



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO.1938 OF 2018

BETWEEN:

THE STATE OF KARNATAKA
THROUGH POLICE INSPECTOR,
MANGALURU RURAL POLICE STATION,
REPT. BY STATE PUBLIC
PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

... APPELLANT

(BY SRI RANGASWAMY R., HCGP)

AND:

1. VIKESH
S/O. ANANDA,
AGED ABOUT 28 YEARS,
R/AT LEELANANDA HOUSE,
S.D'SOUZA COMPOUND,
KULASHEKARA,
MANGALURU-575 001.
2. PRAVEEN
S/O. RAGHAVENDRA,
AGED ABOUT 33 YEARS,
R/AT BEDRAGUDDE AMTADY VILLAGE,
MADAMKAPU POST,
BANTWALA-574 201.

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



3. SMT. SHALINI
W/O. RAJESH RAO,
AGED ABOUT 50 YEARS,
R/O. S.D'SOUZA COMPOUND,
KULASHEKARA, PADAVU,
MANGALURU CITY-575 001.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 27/03/2024)

... RESPONDENTS

(BY SRI P.P. HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDY, ADVOCATE FOR R-1 & R-2;
SMT. SHILPA RANI, ADVOCATE FOR R-3 (HCLSC))

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1)
AND (3) CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST
THE JUDGMENT AND ORDER OF ACQUITTAL DATED 02.05.2018
IN SPL.C.NO.1/2014 PASSED BY THE II ADDITIONAL DISTRICT
AND SESSIONS (SPECIAL) JUDGE, D.K., MANGALORE
ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCE
P/U/S 376, 506 R/W 34 OF IPC AND SECTION 4 AND SECTION 6
OF THE POCSO ACT.

Date on which the appeal was reserved for Order	25.03.2025
Date on which the Order was pronounced	29.04.2025

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND
RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY,
ORDER WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA



CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

The State has preferred the present appeal against the judgment of acquittal dated 02.05.2018 passed by the II Additional District and Sessions (Special) Judge, D.K. Mangaluru ('trial Court' for short) in Special Case No.1/2014 acquitting the accused for the offences punishable under Sections 376 and 506 read with Section 34 of Indian Penal Code (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short).

2. Based on the complaint lodged by the victim girl (PW.1), aged about 13 years studying in 8th standard, case was registered in crime No.340/2013 for the aforesaid offences. The case of the prosecution is that after completion of examination in the month of April 2012, upon the request made by the mother of accused No.1, PW.1 went to stay in the house of accused No.1. She stayed for about two months in their house. The complaint states that on several occasions during the stay at the house of accused No.1,



accused Nos.1 and 2 committed forcible sexual intercourse upon her.

3. The prosecution examined PWs.1 to 11, marked documents at Exs.P1 to P10. Accused No.1 examined himself as DW.1 and marked document at Ex.D1.

4. The trial Court observed that PW.1 gave a completely different narration contradictory to Ex.P1-complaint and Ex.P4 i.e., statement under Section 164 Cr.P.C. The testimony of PW.1 and the prosecution witnesses is not convincing, nor does it inspire the confidence of the Court. After the appraisal of the evidence, the Trial Judge found the case of the prosecution to be doubtful, which ultimately resulted in acquittal of the accused. It was also observed that the medical evidence goes against the prosecution case and could not establish the charged offences against the accused.

5. Learned High Court Government Pleader appearing for the State argues that the sole testimony of PW.1, if it had been considered and appreciated by the Trial



Court was sufficient to bring home the guilt of the accused. PWs.1, 2 and 8 testimony corroborates to Ex.P7-the medical report clearly establishes the case of the prosecution beyond reasonable doubt.

6. Learned counsel for respondent No.3-complainant adopts the arguments advanced by learned High Court Government Pleader.

7. *Per contra*, learned counsel appearing for the respondent Nos.1 and 2-accused submits that with the order of acquittal by the Trial Court the presumption of innocence in favour of the accused is being reinforced. If two views are possible, the view which favours the accused should be adopted. The Trial Court has taken the possible view in favour of the accused. If the narration of facts is considered in totality as spoken to by the witnesses, the case of the prosecution is doubtful.

8. We have considered the contentions urged by the learned counsel for the parties and perused the material on record.



9. PW.1's complaint was lodged on 01.10.2013. PW.1 went to stay at the house of accused No.1 after being invited by accused No.1's mother, who mentioned she was alone and needed company. When PW.1 arrived at the house, both accused Nos.1 and 2 were present. Complaint describes three incidents. The first incident occurred in April / May 2012 when accused No.1's mother had gone to wash clothes. PW.1, accused Nos.1 and 2 were together in the house, accused No.1 allegedly dragged PW.1 into a room, despite her resistance. The complaint states that accused No.1 committed an act of sexual assault, during which he reportedly pressed his hand over her mouth to prevent her from screaming. Afterwards, accused No.1 is said to have placed a small cloth in her mouth, tied her hands behind her with a dupatta, and left the room. Ten minutes later, accused No.2 had entered the room and committed sexual assault. The second incident took place a few days after the first one, when PW.1 went near a mango tree close to accused No.1's house. Accused No.1 allegedly dragged her and committed sexual assault again. She continued staying



in the accused's house until May 31st, before returning home to join school. The third incident occurred on 10.08.2013, when PW.1 went to a toilet next to accused No.1's newly constructed house around 5.30 p.m. Accused No.1 reportedly dragged her to the basement of the new house and committed sexual assault on her again. Afterwards, he took her on his Activa bike to a medical shop, handed her a prescription, and sent her to get a tablet. Additionally, PW.1 mentions that accused No.1 committed sexual assault on her multiple times when she visited his house.

10. While PW.1's testimony is that during the sexual assault by accused No.1 her hands were tied behind her and her mouth was covered with a piece of cloth. This statement is inconsistent and contradictory, raising questions about the credibility of her statement. She further deposed that there were no injuries after her hands were tied with the dupatta. According to her complaint and evidence, accused No.1 allegedly tied her hands behind her with a dupatta and committed sexual assault, but the absence of any physical injuries contradicts the severity of the alleged assault



described. In cases like this, injuries are often expected, especially if force was involved in restraining someone (such as tying hands). If PW.1 did not sustain any injuries, it challenges the plausibility of the events as she described them. It could suggest that either the sexual assault didn't happen in the manner she claims or that her account of the assault might be exaggerated or inaccurate. This inconsistency in her statement weakens the reliability of her entire account, as it does not align with what might reasonably be expected from such an incident.

11. PW.8, the doctor who examined PW.1, is crucial in determining whether there is medical evidence to support the allegation of sexual assault. The fact that the doctor found no external injuries as shown in Ex.P7 suggests that there was no visible physical harm resulting from the alleged sexual assault. However, the doctor's opinion was that the possibility of sexual intercourse cannot be ruled out does add a layer of complexity. While the absence of external injuries weakens the physical evidence of assault, however, the doctor's opinion that the possibility of sexual intercourse



cannot be ruled out is not enough by itself to directly attribute responsibility to the accused. This is because medical evidence cannot definitely establish that the accused committed the sexual assault. It only suggests that an assault may have occurred, but it does not prove who was responsible for it.

12. The evidence of DW.1 mentions a civil dispute between the parents of accused No.1 and PW.1's grandmother, related to a caveat filed by the father of accused No.1 against PW.1's grandmother. The prosecution witness does not dispute this civil dispute, which centers around the house where PW.1 lived and the construction of a house by the parents of accused No.1 next to PW.1's house. PW.1 claims she stayed at accused No.1's house for two months, during which she alleges she was subjected to sexual assault. Despite this, she continued to stay there, which seems highly improbable. Given this, along with the known civil dispute regarding the construction, it's possible that personal conflicts or other factors influence PW.1's testimony. Therefore, when looking at all the circumstances



together—the civil dispute, the inconsistencies in PW.1's testimony, and the lack of solid incriminating evidence—the prosecution fails to present a strong enough case to prove charges against the accused beyond reasonable doubt.

13. The law is well settled that the reversal of acquittal is permissible only if the view of the trial court is not only erroneous but also unreasonable and perverse. The Apex Court in the case of **Roopwanti vs. State of Haryana and others**¹ (Roopwanti) held at para Nos.7 and 8 as under:

"7. In cases where a reversal of acquittal is sought, the courts must keep in mind that the presumption of innocence in favour of the accused, on grounds of it surviving the rigours of a full trial, is strengthened and stands fortified. The prosecution then, while still working under the same burden of proof, is required to discharge a more onerous responsibility to annul and reverse the fortified presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgments by this Court.

¹ 2023 SCC OnLine SC 179



8. *In the case of Allarakha K. Mansuri v. State of Gujarat, this Court has held that in cases of reversal of acquittal, where two views are possible, the view which favours the accused has to be adopted. For the sake of convenience, the relevant paragraph of the judgment is being produced hereunder:*

"The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."



14. Looking from any angle, there are no compelling and substantial reasons for this Court to interfere with the order of acquittal. From the perusal of the judgment of the trial court, we are convinced that there is no perversity committed by the trial court while reaching the possible view and on considering the entire evidence, we find no reason to interfere with the decision of the trial court. Therefore appeal is ***dismissed.***

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

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

MBM
List No.: 1 Sl No.: 3