



CNR: KAHC010055512019

NC: 2026:KHC:42165-DB
CRL.A No. 196 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.196 OF 2019

BETWEEN:

1. THE STATE OF KARNATAKA
BY KOLLEGAL TOWN POLICE STATION
CHAMARAJNAGAR DISTRICT
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001.

...APPELLANT

(BY SRI. M.DIVAKAR MADDUR, HCGP)

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. SRI. ZAMIRKHAN
S/O LATE AMIR
AGED ABOUT 39 YEARS,
R/AT NO.3RD WARD
NEAR MEKKA MASK
GALIPURA
CHAMARAJNAGAR TOWN-571313.

...RESPONDENT

(BY SRI. N.D. MANJUNATH, ADVOCATE)



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THIS CRL.A. IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 07.09.2018 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHAMARAJANAGARA IN S.C.NO.23/2015 ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 417 AND 376(2)(n) OF IPC.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard learned High Court Government Pleader appearing for the appellant-State and learned counsel for the respondent is absent.

2. The factual matrix of case of the prosecution before the Trial Court is that accused with an intention to deceive P.W.1 and to get sexual favour, he had promised that he would marry her and in a deceitful manner had obtained consent on the promise that he would marry her and subjected her for sexual act and failed to marry her. When he refused to marry her, she took the extreme step of committing suicide and set fire on herself. As a result, she has sustained injuries. Hence,



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the Police have registered the case against the accused for the offence punishable Sections 417 and 376(2)(n) of IPC in Crime No.10/2015. Having registered the case, the Police investigated the matter and filed the charge sheet. The accused was secured before the Trial Court and he did not plead guilty and claims for trial.

3 Hence, the prosecution, in order to substantiate the charges alleged in the charge sheet, examined P.W.1 to P.W.18 and got marked the documents Exs.P1 to P27. During the course of cross-examination of P.W.1, P.W.2 and P.W.3, documents are confronted and marked as Exs.D1 to D3. M.Os.1 to 13 were also marked at the time of trial.

4. The Trial Court having assessed both oral and documentary evidence i.e., evidence of P.W.1 to P.W.18 and also documentary evidence, comes to the conclusion that the evidence of P.W.1 not inspires the confidence of the Court to invoke the offence under Sections 417 and 376(2)(n) of IPC and acquitted the accused. Being aggrieved by the judgment of acquittal, the present appeal is filed before this Court.



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5. The main contention of learned High Court Government Pleader appearing for the appellant-State in the appeal as well as during the course of argument is that the Trial Court has committed an error in appreciating both oral and documentary evidence. The conclusion that there is no material evidence to connect the accused with crime is erroneous and the Trial Court has not at all appreciated the evidence on record and no sound reasons are assigned while acquitting the accused. He would vehemently contend that the Trial Court, except discussing the evidence led before it, has not at all appreciated the evidence from all perspectives and absolutely, there is no deliberation and discussion on the evidence. It is also contended that the Trial Court while acquitting the accused has mainly held that the victim lady is major and she had all the knowledge and consequences of the act being committed and inspite of the same, she has willingly participated and as such, there was no force or fraud played by the accused-respondent. The evidence tendered by the prosecution is full of material omission and contradictions, as the prosecution has failed to prove even the ingredients of offence under Section



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417 of IPC and so also comes to the erroneous conclusion that ingredients of Section 375 of IPC also cannot be invoked. The very approach of the Trial Court is erroneous and the material is very clear that with an intention to deceive P.W.1, made her to believe that he is going to marry her and with the misconception of fact itself, she gave consent and the same has not been considered by the Trial Court and committed an error. The P.W.1 has clearly supported the case of the prosecution and also the evidence given by P.W.2, P.W.3 and P.W.4, who have deposed that there was intimacy between the accused and P.W.1 and material also clearly disclose that she was subjected to sexual act. The Trial Court failed to consider the same in a proper perspective, even though she was subjected to sexual act and the victim stands on the same pedestal of an injured witness and over her solitary evidence is sufficient to convict the accused. Hence, it requires interference of this Court.

6. This Court had served notice on the accused and accused is represented through counsel. But, counsel is absent.



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7. Having considered the grounds urged in the appeal memo as well as the arguments of learned High Court Government Pleader appearing for the appellant-State, the point that would arise for consideration of this Court are:

- (i) Whether the Trial Court has committed an error in acquitting the accused for the offence punishable under Sections 417 and 376(2)(n) of IPC and whether it requires interference of this Court?
- (ii) What order?

Point No.(i)

8. Having heard learned High Court Government Pleader appearing for the petitioner-State and also on perusal of the material on record, we have perused both oral and documentary evidence of P.W.1 to P.W.18 and also the documentary evidence and with regard to invoking Sections 417 and 376(2)(n) of IPC, the Court has to satisfy itself that whether such ingredients are proved or not.

9. No doubt, P.W.1 in her evidence has deposed before the Court that the accused with a false promise that he



would marry her and also causing threat, subjected her for sexual act continuously and subsequently, he turned hostile and he did not come forward to marry her.

10. Now this Court has to examine whether the ingredients of Sections 417 and 376(2)(n) of IPC attracts in the case on hand. The Trial Court while coming to the conclusion, particularly in paragraph No.27 taken note of evidence of P.W.1 whether it was forcible sexual intercourse with false promise and taken note of admission on the part of P.W.1 that both of them were having acquaintance with each other. It is also her evidence that, not only one time she has deposed before the Court, but she has repeatedly deposed before the Court that both of them were loving each other for a period of 3 years. Even, she has admitted that when her marriage was performed with one Tippu, even at that time also, she was in affair with this accused and she did not refuse to marry one Tippu and she gave consent to marry him at the instance of her parents.

11. It is also important to note that mother, who has been examined as P.W.2 also categorically deposed that accused was visiting her house and she came to know about



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the same through neighbours and she has given instructions to P.W.1. It is also important to note that P.W.1 herself says that she was having affair with the accused for more than 3 years and she was subjected to sexual act. Apart from that, she categorically deposes that the accused had already married and having children. Though, she made statement before the Police in terms of Ex.D1 which was confronted to her during the course of cross-examination, since she has denied the said statement and the same is very clear that she was having acquaintance with the accused and was having knowledge that he was already married, having children and knowing the consequences, she had indulged in sexual act, her evidence will not come to the aid for invoking the ingredients of offence under Section 417 of IPC so also in respect of the ingredients of Section 375 of IPC and the same is taken note while appreciating both oral and documentary evidence available on record by the Trial Court. Even in paragraph No.29 also comes to the conclusion that considering her admission that her marriage was held with one Tippu and within next two days, she came back and gave Talaq and thereafter also, the said act



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continued and once she has already married one Tippu and also got divorce and once again, she has continued her sexual act with the accused, question of invoking the offence under Section 417 of IPC and so also the offence under Section 375 of IPC does not arise. But nowhere, she has stated that she had given consent by misconception of the fact and the Trial Court also taken note that it will not come within the purview of definition of Section 375 of IPC and so also to invoke Section 417 of IPC and relied upon the order passed in Crl.P.No.1019/2015, wherein considered the judgment of the Apex Court in **UDAY vs. STATE OF KARNATAKA** reported in 2003 (4) SCC 46. While granting bail, the Apex Court discussed in detail with regard to invoking of the offence under Section 417 and considering the material available on record, the Trial Court has not committed any error in coming to the conclusion that it will not attract ingredients of the offence under Sections 417 as well as 375 of IPC, question of invoking the offence under Sections 417 and 376(2)(n) does not arise in keeping the admission and we do not find any error on the part of the Trial Court in appreciating the material on record and the Trial Court



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has appreciated both oral and documentary evidence available on record in a proper perspective. Hence, we answer point No.(i) as 'negative'

Point No.(ii):

12. In view of the discussion made above, we pass the following:

ORDER

The criminal appeal is ***dismissed.***

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

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List No.: 1 Sl No.: 14