



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1407 OF 2018 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY PANDAVAPURA POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

AND:

1. MADHU @ KENGA
S/O PUTTALINGEGOWDA
AGED ABOUT 24 YEARS
R/O NUGGAHALLI
KASABA HOBLI
MANDYA DISTRICT.
2. SRI PRAKASH
S/O SWAMYGOWDA
AGED ABOUT 47 YEARS
R/O NUGGAHALLI VILLAGE
PANDAVAPURA TALUK
MANDYA
(SINCE DEAD)



2(A) SMT. SAVITRI PRAKASH
W/O LATE PRAKASH
AGED ABOUT 40 YEARS
R/AT NUGGAHALLI VILLAGE
PANDAVAPURA TALUK
MANDYA.

...RESPONDENTS

(BY SRI. AMSHITH HEGDE H S., ADVOCATE FOR R1(V/C);
SRI. MALLIKARJUNA T, ADVOCATE FOR R2(A);
V/C/O DATED 19.07.2024 R2 IS DECEASED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF THE CODE OF CRIMINAL PROCEDURE PRAYING THAT TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT AND ORDER DATED 17.02.2018 PASSED BY THE I ADDITIONAL DISTRICT AND SPECIAL JUDGE, MANDYA IN SPL.C.NO.47/2014 ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 302, 201 AND 376 OF IPC AND SECTION 4 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

This appeal is preferred by the State, assailing the judgment of acquittal dated 17.02.2018 passed by the Court of I Additional District and Special Judge, Mandya in Spl.C No.47 of 2014. Vide impugned judgment, the trial Court has acquitted the accused of the offences punishable under Section 376 of IPC read with Section 4 of POCSO Act and Section 302 and 201 of IPC.

2. In brief, case of the prosecution is that on 07.03.2014 between 4.30 and 05.00 p.m., the accused by luring the minor victim, aged about seven years with biscuits and Rs.5/- currency, took her to the sugarcane field bearing Survey No.27/1A of Nuggahalli in Pandavapura Taluk and committed rape on her. Further, he strangled her by using her underwear and committed her murder and thereafter to cause disappearance of the evidence, buried the body in the said sugarcane field.



3. Heard both side and perused the evidence and material on record.

4. Entire case of the prosecution is based on circumstantial evidence. The prosecution got examined 20 witnesses and got marked 39 documents and MOs.1 to 25, to establish its case. On behalf of the defence, Ex.D1, Ex.D1(a) and Ex.D2 were marked. The defence of the accused was one of total denial, however, he has not led any defence evidence on his behalf.

5. The learned Sessions Judge on appreciation of the oral and documentary evidence on record came to the conclusion that the prosecution has failed to prove the guilt of the accused by placing clear, cogent and consistent circumstantial evidence and corroborative medical evidence.

6. It is contended by learned Addl. SPP that PW.2 to PW.4 are the witnesses, who have seen the deceased and the accused together prior to the incident, on the previous



day. The dead body was found on the following day and as per post-mortem report, the death is homicidal and rape is also committed on the victim. Further, to cause disappearance of evidence, accused has buried the dead body. The said evidence coupled with medical evidence of PW.20, the prosecution has established the guilt of the accused beyond reasonable doubt. She has therefore contended that the reasons assigned by the trial Court for acquitting the accused are not in accordance with law and accordingly, sought to allow the appeal and convict the accused for the charged offences.

7. *Per-contra*, learned counsel for respondent No.1/accused contended that the evidence of PW.2 to PW.4 is not sufficient to hold that it was the accused and accused alone, who has committed the murder. Their evidence is full of contradictions and improvements. Further, it is admitted that their statements are not recorded by the police. He further contended that evidence of PW.20 is not conclusive in nature to hold that the



sperms found on the underwear was that of the accused and therefore, considering all these aspects, the learned trial Judge has rightly acquitted the accused. He has therefore sought for dismissal of the appeal.

8. Before proceeding further in analysing the evidence led in the matter, it is to be borne in mind that, it is an appeal against the judgment of acquittal. Therefore, the accused has primarily the double benefit. Firstly, the presumption under law is that unless the guilt is proved, the accused has to be treated as innocent in the alleged crime. Secondly, the accused has already been enjoying the benefit of judgment of acquittal passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analysed.

(a) The Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -v- State of Karnataka*** reported in ***(2007) 4 SCC 415***, while laying down the general principles regarding powers of the Appellate Court



while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph Nos.42(4) and 42(5) as below:

"42(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

42(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

(b) In the case of **Sudershan Kumar -v- State of Himachal Pradesh** reported in **(2014) 15 SCC 666**, while referring to Chandrappa's case (supra), the Hon'ble Apex Court at paragraph No.31 of its judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The



Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

(c) In the case of ***Jafarudheen and others -v- State of Kerala*** reported in **(2022) 8 SCC 440**, at paragraph No.25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

"25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

9. The above principle laid down by it in its previous case was reaffirmed by the Hon'ble Apex Court in the case of ***Ravi Sharma -v- State (Government of NCT of Delhi) and another*** reported in **(2022) 8 SCC 536** and



also in the case of ***Roopwanti -v- State of Haryana and others*** reported in ***2023 SCC OnLine SC 179***.

10. Keeping in mind the above principles laid down by the Hon'ble Apex Court, we proceed to analyse the evidence placed by the prosecution in the case:

11. Entire case is based on circumstantial evidence. To establish that the victim died a homicidal death, the prosecution has got examined Doctor PW.8, who conducted the post-mortem examination. PM report is marked as Ex.P21. Prosecution is also relying on the same report to prove that there was rape committed on the minor victim.

12. As per PW.8, she conducted post-mortem examination on 08.03.2014 at about 02.30 p.m. She has opined that cause of death is due to mechanical asphyxia due to strangulation causing fracture of hyoid bone and thyroid bone with signs of recent vaginal penetration/recent sexual intercourse.



13. The following injuries were noticed on the dead body:-

1. Blood clots over the eyeballs, ears, nose, mouth with blood stained frothy secretion with slight protrusion of tongue within the mouth,
2. Multiple bruises, lacerations, and with blood clots over the eyelids, ears, nose, mouth,
3. Both the upper limbs tied with leaves twigs over the back tightly,
4. Both the lower limbs tied with leaves twigs over the ankle region tightly,
5. Neck tied tightly with a underwear cloth with 3 knots over the anterior aspect of neck region, c/s shows severe engorgement and haemorrhage into the tissue in and above the area compressed,
6. Bilateral superior horns of hyoid bone fracture is seen,
7. Right superior horn of thyroid bone is fractured,
8. Genital examination showing hymenal rupture with lacerations (multiple) indicating first sexual intercourse. Margins of hymen are sharp and red.
9. Congested labia majora and minora, clitoris, fossa nancularis, antierior commissure, fourchettes, vestibules. Margins of vaginal orifices congested and ocedematous.



10. As per examination of the body, back of the body has no external injuries but found with gravel and mud over the back and thigh region, buttocks. Scratches over the mouth, lips. Suggests mark of violence.

14. PW.8 in her deposition has stated that on 18.02.2015, the Investigation Officer sent a DNA report and requested her to give a clear opinion. Based on the post-mortem report and DNA report, she gave final opinion as 'the accused male individual has been proved to have attempted the sexual intercourse on the deceased female victim.' She stated that as per DNA report, in the inner garment of the victim, the seminal stains of the accused were found and in the inner garment of the accused, the victim's cervical smear and epithelial cells were found.

15. In the cross examination, PW.8 has stated that on the basis of the DNA report, she has given such evidence as above, but, she has not collected the semen of the accused and not examined the same. She further



admitted that at the time of conducting post-mortem report, she had removed the clothes of the deceased, but no blood stains were noticed in the said clothes.

16. From the post-mortem report and evidence of PW.8, we notice that there are multiple bruises/lacerations etc., on the dead body and homicidal rupture with lacerations. The Doctor has opined that those injuries indicate first sexual intercourse. In the cross examination, PW.8 has stated that if rape is committed on a minor girl, aged seven years, there will be injuries on the private part and in case of penetration, entire hymen will be ruptured.

17. From the post-mortem report Ex.P21, the prosecution though established that the victim died a homicidal death, however, insofar as, charges of rape is concerned, it is relevant to see that on receiving the FSL report, PW8 has given her opinion, but she has not collected MOs.14 to 19 from the dead body of deceased for examination. She has admitted in the cross-examination



that she has not used preservative in order to preserve the said materials and if preservative is not used, materials will be spoilt after expiry of 24 hours. She has further admitted that, in the instant case, she has not extracted sufficient materials from the dead body of the victim for DNA profile. Considering these aspects, the trial Court has come to the conclusion that the DNA report cannot be considered in favour of the prosecution.

18. The prosecution is relying on the DNA report at Ex-P23 issued by the Scientific Officer-PW20. He has deposed about receiving 17 articles and on examining the same, he has issued Ex.P23. As per the said report, one male individual was found to be included from being the contributor of the seminal stain detected on M.O.21-underwear. Further, the female individual from whom the cervical smear was taken i.e. M.O.19 was found to be included from being the contributor of the epithelial cells detected on MO 8/underwear.



19. PW.20 has deposed that in none of the articles, blood stains were found. In Article 9(3), seminal stains were found and apart from the said Article, in none of the articles, seminal stains were found. He has stated that the seminal stain belong to human being. However, there is nothing to show that the said seminal stain belonged to the accused or accused is the contributor of the seminal stain detected on M.O.21. Hence, the trial Court has rightly come to the conclusion, it is not possible to connect the accused to the alleged rape and the medical evidence is insufficient to conclude that the accused is the person, who has committed rape on the victim.

20. According to prosecution, the victim was aged about seven years at the time of incident. Ex.P20 is the school certificate, as per which, date of birth of the victim is 23.04.2007. The incident took place on 07.03.2014. Therefore, the victim was aged about seven years as on the date of incident. Even otherwise, the defence has not seriously disputed the age of the victim.



21. It is the case of prosecution that, on the fateful day, i.e., on 07.03.2015, at about 05.00 p.m., the accused by luring the minor victim with chocolate and ₹5/- currency, took her to the sugarcane field, wherein, he committed rape and murder. The law was set into motion by victim's father examined as PW.1. Complaint is marked as Ex-P1. In his complaint, PW.1 has stated that on 07.03.2014, in the morning, both his children went to school and returned at about 4.30 p.m. His second daughter i.e., the victim went along with her mother to attend nature's call. She did not return even at 7.30 p.m. and therefore, he along with his wife, sister and others went in search of her. On the next day i.e., on 08.03.2014, in the morning, at about 6.00 a.m. again, they continued their search and at about 7.00 a.m., the villagers Dileep and Basava found a pair of chappal in the sugarcane field and informed them. Thereafter, all of them, went to the spot and saw a portion of his daughter's leg and a sum of ₹5/- lying near the spot.



22. PW.16, Head Constable of Pandavapura Police Station, who received the complaint-Ex.P1 registered the case against unknown persons and issued the FIR-Ex.P30.

23. Investigation was taken over by PW.17-PSI, who conducted spot mahazar-Ex.P2 and seized MOs.1 to 6. PW.19-Police Inspector, Pandavapura Police Station, took over the investigation. He conducted inquest mahazar and at that time, recorded the statements of victim's mother and one Arun Kumar/PW.7. The articles collected during post-mortem report were sent for FSL examination. On 09.03.2014, he arrested the accused, who showed the place of incident under mahazar Ex.P14. Accused was subjected to medical examination. On completion of investigation, he filed charge sheet.

24. To prove the charges levelled against the accused, prosecution has mainly relied on the evidence of PW.2 to PW.4 and the medical evidence. It is the contention of the learned Addl. SPP that PW.2 to PW.4



have seen the deceased in the company of the accused on the previous day and on the following day, the dead body was found, which establishes that it is the accused, who committed the murder.

25. We have carefully examined the evidence of PW.2 to PW.4. PW.2 in his chief examination, has stated that at about 5.30 p.m., he saw the deceased along with the accused and both of them were standing near V.C. canal. He has stated, at that time, he along with PW.3 Rajini (PW.3) were proceeding to their house from their land. He has further stated that, at about 07.00 p.m., the victim's mother and father were searching for their daughter. On the next day, while searching, they noticed the dead body. At the spot, a pair of chappal and ₹5/- note were also lying.

26. In the cross-examination, PW.2 has stated that, on the next day, at about 09.00 a.m., the police had enquired him with regard to the incident, however, he has



not stated that he saw the deceased and accused together on the previous day. He has stated that, at no point of time, he informed the police about the same. The defence got marked Ex.D1, portion of the statement given to the police, wherein, he has stated about searching for the victim and informing victim's father about noticing victim along with the accused. PW.2 has denied having stated so before the police.

27. PW.3 in his chief examination has stated that while he along with PW.2 Ningegowda were proceeding near the land, at about 5.00 p.m., accused and the victim were standing near V.C. canal. On the same day, at about 7.00 p.m., the victim's family were searching for her. In the cross-examination, he has stated that along with the victim's parents, he has not gone to search the victim and on the date of missing of the victim, he was not present in the village. Only on the next day, after coming to know about missing of the victim, he went along with PW.1 in search of the victim.



28. It is relevant to mention that according to PW.3, he informed PW.1 that he saw accused and deceased together near the canal and he gave said information to PW.1 prior to lodging of the complaint and discovering the dead body. However, the said fact has not been stated in Ex.P1 lodged by PW.1. On the other hand, Ex.P1 is lodged against unknown persons. It is also relevant to mention that PW.3 in his cross-examination has categorically admitted that he has not given any statement to the police. A perusal of the cross-examination of PWs.2 and 3 clearly goes to show that they have not stated before the police about seeing the deceased in the company of the accused on the date of incident.

29. PW.4 is the person, who alongwith one Basava saw a pair of chappals, ₹5/- note in the sugarcane field and also leg of the victim protruding from the bund. Matter was then informed to others. He has stated that the victim's father identified the chappals of his daughter and



thereafter, the complaint was lodged. PW.4 has not seen accused and deceased together on the previous day of discovery of the dead body. Ex.D2 is marked from his statement and he denied having stated before the Police that accused was in the habit of watching the blue film and he committed the rape and murder of the victim.

30. Insofar as last seen theory is concerned, it will be relevant to refer to the following observations made by the Hon'ble Apex Court in the case of **STATE OF U.P. v. SATISH** reported in **(2005) 3 SCC 114**, wherein it has been held that *the last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible and if the time gap of last seen and deceased found dead is long, then, possibility of other persons coming in between exists*. It is thus clearly seen that firstly, there is a gap of at least 14 hours from the



time on which, according to PW.2, Ningegowda and PW.3 Rajini, the deceased was seen with the accused and that the dead body was recovered on the following day i.e., approximately 14 hours. However, the crucial question would be as to whether it can be held that the prosecution has established beyond reasonable doubt that the recovery of the dead body was at the instance of accused. Only in the event, the prosecution establishes that the recovery of the body was at the instance of the accused, it could have been different aspect, but the dead body was discovered by one Basava and PW.4 Dileep. Thus, the relevancy of gap of 14 hours would come. It is thus clear that only circumstance that now remains is the circumstance of the accused last seen in the company of the deceased on the basis of evidence of PW.2 and PW.3. However, the evidence of PW.2 and PW.3, for the reasons we have discussed supra, does not inspire the confidence of the Court to accept that deceased was seen in the company of the accused on the previous evening.



31. This is an appeal preferred against the judgment of acquittal. Having re-appreciated the entire evidence and material on record, we find that the reasons assigned by the trial Court for acquitting the accused are not perverse or illegal. The presumption of innocence against the accused gets reinforced by a judgment of acquittal. We do not find any compelling reasons to upset the said finding. Furthermore, in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established and the facts, so established, should be consistent only with the hypothesis of the guilt of the accused, that is to say, they will not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be conclusive in nature and they should exclude every possible hypothesis, except the one to be proved, and the chain of evidence should be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused.



32. In the instant case, it cannot be held that the prosecution has proved the guilt of the accused beyond all reasonable doubt. It is not established that the circumstances relied by the prosecution is definite and conclusive in nature and in all human probability, the offence was committed by the accused.

For the foregoing reasons, we pass the following:

ORDER

Appeal is ***dismissed***.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**