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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF SEPTEMBER, 2020

PRESENT

THE HON' BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE E.S. INDIRESH

CRIMINAL APPEAL No.397/2015

BETWEEN:

Nagesh
S/o Narayan Swamy,
Aged 25 years,
Res at Bukkanahalli,
Singasandra,
Chintamani Taluk,
Chikkaballapur District-563125.

... APPELLANT

(BY SRI AMARESH N., ADVOCATE)

AND:

The State of Karnataka,
Rep. by Police Inspector,
Mangalore Rural Police Station,
Kulashekara,
Mangalore-575001.

... RESPONDENT

(BY SRI S. RACHAIAH, HIGH COURT GOVERNMENT PLEADER)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 14.11.2014, PASSED BY THE VI ADDL. DISTRICT AND

SESSIONS JUDGE, D.K., MANGALORE, IN S.C. No.161/2013 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 448,376,392 READ WITH 397 AND 506 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***B.VEERAPPA, J***, DELIVERED THE FOLLOWING:

JUDGMENT

The accused/appellant filed the present Criminal Appeal under Section 374(2) of the Code of Criminal Procedure against the judgment and Order of conviction and sentence dated 14/18.11.2014 made in S.C. No.161/2013 on the file of the VI Additional District and Sessions Judge, Dakshina Kannada, Mangaluru, convicting the accused and sentencing him to undergo simple imprisonment for six months and to pay a fine of ₹1,000/- and in default to pay the fine amount, to undergo further simple imprisonment for two months, for the offence punishable under Section 448 of the Indian Penal Code; to undergo rigorous life imprisonment and to pay a fine of ₹5,000/-, in default to pay the fine amount, to undergo further simple

imprisonment for two years for the offence punishable under Section 376 of the Indian Penal Code; to undergo rigorous imprisonment for seven years and to pay a fine of ₹5,000/-, in default to pay the fine amount, to undergo further simple imprisonment for two years for the offence punishable under Sections 392 r/w 397 of the Indian Penal Code; to undergo simple imprisonment for one year and to pay a fine of ₹1,000/-, in default to pay the fine amount, to undergo further simple imprisonment for six months for the offence punishable under Section 506 of the Indian Penal Code.

I. FACTS OF THE CASE

2. It is the case of the prosecution that the complainant/P.W.1- is resident of Door No.7/63/13 situated at Saripalla house, Alape village, Mangaluru Taluk. On 14.07.2013, at about 7.15 pm, the accused called P.W.1 as ಅಜ್ಜಿ ಅಜ್ಜಿ (grand mother, grand mother) from the back door of her house.

When P.W.1 opened the door, the accused trespassed into her house by holding a knife, threatened her not to shout, otherwise, he will kill her and dragged her to the bed room, forcibly removed her clothes and committed sexual intercourse, against her will. After committing rape, he robbed cash of ₹5,500/- and jewellery worth ₹51,000/- from the vanity bag kept in the almirah and ran away from the house. Therefore, she came out shouting ಕಳ್ಳ, ಕಳ್ಳ (thief, thief) by covering with a piece of cloth. It is further case of the prosecution that on the next day, i.e., on 15.07.2014, C.W.26/ P.W.21-Ravish, Police Inspector, arrested the accused, seized the cash and jewels from his possession and produced the accused before the Court who was remanded to judicial custody. The Investigating Officer recorded the statement of the witnesses, secured report from the Doctor and Forensic Science Laboratory. After completion of the investigation, P.W.21 filed charge sheet against the accused before the Magistrate, who,

took cognizance of the offences in C.C.No.3422/2013 and committed the matter to the Prl. District and Sessions Judge, Mangaluru.

II. EVIDENCE OF PROSECUTION WITNESSES AND DOCUMENTS RELIED UPON BY THE PROSECUTION

3. In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 21 and marked Exs.P.1 to P.23(a) and M.Os.1 to 18. After completion of evidence of prosecution witnesses, the Court recorded the statement of the accused under Section 313 of the Code of Criminal Procedure by explaining the incriminating materials appearing against him. The accused denied all incriminating evidence made against him by the prosecution and filed additional statement under Section 313(5) of the Code of Criminal Procedure and did not choose to lead any defence evidence.

4. Based on the pleadings, the learned Sessions Judge, framed six issues.

5. Considering both oral and documentary evidence on record, the learned Sessions Judge recorded a finding that, the prosecution has proved beyond reasonable doubt that on 14.07.2013 at about 7.15 pm, the accused by holding knife in his hand, trespassed into the house of the complainant-

bearing door No.7/63/13 situated at Saripall, Alape village, Mangaluru, and forcibly had sexual intercourse against the will of the complainant and thereafter, he robbed cash of ₹5,500/- and gold from the vanity bag kept in the almirah and committed criminal intimidation by threatening to kill the complainant and thereby, committed the offences punishable under Sections 448, 376, 392 r/w 397 and 506 of the Indian Penal Code. Accordingly, the learned Sessions Judge, by the impugned Judgment and Order of conviction and sentence dated 14/18.11.2014, proceeded to convict and sentence the accused for the aforesaid offences.

Hence, the present Criminal Appeal is filed by the accused.

6. We have heard the learned counsel for the parties to the lis.

III. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE APPELLANT-ACCUSED

7. Sri N.Amaresh, learned counsel for the accused appellant, contended with vehemence that the impugned judgment and order of conviction and sentence passed by the learned Sessions Judge is erroneous and contrary to the material on record and is liable to be set-aside. He contended that the learned Sessions Judge has not given any weightage or credibility to the records pertaining to the medical examination of the victim as well as accused. As per the medical record, no sexual assault has taken place on the victim. He contended that presence of seminal stains and vaginal secretions were not detected in

article Nos.A(bedsheet), D(nightie), E-1(pant), E-2(T-shirt), E-3 (underwear), F-1 (Penile swab), F-3 (public hair), F-4(nail cuttings), G-1 (vaginal swab) and G-2 (pubic hair). The learned Sessions Judge has not considered the said material facts before passing the impugned judgment and order of sentence. He further contended that the wound certificate of the victim discloses 'no blood/seminal stains, no foreign bodies/hair over the body except for a linear abrasion over the face'. The genital examination further states no blood stains, no seminal stains and foreign particles and hair in the genital region. The opinion states that, on the basis of the said observation, 'the sexual intercourse might have taken place'. So also, the FSL report depicts 'the sexual intercourse might have taken place'. Therefore, there is no definite opinion that any kind of sexual assault has taken place on the victim.

8. Learned counsel for the accused further contended that the investigating officer has not seized the towel; the finger print on the knife and vanity bags, M.O.2 and 3 were not sent for expert's opinion. The complainant-P.W.1, at the inception has not alarmed or raised voice when accused forcibly trespassed into her house. Therefore, there is no sexual assault on P.W.1. He further contended that the son of P.W.1 is residing in the adjoining house and there was no impediment for the P.W.1 to resist the accused and raise her voice. The same has not been done. Therefore, the story created by P.W.1 is nothing but false implication of the accused and the impugned judgment and order of sentence cannot be sustained.

9. He further contended that, as per the statement of P.W.1, the intercourse continued for more than half an hour, but no medical evidence is produced to establish the said fact. It is only a concocted story of P.W.1 in

collusion with P.W.8-Bashir, a Mason, only to deprive the arrears of salary of ₹10,000/- to the accused, as stated by him in additional statement under Section 313(5) of the Code of Criminal Procedure dated 16.10.2014. He further contended that the impugned judgment and order of sentence passed by the learned Sessions Judge is on the basis of the evidence of highly interested witnesses (relatives) of P.W.1. The same cannot be relied upon. He further contended that there cannot two acts i.e., rape and robbery at a time, in the facts and circumstances of the present case, considering the fact that the accused is a labour working under P.W.8. On that ground also, the impugned judgment and Order of sentence is liable to be set-aside. He further contended that, if the Court comes to the conclusion that the accused is involved in the alleged crime, taking into consideration the age and antecedents of the accused, it warrants reduction of

sentence imposed on the accused. Therefore, sought to allow the Appeal.

10. In support of his contentions, learned counsel for the accused- appellant relied on the following judgments:

(i) ***Phul Singh vs. State of Haryana*** reported in ***AIR 1980 SC 249.***

(ii) ***State of Rajasthan vs. N.K.(Accused)*** reported in ***AIR 2000 SC 1812***, para-9 and 18;

(iii) ***T.K.Gopal alias Gopi vs. State of Karnataka*** reported in ***AIR 2000 SC 1669***, para-20.

IV. ARGUMENTS ADVANCED BY THE LEARNED HIGH COURT GOVERNMENT PLEADER

11. Per contra, Sri S.Rachaiah, learned High Court Government Pleader, while justifying the impugned judgment and order of conviction, contended that the prosecution proved beyond reasonable doubt, the forceful trespass, rape, robbery and threat by the

accused, based on the oral and documentary evidence on record.

12. The learned HCGP further contended that, though the accused filed additional statement dated 16.10.2014 under Section 313(5) of the Code of Criminal Procedure, he has not whispered about his voluntary statement dated 15.07.2013, made before the police, admitting the act of trespass, rape, robbery and threat to life with knife, to the P.W.1. In the absence of any material to prove his defence, the impugned judgment and order of sentence passed by the learned Sessions Judge is just and proper. He further contended that, taking into consideration the barbaric act of the accused on P.W.1 committing rape on a 69 years old woman, no leniency should be shown to the accused, as the entire material on record clearly depicts, beyond reasonable doubt, that the accused is involved in the alleged crime.

13. He further contended that the evidence of P.W.1 supported by medical evidence clearly proved rape, robbery and threat to life by the accused on P.W.1. The evidence of P.Ws.3, 4, 5 and 6 and spot mahazar/Ex.P.2 clearly depicts that the accused is involved in the crime. The statement of the victim-P.W.1 aged 69 years as on the date of the incident has to be considered as gospel truth, as, no women at that age would lie, as alleged by the accused. Therefore, the appellant has not made out any ground to interfere with the impugned judgment and order of conviction and sentence.

14. In support of his contentions, learned HCGP relied upon the following judgments:

(i) ***Siriya @ Shri Lal vs. State of Madhya Pradesh*** reported in ***(2008)3 SCC Cri 422: (2008)8 SCC 72***.

(ii) ***Shyam Narain vs. State (NCT of Delhi)*** reported in ***(2013)7 SCC 77***, para-27,28

V. POINT FOR DETERMINATION

15. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in the present Appeal is:

> "Whether the accused has made out a case to interfere with the impugned judgment and order sentencing the accused for the offences punishable under Sections 448, 376, 392 r/w 397 and 506 of the Indian Penal Code, in the facts and circumstances of the case?"

16. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material including original records, carefully.

17. The sum and substance of the prosecution case as per the Charge dated 28.06.2014, is that, on 14.07.2013 at 19.15 hours, the accused has trespassed into the house of P.W.1, committed rape on P.W.1, robbed cash of ₹5,500/- and jewels worth ₹51,000/-

and threatened P.W.1 with knife knowingfully well that the P.W.1 was alone in the house. It is the specific case of the accused in the additional statement dated 16.10.2014 made under Section 313(5) of the Code of Criminal Procedure, to the effect that he went to the house of P.W.1 to recover arrears of salary of ₹10,000/- which was deprived to him by P.W.1 by colluding with P.W.8, and he has not committed any offence, as alleged.

18. In order to appreciate the entire material on record, it is relevant to consider the evidence of the prosecution witnesses and the documents relied upon.

19. P.W.1, who is the complainant and victim, reiterating the complaint averments, has stated that, "on 14.07.2013, at about 7.00 pm, when I was meditating in my house, the accused, by knocking the back door of my house, called me ಅಜ್ಜಿ ಅಜ್ಜಿ (grand mother, grand mother). When I slightly opened the

door, the accused pushed the door, entered the house forcibly holding a knife in his hand. At that time, there was electric power supply in the house. The accused dragged me to the bed room by holding the collar of my nightie and threatened me that if I shout, he would kill me. The accused, forcefully, made me naked. Though I told the accused that I am not feeling well and I am having children who are elder to him, and begged him not to do anything to me, the accused did not care. The accused opened his pant zip and had sexual intercourse against my will by biting my lips with his lips. Thereafter, the accused sat on my chest and inserted his penis into my mouth. Then, with knife point, the accused terrorized me and asked me to give cash and gold. As I was not in a position to get up, the accused supported me to get up and went near the almirah, took out ₹5,500/- and gold ornaments kept in the vanity bag. He warned that I should not inform any body, and ran away from the place. Thereafter, I covered myself with a

piece of cloth, came out and raised hue and cry. Thereafter, I lodged the complaint with the jurisdictional police'. In the cross-examination, the complainant-P.W.1 has stated as under:

> "ನಾನು ದೂರಿನಲ್ಲಿ "ಆಗ ನಾನು ಎದ್ದು ಮನೆಯ ಹಿಂಭಾಗದ ಬಾಗಿಲನ್ನು ತೆರೆದಂತೆ ನಾಗೇಶನು ಕೈಯಲ್ಲಿ ಕತ್ತಿಯೊಂದನ್ನಿಡಿದು ಮನೆಯೊಳಗಡೆ ಬಂದು ನಾನು ಧರಿಸಿದ್ದ ನೈಟಿ ಉಡುಪಿನ ಕಾಲರ್ ಹಿಡಿದು ಕೈಯಲ್ಲಿದ್ದ ಕತ್ತಿಯನ್ನು ತೋರಿಸಿ ಬೊಬ್ಬೆ ಹೊಡೆದರೆ ನಿಮ್ಮನ್ನು ಕಡಿದು ಕೊಂದು ಹಾಕುತ್ತೇನೆ ಎಂಬುದಾಗಿ ಬೆದರಿಸಿ" ಎಂದು ಹೇಳಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ."

The complainant denied the suggestion that the accused has neither trespassed into her house, nor robbed money and jewels with knife point. She has further stated that, she made statement before the Magistrate that the accused threatened her and thereafter, pushed her on the bed and committed rape. Thereafter, she informed her sons and neighbours about the incident. P.W.1 further denied the suggestion that the accused has not made any sexual assault on her.

20. P.W.2-Greshian D'Souza, aged 40 years, son of the victim- complainant, reiterating the statement of the complainant, has stated that, about 5 to 10 minutes after the incident, his mother-P.W.1 came out of the house and shouted ಕಳ್ಳ ಕಳ್ಳ (thief, thief). Thereafter, though, himself and others chased the accused, he disappeared in the forest as it was dark and rainy.

21. P.W.3-Marshal D'Cunha, neighbour of P.W.1 has not supported the case of the prosecution. P.W.4, friend of P.W.2, though stated that after 5 to 10 minutes, P.W.1 came out of the house shouting ಕಳ್ಳ ಕಳ್ಳ (thief, thief), turned hostile.

22. P.W.5-Sharmila and P.W.6-Lilly D'Souza, have reiterated the statements of P.Ws.1 and 2 and supported the case of the prosecution.

23. P.W.7-Mohd.Rafeeq has stated that the accused was working under P.W.8 in the house under

construction belonging to the daughter of P.W.1 and the accused was residing in a shed behind the house of P.W.1. He supported the case of the prosecution.

24. P.W.8-Basheer, building contractor who was engaged by P.W.1 to construct the house has stated that the accused was working under him as a labourer and the accused was residing in a shed behind the house of P.W.1. He used to pay salary to the accused regularly. The witness supported the case of the prosecution.

25. P.W.9-Dr.Jesintha D'Souza, working as Senior Specialist, Government Wenlock Hospital, Mangaluru, has stated that, she examined the complainant-P.W.1 on 15.07.2013 and found injuries on her body and the said injuries have happened within 12 hours from the time of the examination. She issued Wound Certificate as per Ex.P.9. Ex.P.10 is the FSL report. P.W.9 has not

been cross-examined by the learned counsel for the accused/defence.

26. P.W.10-Dr.Geethalakshmi- Scientific Officer, Regional Forensic Science Laboratory, Mangaluru, has stated that, on 03.08.2013, five sealed bags were received for examination, in Crime No.244/2013. The bag marked as (A) contained a bed sheet, (D) contained a nightie, (E) contained a pant, T-Shirt, an underwear, (F) contained one Penile swab, semen, pubic hairs, nail pieces, and (G) contained one vaginal swab and pubic hairs. After examining the said items, she gave the Certificate of Examination as per Ex.P.10 and Serology Report as per Ex.P.11. In the Serology Report-Ex.P.11, it is clearly stated that except penile swab, all other articles contain blood stains. It is stated that items A-bed sheet, D-nightie, E1-pant, E2-T Shirt, E3-underwear and G1-vaginal swab were stained with 'AB' blood group. She identified the bed sheet and nightie

marked as M.Os.1 and 4 and the pant, T-Shirt and the undergarment marked as M.Os.10, 11 and 12, respectively. The penile swab, semen, pubic hairs, nails, vaginal swab and pubic hairs were marked as M.Os.13 to 18.

27. P.W.11-Narendra, an auto driver, who took the complainant-P.W.1 and her son to the police station, whose statement was also recorded by the police, has supported the prosecution case.

28. P.W.12-H.Nagesh, a goldsmith, has stated that among the jewels brought by police for examination on 15.07.2013, except the thendulkar chain, the other jewels i.e., one jumki, one bendole, one necklace and a pearl chain are made of gold, worth ₹60,000/-. The said jewels are marked as M.Os.5, 6, 7, 8 and 9. His signature in the mahazar-Ex.P.7 was marked as Ex.P.7(c).

29. P.W.13-Manjunatha, police constable, supported the case of the prosecution.

30. P.W.14-Dr.Bhavani Shankar, Eye specialist, Wenlock Hospital, Mangaluru, who examined the accused issued Out Patient Card as per Ex.P.14. Ex.P.15 is the Certificate of Age. Ex.P.16 is the report estimating the age of the accused. The witness supported the prosecution case.

31. P.W.15-Vijayakumar, Assistant Revenue Officer, has stated that he has issued Ex.P.17 certifying the ownership of complainant in respect of door No.7/63/13. His signature is marked as Ex.P.17(a). Ex.P.17(b) is the signature of P.W.21.

32. P.W.16-Denis D'Souza, Junior Engineer, MESCOM, has stated on oath that on the date of the incident, there was no power cut and there was continuous supply of electricity. Accordingly, he issued

Electricity Supply Certificate as per Ex.P.18. Ex.P.18(a) is the signature of P.W.14 and Ex.P.18(b) is the signature of P.W.21.

33. P.W.17-Narayana Bhandari-Head Constable, has stated that, he along with other police searched for the accused in the forest area on 14.07.2013 and on the next day, at about 5.30 am, the accused was found hiding in the shrub. They surrounded the accused, arrested and brought him near the jeep under mahazar.

34. P.W.18-C.S.Venkatesh, Police Head Constable, Mangaluru Rural Police Station, has stated that, on 03.08.2013 he was directed to take five packets seized by C.W.26 in Crime No.244/2013 along with permission letter with the seal of A.C.P., to the RFSL, Mangaluru. When he handed over the same to the RFSL, the packets and seal were intact. The witness has not been cross-examined.

35. P.W.19-Nanda Kumar, PSI, deposed in the same lines as that of P.W.17. Ex.P.19 is the mahazar. Signature of P.W.20 is marked as Ex.P.19(a) and the signature of P.W.21 is marked as Ex.P.19(b).

36. P.W.20-Gopalakrishna Bhat, is the PSI who filed FIR and sent the victim to the hospital. Ex.P.20 is the mahazar. Ex.P.20(a) is the signature of P.W.20 and Ex.P.20(b) is the signature of P.W.21.

37. P.W.21-Ravish, Police Inspector and the Investigating Officer further investigated the matter and recorded the confession statement of the accused as per Ex.P.21. Ex.P.21(a) is the signature of the accused and Ex.P.21(b) is the signature of P.W.21. He filed charge sheet against the accused.

VI. FINDINGS RECORDED BY THE LEARNED SESSIONS JUDGE

38. Based on the aforesaid material on record, the learned Sessions Judge recorded a finding that,

knowingfully well that the complainant was alone in the house, the accused trespassed into the house of the complainant, aged 69 years old, raped her, robbed with knife point and terrorized her and the prosecution has proved the involvement of the accused in the said offences, beyond reasonable doubt. It is further recorded that the accused has not explained as to how he came in possession of the cash and gold ornaments which were kept in the almirah of the house of the complainant-victim, when the same was seized by the police. It is not the defence of the accused that the prosecution witnesses including independent witnesses had grudge against him and therefore, they are taking revenge. The learned Sessions Judge has further recorded a finding that the independent witnesses, P.Ws.5 and 6 have categorically stated the incident disclosed by P.W.1 on the same day at 8.00 pm. On the next day, the visit of spot by the Investigating Officer and spot mahazar conducted by seizing M.Os.1 to 4 is

also affirmed by them. The criminal intimidation caused by the accused holding knife is disclosed by the complainant with her son and neighbours i.e., P.W.5 and 6 on the same day. Therefore, the learned Sessions Judge, by the impugned judgment and order of conviction and sentence, proceeded to convict the accused.

VII. CONSIDERATION

39. Having regard to the peculiar facts and circumstances of the case, it is an admitted fact that the accused was a labourer working as assistant under P.W.8 who was engaged by P.W.1 for constructing a new house for her daughter and the accused was residing in a shed near the house of the P.W.1. There is no dispute with regard to the ownership of the building, in view of the certificate issued by P.W.15 as per Ex.P.17. It is also not in dispute that, no Indian women, at an advanced age of 69 years gives false complaint as alleged by the accused in his additional statement

under Section 313(5) of the Code of Criminal Procedure. In fact, in the very same statement, the accused has admitted that he was present in the house of P.W.1 at 7.00 pm on 14.07.2013. According to him, he went to the house of P.W.1 and asked ₹10,000/- which was due to him from P.W.1. But, she refused to give the said money and immediately shouted ಕಳ್ಳ, ಕಳ್ಳ (thief thief). The statement of P.W.1 is corroborated by the evidence of P.W.8 who has stated on oath that he was paying salary to the accused and there was no arrears of salary, as alleged by the accused. P.W.8 denied the suggestion that he is colluding with P.W.1. But no suggestion was put to P.W.1 as to whether the accused came to her house only to ask the money said to have been retained by her, as alleged by the accused.

40. In the additional statement, the accused took a defence that the complainant has given false statement against him as he demanded money due to him towards

construction of house. In the cross-examination of P.W.1 suggestion was put to the effect that in order to vacate the accused from the shed, a false case is registered. The said suggestion was denied and it was inconsistent to the previous suggestion. Therefore, the inconsistent defence taken by the accused is not believable.

41. It is also not in dispute that the accused made voluntary statement/confession statement dated 15.07.2013 as per Ex.P.21. In the additional statement dated 16.10.2014 made under Section 313(5) of the Code of Criminal Procedure, the accused has not stated anything about his previous voluntary statement. It is well settled that once defence is taken, it is for the accused to discharge the burden by himself. Admittedly, neither any evidence is adduced nor any document is produced by the accused in support of his

additional statement to disprove the allegations made in the complaint.

42. It is relevant to state that, in the confession statement made by the accused, it is clearly stated that he was fond of reading sex books, watching sex pictures and was in the habit of watching sex movies. He had further expressed about his lust for having sex after reading sex books. Though he was aged 24 years as on the date of the incident, prior to that, he had evil thought in his mind whenever he saw the complainant in the nightie. How the accused who is similar to the age of grandsons of the victim thought of having sex with the victim without caring for her age of 69 years is un-understandable. Normally, in the Society, the elders, irrespective of gender will be given utmost respect. The accused who was taking help from the complainant calling her as ಅಜ್ಜಿ ಅಜ್ಜಿ (grand mother, grand mother) crossed the limit and only to fulfill his lust,

had sexual intercourse against her will, ignoring the sanctity of relationship of "grandmother and grand son". The act of sexual attack on an aged woman by the accused is like a "cruel animal" and P.W.1 never dreamt of such an inhuman behaviour by the accused who used to call her as ಅಜ್ಜಿ ಅಜ್ಜಿ (grand mother, grand mother).

43. The material-oral and documentary evidence on record clearly depicts that, the accused was residing in a shed near the house of the victim-complainant-P.W.1, as deposed by all the prosecution witnesses and independent witnesses. The sexual assault made by the accused is not against an old aged women, but against the entire Society. It is the rape on the grand mother. Such an act cannot be encouraged.

44. The incident narrated by the victim-P.W.1 with regard to house trespass, rape, robbery and threatening by using a deadly weapon by the accused clearly indicate that the accused has not only violated the

privacy and personal integrity of P.W.1, but also inevitably caused serious psychological as well as physical harm to P.W.1. "Rape is not merely a physical assault-it is often destructive of the whole personality of the victim. A murder destroys the physical body of the victim, a rapist degrades the very soul of the helpless female".

45. The evidence of P.Ws.3 to 7 clearly depicts that they have seen P.W.1 coming out of the house covering her body with a small piece of cloth and shouting ಕಳ್ಳ, ಕಳ್ಳ (thief thief). P.W.4-Dixit, who turned hostile, has stated that he heard P.W.1 shouting and coming out of her house by covering her body with a towel, his evidence corroborates the evidence of P.W.1. Even the evidence of hostile witnesses can be relied upon to the extent to which it supports the prosecution version of the incident, as held by the Hon'ble Supreme Court in the

case of ***Bhajju @ Karan Singh vs. State of Madhya Pradesh*** reported in ***(2012)2 Crimes 40(SC)***.

VIII. MEDICAL EVIDENCE, PARA 46 TO 50

46. P.W.9-Dr. Jasintha D'Souza, a Senior Specialist working in Government Wenlock Hospital, has stated that on 15.07.2013, P.W.1 was brought for examination. After examination, she issued wound Certificate as per Ex.P.9, which reads as under:

Injuries:

(i) Linear abrasion 1cm over the face in the mandibular region left side.

(ii) Linear abrasion ½cm over the face in the maxillary area on the left side.

Genital Examination:

No blood stains. No seminal stains. No foreign particles and hairs in the genital region.

Genital Injuries:

Linear abrasion ½cm over the posterior part of labia majora on the left side- P/V. Vagina lax: Admits two fingers easily.

Uterus normal size. Anteverted delivered 5 children, 3 male and 2 female. Last child birth female 32 years back. Attained menopause 19 years back.

Provisional Opinion:

From the foregoing clinical examination following evidence is found to suggest that sexual intercourse might have taken place.

(i) Injuries. Linear abrasion 1cm over the face in the mandibular region.

(ii) Linear abrasion ½cm over the face in the maxillary area on the left side.

(iii) Genital injury Linear abrasion ½cm over the posterior part of labia majora on the left side.

(iv) Age of Injuries: Less than 12 hours.

The evidence of the Doctor-P.W.9 has reached finality, as the defence counsel has not cross-examined the doctor.

47. P.W.10-Dr.Geethalakshmi, on examination of five sealed bags sent by the Investigating Officer, has given her opinion as per Ex.P.10, as under:

OPINION

Item No.	Stained with blood/ not stained	Extent of stains	Size (approx)	Location
1.A	Stained	Very few	0.1-1.5 cm	Here & there
D	Stained	Few	0.1-2 cm	Here & there
E-1	Stained	Few	0.1-12 cm	Here & there
E-2	Stained	few	0.1-8 cm	Here & there
E-3	Stained	Few	0.1-1 cm	Here & there
F-1	Not stained	-	-	-
F-3	Stained	-	-	-
F-4	Stained	-	-	-
G-1	Stained	-	-	-
G-2	Stained	-	-	-

2. Presence of Seminal stains and Vaginal secretions was not detected in article Nos.A, D, E-1, E-2, E-3, F-1, F-3, F-4, F-1 and G-2.
3. Skin tissues were not detected in article No.F-4.

NOTE:

(1) The contents of article No.F-2 were decomposed.

(2) Article Nos.F-3 and G-2 contain cut hairs, hence unfit for the comparison of hairs.

(3) Pubic hairs were not detected in article Nos.A,D,E-1, E-2 and E-3.

(4) The blood stained exhibits vide serial Nos.12 to 20 were subjected to serological analysis and

the specimen cuttings were completely utilized for serology work. Serology report will be sent in due course.

The Serology Certificate dated 03.10.2013-Ex.P.11 issued by P.W.10 reads as under:

ORIGIN OF THE STAINS

Items A,D,E-1, E-2, E-3, F-3, F-4, G-1 and G-2 are stained with human blood.

BLOOD GROUP OF THE STAINS

Items A,D,E-1,E-2,E-3 and G-1 are stained with 'AB' group blood.

The blood group of the stains in items F-3, F-4 and G-2 could not be determined because the results of the tests were inconclusive."

48. P.W.14-Dr.Bhavani Shankar, a Specialist who examined the accused on 15.07.2013 has stated that the accused was capable of having sexual intercourse. Ex.P.14 is the outpatient card and Ex.P.15 is the Certificate of Age of the accused which clearly states that the accused is aged more than 20 years.

49. Admittedly, P.W.9-Dr.Jesinth D'Souza has not been cross-examined and the important evidence adduced by P.Ws.9, 10 and 14 has not been challenged by the accused and the said material witnesses have not been cross-examined. Therefore, the evidence of P.W.9, 10 and 14 who supported the prosecution along with corroborative evidence along with documents corroborates the case of the prosecution.

50. The opinion of P.W.9 with regard to sexual assault on the complainant cannot be ignored. P.W.10 examined the clothes worn by the accused. Blood stains were found on the clothes of the complainant and the blood group is 'AB'. The Serology report proves that the blood stains found is human blood.

51. The cash and gold seized by the Investigating Officer from the possession of the accused is not in dispute. The accused has neither adduced any contra

evidence nor produced any contra documents. It is also not in dispute that the documents Ex.P.8-evidence of P.W.4 shows that the witness seen the accused coming out of the house of the complainant and there was street light by the side of the road.

52. P.W.16-Denis D'Souza, Junior Engineer, MESCOM, in the certificate issued by him as per Ex.P.18 has stated that as on the date and time of the incident, there was no scarcity or shortage of electricity. On the other hand, it proves that there was supply electricity through out the night on the date of the incident. Therefore, the evidence of P.W.4 that in the street light, he saw the complainant-P.W.1 coming out of her house, corroborates the evidence of P.W.1.

53. The evidence and material documents stated supra clearly establish that as on the date and time of the incident, the accused trespassed into the house of the complainant by holding a deadly weapon-knife,

raped the complainant, robbed cash and gold ornaments and threatened the complainant, causing criminal intimidation to complainant's life. Accordingly, the prosecution has proved the case of the complainant beyond reasonable doubt.

54. It is also not in dispute that the evidence of P.W.1 is supported by evidence of the Doctor who gave the opinion of rape on P.W.1 on 14.07.2013. The complainant being a grown up married women aged 69 years, the absence of injuries on her private parts is not of much significance, as held in ***Joshi's Medical Jurisprudence and Toxicology***. Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia Majora or the vulva or pudenda with or without emission of semen or even an attempt of penetration is quite sufficient for the purpose of the law.

It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. "Rape is a crime and not a medical condition". "Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim". The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a "legal conclusion, not a medical one".

55. The learned counsel for the appellant contended that there were no blood stains on the clothes of the accused, it may be true that the rainy season starts from June in Mangaluru. Even if it is accepted that there was heavy rain during night hours on 14.07.2013 till morning on 15.07.2013, the accused was found on

the next day at 5.30 am. His admission made in the statement itself shows that he was hiding in the forest area. Therefore, the blood stains on his clothes might have been washed away in the rain.

56. Though learned counsel for the appellant contended that the seized towel, knife and vanity bag were not sent to finger print expert and complainant has not raised alarm at the inception, the same cannot be accepted, since, the fact remains that the accused trespassed into the house of the complainant, calling her as ಅಜ್ಜಿ ಅಜ್ಜಿ (grand mother, grand mother) when she opened the door slightly, the accused pushed the door by force and trespassed into the house of the complainant by holding a knife in his hand and dragged her and threatened her not to shout, otherwise, he will kill her, and forcibly made her naked and had sexual intercourse against her will and he made all lustic acts

inhumanly. Therefore, the contention of the learned counsel for the appellant cannot be accepted.

57. The jurisdictional police registered the complaint on 15.07.2013 and the accused was arrested on the same day. There was no delay as contended by the learned counsel for the accused. A heinous offence has been committed on an aged women. The delay been explained by P.W.13. The Hon'ble Supreme Court and this Court, time and again, have held that in any rape case, delay in filing complaint by the victim who suffered at the hands of accused is not fatal to the case and admittedly, in the present case, the authorities have explained why it was delayed.

58. As per the evidence of P.W.14-Doctor who examined and found injuries on the accused has not explained how the accused sustained those injuries. The medical certificate shows multiple abrasion on the left hand and right knee. The evidence of P.W.1 depicts

how the brutal act was done by the accused. She has stated that the accused first made her naked and committed sexual intercourse. After committing the rape, the accused sat on her chest and made his private part into her mouth. There was no necessity for the complainant/victim who is aged 69 years having five children and grand children, to make such an allegation against the accused. As already stated above, the accused was aged 24 years. On 15.07.2013, he has confessed his act of sexual intercourse, his determination to have sexual intercourse on P.W.1. In the confession statement, the accused has stated that, he had determined to have sex with the complainant. He has stated that, after knowing that the complainant-victim was alone in the house on 14.07.2013, he entered the house at 7.15 pm with a knife deciding to have sex with the complainant. Accordingly, he did forcible sexual intercourse with the complainant. The said confession statement made by the accused

corroborates the evidence of P.W.1 who is the victim. The evidence of other witnesses including Medical witness and official witnesses corroborates with the statement made by the accused. The same has not been denied when the accused made his additional statement before the Court on 16.10.2014, under Section 313(5) of the Code of Criminal procedure. Therefore, the prosecution has proved the offence against the accused, beyond reasonable doubt.

59. Under the provisions of Section 27 of the Indian Evidence Act, 1872, M.O.1-bed sheet, M.O.2-knife, M.O.3-vanity bag, M.O.4-Nightie, M.O.5-Jumki, M.O.6-Ear ring, M.O.7-Neckless, M.O.8-White pearl gold chain and M.O.9-tendulkar chain, have been recovered and seized from the possession of the accused by the Police/ Investigating Officer. No explanation has been offered by the accused about the possession of the said articles.

The fact that the said articles belong to P.W.1 cannot be discarded.

60. It is relevant to state at this stage that, "Rape is violative of the victim's fundamental right under Article 21 of the Constitution of India". Therefore, the "Courts should deal with such cases sternly and severely". "Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman". 'It is a serious blow to her supreme honour and offends her self-esteem and dignity as well". "It degrades and humiliates the victim and leaves behind a traumatic experience". "A rapist not only causes physical injuries, but, leaves behind a scar on the most cherished position of a woman, i.e., her dignity, honour, reputation and chastity". Rape is not only an offence against the person of a woman, rather a crime against the entire society. It is a crime against basic human rights and also violates the most

cherished fundamental right guaranteed under Article 21 of the Constitution of India.

61. The accused found guilty of committing rape on prosecutrix ignoring her advanced age, to satisfy his lust. "A woman's body is not a man's play thing and he cannot take advantage of it in order to satisfy his lust, and the Society will not tolerate such things anymore".

62. The Hon'ble Supreme Court, while considering the provisions of Section 449, 342, 376(1), 302, 307, 394 and 397 of the Indian Penal Code, in the case of ***B.kumar alias Jayakumar alias Left. KR alias S. Kumar vs. Inspector of Police through CB CID*** reported in ***(2015)2 SCC (Cri) 78***, at paragraph 14 to 17, held as under:

> 14. We have heard the learned Senior Counsel for the appellant Shri P.C.Aggarwala, and learned counsel for the State Shri Subramonium Prasad at great length. Having examined the entire

evidence, we are satisfied that there is no error whatsoever in the conviction of the appellant for all the offences he has been charged with. There is clear and unimpeachable evidence of the prosecutrix herself, as regards the offence of rape, though it was argued that penetration was not proved. We find no merit whatsoever in the said submission. In view of the other evidence suggesting the rape, such as injuries on the private parts of the prosecutrix, moreover, there is nothing to cast any doubt at the version of the prosecutrix as regards the offence of rape. The injuries on her throat caused by a sharp-edged weapon have been examined by the doctor. Her evidence in this regard is also unimpeachable. She has also deposed about the removal of jewellery which was subsequently found to have been pawned by the appellant in two pawn shops and was thereafter recovered. The evidence of PW 2 Sangeetha corroborated the deposition of the prosecutrix, both as regards the injury

caused to the prosecutrix and decamping with the jewellery.

15. Similarly, there is no reason to doubt the evidence produced by the prosecution as regards the assault on Sangeetha with an *aruval* and slitting of her throat. Sangeetha, who is an injured witness had no reason to lie. Her presence in the house has also been explained. She is the daughter of the elder brother of the father of the prosecutrix and was staying with the family at the relevant time.

16. We thus have no hesitation in confirming the concurrent findings and facts recorded by the Sessions Court and the High Court. We find from the evidence that the appellant came to the house driven by lust with the intention of satisfying his desires at the cost of the chastity of the prosecutrix. He was armed with an *aruval,* which in all probability he intended to use to intimidate anyone who opposed him, since he was probably aware that there were no adults in the house. Since he had worked as a mason

in the house, he had noticed the prosecutrix to whom he felt greatly attracted. There is evidence of the fact that she looks older than her age. There is no doubt that he committed the murder of the deceased Manikandan on the spur of the moment, since he was enraged and infuriated when the boy had untied himself, seen him committing rape and further that he tried to make a phone call to someone outside. There is thus little doubt, that he attached the deceased with a view to ensure a safe escape from the scene of the crime and further, eliminating evidence against himself.

17. Having regard to the fact that he was initially content with typing up the deceased to keep him out of the way, he was infuriated later on at his insurgence. His motive in going to the place was not to commit murder, but was to satisfy his lust, as suggested by the learned counsel for the State. The appellant attacked the deceased boy because he suddenly panicked at the thought that he would be caught. It is also

clear that it was in the same state of mind that he attached PW 2 Sangeetha, who had seen him attacking the deceased. Similarly, he then attacked the prosecutrix with a view to intimidate her. We have no doubt that if it was truly his intention to do so, he could have killed all the three, who were much weaker than him, with the *aruval* at the outset, but he did not do so. We make these observations only by way of assessment of the predominant motive of the appellant in injuring his victims and killing one of them. Our observations do not detract from the fact that the injuries were caused during the course of and as a part of, a heinous crime of lust. The assault on PW 2 Sangeetha and the prosecutrix certainly constitute an attempt to murder as found by the Sessions Court and the High Court. The appellant has thus been rightly convicted for the offences having regard to the nature of the injuries, their location and the weapon with which the were caused."

63. The Hon'ble Supreme Court, while considering the provisions of Section 375, 376, 417 r/w 365 in the case of ***Deepak Gulati vs. State of Haryana*** reported in ***(2013)7 SCC 675***, at paragraph 20, held as under:

> "20. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murdere destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore, a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to

the victim, leaving upon her indelible marks".

64. The Hon'ble Supreme Court, while considering the provisions of Section 27 of the Indian Evidence Act, 1872, in the case of ***Mukesh and another vs. State for NCT of Delhi and others*** reported in ***AIR 2017 SC 2161***, at paragraph 135, 136 and 431, held as under:

> "135. In the instant case, the recoveries made when the accused persons were in custody have been established with certainty. The witnesses who have deposed with regard to the recoveries have remained absolutely unshaken and, in fact, nothing has been elicited from them to disprove their creditworthiness. Mr. Luthra, learned senior counsel for the State, has not placed reliance on any kind of confessional statement made by the accused persons. He has only taken us through the statement to show how the recoveries have taken place and how they are connected or linked with the further investigation which matches the

investigation as is reflected from the DNA profiling and other scientific evidence. The High Court, while analyzing the facet of Section 27 of the Evidence Act, upheld the argument of the prosecution relying on State, Govt. of NCT of Delhi v. Sunil and another reported in (2001)1 SCC 652, Sunil Clifford Daniel v. State of Punjab reported (2012)11 SCC 205, Ashok Kumar Chaudhary and others v. State of Bihar reported in (2008)12 SCC 173, and Pramod Kumar v. State (Government of NCT of Delhi) reported in (2013)6 SCC 588.

136. On a studied scrutiny of the arrest memo, statements recorded under Section 27 and the disclosure made in pursuance thereof, we find that the recoveries of articles belonging to the informant and the victim from the custody of the accused persons cannot be discarded. The recovery is founded on the statements of disclosure. The items that have been seized and the places from where they have been seized, as is limpid, are within the special knowledge of the accused persons. No

explanation has come on record from the accused persons explaining as to how they had got into possession of the said articles. What is argued before us is that the said recoveries have really not been made from the accused persons but have been planted by the investigating agency with them. On a reading of the evidence of the witnesses who constituted the investigating team, we do not notice anything in this regard. The submission, if we allow ourselves to say so, is wholly untenable and a futile attempt to avoid the incriminating circumstance that is against the accused persons.

431. As noted in the above tabular form, various articles of the complainant and the victim were recovered from the accused viz., Samsung Galaxy Phone (recovered at the behest of A-2 Mukesh); silver ring (recovered at the behest of A-3 Akshay); Hush Puppies shoes (recovered at the behest of A-4 Vinay) and Sonata Wrist Watch (recovered at the behest of A-5 Pawan). Recovery of belongings of PW-1 and that of the victim, at the instance of the accused is

> a relevant fact duly proved by the prosecution. Notably the articles recovered from the accused thereto have been duly identified by the complainant in test identification proceedings. Recovery of articles of complainant (PW-1 and that of the victim at the behest of accused is a strong incriminating circumstance implicating the accused. As rightly pointed out by the Courts below, the accused have not offered any cogent or plausible explanation as to how they came in possession of those articles."

65. The Hon'ble Supreme Court, while considering the provisions of Sections 375, 376 and 90 of the Indian Penal Code, in the case of ***Anurag Soni vs. State of Chhattisgarh*** reported in ***2019(13) SCC 1***, at paragraph 19, held as under:

> "As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase nowadays. Such offences are

against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamount to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity. Therefore, merely because the accused had married with another lady and/or even the prosecutrix has subsequently married, is no ground not to convict the appellant-accused for the offence punishable under Section 376 IPC. The appellant-accused must face the

consequences of the crime committed by him."

66. It is relevant to state at this stage that in ***Halsbury's Statutes of England and Wales*** (Fourth Edition) Volume 12, it is stated that, "even the slightest degree of penetration is sufficient to prove sexual intercourse". It is violation with violence of the private person of a woman an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order. The physical scar may heal up, but the mental scar will always remain. "When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame".

> "As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase nowadays. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by

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67. The Hon'ble Supreme Court while considering the provisions of Section 376(2)(f) of the Indian Penal Code,

in the case of ***Shyam Narain vs. State (NCT of Delhi)*** reported in ***(2013)7 SCC 77*** relied upon by the learned High Court Government Pleader, at paragraph-27 and 28, held as under:

> 27. Respect for reputation of women in the society shows the basic civility of a civilized society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the

individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasized on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the drams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the Court.

> 28. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court."

68. Though Indian Penal Code was enacted by Act 45 of 1860, and even after lapse of 74 years of independence, still women is not safe in the hands of violators of law. "Now time warrants that the Court should act as guardians and protect Dharma in order to protect the safety of women, as contemplated under Article 21 of the Constitution of India and deal with the violators including rapists sternly and severely with iron hands and Courts should act as Lord Shri Krishna of

Mahabharatha to protect Dharma. Verse 7-8 of Chapter 4 of the BHAGAVADGEETHA, says:

"ಯದಾ ಯದಾಹಿಧರ್ಮಸ್ಯ ಗ್ಲಾನಿರ್ಭವತಿ ಭಾರತ
ಅಭ್ಯುದಾನಮಧರ್ಮಸ್ಯ ತದಾತ್ಮಾನಾಂ ಸೃಜಾಮ್ಯಹಂ
ಪರಿತ್ರಾಣಾಯ ಸಾಧೂನಾಂ ವಿನಾಶಾಯ ಚ ದುಷ್ಕೃತಾಂ
ಧರ್ಮ ಸಂಸ್ಥಾಪನಾರ್ಥಾಯ ಸಂಭವಾಮಿ ಯುಗೇ ಯುಗೇ!"

which means:

"Whenever there is decay of righteousness,
O Bharata,
And there is exaltation of unrighteousness,
then I myself come forth;
For the protection of the good, for the
destruction of evil-doers,
For the sake of firmly establishing
righteousness, I am born from age to age."

Therefore, the Court cannot act like a mute spectator to allow injustice being done to the women for generations to generations, in order to maintain the majesty of the Court.

69. Insofar as the judgment relied upon by the learned counsel for the appellant in the case of ***Phul Singh vs. State of Haryana*** reported in ***AIR 1980 SC 249*** for reduction of sentence, it was a case where the accused

was aged 22 years, committed rape on the wife of his cousin who was next door neighbour in a broad-day-light. The two families being close cousins, were ready to take a lenient view of the situation. In those circumstances, the Hon ble Supreme Court, reduced the sentence, by consent. The said judgment has no application to the facts and circumstances of the case.

70. The judgment relied upon by the learned counsel for the accused-appellant in the case of ***State of Rajasthan vs. N.K.*** (Accused) reported in ***(2000)5 SCC 30***, was a case of rape on a minor girl aged 15 years. The circumstances of the said case and the present case are entirely different. Admittedly, in the present case, the accused has committed rape on a married woman having five children and grand children, aged about 69 years. The accused has not only raped, but also has robbed cash and gold jewellary and threatened the victim with a knife point. The case referred to by the

learned counsel for the appellant supra was dealt with under Section 376 of the Indian Penal Code, alone. Admittedly, in the present case, the charge made against the accused is under Sections 448, 376, 392 r/w 397 and 506 of the Indian Penal Code and all charges against the accused have been proved by the prosecution, beyond reasonable doubt. Therefore, the case relied upon by the learned counsel for the accused-appellant has no application to the facts and circumstances of the present case.

71. Another judgment relied upon by the learned counsel for the appellant-accused is rape on a 1½ year old child and the offence is under Section 376 of the Indian Penal Code. There are no other offences, as in the present case. The said case has no application to the facts and circumstances of the present case.

72. Admittedly, in the present case, heinous offence is committed by the accused. The trespass has been

proved by the evidence of P.W.1 and the additional statement of accused under Section 313(5) of the Code of Criminal Procedure. The offence of rape, robbery and threat is also spoken by P.W.1 who is the victim. The evidence of other witnesses including independent witnesses corroborates the said fact. This clearly depicts that the prosecution has proved all the offences alleged against the accused i.e., offences punishable under Sections 448, 376, 392 r/w 397 and 506 of the Indian Penal Code, beyond reasonable doubt. The learned Judge considering the entire material on record has proceeded to pass the impugned judgment and order of sentence and the appellant-accused has not made out any ground to interfere with the impugned judgment and order of sentence, in exercise of powers under Section 374(2) of the Code of Criminal Procedure. Accordingly, the point raised for consideration is answered in the negative holding that the appellant/ accused has not made out any ground to interfere with

the well crafted judgment and order of sentence passed by the learned Sessions Judge.

73. We also appreciate the courage, conviction, articulation, sincerity and devotion shown by the learned Sessions Judge in considering the averments made in the complaint, evidence-both oral and documentary, meticulously.

IX. RESULT

74. For the reasons stated above, the Criminal Appeal filed by the accused-appellant against the impugned judgment and the Order of sentence dated 14/18.11.2014 made in S.C.No.161/2013 on the file of the VI Additional District and Sessions Judge, Dakshina Kannada, Mangaluru, is ***dismissed*** as devoid of merits, confirming the judgment and order of sentence passed by the learned Sessions Judge.

75. Acting under Section 357(3) of the Code of Criminal Procedure, the entire fine amount imposed by the learned Sessions Judge is ordered to be paid to the complainant-victim as compensation.

Ordered accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

kcm