



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100504 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY THE
POLICE INSPECTOR,
ANKOLA POLICE STATION,
DISTRICT UTTARA KANNADA
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR
ADVOCATE GENERAL OFFICE
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP.)



AND:

1.



2.

...RESPONDENTS

(BY SRI. S.V. YAJI, ADVOCATE FOR R1;
NOTICE TO R2 SERVED)

THIS CRIMINAL APPEAL IS FILED U/S. 378(1) AND (3) OF CR.P.C., PRAYING TO SET ASIDE AND GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 24.02.2021 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, U.K. KARWAR (SPECIAL COURT FOR TRIAL OF CASES FILED UNDER POCSO) ACT IN SPECIAL CASE NO.42/2014 AND TO CONVICT AND SENTENCE THE RESPONDENTS/ACCUSED FOR THE OFFENCES PUNISHABLE U/S 448, 376, 504 AND 506 OF IPC AND SECTION 6 OF POCSO ACT AND U/S 3(2) (V) OF SC/ST ACT 1989, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR FURTHER HEARING THIS DAY, **MOHAMMAD NAWAZ, J.**, DELIVERED THE FOLLOWING:



JUDGMENT

This appeal is preferred by the State against the judgment and order dated 24.02.2021 passed by the Court of Additional District and Sessions Judge - FTSC-I, U.K. Karwar (Special Court for trial of cases under POCSO Act).

2. The learned Sessions Judge vide impugned judgment has acquitted the respondent/accused of the offences punishable under Sections 448, 376, 504 and 506 of IPC, Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO', for short) and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act', for short).

3. We have heard Sri. M. B. Gundawade, learned Addl. SPP appearing for the appellant/State and Sri. S. V. Yaji, learned counsel appearing for respondent/accused.



4. It is the case of the prosecution that the victim girl (PW1) is a minor belonging to scheduled caste and she is a resident of Aversa Village, Ankola Taluk. The accused knowing very well that the victim girl is a minor and she belongs to scheduled caste, induced her stating that he is in love with her and he will marry her and on 17.04.2014 at about 1.30 pm, when no one was present in her house, trespassed into her house and in spite of her resistance, committed forcible penetrative sexual assault on her. Further, the accused took her to the nearby hillock area several times and repeatedly committed penetrative sexual assault on her, on account of which the victim girl became pregnant. Further, the accused abused the victim and threatened her not to disclose the incident to others and thereby committed the charged offences.

5. Charges were framed against the accused for offences punishable under Sections 448, 376, 504, 506 of



IPC, Section 5(j)(ii)(I) r/w Section 6 of POCSO Act and under Section 3(2)(v) of SC/ST(POA) Act,1989.

6. In order to establish the charges leveled against the accused, prosecution in all examined PWs.1 to 27 and got marked Ex.P1 to P42.

7. The victim who is examined as PW1 has not supported the prosecution case. She has completely denied the sexual assault alleged to have committed on her by the accused. Further, PWs.4 to 9, the relatives of the victim and PW.10-an independent witness has also turned hostile and not supported the case of prosecution. Hence, the prosecution, to establish that the accused has committed repeated penetrative sexual assault on the victim, on account of which she became pregnant and delivered a baby, is relying on the medical evidence and the DNA report marked as Ex.P.42.

8. The learned Sessions Judge having examined the evidence on record, particularly the DNA report has



come to the conclusion that, it is highly unsafe to convict the accused by relying on the DNA Test alone, without any corroboration. To arrive at the said conclusion, the Learned Sessions Judge has relied on the judgment of this Court passed in Crl.A.No.1933/2019 decided on 19.12.2019, in the case of '**Nagappa s/o Manappa Vs. State of Karnataka**'.

9. Learned Addl. SPP assailing the impugned judgment would vehemently contend that, the prosecution has established that the victim was a minor as on the date of commission of the offence by examining the Head Masters namely PWs.11 and 12 and marking the documents Exhibits P23 and P24. He contended that the prosecution has also established that the victim belongs to scheduled caste by examining the Tahasildar-PW.21 and marking Ex.P.32-Caste certificate of the victim. He would further contend that the prosecution has established that the accused was not a member of Scheduled Caste or Scheduled Tribe, by examining PW.15-Tahasildar who has



issued Ex.P27 wherein, it is stated that the accused belongs to Hindu Talawar caste which does not come either under Scheduled Castes or Schedule Tribes.

10. The learned Addl. SPP has vehemently contended that the victim was 22 weeks and 5 days pregnant when she was examined by PW.20 on 13.09.2014 and as per scanning report Ex.P29 issued by PW.16. He contended that subsequently, victim gave birth to a child and in order to establish that the accused is the biological father of the child, DNA examination was conducted by PW.27 and as per his report-Ex.P.42, victim girl is the biological mother and accused is the biological father of the child. He therefore contended that the DNA examination report being a conclusive evidence to establish paternity of a child, the learned Sessions Judge was not justified in discarding the said evidence and acquitting the accused. He has therefore, sought to allow the appeal and convict the accused for the charged offences.



11. Per contra, learned counsel appearing for respondent/accused has contended that in this case, victim has denied the allegations made against the accused and even her close relatives namely her grand mother, mother and sisters have also not supported the prosecution case. It is contended that DNA report is only an opinion and without corroboration the said report alone cannot be accepted to convict the accused. It is further contended that from the cross examination of PW.27, it is clear that DNA examination was not conducted in accordance with law and there are procedural lapses and therefore, based on the said DNA report-Ex.P.42, it is highly unsafe to convict the accused. He has therefore argued in support of the judgment passed by the trial Court and sought for dismissal of the appeal.

12. It is the case of prosecution that the victim girl was a minor aged below 18 years and she belongs to Scheduled Caste. The prosecution has placed reliance on



the evidence of PW-11 and PW-12 to prove that the victim was a minor as on the date of commission of offence.

13. PW-11, Head Master of Katyayini High School, Aversa, has issued Ex.P-23, as per which, the date of birth of the victim is 20.07.1998. PW-12 is the in-charge Head Master during the relevant period and he has issued Ex.P-24, study certificate pertaining to the victim, which shows that she studied from 1st standard to 8th standard in the Government Higher Primary School, Aversa, Ankola and received the Transfer Certificate during 2010-2011. As per Ex.P-24, the date of birth of the victim is 20.07.1998.

14. The learned Sessions Judge has accepted the evidence of PW-11 and PW-12 as well as Exs.P-23 and P-24 and held that the prosecution has proved that the victim was a minor as on the date of incident. We find that the said finding is based on the evidence and material on record.



15. In order to prove that the victim belongs to Scheduled Caste and the accused was not a member of Scheduled Caste, the prosecution has examined PW-15 and PW-21 and the documents at Exs.P-27 and P-22.

16. As per Ex.P-32 issued by PW-21-Tahasildar, victim belongs to Hindu Bedara caste. He has stated that the victim belongs to Scheduled Caste. Similarly, PW-15, Tahasildar by issuing Ex.P-27 with regard to caste of the accused has stated that the accused belongs to Hindu Talwar caste. According to the prosecution, the accused is not a member of Scheduled Caste and therefore, he has committed the offence under Section 3(2)(v) of SC/ST(POA) Act.

17. It is contended by the learned counsel for accused that Ex.P-27 does not pertain to the accused as the name mentioned in the said certificate is

and it is not the name of the accused.



He would further contend that the accused has produced one document i.e., Transfer Certificate wherein the caste of the accused is mentioned as Hindu Bedar. The learned counsel has therefore tried to contend that even the accused belong to Scheduled Caste.

18. The learned Sessions Judge has relied on the said documents produced by the accused and also relied on the admission made by the Investigating Officer-PW-25 to hold that the accused belongs to Hindu Bedar caste, coming under Scheduled Caste.

19. A perusal of Ex.P-27 shows that the name mentioned in the said document pertains to Mallappa Sharanappa Talawar, whereas the name of the accused is . It is no doubt true that PW-15 has stated that both the persons are one and the same and Ex.P-27 pertains to the accused. However, the Investigating Officer-PW-25 has admitted in the cross-examination that the accused belongs to Hindu Bedar caste. Therefore, a doubt arises with regard to the caste



of the accused and the document-Ex.P-27 issued by PW-15 stating that accused belongs to Hindu Talawar category-I. Hence, it cannot be held conclusively that the prosecution has established beyond reasonable doubt that the accused is not a member of Scheduled Caste.

20. The complaint is lodged on 13.09.2014, marked as Ex.P1. The incident is alleged to have taken place six months prior to the date of lodging the complaint. PW.26- Police Inspector of Ankola police station on receiving Ex.P1, registered a case and proceeded with the investigation. The victim girl was sent for medical examination to Ankola Government Hospital. She was examined by PW.20. On abdominal examination she noticed that the victim was six months pregnant. She has stated that there is no sign of any forcible sexual intercourse. Report submitted by her is marked as Ex.P.30. On the basis of scanning report, she opined that there is no sign of forcible sexual intercourse.



21. PW.16 is the CMO of one Kamala Hospital, Ankola. She has deposed that she has done the scanning of victim girl and as per scanning report-Ex.P.29, the victim was 22 weeks 5 days pregnant.

22. In her deposition, the victim who is examined as PW.1 has stated that she has not at all become pregnant and not delivered a baby. However, in view of the above medical evidence placed on record by the prosecution, it is difficult to accept that the victim girl did not become pregnant. What is relevant to be seen is that whether, the accused has committed penetrative sexual assault on the minor victim, on account of which she became pregnant and delivered a child.

23. In order to establish the paternity of the child the prosecution has got marked Ex.P42-the DNA report issued by PW.27. The prosecution is relying on the



evidence of PW.23, PW.27 and the evidence of the investigating officer.

24. It is contended by the learned Addl. SPP that the victim girl delivered a baby girl and therefore, to establish that the accused is the father of the child, blood samples of the accused, victim and the baby were taken as per the direction of the learned Sessions Judge. Thereafter, the samples were sealed and sent for DNA examination. He contended that as per DNA examination, the victim is the biological mother and accused is the biological father of the baby.

25. PW.23 who conducted physical general examination of the accused speaks about obtaining the blood samples of victim girl, her child and accused on 10.07.2015 with the help of a lab technician, in the Court. He has also issued Ex.P.36 stating that there is nothing to suggest that accused is incapable of performing sexual intercourse. Further, he has stated that he sealed the



blood samples taken in the Court, labeled them and handed over to the investigating officer.

26. PW.27 working as Scientific Officer, FSL, Bengaluru has deposed that on 13.07.2015, he received three sealed articles concerning to the case which was submitted by the Head Constable-472-Keshgiri Naik, Ankola Police Station. All the three articles were sealed intact and sent by keeping them in temperature controlled thermocol box. By adopting internationally validated protocol, he extracted DNA from all three coded blood samples etc. and subjected DNA was profiled using genetic analyzer instrument. As per the finding, 50% of the alleles/genes present in the DNA of sample blood collected from female baby was matching with the alleles/genes present in the DNA of blood collected from the victim and remaining 50% alleles/genes present in the DNA of sample blood collected from female were matching with the alleles/genes present in the DNA of sample blood collected from the accused. He has opined that the victim girl is the



biological mother and accused is the biological father of the female baby.

27. In the instant case, the victim has not supported the case of prosecution. She has completely denied the allegations leveled against the accused that he trespassed into her house on 17.04.2014 and committed forcible penetrative sexual assault and later, on several occasions, took her to hillock area and committed penetrative sexual assault and made her pregnant etc. Hence, the sole material available for the Court to come to the conclusion that the accused has committed penetrative sexual assault on the victim and made her pregnant, on account of which she delivered a baby girl, is the DNA report and the evidence of PWs.23 and 27.

28. Learned Addl. SPP has relied on the judgment of Hon'ble Apex Court in the case of ***Chamanlal Vs. State of Himachal Pradesh*** reported in ***(2020) 17 SCC 69*** to contend that in view of the victim delivering a baby and the DNA report which states that accused is biological



father of the baby delivered by the victim, the prosecution has firmly established the said charges leveled against the accused.

29. The DNA report or the scientific method to determine the paternity if firmly established, the only challenge that can be setup by the defense is that there is tampering with the blood sample of the accused and no proper procedure is followed while drawing the blood samples and to show that there was a possibility of tampering of blood samples, then only there could be some room for suspicion about DNA report.

30. In the case of ***State of Gujarat Vs. Jayantibhai Somabhai Khant*** reported in ***2015 Crl.L.J. 3209***, it is held that if the DNA report is sole piece of evidence even if it is positive cannot be conclusively fix the identity of the miscreant.

31. In the case on hand, we are required to carefully examine the evidence of both PW.23 and PW.27



and the DNA report Ex.P.42. PW.23 has deposed that on 10.07.2015, he went to the Court along with lab technician and in the open Court he drew the blood samples of victim girl, her child and accused with the help of lab technician and sealed blood samples, labeled them and handed over to the investigating officer. In the cross examination, he has admitted that separate registers are kept for making chemical examination in Court but he has not produced the extract of chemical examination register in this case. According to him, the accused and victim signed on the respective identification forms. However, the victim has completely denied the same. It is relevant to mention that the investigation officer who received the sealed blood samples was not examined before the trial court. As per PW.27, he received three sealed articles on 13.07.2016, which was brought by one Head Constable HC-472-Keshgiri Naik, Ankola Police Station. He is also not examined by the prosecution. It is not forthcoming as to where the sealed blood samples were kept from 03.07.2015 to 13.07.2015.



32. The Investigating Officer namely CW-27 who received the sealed blood samples handed over by PW-23 is a material witness to speak about the blood samples received by him on 10.07.2015 and sending the same to the FSL for DNA examination through Head Constable-472 namely Keshagiri Naik. The said witness is given up by the prosecution for the reasons best known.

33. PW-27 who issued Ex.P-42 has stated in the cross-examination that the quantity of blood samples taken up for DNA examination and EDTA test preservatives were not mentioned in his report, in order to confirm that there was no contamination. He has admitted that he has not mentioned in the acknowledgement that the blood samples were kept in thermocol ice cold box, while transporting it.

34. The learned Sessions Judge has placed reliance on para 13 to 15 of the judgment passed by a Coordinate Bench of this Court by a coordinate bench of the Court in



the case of ***Nagappa s/o. Manappa*** (supra), which are extracted hereunder:

13. *The only material which is available before the Court is that of the opinion of PW19, the DNA test report as per Ex.P.16. 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 a 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 person. 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.*

14. *No doubt Article 20(3) on the constitution of India, if it contended that the accused is not bound to give the blood test, however, in order to have an investigation, the investigating officer 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 person. 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.

15. *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.*

The trial Court taking into consideration the medical evidence of PW-27 and the DNA report-Ex.P-42 issued by



him held that the principles laid down in the above judgment are aptly applicable to the present case and therefore, it is highly unsafe to convict the accused only by relying upon the DNA Test. The findings recorded by the trial Court cannot be said to be either perverse or illegal.

35. This being an appeal against the judgment of acquittal, we find no convincing material to reverse the said judgment. The appeal therefore fails.

36. For the forgoing reasons, we pass the following:

ORDER

The appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE