



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH 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. 947 OF 2018

Between:

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

...Appellant

(By Sri Vijay Kumar Majage, SPP-II)

And:

1. Venkatesh
S/o Rangappa,
Aged about 23 years,
Auto Driver, R/o Hosahalli Village,
Molakaalmuru Taluk-577535.
2. Adaveera
Son of Kaadla Bommanna,
Aged about 25 years,
R/o Hosahalli Village,
Molakaalmuru Taluk-577535.
3. Gangareddy
Son of Krishnappa,
Aged about 58 years,
Car Driver, R/o Hosadadaguru Village,
Molakaalmuru Taluk - 577535.

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



4. Smt. Lakshmi
W/o Late Shekarappa,
Molakaalmuru Taluk,
Chitradurga District

(R4 impleaded as per
court order dated 26.03.2024)

...Respondents

(By Sri P.B.Umesh, Advocate for Sri R.B.Deshpande,
Advocate for R1; Sri Nagesh M., Advocate for R2;
Smt. Manoranjini, Advocate for R4;
Sri P.B.Boranna, Advocate for R3)

This Criminal Appeal is filed u/s 378(1) and (3) Cr.P.C. praying to grant leave to file an appeal against the judgment and order of acquittal passed by the Special II Additional District and Sessions Judge, Chitradurga in Spl.C.(POCSO) No.29/2015 dated 24.11.2017 thereby acquitting the respondents/accused for the charged offences p/u/s 114, 366, 376 and 506 r/w 34 of IPC and section 4 and 8 of POCSO Act and etc.,

This Criminal Appeal, coming on for 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)

The State has preferred this appeal challenging the judgment dated 24.11.2017 acquitting accused 1 to 3 of the offences punishable under Sections 114, 366, 376,



506 read with Section 34 of IPC, and Sections 4 and 8 of Prevention of Children from Sexual Offences Act.

2. The accused were prosecuted on the allegations that when PW9 went out of the house for answering calls of nature, accused 1 and 2 forcibly kidnapped her. She was taken to a temple on the hills of Rameshwara Betta. Accused No. 1 and PW9 spent a night there. On 03.08.2015 accused No.1 took her to Uchangidurga by threatening to kill her if she cried. Accused 2 and 3 came in a car to join accused No.1 and PW9 during transit. And at about 12 O' clock in the midnight accused No.1 took PW9 to a place near residential quarters on the hill and committed rape on her under a tree. On 04.08.2015 at 8 a.m accused 1 to 3 travelled in a car with PW9 towards Ramapura. On the way accused No.3 dropped accused No.1 and accused No.2 and took PW9. When PW9 wanted water to drink, accused No.3 gave water mixing something in it. PW9 fell unconscious after drinking water. She was admitted to hospital at Bellary.



3. The assessment of evidence by the trial court shows that accused No.1 and PW9 were in love with each other and it is not possible to believe the evidence of PW9 that she was kidnapped for the purpose of subjecting her to forcible sexual intercourse. To arrive at this conclusion the trial court has referred to evidence given by PWs4, 7, 9, 18 and 21. The trial court has also found case and a counter case being filed owing to political issues. So far as the age of PW9 is concerned the trial court has held that Ex.P17 does not establish her correct age. Though her date of birth is mentioned as 02.06.1999 in Ex.P17, the said date may not be correct date of birth because of the attending circumstances, and the evidence of PW21, the sister of PW9 indicate that PW9 was not a child as on the date of alleged kidnap and rape. With these conclusions the trial court recorded acquittal.

4. We have heard the argument of Sri Vijay Kumar Majage, SPP-II, for the State, Sri P.B.Umesh, Sri Nagesh M and Sri P.B.Boranna, learned counsel for respondents 1



to 3 respectively and Smt. Manoranjani, learned counsel for respondent No.4.

5. Sri Vijay Kumar Majage argued that the findings of the trial court are not sustainable in as much as Ex.P17 clearly establishes the age of PW9 as 16 years 2 months on the date of her kidnap. Ex.P17 is school admission register extract, which is an admissible document for the purpose of proving the age. As it becomes clear that PW9 was a child her consensus for sexual intercourse was immaterial. But the evidence of PW9 does not show that she gave consent. She was forcibly taken and subjected to rape. Her evidence is fully believable and therefore acquittal judgment is to be set aside and accused, punished.

6. All the counsel for accused 1 to 3 argued that the incident, as alleged, never occurred, and the evidence clearly discloses that a false case was filed. The testimony of PW9 is not inspiring to be believed. And with regard to her age, they argued that Ex.P17 cannot be considered as



birth proof. It is not a primary document for proving the age. The medical evidence does not support. There is delay in recording the statements of witnesses. For all these reasons the accused were rightly acquitted and there are no reasons to interfere with impugned judgment.

7. Smt. Manoranjani, learned counsel for respondent No.4, supported the argument of Sri Vijay Kumar Majage.

8. On re-assessment of evidence the obtaining picture is this. PW9 is the star witness being prosecutrix. In the examination-in-chief she has stated when she was abducted and what happened to her later on. Though her statement in the examination-in-chief is that accused No.1 subjected her to forcible intercourse, the way she has answered in the cross-examination makes it very clear that her statements are difficult to be relied upon. Moreover she has clearly admitted in the cross-examination that forcible sexual intercourse on her in the night of 02.08.2015 was not disclosed by her either before the Magistrate or the Women Police Sub-Inspector. PW24



is the investigating officer and in his cross-examination he has clearly admitted that PW9 did not give statement before him that she was subjected to forcible intercourse near Huchcha Mallappa temple and likewise the other witnesses PW7, PW18 and PW20 having not given certain statements in regard to kidnap of PW9 and that she was made to consume a drink which made her fall unconscious. Therefore these omissions in the evidence weaken the testimony of PW9. Above all the testimony of PW9 does not find support from PW25, the doctor who examined her. Her clear evidence is that she did not find any injury around the genital of PW9 and she did not find evidence of sexual assault on PW9. Ex.P25 is the opinion given by PW25 in which it is clearly written that there is no evidence of sexual assault or rape. That means the testimony of PW9 does not find support from medical evidence. It is true that though medical evidence is not supportive, the sole testimony of the prosecutrix can be considered if the prosecutrix is found to be a trustworthy



witness. But in this case the testimony of PW9 is difficult to be acted upon.

9. If for any reason PW9 and accused No.1 had consensual sexual intercourse, the consent of a minor girl becomes immaterial. Therefore the age factor is very important in POCSO cases. PW9 has stated her date of birth as 02.06.1999. Ex.P17 is the school admission register extract in which her date of birth is written as 02.06.1999. If this date of birth is correct, as on 02.08.2015 she was below 18 years of age. But PW23, the Tahsildar who recorded the statement of PW9 when she was in hospital at Bellary has clearly admitted in the cross-examination that age of PW9 was indicated as 18 years. PW9 has stated in the cross-examination that her parents were illiterates and therefore she cannot say as to on the basis of which document, her date of birth was given when she was admitted to the school. Very interestingly she refuses that when the Tahsildar examined her she herself gave her age as 18 years. PW21 is the



sister of PW9. She too was questioned with regard to age of PW9. Her answer is that PW9 is younger to her by four years. She does not know her date of birth and she is unable to give the date of birth of PW9 also. In this view, as has been rightly observed by the trial court there is no acceptable evidence with regard to correct age of PW9.

10. This being the nature of evidence of PW9 about the incident and age, it is not necessary to refer to evidence of other witnesses. As the testimony of PW9 does not inspire confidence and apparently appears to be not worth reliable, the trial court is justified in recording acquittal. There are no grounds to interfere with the impugned judgment. Hence, appeal is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE