



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO. 1308 OF 2018

Between:

The State of Karnataka
By Kodige Halli Police Station,
Bengaluru
Represented By
State Public Prosecutor,

(By Sri Rangaswamy R, HCGP)

...Appellant

And:
Anil @ Anil Kumar
S/o Sriramappa,
Aged about 27 years,
R/o Seva Mandira,
Madakashira Road,
Hindupur, Ananthapura District,
Andhra Pradesh - 515001.

(By Sri D.A.Shivakumar, Advocate)

...Respondent



This Criminal Appeal is filed u/s. 378(1) and (3) Cr.P.C.,
praying to grant leave to appeal against the judgment and order
dated 21.02.2018 passed in Spl.C.C.No.255/2014 on the file of
the L Additional City Civil and Sessions Judge and Special Judge,
Bengaluru, acquitting the respondent/accused for the offence
p/u/s 366 and 376 of IPC.

This Criminal Appeal, coming on for final hearing, this day,
judgment was delivered therein as under:



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

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

The State has assailed acquittal judgment passed by I Additional City Civil and Sessions Judge in Spl.C.No.255/2014.

2. The prosecution case is that on 16.03.2012, PW7-the prosecutrix and her parents i.e., PW1 and PW4 came to Bengaluru from Hindupura to buy new clothes for Ugadi festival. After the purchase they boarded the train at 6.30pm to return to Hindupura. When the train reached Kodigehalli Railway station, PW7 got down from the train saying that she wanted to answer nature call, but she did not return. PW1 suspected that accused might have kidnapped his daughter and gave a report as per Ex.P1 to Kodigehalli police station on 26.03.2012. Based on this report FIR came to be registered and investigation held which



resulted in accused being charge sheeted for the offences punishable under Sections 366A and 376 of IPC.

3. The prosecution in all examined 12 witnesses and got marked the documents as per Ex.P1 to P6. Ex.D1 to D3 are the documents marked by the defence. Assessing the evidence the trial court arrived at conclusion that the prosecution was not able to prove the allegation that the accused induced PW7 to go along with him at Kodigehalli railway station and then raped the girl against her will. To arrive at this conclusion the trial court has drawn inferences that PW7 and the accused were known to each other as the latter's house was situated near the house of PW7 and that they used to meet very often. The entire evidence of PW7 is disbelieved because of the fact that if really she had been kidnapped by the accused, she had ample chance to escape from the places wherever she was taken by the accused.



She also did not raise alarm to draw the attention of people around her. The conduct of PW1 in keeping quite for 11 days without making a report to the police was also seriously considered by the trial court to doubt the case posited by the prosecution.

4. We have heard the arguments of Sri Rangaswamy R, learned High Court Government Pleader for the appellant/State and Sri D.A.Shivakumar for the respondent/accused.

5. Sri Rangaswamy R argued that the testimonies of PW1, PW4 and PW7 make it amply clear that the accused kidnapped PW7 at Kodigehalli railway station and took her to various places against her will. She could not raise her voice because she had been threatened by the accused. PW7 has clearly stated that the accused had forcible sexual intercourse with her inspite of resistance shown by her. Her testimony finds



corroboration from medical evidence. PW11 was the doctor who examined both PW7 and the accused and his evidence clearly discloses that PW7 herself given the history before him that she was raped by the accused. At the time of examination PW11 noticed the injuries such as abrasions on the neck caused by nails and they appeared to be a week old injuries. PW11 also noticed presence of abrasions on the left cheek and the neck of the accused. These injuries only indicate struggle marks and therefore it cannot be said that PW7 was a consenting party to the sexual intercourse with the accused. Moreover Ex.P6 indicates that the date of birth of PW7 is 21.04.1996, and as on the date of incident she was a minor. Ex.P4 is the forensic medical report which also shows that age of PW7 was around 15 to 16 years and in the same report it is mentioned that PW7 might have undergone sexual intercourse within a period of one week. This being the nature of evidence, the trial court



should not have acquitted the accused. Therefore he argued for setting aside the impugned judgment and, convicting and punishing the accused.

6. Sri D.A.Shivakumar argued that the trial court has appreciated the evidence extensively by giving cogent reasons to acquit the accused. Since this is an appeal against acquittal judgment, this court cannot interfere unless there is perversity in appreciation of evidence. As there is no perversity, the appeal should fail. He argued further that there is no consistent proof with regard to age of PW7. Though Ex.P6 shows that date of birth is 21.04.1996, PW1 has given the date of birth of PW7 as 21.11.1995. He stated that he gave the birth certificate of PW7 to the police but it was not produced. Birth certificate is the primary proof and not Ex.P6, a certificate issued by the school. The school cannot issue birth certificate.



7. As regards the incident it is the argument of Sri Shivakumar that the entire testimony of PW7 as regards forcible sexual intercourse on her is untrustworthy inasmuch as the way she has given answers in the cross-examination makes it amply clear that the accused and PW7 were liking each other and they voluntarily went to get married. At all the places where they visited she had ample opportunity to escape or to seek help from the public by raising alarm if she had been really kidnapped. She didn't do so. It was a case of consensual sex. Since the age of PW7 has not been proved in accordance with law, accused cannot be convicted. In this view the appeal deserves to be dismissed.

8. We have perused the entire evidence. At the outset we may opine that the trial court is not at fault in acquitting the accused. While subscribing with findings recorded by the trial court, we may also state that the testimony of PW7



in regard to forcible intercourse on her does not appear to be believable. The evidence shows that accused also belongs to Hindupura though he was working in Bengaluru. His house was situated near the house of PW7 and they knew each other and were meeting at Hindupura whenever accused went there.

9. PW1, the father of PW7 has stated in the cross examination that there was friendship between his daughter and the accused. PW4, the mother has also stated that accused was their neighbor and there was friendship between her daughter and the accused. Both PW1 and PW4 may have denied the suggestion that their daughter and the accused were loving each other, but from the answers that PW7 has given in the cross examination, a clear inference can be drawn that they were near to each other. Contextually the evidence of PW9 may be referred here and his clear evidence is that he being the neighbor of PW1 had



seen both the accused and PW7 walking with each other and this was about 5 months before the alleged incident occurred. He has also stated that he alarmed PW1 to keep a vigil on his daughter.

10. Visit to Bengaluru by PW1, PW4, and PW7 on 16.03.2012 to buy new clothes for Ugadi festival is not disputed. But how the accused came to know that PW7 had come over to Bengaluru is the question to which answer can be found from the answer given by PW7 in the cross examination. She has stated that though she did not tell the accused that she was going to Bengaluru, she stated that accused knew about it because he had overheard her parents talking with each other to visit Bengaluru. Even this answer of PW7 cannot be so easily believed. Assuming that he had overheard, he would not have come to Kodigehalli railway station unless he had a prior information about it. In this regard the evidence of PW6 becomes relevant because he has stated that on 16.03.2012



he too was traveling in the same train to return to Hindupura and he saw PW7 and the accused alighting from the train. The evidence of PW1 and PW4 that PW7 got down from the train to go to toilet cannot also be so easily believed because of availability of toilet facility in every compartment of the train. There was no need for her to get down from the train. If PW7 stated in the examination in chief that she had to get down from the train because of the threat given by the accused, it cannot be believed at all. All these aspects stare at the conduct of PW7.

11. It is true that PW7 has stated that in the examination in chief that accused took her to Dharmastala and then to his friend's house at Channekavalu village. She also stated that he married her in a temple and then took her to his friend's house where they stayed overnight. Her evidence is that in that house she was raped 2 or 3 times. The cross examination of PW7 appears as



though accused admits to have taken PW7 with him and had intercourse with her. But closer scrutiny of the cross examination gives picture that questions are put in such a way as admitting the relationship and sexual intercourse with a view to impeaching the testimony of PW7. The actual picture that can be obtained from the cross examination of PW7 is that she went along with the accused voluntarily and was a consenting party to sexual intercourse. If she was unwilling to go with the accused and there was a threat to her by him, ample opportunities were available to her to escape or to seek help from others. If she says that she was under constant threat it cannot be so easily believed. Though the medical report indicates that PW7 had undergone sexual intercourse within a period of a week before she was examined, it is not possible to draw an inference that she was subjected to forcible intercourse just because of



injuries found on the bodies of PW7 and the accused.

12. The age of PW7 is very important because of the fact that consent given by a minor is immaterial. Prosecution produced Ex.P6 issued by the Headmaster of the school where PW7 studied. In Ex.P4 issued by PW11 the approximate age of PW7 was fixed in between 15 and 16 years on the basis of physical and radiological examinations. PW7 has stated that her date of birth is 21.04.1996 which is also the date of birth mentioned in Ex.P6. If this date is considered, she was a minor as on 16.03.2012. But PW1 has given date of birth of PW7 as 21.11.1995. Even if this date is considered she was a minor as on 16.03.2012. But PW1 has stated that he handed over the birth certificate issued by the Municipality to the police. That means the birth certificate is the primary proof for the date of birth which the prosecution should have produced before the court. Ex.P6 cannot be



considered as the age proof. In the absence of legal evidence with regard to age of PW7, it is not possible to hold the accused guilty of the offence. Obviously this benefit must be made available to him.

13. Since our assessment of evidence is in consonance with the findings recorded by the trial court, the appeal fails and it is **dismissed**.

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

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

KMV
List No.: 1 Sl No.: 3