



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH 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.264 OF 2018 (A)

BETWEEN:

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

... APPELLANT

(BY SRI HARISH GANAPATHY, HC GP)

AND:

1. U.K. LOKESH
S/O. KUTTAPPA,
AGED ABOUT 47 YEARS,
COOLIE, R/O ULUVAGILU VILLAGE,
VASTHARE HOBLI,
CHIKKAMAGALURU TALUK – 577 101.

2. SMT. MANJULA
W/O. LOKESH
AGED ABOUT 45 YEARS,
R/O ULUVAGILU VILLAGE,
VASTHARE HOBLI,
CHIKKAMAGALURU TALUK – 577 101.

... RESPONDENTS

(BY SRI N.S. SAMPANGI RAMAIAH, ADVOCATE APPEARED
AS A AMICUS CURIAE ON BEHALF OF R-1;
SRI D. NAGARAJA REDDY, ADVOCATE FOR R-2)



THIS CRL.A. IS FILED U/S. 378(1) AND (3) CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 01.07.2017 PASSED IN SPECIAL CASE (PCSOA) NO.16/2014 ON THE FILE OF THE COURT OF I ADDITIONAL SESSIONS AND SPECIAL JUDGE AT CHIKKAMAGALURU, ACQUITTING THE ACCUSED-RESPONDENT OF THE OFFENCES PUNISHABLE UNDER SECTIONS 376(2)(f) AND 506 OF IPC AND UNDER SECTION 5(I)(n) PUNISHABLE UNDER SECTION 6 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES 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)

Against the order of acquittal passed in Special Case (PCSOA) No.16/2014 on the file of the I Additional Sessions and Special Judge at Chikamagaluru for the offences punishable under Sections 376 (2) (f), 506 of IPC and under Section 5 (I) (n) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the State is before this Court.

2. PW.1-mother of the victim girl (PW.7) lodged a report at Ex.P1. PW7, studying in 7th standard in Basavanahalli Primary School, was staying in the Girls



Hostel, Ramanahalli. Her age was about 14 years and she is the daughter of complainant and the accused. She came home on 24.08.2014. The complainant went to work leaving PW.7 with the accused. On her returning home, PW.7 told her that the accused committed sexual assault on her. On knowing the heinous act committed by the accused, it is stated that the complainant advised him after which, they all had dinner and went to sleep. On the intervening night when she, along with PW.7 and her son, was sleeping, the accused, on the threat of dire consequences, had sexual intercourse with the PW.7. It is further stated that on the next day morning, PW.7 informed her that accused had committed sexual assault earlier as well, that was on 15.08.2014, the day she had come home after Independence day celebration in the school. She revealed that when she was having bath the accused entered the bathroom and forcibly committed sexual assault on her. It is stated that six months prior to lodging of the complaint, the accused had committed sexual assault on PW.7. The complainant and her brothers



advised him and despite being previously advised, the accused committed the same offence again and the complaint is lodged. FIR was registered, accused was charged with the offences punishable under Sections 376 (2) (f), 506 of IPC and under Section 5 (I) (n) read with Section 6 of the POCSO Act.

3. Prosecution examined 16 witnesses as PW.1 to PW.16, 20 documents were marked as Exs.P1 to P20 and marked MO.1 and MO.2. When the accused was examined under Section 313 Cr.P.C. he stated that he was falsely implicated due to matrimonial dispute between him and his wife.

4. We have heard the arguments advanced by Sri Hareesh Ganapathy, learned HCGP, Sri N.S. Sampangi Ramaiah, learned Amicus Curiae for respondent No.1 and Sri D. Nagaraja Reddy, learned counsel for respondent No.2 and perused the material on record.



5. The Trial Court found many reasons to disbelieve the prosecution case. It is held that the evidence of PW.1 and PW.2 not trustworthy and there is possibility of false implication of the accused due to a matrimonial dispute, medical evidence does not indicate any possible sexual intercourse and did not support the evidence of PW.1 and PW.7.

6. Argument advanced by the State is that PW.1 and PW.7 clearly narrated the offence committed by the accused repeatedly. The heinous act was committed by none other than the father of PW.7. There was no possible reason for PW.7 to depose against her father and to implicate him in a false case. The testimony of the victim is vital and the victim's testimony alone is sufficient to convict the accused. As the evidence of the victim of sexual offences is of great weight, corroboration is not a requirement of law. Merely because there was unrest between husband and wife, it cannot be a ground to disbelieve the evidence placed by the prosecution, and



ignoring of this kind of evidence is nothing but an improper appreciation of evidence warranting interference by this Court.

7. Counsel appearing for accused submits that if the evidence of PW.1 as a whole is assessed and the complaint is perused, it becomes very clear that there was a matrimonial dispute between the husband and wife, which is the main cause to falsely implicate the accused. If the evidence of PW.7 is looked into, it clearly establishes that PW.7 has not spoken anything against her father and on the other hand, she has categorically stated about her love and affection towards her parents. It is hard to believe that the accused would have had sexual intercourse with his daughter when all the members of the family were sleeping in the night. Above all, there is no support from medical evidence to believe the testimony of PW.7.

8. The burden of proof is on the prosecution, the standard of proof required is 'proof beyond reasonable



doubt', and this standard is higher than the 'standard of preponderance of probability' prescribed for every case. A person has, no doubt, a profound right not to be convicted of an offence which is not established by evidential standard of proof beyond reasonable doubt. To constitute reasonable doubt, it must be free from an over emotional response. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reasons and common sense.

9. From the testimony of PW.1 and her complaint it can be found that she has narrated four incidents said to have taken place, the first about six months prior to lodging of complaint, second on 15.08.2014 and, third and fourth on 24.08.2014 in the morning and in the night. PW.1 deposes that the accused had forced sexual intercourse with her daughter. She and her brothers advised the accused and the latter promised to mend his ways. For the incident on 24.08.2014 the testimony is that on her returning home, PW.7 informed about the sexual



act by the father on her and again she advised him, but the very night when all were sleeping in the same room, the accused had sexual intercourse with PW.7. Therefore, the evidence of PW.1 is to the effect that PW.7 was subjected to forcible sexual intercourse by the accused several times. During her cross-examination, PW.1 categorically admitted that from the time of the first incident until the lodging of the complaint, the accused and the complainant continued to live together and also admitted that the accused behaved well with his children during this six months period. It is also relevant to state that in the morning on 24.08.2014, a similar incident is stated to have occurred, but the evidence of PW.1 and the complaint is to the effect that after the incident, PW.1 advised the accused and all the family members had dinner together. This conduct is hard to believe. If a serious offence of sexual assault had taken place, the complainant and the accused proceeding to have dinner together afterwards really raises questions about the complainant's version. Further, on the same day, at night



in the presence of PW.1, the accused committed sexual assault. PW.1 deposes that there was sexual intercourse by the accused with PW.7. The complaint nor the evidence of PW.1 is narrative of the incident and PW.1 does not provide details other than saying the sexual assault by the accused. The deposition of PW.1 is unreliable, as PW.15- the doctor, who examined the victim supporting the report at Ex.P.17, categorically stated that there was no external injuries on the external genitalia and there was no evidence suggestive of recent sexual assault.

10. The complainant knew about assault on PW.7 six months before filing the complaint. There is no explanation for the delay in reporting it. This silence raises doubts. Therefore, PW.1's version of events is hard to believe. There is a significant delay of six months existing between the alleged first incident and the date of lodging of complaint. The complainant has not provided a justifiable reason for this delay, creating doubt regarding the authenticity of the allegation.



11. The testimony of PW.7 is also important to be assessed. She states that two to three years back, there was a dispute between her father and mother, and a complaint was lodged. Questioned about her mother taking care of the children, PW.7, categorically deposed about her father taking care of the children and her equal love and affection towards both her father and mother. It is always said that a child will never tell a lie, though may be tutored to say something, but the truth will always come out. When questioned as to what transpired on 24.08.2014, she totally kept silent. Counsel for the defence submits that if the victim truly suffered harm, as an immediate reaction, complaint or resistance would be expected. Though the silence alone is not conclusive, it has to be assessed along with behavioral psychological and evidentiary factors. The evidence of PW.7 if seen, she is able to narrate the dispute between her parents, her categorical admission that she loves both her parents. The silence on part of PW.7 is unexplained by the



prosecution gives rise to reasonable doubt and therefore possibility of falsehood cannot be ruled out. The inconsistency in the evidence of PW.1 and PW.7 clearly casts doubt on the allegations levelled against the accused.

12. The narration of the fact of sexual assault has to be corroborated by the medical evidence. With regard to this, the testimony of PW.15-the doctor who examined PW.7 on 25.08.2015 has to be assessed. After examining PW.7, she gave a report as per Ex.P17. She categorically stated in her chief examination that there were no signs of recent sexual intercourse on PW.7, however, deposed that hymen was absent. In her cross examination, she categorically admitted that absence of hymen could be due to many other reasons, other than sexual intercourse. If Ex.P17 is perused, it is found that it corroborates the evidence of PW.15 on each aspect. Ex.P17-the report states that there were no external injuries like abrasions, scratches or bite marks over the cheeks, lips, neck, over



the breasts and also anywhere on the body. Examination of the genitals indicated no blood / or seminal stains. Labia majora and minora were normal. The FSL report marked at Ex.P18 shows there was no presence of seminal stains on the articles. Though the hymen is stated to be not intact, it cannot be indicated that her virginity has been lost due to the act of any forcible sexual intercourse, it would have been caused due to cycling or participating in sports, etc., The case made out by the prosecution does not corroborate with the medical evidence and clearly goes against the prosecution of any act of incident or any possible sexual intercourse by the accused. The prosecution has failed to prove that the accused has committed any sexual offence as per the charges levelled against him.

13. PW.2, is the brother of PW.7 and son of complainant and accused, categorically deposed that he was not personally aware about the incidents, and he came to know from his mother. PW.3 and PW.4 are spot



mahazar witnesses whose evidence is not helpful to the prosecution. PWs.5 to 9 are hearsay witnesses who categorically deposed that PW.1 informed about the incident and denied any statement given, PWs.2 to 9 turned hostile to the case of the prosecution. PWs.10 and 11, the brothers of complainant deposed to the effect that on being informed by their sister, they came to know that accused committed rape on PW.7, they are hearsay witnesses to the incidents.

14. If the evidence is put to scrutiny, especially that of PW.1 and PW.7, uncorroborated by the evidence of PW.15, the medical report at Ex.P17 and FSL report at Ex.P18, the case projected by the prosecution is difficult to be believed. The Trial Court has drawn right conclusion. The appeal is against the acquittal judgment. The possible view has been taken by the Trial Court. Finding no perversity in appreciation of evidence, we hold that no grounds are made out to overturn the judgment of



acquittal passed by the Trial Court and hence the following:

ORDER

- i. Appeal is ***dismissed***.
- ii. Accused shall be set at liberty forthwith, if his presence is not required in any other case/s.

Registry to communicate this order to the concerned jail authorities forthwith.

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

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

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