

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR. JUSTICE G. NARENDAR

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

CRIMINAL APPEAL NO.414 OF 2021 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY ALDUR POLICE, REP. BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001

... APPELLANT

(BY SRI.VIJAYA KUMAR MAJAGE, ADDL. SPP. A/W
SMT. RASHMI JADHAV, HCGP)

AND:

SANTHOSH
AGED 20 YEARS
S/O THIPPESH NAIKA

(BY SRI.N. R. RAVIKUMAR, ADV.)

... RESPONDENT

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1)
AND (3) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO
GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT AND
ORDER OF ACQUITTAL DATED 01.02.2020 PASSED BY THE I
ADDITIONAL SESSIONS AND SPECIAL JUDGE,

CHIKKAMAGALURU IN SPL.C.NO.23/2019, ACQUITTING THE RESPONDENT-ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 376(2)(n) OF IPC AND SECTION 5(j)(ii) AND 6 OF POCSO ACT.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 16.08.2021 FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, M.I.ARUN J., DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the judgment of the I Additional Sessions and Special Judge, Chikkamagaluru, in Special Case (PCSOA) No.23/2019 dated 01.02.2020, whereby the trial Court has acquitted the accused, the complainant - State has preferred this appeal.

2. For the sake of convenience, parties are referred to as per their status before the trial Court.

3. The case of the prosecution is that on 29.04.2019, PW-1-complainant filed a complaint with the jurisdictional police stating that he has a daughter by name , who is 16 years and is studying in 10th Std. He along with his family lives and work in a coffee estate which belongs to one The accused by name Santhosh also joined the said estate for work around 10 months back. The accused acquainted himself with

the daughter of the complainant and both fell in love. The accused made his daughter believe that he would marry her and when no one was there in the house, he came and had forcible sexual intercourse with his daughter and that from past 20 days he has gone away to his native without telling anybody. Presently, his daughter is seven months pregnant and accordingly, he has sought for initiating criminal proceedings against the accused Santhosh.

4. In the course of the investigation, the police also recorded the statement of victim who is PW-2 herein. She has also stated the same facts before the police. Ex.P.4 is the Medico-legal Examination Report of Sexual Violence against the victim and it records that the said is pregnant and fetus is about 32 weeks old.

5. Based on the charge sheet, the trial Court has framed the following charge against the accused:-

CHARGE

"I, K.L. Ashok, B.Com., LL.B., 1st Addl. Sessions judge, Chikkamagaluru, do hereby charge you:

Santhosh S/o Thippeshnaika, Aged about 19 years, Coolie

as follows:

That since seven months prior to the date of complaint, in the coolie lane of Nasrath Ali, situated at Kesarike village, Chikkamagalaur Taluk, coming within the jurisdiction of Aldur Police Station, when CW.4 – victim minor girl was alone in her house, you accused had repeated sexual intercourse with CW.4 and thereby you accused committed an offence punishable under Section 376(2)(n) of I.P.C., and within the cognizance of this Court.

Secondly, on the aforesaid date, time and place, you accused committed aggravated penetrative sexual assault on CW.4, the victim minor girl, repeatedly and as a consequence of which she became pregnant and you thereby committed an offence under Section 5(j)(ii) punishable under Section 6 of POCSO Act, 2012 and within the cognizance of this court.

And I hereby direct that you be tried by this court on the said charges.

Dated this the 16th day of July 2019.”

6. The prosecution to prove its case has examined PW-1 to PW-5 and got marked Ex.P.1 to P.15. The defense has not examined any witnesses nor got marked any documents.

7. Based on the evidence let in, the trial Court has acquitted the accused for the offences charged. Aggrieved by the same, the prosecution has filed this appeal.

8. Ex.P.4 – Medico-legal Examination Report of Sexual Violence indicates that the victim was a minor and was about seven months pregnant when she was examined.

9. PW-1 is the complainant and father of the victim. PW-2 is the victim. PW-3 is the mother of the victim. PW-4 is the brother of the victim and PW-5 is the sister of the victim. All of them have turned hostile. They have not supported the case of the prosecution at all. Even the contents of complaint are denied by PW-1 complainant and statement made by PW-2 victim before the police is also denied. They have not deposed anything to suggest that the accused has committed forcible sexual intercourse with the victim or that he has made her pregnant. For the said reasons, the trial Court has acquitted the accused of the charges alleged.

10. It is noticed that the prosecution to prove its case had requested the permission of the Court to examine other witnesses mentioned in the charge sheet. However, the trial Court on the ground that the victim and other material witnesses have turned hostile has rejected the prayer of the prosecution to examine other witnesses and has acquitted the accused.

11. The State in its appeal has contended that DNA test of the child and the accused has not been conducted and the trial Court has erred in not permitting the other witnesses to be examined by the prosecution including Doctor, who has examined the victim and argues that this is a case for remand.

12. Per contra, learned counsel for the accused has justified the judgment of the trial Court and has sought for dismissal of the appeal.

13. The questions that arises for consideration in this appeal is whether the trial Court has erred in not directing conduct of DNA test of the child and the accused, whether it erred in not permitting the prosecution to examine other witnesses.

14. It is seen from the records that the prosecution has not made necessary application before the trial Court to have a DNA test conducted for relating the child with the accused. They cannot now turn around and argue that the trial Court committed an error in not permitting the required DNA test.

15. Normally, it is obligatory on the part of the trial Court to permit the prosecution to examine the witnesses mentioned in the charge sheet to prove its case. However, in the instant case, as the victim girl, her father, mother, brother and sister have not supported the case of the prosecution, the trial Court on the ground that all the material witnesses have turned hostile has not permitted further examination of the witnesses and has acquitted the accused.

16. It is further submitted by the learned counsel appearing for the accused that presently, the accused and the victim are married and are leading a happy married life. However, learned Additional SPP submits that it is a wrong submission. He further submits that on enquiry, it is revealed that the accused held out a promise of marriage to the victim girl. For the said reasons, the victim and other material witnesses have turned hostile before the trial Court. It is further

submitted that pursuant to the said acquittal, the accused has abandoned her and the child and is untraceable. It is further submitted by the learned Additional SPP that the prosecution has a good case on merits and the trial Court has committed serious error in not permitting the prosecution to adduce additional evidence. It is further submitted that they would also make necessary applications to have the DNA test conducted in respect of the accused and the child and it will prove the case of the prosecution.

17. The guilt of the accused can be established only after examination of all the witnesses as desired by the prosecution. It is a specific case of the prosecution that it has necessary evidence to prove the guilt of the accused and it is desirous of making necessary application to have DNA test conducted and that the material witnesses have turned hostile only on the false promise of the accused.

18. Considering the submission made by the prosecution, under peculiar facts and circumstances of the case, in our opinion, the ratio laid down in ***State of Karnataka vs. Sri.Paruvangada Bopanna reported in 2017 CRR 394***

(Kant) is not applicable to the present facts and circumstances of the case.

19. Under the given facts and circumstances of the case, the trial Court clearly erred in not permitting the prosecution to lead necessary evidence to prove the guilt of the accused. Hence, the following:-

ORDER

- (i) The appeal is allowed.
- (ii) The order of acquittal dated 01.02.2020 passed by the I Additional Sessions and Special Judge at Chikkamagaluru in Special Case (PCSOA) No.23/2019 against the accused is hereby set aside.
- (iii) The matter stands remanded back to the trial Court to continue the trial with liberty being given to the prosecution to adduce necessary evidence.
- (iv) No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

MH/-