



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.2439 OF 2025 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY BANTWAL TOWN POLICE STATION
D.K. MANGALURU DISTRICT
REPRESENTED BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001.

...APPELLANT

(BY SMT. RASHMI PATEL, H.C.G.P.)

AND:

1. MOHAMMED TANSIF
AGE: 23 YEARS
S/O. BADRUDDIN
RESIDENT OF 12-37(2)
NIRALKE HOUSE
KODANGALLU POST, KALLABETTU VILLAGE
MOODABIDRE TALUK
D.K. DISTRICT.
2. RAJIYA
AGE: 37 YEARS OLD
W/O. ASLAM PASHA
RESIDENT OF GANJI MATHA
MOGARU VILLAGE.
ALSO RESIDING AT 9-69/2
KUKKATTE SITE HOUSE, MANGALORE TALUK
DAKSHINA KANNADA-574 230.

...RESPONDENTS

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378 (1) AND (3) OF THE CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 23-11-2024 PASSED IN SPECIAL CASE NO.58 OF 2024 ON THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (POCSO), AT D.K., MANGALURU, THEREBY ACQUITTING RESPONDENT NO.1/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 354A, 376(2)(h) AND 376(2)(n) OF IPC AND UNDER SECTION 6 OF POCSO ACT.

THIS CRIMINAL APPEAL IS COMING ON FOR ORDERS, 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 VENKATESH NAIK T)

This appeal preferred by the State is directed against the judgment of acquittal dated 23.11.2024 passed by the Court of Additional District and Sessions Judge (POCSO), D. K., Mangaluru, in Special Case No.58 of 2024.

2. The charges were framed against respondent No.1/accused for the offences punishable under Section 354A, 376(2)(h) and 376(2)(n) of the Indian Penal Code, 1860 (for short, 'IPC') and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). The trial Court, vide impugned



judgment, was pleased to acquit the accused of the charged offences. Hence, this appeal by the State.

3. We have heard Smt. Rashmi Patel, learned High Court Government Pleader appearing for the appellant-State, and perused the material on record.

4. It is the case of prosecution that the accused frequently used to come near the house of minor victim girl, situated at Kukkatte Site, Mogaru Village, Mangaluru, to play cricket and also to collect scrap items. During that period, he came in contact with the victim and became friendly with her. Later, they started loving each other and used to chat with each other on mobile phone. On 13.4.2023 at 9.00 a.m., when the victim was studying at her home, the accused came near her house and asked her to come near an under construction building. When she went to the said place, the accused, by promising that he will marry her, had sexual intercourse with her against her will. Thereafter on 15.4.2023, when the victim had



been to her aunt's house, situated at Goodinabali Village, the accused came there and met her near Bus Stand and outraged her modesty by touching her breast and sexually harassed her, at that point of time, her uncle noticed the same and took her to home. On 15.6.2023 at 9.30 a.m., the accused again asked her to come near the same under construction building near her house and by promising that he will marry her, committed penetrative sexual assault against her will, due to which, she became pregnant and thereby, the accused committed the charged offences. When the victim missed out her menstruation and started vomiting, she disclosed the same to her mother, who took her to Vinayaka Hospital, where the Doctor tested her and informed that she is pregnant. When her mother enquired her, she initially alleged that her uncle, named Abdul Salam, had sexually assaulted her, due to which, she became pregnant. Then, she accompanied her mother and lodged First Information Report against said Abdul Salam. Later, the Police



conducted investigation and during the course of investigation, it was revealed that the accused is the father of the foetus. Hence, the Investigating Officer laid charge-sheet against the accused for the aforesaid offences. It was revealed from the DNA report that, the accused is the biological father of the foetus.

5. Insofar as the charge framed against the accused for the offences punishable under Section 354A, 376(2)(h) and 376(2)(n) of IPC and under Sections 5 and 6 of POCSO Act is concerned, the prosecution has mainly relied on the evidence of the victim, her mother and the DNA report issued by PW13-Dr. Sahana Chowhan.

6. Learned High Court Government Pleader has contended that, in this case, the DNA profile result of product of conception is consistent with having come from the offspring of the victim and the accused. The same matched with the DNA profile result of blood samples of the victim and the accused, which confirms that the



accused is the biological father of the product of conception and the victim is the biological mother and therefore, the prosecution has proved the charges levelled against the accused beyond reasonable doubt. She further contented that the reasons assigned by the trial Court for acquitting the accused by discarding the DNA report has resulted in miscarriage of justice.

7. In this case, the victim is examined as PW1. As could be seen from the material on record, when the victim missed her menstruation from the month of March, 2023, she informed the matter to her mother-PW3, who took her to the Hospital for examination.

8. PW5-Dr. Sundari has stated that on 6.10.2023, she examined the victim who was brought by her mother and on being enquired, she narrated that one Abdul Salam, her uncle, had forcibly committed sexual intercourse when she was sleeping in her house and again, she has stated that said Abdul Salam used to hug and kiss



her earlier and during March, 2023, she missed her menstruation and informed the same to her mother. Thus, her mother took her to Vijaya Hospital, Kaikamba, where she was referred to Lady Goschen Hospital. However, in the history given to PW5, nowhere the name of the accused was disclosed by the victim.

9. PW11-Dr. Venugopal, Senior Medical Officer, Taluk Government Hospital, Bantwala, has stated that on 7.11.2023, he collected the blood sample of the victim and one Abdul Salam in the presence of learned Magistrate and on 7.2.2024, he collected blood sample of the accused.

10. PW6-Dr. Prathushya has stated that on 5.4.2024, he collected blood sample from the child, named Baby Mariam, born to the victim in EDTA vacutainer. The prosecution also examined PW13-Sahana Chowhan, Senior Scientific Officer, DNA Section, FSL, Bengaluru. She has stated that on 9.11.2023, she received blood samples of the victim and Abdul Salam and on 8.2.2024, she received



blood sample of the accused. She preserved the same and extracted DNA from all the said articles by adapting the standard working procedure. She obtained DNA profile extracted from all the blood samples and after obtaining approval and decoding them, issued the DNA analysis reports as per Exs.P25 to P27. In the said reports, since the DNA profile of the blood sample of Baby Mariam was found matching with the DNA profile of the blood samples of the victim and the accused and the same did not match with the DNA profile of the blood sample of Abdul Salam, she opined that the victim is the biological mother and the accused is the biological father of the Baby Mariam.

11. Before the trial Court, the defence raised serious questions regarding handling of the product of conception and the blood samples. The trial Court found that those questions were not suitably answered by the witnesses, including the Investigating Officer, thereby giving room for manipulation in the said process of collecting and sending



the blood samples till the process of extracting DNA profile and its analysis.

12. The evidence of prosecution witnesses, including the Scientific Officer, do not reveal as to the collection of product of conception and transportation of the blood samples in a safe method. Further, no mahazars were drawn while receiving the sample. Hence, the trial Court has held that the prosecution has not discharged the initial burden of proving the guilt of the accused for the offences charged against him so as to raise presumption available under Sections 29 and 30 of POCSO Act.

13. Having heard the learned High Court Government Pleader appearing for the appellant-State, no doubt, PW1 is the victim, aged about 15 years and 8 months. PW3 is the mother of the victim. PW5 is the Doctor, who examined the victim. PW11 is also the Doctor and PW13 is DNA expert, who issued DNA report. The victim was subjected to medical examination and the DNA reports,



which clearly discloses that the accused is the biological father of the product of conception said to have been collected from the victim.

14. The trial Court relied on a decision reported in **2020 (3) KCCR 1704** in the case of **Nagappa v. State of Karnataka**. It is relevant to extract paragraph Nos.26 to 28 of the said judgment:

"26. The only material which is available before the Court is that of the opinion of PW.19, the DNA test report as per Ex. P16. The DNA test is an impact of the modern scientific and technological revolution. No doubt this new technology can be used as an effective tool in crime detection. To prove the case of the prosecution the DNA technology as a latest tool of forensic science, is the by-product of modern genetic science. Many Courts not only in India even in United States have relied upon and have accepted it as admissible evidence. However, by close reading of the material through which the scientific result is going to



be taken, the entire process of procuring the DNA evidence is controlled by human agencies i.e., Investigating Officers and forensic scientists, there is ample chance of manipulation, tampering of such evidence by corrupt officers or scientist which needless to say highly prejudices the accused persons. Even preservative methods adopted are not properly brought on record. In that light, prosecution has to establish corroboration to such evidence and its truthfulness error free, accurate, unbiased and correct testing.

27. No doubt Article 20(3) of the Constitution of India, if it is contended that the accused is not bound to give the blood test, however, in order to have an investigation, the Investigating Officers or the Court can direct him to give the blood for DNA sample. Merely because he has given the consent for taking the blood, then under such circumstances, the report which has been given cannot be accepted as a gospel truth. When there is ample chance of tampering, then under such circumstances it is going to be highly prejudice the accused



persons. The science may be infallible, but human action, which controls the result of the scientific forensic examination, is always fallible and there is probability of manipulation and tampering with the scientific evidence.

28. Keeping in view the above said facts, I am of the considered opinion that it is highly unsafe to rely upon the sole DNA test to convict the person on the basis of the said test. There must be a unique balance between scientific evidence and human evidence. Therefore, existing value based criminal justice system cannot be done away with and as such, a susceptible balance has to be struck between the modern system based on scientific and technological knowledge and our existing value based system. It should be remembered that the law directly deals with the basic complex human problems, which are not of mathematical precision and the fate of every case depends upon its own factual matrix."



15. In the present case, the preservation methods adopted for the samples are not properly brought on record. The prosecution has not established the method of preservation and transportation of the product of conception as per the medical protocol. Therefore, the trial Court, on appreciation of oral and documentary evidence on record, held that initial burden lies on the prosecution and the same is not proved by the prosecution.

16. In this case, except the official witnesses, all other independent witnesses including victim and her mother have turned hostile. Victim during the course of her evidence has gone to the extent of stating that she does not know the accused and he has not committed penetrative sexual assault on her. She has further stated Ex.P3-statement to the Magistrate was given by her as tutored by the Police. The only material which is available, in view of the hostility of the victim and her mother, is the DNA report. Hence, by giving benefit of doubt in favour of the accused, the trial Court acquitted the accused. There is



no other corroborative evidence to convict the accused. The victim and her mother themselves have turned hostile and not supported the case of prosecution. Further, the victim has not pointed out the role played by the accused. When the victim and the mother of victim have not supported the case of prosecution, the evidence of PWs.5 and 13-Doctors do not in any way help the prosecution to bring home the guilt of the accused. When such being the case, we do not find any grounds to admit the appeal.

17. The Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others v. State of Karnataka*** reported in ***(2007) 4 Supreme Court Cases 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."

18. In the case of **Sudershan Kumar v. State of Himachal Pradesh** reported in **(2014) 15 Supreme Court Cases 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.



19. In the case of ***Jafarudheen and others v. State of Kerala*** reported in ***(2022) 8 Supreme Court Cases 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."

20. 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 Supreme Court Cases 536*** and also in the case of ***Roopwanti v.***



State of Haryana and others reported in **2023 SCC
OnLine SC 179.**

21. In view of the discussions made hereinabove, we
proceed to pass the following

ORDER

The appeal filed by the State is ***dismissed*** as no
grounds are made out to admit the appeal.

In view of the dismissal of the main appeal, the
interlocutory applications, if any, stand dismissed.

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

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