kolar

...Appellant

(By Sri Vijaykumar Majage, SPP-II)

And:

T.N.Suresh Babu @ Babu @ Soori
S/o Narayanaswamy
Aged about 25 years
R/o Besides Anjaneyaswamy Temple
Melina Tekal Village
Malur Taluk-563130.

...Respondent

(By Sri Nagaraja Reddy D., Advocate)

This Criminal Referred Case is registered as required u/s.366 (1) Cr.P.C. for confirmation of death sentence awarded to accused Sri T.N.Suresh Babu @ Babu @ Soori by judgment dated 15.09.2018 passed in S.C.No.130/2018 on the file of II Additional District and Sessions Judge, Kolar for the offences punishable under Sections 341, 302, 376, 511 of IPC and section 8 of POCSO Act.

Date on which the appeal was reserved for judgment	07.01.2025
Date on which the judgment was pronounced	22.01.2025

These Criminal Appeal and Criminal Referred case, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:



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

CAV JUDGMENT

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

The accused faced trial for the offences punishable under Sections 341, 302, 376 read with Section 511 of IPC and Section 8 of Protection of Children from Sexual Offences Act (POCSO Act), has been found guilty of those offences and sentenced to death for the offence under Section 302 of IPC and term sentences besides fine for other offences. The II Additional District and Sessions Judge who recorded conviction and sentenced the accused to death referred the case to this court under Section 366 of Code of Criminal Procedure for confirmation of death sentence. The accused has also preferred an appeal challenging his conviction and sentence imposed on him.

2. The incident that led to prosecuting the accused was that, on 1.8.2018 about 4.30 p.m when two girls namely Rakshita (the deceased) and Preeti were on their way to their houses while returning from school, the



accused caught hold of Rakshita from behind, threatened Preeti to run away, then dragged Rakshita to a nearby place, and when she screamed, he gagged her mouth. The accused then attempted to commit rape on her. As she resisted and tried to escape, he fisted on her left eye and gave repeated blows on her with a stone. Thereafter he dragged her to a nearby bush, removed her clothes and while attempting to commit rape, PW3 Narayanaswamy came to that place. Seeing him the accused fled that place. By that time Preeti had gone to her house and informed her father, and thereafter both of them went to the house of Rakshita and gave information to her father. All of them went to that place, and shifted Rakshita to hospital where the doctor declared that she was already dead.

3. The investigation revealed the motive that the accused had once eve teased Rakshita developing aphrodisiac desire after seeing her and at that time he was scolded by Rakshita's father (PW1). Enraged, he decided



to rape her, and was waiting for an opportunity which he got on 1.8.2018.

4. The trial court has held that the evidence of PW1, PW2 and PW3 in particular as also corroboration provided by medical evidence and FSL report point to the involvement of the accused in the crime.

5. Sri Nagaraja Reddy, learned advocate for the accused, highlighted the following points when he argued:

(i) Trial court hurried the trial to be completed within twenty one days from the date of filing of charge sheet, and this has ensued in great injustice being caused in as much the accused did not get sufficient opportunity to cross-examine prosecution witnesses.

(ii) There is no evidence indicative of involvement of accused in the crime, in other words the investigating officer does not disclose as to how he came to know about involvement of accused.



(iii) The trial court has committed a grave error by imposing death sentence. The age of the accused at the time of incident was 25 years. The trial court has failed to consider mitigating circumstances. There is no circumstance to hold that the rarest of rare case is made out.

6. Sri Vijaykumar Majage, learned SPP-II, argued that speedy disposal of the case did not result in miscarriage of justice; the counsel for accused cross-examined the witnesses in full length, and therefore it cannot be said that accused did not get an opportunity to cross-examine the witnesses. Having found that prosecution witnesses have not been discredited, the trial court found the accused guilty of offences charged against him. The accused might be aged 25 years at that time, but his criminal intention is forthcoming from the brutal manner of killing a girl of 15 years. He is always a threat to society, and considering this death penalty was



imposed. There is no infirmity in the sentence passed by the trial court.

7. The material witnesses are PW1, PW2, PW3 and PW8. Re-appreciation of evidence of these witnesses gives this picture. PW1 is the father of Rakshita, but he was not an eyewitness. His deposition discloses that on 1.8.2018 at 4.45 p.m when he was in his house, PW2 Preeti and PW8-Babu, the father of PW2, came to his house, and PW2 told him what happened to Rakshita when both of them were returning home from school. Immediately all of them went to that place and saw Rakshita having fallen on a mound. Her undergarments appeared like pulled down. He saw injuries on her head and left eye. He thought that she was not breathing, yet he took the help of people who had gathered there and shifted his daughter to hospital. The doctor declared the death of his daughter. Then he went to police station and gave report as per Ex.P1. He has also spoken about drawing of Ex.P2-the spot mahazar and certain seizures



there under. He identified the accused in the court and stated that he had warned him when his daughter brought to his notice that she was eve teased by the accused. In the cross-examination, except extracting an answer from him that he did not disclose to the police about having warned the accused, otherwise he is not discredited.

8. PW2 is an eyewitness to a part of the incident. She gave full account of what the accused did while Rakshita and she were going home around 4.00 p.m on 1.8.2018. Her evidence discloses that when both of them crossed the railway track, a man standing under a tree came and closed the mouth of Rakshita, and he threatened her (PW2) not to shout. Immediately she ran towards her house and informed her father. Then her father and she went to the house of Rakshita and informed her father i.e., PW1. All of them went to that place, saw Rakshita having fallen down sustaining injuries and also saw the clothes worn by Rakshita being pell-mell. She has spoken about having identified the accused in the test



identification parade. She was cross-examined in vain. PW8 has fully buttressed the testimony of PW2 and not been discredited in the cross examination.

9. The testimony of PW3 shows that on 1.8.2018 around 4.30 p.m when he was carrying green leaves to a shop, he saw the accused standing beside a girl who had fallen down. PW3 stopped his vehicle and when he was about to get down from the vehicle, the accused ran away from that place. He went near the girl and saw injuries on her body and scattered clothes below the knee. He then brought 7-8 persons, and by that time father of the girl and 5-6 persons including PW2 came to that place. He has also spoken about identifying the accused in the jail when test identification parade was held there. His cross-examination has not been successful.

10. The evidence of PW6 is incidentally relevant. He has stated that accused was working as a construction labour when he was constructing a house at Indiranagar,



Malur and he has stated very specifically that accused was habituated to drinking liquor and was teasing the girls.

11. There is no need to refer to evidence relating to various mahazars in regard to certain seizures, as they cannot be disputed. PW22 is the doctor who conducted autopsy, and before dissection of the dead body, he noticed presence of seven external ante mortem injuries, prominent among the injuries were injuries on the head and contusion over left eye. There was extravasation of blood over left and right parietotemporal region. He collected vaginal smears and swabs to be sent to FSL. He identified the clothes of the girl that were found on the dead body. Ex.P56 is the post mortem report. No effort was made to discredit him in the cross-examination.

12. PW30 is the FSL expert who subjected 16 items for examination. He also collected blood samples of PW1 and his wife to match their DNA profile with DNA profile of Rakshita and his report shows there was matching of DNA profiles. PW30 also detected presence of semen stains in



item No.16, i.e., the underwear said to be belonging to the accused. In his cross-examination he answered that since blood sample of accused had not been sent to him, he did not conduct any test. Ex.P61 is the DNA report. DNA profiling report is of no consequence because the prosecution case is that the accused did not actually commit rape, he fled that place without accomplishing his desire as PW3 came to that place. There was no need to obtain DNA profiling report by collecting the blood samples of Rakshita's parents as her identity was not at all disputed by anybody.

13. PW21 was the Tahsildar who conducted test identification parade on the requisition of the investigating officer. His evidence clearly shows PW2 and PW3 correctly identifying the accused in each round amid eight persons. Exs.P27 to P29 are test identification reports. The cross-examination consists of only suggestions which are of no use. PW33 is the investigating officer, and has given detailed evidence of investigation.



14. Therefore on collation of entire evidence, it becomes amply clear that the evidence of PW2 and PW3 point to the involvement of accused in commission of crime. There is no reason to discard their evidence.

15. In regard to argument of Sri Nagaraja Reddy about completion of trial within twenty one days, it may be stated he just highlighted that factor but failed to substantiate as to how the interest of the accused was affected. No opportunity was denied to accused at any stage. This argument therefore fails.

16. Now the irresistible conclusion is that the prosecution was able to prove its case beyond reasonable doubt. The guilt of the accused is clearly established. All the offences charged against the accused are proved. There cannot be interference with the judgment of the trial court in recording conviction.

17. The trial court has noted the aggravating and mitigating circumstances. In our opinion, the assessment is not sufficient. Sri Nagaraja Reddy has relied on the



judgment of the Supreme Court in ***Chhannu Lal Verma vs State of Chhattisgarh [(2019) 12 SCC 438]*** where, by referring to earlier decisions in Bachan Singh and Macchi Singh, it has been held as below :

"13. In our opinion, the High Court has erroneously confirmed death penalty without correctly applying the law laid down in Bachan Singh, Machhi Singh, Santosh Bariyar (supra) and Shankar Kisanrao Khade. The decision to impose the highest punishment of death sentence in this case does not fulfill the test of "rarest of rare case where the alternative option is unquestionably foreclosed". The questions laid down in paragraph 39 of Machhi Singh have not been answered in the particular case. No evidence as to the uncommon nature of the offence or the improbability of reformation or rehabilitation of the appellant has been adduced. Bachan Singh unambiguously sets out that death penalty shall be awarded only in the rarest of rare cases where life imprisonment shall be wholly inadequate or futile owing to the nature of the crime and the circumstances relating to the criminal. Whether the person is



capable of reformation and rehabilitation should also be taken into consideration while imposing death penalty. As laid down in Shankar Kisanrao Khade, whether the person would be a threat to society or whether not granting death penalty would send a wrong message to society are additional factors to be looked at. No such analysis was undertaken by the High Court. The High Court has also failed to look at the aggravating and mitigating circumstances regarding the criminal as warranted by Bachan Singh. The fact that the appellant had no previous criminal record apart from the acquittal in Section 376 IPC, which was a false implication and the alleged motive did not weigh with the High Court as an important mitigating circumstance with respect to the criminal."

Apart from above, the trial court did not give bifurcated hearing on sentence. Judgment of conviction was pronounced on 15.9.2018, and on the same day it proceeded to pass sentence. It appears that trial court was predetermined to impose capital punishment. Overall circumstances do not bring this case within the purview of



the rarest of rare case even though a young girl became victim of incident. Therefore the trial court should not have imposed death sentence.

18. So far as sentence on Section 8 and Sections 376 read with Section 511 of IPC is concerned, the trial court has imposed separate sentences de hors the mandate in Section 42 of the POCSO Act. Conviction may be recorded for two offences, but while imposing sentence, greater punishment prescribed in correlated penal sections must be chosen in accordance with Section 42.

19. Here the accused attempted to commit rape on a girl aged 15 years, and because of resistance shown by her, he assaulted with a stone on her head which resulted in internal fracture in the skull as is evident from post mortem report. If the accused had raped and caused the death of the girl, he should have been punished under Section 376A of IPC according to which minimum sentence is rigorous imprisonment for not less than twenty years, and life sentence may also be imposed depending on facts



and circumstances. Since accused is charged for Section 376 read with Section 511 of IPC, and there was no charge for Section 376A read with Section 511 of IPC, sentence must be in accordance with Section 511 read with Section 376 of IPC. Section 511 of IPC states that the sentence of one half of the longest term of imprisonment provided for the offence is to be imposed. Longest term imprisonment prescribed is 10 years. Therefore one half of it is 5 years. For Section 8 of POCSO Act, minimum punishment is three years extendable up to 5 years. In view of Section 42 of POCSO Act accused needs to be punished in accordance with Section 511 read with Section 376 which comes to five years rigorous imprisonment.

20. The sentence for the offence punishable under Section 341 of IPC is to be sustained because the accused wrongfully restrained Rakshitha when she was returning from the school. Therefore from the above discussion the following order is passed.



ORDER

- (i) Crl.R.C.No.9/2018 filed under Section 366 of Cr.P.C. is rejected.*
- (ii) Crl.A.No.630/2020 is partly allowed.*
- (iii) Retaining the conviction recorded by the trial court for the offences charged against the accused, the sentence is modified as below:*
 - a) For the offence punishable under Section 302 of IPC, the accused is directed to undergo rigorous imprisonment for life and pay fine of Rs.25,000/- failing which he shall undergo simple imprisonment for a period of two years.*
 - b) For the offence punishable under Section 511 read with Section 376 of IPC, he is sentenced to undergo rigorous imprisonment for a period of five years and pay fine of Rs.10,000/- failing which he shall undergo simple imprisonment for a period of six months.*
 - c) The sentence imposed by the trial court for the offence punishable under Section 341 of IPC is retained.*



- d) The sentence imposed by the trial court for the offence punishable under Section 8 of the POCSO Act is set-aside.*
- (iv) The sentence of imprisonment imposed for all the offences is made to run concurrently.*
- (v) The period already spent by the accused in the jail shall be counted only if the Government decides to extend the benefit of remission under Section 432 of Cr.P.C. or else not.*
- (vi) Send back the trial court records forthwith with a copy of this judgment.*

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 1