



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH 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.749 OF 2020

BETWEEN:

STATE OF KARNATAKA,
BY ALANAHALLI POLICE STATION,
MYSURU,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

... APPELLANT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

AND:

SRINIVASA .C
S/O. LATE CHIKKANNA,
AGED ABOUT 29 YEARS,
R/O. NO.91, LINGAMBUDI PALYA,
SRI RAMPURA POST,
MYSURU CITY.

... RESPONDENT

(BY SRI N.S. SAMPANGI RAMAIAH, ADVOCATE APPEARING AS
AMICUS-CURIAE ON BEHALF OF RESPONDENT)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND
(3) CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE
IMPUGNED JUDGMENT AND ORDER DATED 05.04.2019 PASSED IN
SPECIAL CASE NO.132/2017 ON THE FILE OF THE HON'BLE LEARNED
VI ADDITIONAL DISTRICT AND SPECIAL JUDGE AT MYSURU IN SO
FAR AS THE IT RELATES TO ACQUITTING THE
RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S. 363, 376 OF IPC
AND SECTION 3 R/W SECTION 4 OF POCSO ACT AND ALSO UNDER
SECTION 9 OF PROHIBITION OF CHILD MARRIAGE ACT AND ETC.



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 MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal is filed by the State challenging the correctness of the judgment dated 05.04.2019 in SC No.132/2017 on the file of VI Additional District and Special Judge, Mysuru. The accused faced trial for the offences punishable under Sections 363 and 376 of IPC read with Sections 3 and 4 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act. By the impugned judgment, the trial court acquitted the accused of the said offences and hence this appeal.

2. The first information report was lodged by PW.8, the mother of the prosecutrix i.e., PW.1. She stated that on 24.03.2017, when she was about to return home after finishing the work at a garment factory, she received a call from her mother-in-law and came to know



that her daughter was not found in the house. Immediately she returned home and searched for her daughter. She did not get any information. Therefore on 27.03.2017, she gave a report to the police stating that her daughter was missing. PW.1 and accused were traced on 30.03.2017. Investigation resulted in accused being charge-sheeted for the aforesaid offences.

3. On behalf of the prosecution, 8 witnesses adduced evidence. Exs.P.1 to P.21 and M.O.1 to M.O.3 were marked by the prosecution. Assessing the evidence, the trial court recorded findings that PW.1 and the accused were in love and infact PW.1 put pressure on the accused to take her away from the house and marry her. PW.8 had arranged the marriage of PW.1 with another person, namely, Nagaraju, but PW.1 was not ready to marry him because of her love affair with the accused. In this background, both of them got married voluntarily. PW.1 herself stated that she had completed 18 years of age on the date when the accused married her. It was not a case



of abduction. The prosecution has relied on the school admission register extract issued by the Headmaster. In the said certificate the date of birth of PW.1 is shown as 17.12.1999, but statement of the girl was that she had completed 18 years. There was no inducement or threat at the time when PW.1 went along with accused. In this view, the prosecution has failed to prove the abduction of the girl and her being subjected to forcible intercourse by the accused.

4. We have heard Sri Vijaykumar Majage, learned SPP-II and Sri Rangaswamy, learned High Court Government Pleader for the appellant/State and Sri N.S.Sampangiramaiah, learned Amicus Curiae for the respondent/accused.

5. It is the submission of Sri Vijaykumar Majage and Rangaswamy, that although the evidence of PW.1 shows that she was a consenting party to the act of sexual intercourse, Ex.P.5-the study certificate shows that the date of birth of PW.1 was 17.12.1999. PW.1 has also



stated that her date of birth was 17.12.1999. This date of birth is not disputed by the defence. For this reason, as on 24.03.2017, the age of the girl was 17 years 3 months and 7 days. That means she had not completed 18 years of age. Even though there was a consent, minor's consent was immaterial. The medical evidence clearly discloses that hymen was not intact. It supports the prosecution case that the accused subjected the minor girl to sexual assault. Therefore the trial court went wrong in appreciating the evidence and in this view the impugned judgment has to be set aside.

6. Sri N.S.Sampangi Ramaiah submits that the date of birth of the girl being 17.12.1999 cannot be taken as correct because PW.3-Headmaster who issued Ex.P.5 has given evidence that PW.1 took admission to the school for 9th standard during the year 2013-2014. PW.1 discontinued the study when she was in 10th standard. That means she might have completed 16 years of age in the year 2015. According to the prosecution, the incident



took place in the year 2017. If this evidence is considered, as on 24.03.2017 the age of PW.1 was more than 18 years and that is the reason for PW.1 herself stating that she had completed 18 years of age. Even when PW.1 gave statement before the Magistrate under Section 164 of Cr.P.C., she stated that her age was 18 years. In this view, no offence was committed by the accused. The trial court has rightly come to the conclusion to acquit the accused. The well reasoned judgment of the trial court cannot be disturbed.

7. We have considered the arguments and perused the evidence.

8. Evidence of PW.1 shows that she developed acquaintance with accused when she was working in a textile shop. At that time the accused was working as a mason. Both of them were loving each other. PW.1 herself told the accused that her mother had arranged the marriage with one Arakere Nagaraju and she was not willing to marry him. At that time accused advised her



that she should marry a boy fixed by the family members and for this PW.1 replied that she would commit suicide if accused did not marry her. Thereafter accused advised her to wait for six months. When the marriage date of PW.1 with Arakere Nagaraju was nearing, again she asked the accused that the marriage was to be performed within a month and if he did not marry her, she would die. Therefore on 24.03.2017, both of them left the house and at the time of leaving the house, she carried with her some jewellery and they got married in a temple. Both of them lived in the house of the aunt of the accused. She stated that both of them had sexual intercourse voluntarily. In the cross-examination she admitted that her mother had arranged her marriage with another boy and she married the accused because she had completed 18 years of age. It is needless to say that the evidence of PW.8-the mother of PW.1 is quite contradictory. That apart when PW.1 was taken before the Magistrate to give statement under Section 164 Cr.P.C., she stated that she and accused married voluntarily at Mahadeshwara Temple.



But she gave one more statement on 30.03.2017 that when they were sleeping together, accused wanted to have physical contact with her and at that time, she told that he must convince her parents first and then he could have contact with her. But the accused did not heed to her request. So far as this statement is concerned, PW.1 has stated in the cross-examination that she had to give statement like this because she was tutored by her mother and the police. Ex.P.17 is the report given by the doctor after examining the girl and it shows that hymen was not intact and there was no sign of recent sexual intercourse. And the girl was used to an act like that of sexual intercourse.

9. It becomes clear that PW.1 herself has stated to have had intercourse with accused and she has stated that it was voluntary. Ofcourse, this was supported by Ex.P17- medical examination report, but the question is about the age. If the girl was minor below the age of 18 years as on the date of the incident, her consent was immaterial. So



what remains for examination is whether 17.12.1999 can be considered as correct date of birth of the girl. PW.1 and PW.8 have stated that the date of birth is 17.12.1999 and same date is recorded in Ex.P.5. This date of birth cannot be held to be correct because of statement of PW.3 in the examination-in-chief that PW.1 took admission to the school for 9th standard in the year 2013-2014 and discontinued her studies when she was in 10th standard. Normally, a boy or girl will have reached the age of 15 or 16 years when he or she comes to the 10th standard. The date of incident is shown as 24.03.2017. If the girl took admission for 9th standard during the year 2013-2014, as on 24.03.2017, it appears that she might have completed 18 years of age. That means the date of birth entered in the school register does not appear to be correct. It may be the date given on approximation. Moreover the girl herself has stated that her mother was tried to arrange her marriage after she attained 18 years of age. Therefore there is no clear proof with regard to the age of the girl. This benefit must go to the accused. Looked in



this view, it is to be held that the trial court has not committed error in acquitting the accused. We do not find good grounds to interfere with the judgment of the trial Court. Hence, the appeal is dismissed.

10. Rs.15,000/- shall be paid as remuneration to Sri N.S.Sampangiramaiah, Advocate for the accused for the services rendered as Amicus Curiae.

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

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

MBM

List No.: 1 Sl No.: 30