

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 09th DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
AND

THE HON'BLE MS. JUSTICE J.M.KHAZI

CRIMINAL APPEAL No.100055/2019

BETWEEN:

STATE OF KARNATAKA,
REPRESENTED BY THE
SPECIAL PUBLIC PROSECUTOR,
HONNAVAR POLICE STATION,
UTTARA KANNADA, KARWAR,
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, PIN CODE 580011

... APPELLANT

(SRI. V.M.BANAKAR, ADDL. SPP FOR APPELLANT)

AND:

KAMALESH GAJANAN NAIK,
AGE 34 YEARS, OCC: DRIVER,
R/O. NAGARBASTIKERI, TQ. GERA SOPPA,
TQ. HONNAVAR, DIST. UTTARA KANNADA,
PIN CODE : 581384

... RESPONDENT

(BY SRI. RAMESH I. ZIRALI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) &
(3) OF CR.P.C., SEEKING TO GRANT LEAVE TO APPEAL AGAINST
THE JUDGMENT AND ORDER OF ACQUITTAL DATED 08.06.2018

PASSED BY THE DIST. AND SESSIONS JUDGE, AND SPECIAL JUDGE UTTARA KANNADA, KARWAR, IN S.C.NO.33/2013, ETC.,

THIS APPEAL COMING ON FOR FINAL ORDER, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY, **SURAJ GOVINDARAJ J.**, DELIVERED THE FOLLOWING:

JUDGMENT

1. The State is before this Court, challenging the order of acquittal passed by the Special Judge, Uttara Kannada, Karwar, dated 08.06.2018 in Special Case No.33/2013.
2. Sri. V.M.Banakar, learned Addl. S.P.P. would submit that, the trial Court has not considered all the evidence on record in a proper perspective, there being serious allegations made by the victim minor as regards the sexual assault made on her, the trial Court ought to have considered the matter in the proper perspective and convicted the accused. He submits that, the prosecution had proved its case beyond all reasonable doubt about

the complicity of the accused and as such, the accused ought to have been convicted.

3. Per contra, Sri. Ramesh Zirali, learned counsel appearing for the respondent/accused would submit that, the trial court has considered the matter properly and acquitted the accused, the prosecution has not even able to establish the occurrence of the event, let alone on the complicity of the accused and as such, he submits that the appeal as filed is required to be dismissed.
4. Both the victim and the witnesses are referred to by the witness number and not by their name in order to protect the identity of the victim.
5. The case of the prosecution is that, when the victim aged about 17 years on 31.08.2013 at 7.00 a.m. had gone to attend nature's call in the forest near her house as they did not have a toilet in

their house, the accused knowing that the victim is a minor had waylaid the victim, forcibly made her to lay flat on the ground, thereafter the accused removed his trouser and forcibly tried to have sexual intercourse with her at which time she picked up a stone hit him and ran away.

6. It is in this background, on the very same day at 2.00 p.m. the victim has lodged a complaint with the jurisdictional police on which basis Crime No.355/2013 was registered by the Honnavara Police Station.
7. The investigation was taken up and upon completion of the investigation a charge-sheet was filed against the accused for the offences punishable under Sections 341, 376 and 511 of IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

8. The charges having been framed, the same was read over to the accused and explained to the accused in a language known to him being Kannada, the accused denied the charges, pleaded not guilty and claimed to be tried.
9. The prosecution in order to prove its case has in all examined 09 witnesses, i.e. P.W.1 to P.W.9 and got marked 13 documents i.e. Ex.P.1 to Ex.P.13 and closed his side. The evidence against the accused was put forward to the accused when the statement under Section 313 of Cr.P.C., was recorded when the accused denied the evidence against them, but did not lead any evidence.
10. The trial Court upon hearing the parties, acquitted the accused vide impugned Judgment dated 08.06.2018, it is the said Judgment which has been challenged on the aforesaid grounds.

11. It is in this background, we are called upon to re-examine and re-appreciate the evidence on record in order to arrive at a conclusion as to whether the Judgment of the acquittal passed by the trial Court is proper and correct.

12. The complainant was examined as P.W.1. She has stated that, P.W.2 is her father and that during the year 2013 when she was 17 years of age on 31.08.2013 at 7.00 a.m., when she had gone to attend nature's call, the accused assaulted her, held her hands and tried to forcibly have sexual intercourse with her, when she hit him with a stone and escaped from his clutches, thereafter at 2.00 p.m., she went to the Honnavara Police Station and lodged a complaint as per Ex.P.1, she identified her signature as Ex.P.1A. She has deposed that on the very same day, the police came to the spot, conducted a panchanama

between 4.30 p.m. to 5.30 p.m., as per Ex.P.2 and drawn a sketch as per Ex.P.3 and taken the photograph of the spot as per Ex.P.4. She has further stated that around 6.00 p.m. on the same day, she was taken by the police to the hospital for medical examination, where the Doctor examined her. During the course of cross-examination, she has admitted that the accused is the son of the elder brother of her father. She denied any disputes regarding the partition of properties between her father and the father of the accused. She admits that C.W.3 and C.W.4 who have been examined as P.W.3 and P.W.4 are the children of the sister of her father. She denied that the mother of C.W.3 and C.W.4 had committed suicide since she was not given a share in the partition. She denied that there were any complaints filed by her father and brother against the accused on an

earlier occasion. She has denied that there is any dispute between her father, brother, P.W.3 and P.W.4 and the family of the accused. She denied that she has given a false complaint at the behest of her father, brother, P.W.3 and P.W.4. She denied that close to the place of crime there is a school located. She denied that the school starts at 7.00 a.m. and there were children and other people in the school at that time. She denied that nearby to the spot there is a road where people would be moving at that time. She has stated that she had suffered an injury during the incident and she does not remember whether she has disclosed the name of the accused before the Doctor. She has denied that the incident did not happen.

13. P.W.2 is the father of the complainant. He has also stated that the complainant was aged about 17 years as of the date of the incident. He admits that

the accused is the son of his brother. He also states that since there was no toilet in their house, his daughter had gone out to attend nature's call and she returned back shouting and on enquiry, she has informed that the accused had tried to commit sexual assault on her. It is for this reason, he along with the complainant went to the police station and lodged a complaint, thereafter, the police came to the spot conducted a spot panchanama in his presence. During the course of cross-examination, he admits that about 10 to 12 years back, the properties of his father were partitioned. He has also admitted that he had a quarrel with the father of the accused of the purpose of giving a share to the P.W.3 and P.W.4 on several occasions. He has admitted of the accused has filed a complaint against him and his son, as also against P.W.3 and P.W.4 alleging

assault by them on the accused on 20.08.2013. He has admitted that he in turn has filed a complaint against the accused on 25.08.2013, for assaulting him.

14. P.W.3 is the son of the sister of the father of the complainant. He has admitted that there is a property dispute between P.W.2 and the father of the accused as regards the properties. He has stated that on 31.08.2013 when he was proceeding on his bike with his brother P.W.4 at 11.00 a.m., he met P.W.2 and P.W.1 who informed him that they were going to the police station to file a complaint against the accused. He has stated that at that time, neither of them knew of the sexual assault and the statement was recorded the next day. He was hence treated hostile by the public prosecutor during the course of cross-examination, he admits that the complainant and

the accused are brother and sister. He admits that the father of the complainant has lodged a complaint against the accused on 24.08.2013 and 25.08.2013, but has denied the suggestion that since the accused was not arrested in those cases, P.W.2 got filed the present case, through his daughter to get him arrested.

15. P.W.4 who is the brother of P.W.3 has reiterated the statement made by P.W.3. During the course of cross-examination, he has admitted that there is a complaint filed by the accused against P.W.2 and his son, wherein an enquiry is being conducted against them. He denies any knowledge of the complaint being filed on 24.08.2013 and 25.08.2013 by the accused against P.W.2. He denied that, since the police had not arrested the accused, P.W.2 has filed the present complaint through his daughter.

16. P.W.5 did not support the case of the prosecution and was treated as a hostile witness. During the course of his cross-examination, nothing was elicited to support the case of the prosecution.
17. P.W.6 is the Principal of the Government School, who has produced the evidence in support of the date of birth of P.W.1 which was marked as Ex.P.7.
18. P.W.7 is the witness to the spot panchanama. He has identified the spot panchanama and the sketch prepared of the spot. During the course of his cross-examination, he had admitted that there is a property dispute between P.W.2 and the father of the accused. He had admitted that there is a school near the place of the incident.
19. P.W.8 is the Medical Officer, who examined P.W.1 victim on 31.08.2013. He has stated that at that time, he has not found any external injuries but

the victim has complained of body pain, hence, he has issued a certificate in terms of Ex.P.8. During the cross-examination, he has admitted that the victim did not inform him of who assaulted her.

20. P.W.9 is a Circle Inspector of Police and the Investigating Officer. He has stated that P.W.1 the victim came to the police station on 31.08.2013 at 2.00 p.m. and filed a written complaint (Ex.P.1) on which basis Crime No.355/2013 was registered and FIR at Ex.P.9 sent to the Court. He along with several others went to the spot and prepared the spot panchanama as per Ex.P.2 and prepared a map at Ex.P.3, took a photograph of the spot as per Ex.P4 and then sent the complainant for medical test and on the same date the accused has been arrested and produced before the Court and he was remanded to judicial custody. He has stated that he has recorded the statements of

P.W.3, P.W.4 and P.W.5 on 06.09.2013, obtained transfer certificate as per Ex.P.7 from the School and also obtained wound certificate from P.W.8 at Ex.P.8, thereafter filed a charge-sheet. He admits in his cross-examination that during the investigation he came to know that the father of the complainant and father of the accused are brothers, between whom there are property disputes. The father of the complainant had filed several complaints against the complainant and his father. He also admitted that on 20.08.2013 the father of the complainant, brother of the complainant P.W.3 and P.W.4 had assaulted the accused and a case was registered. The complaint and FIR have been marked as Ex.D.1 and Ex.D.2. He admits that, there is a Government School near the spot, but no students and teachers have given the statements.

21. The above being the statements and depositions Ex.P.1 is the complaint where more or less similar allegations as made in the deposition of the P.W.1 are made. Ex.P.2 is the panchanama of the spot and the sketch of the spot. A perusal of the sketch indicates that the distance between the house of the complainant and the spot is around 100 meters, the distance from the spot to the school is around 75 meters and the distance to the road is about 30 feet. This would disprove the statement made by the complainant since the complainant has stated that there is no school near the spot and that there is no road near the spot.
22. Ex.P.3 is the portion of the statement of the P.W.3, Ex.P.4 is the photograph of the spot, Ex.P.5 is the statement of P.W.3. Ex.P.6 is the statement of P.W.5. Ex.P.7 is the Transfer Certificate of the complainant, which indicates the date of birth to be

06.11.1997, Thus as on the date of occurrence of the event, she was 17 years old.

23. Ex.P.8 is the wound certificate which makes interesting reading inasmuch as the Doctor in the said certificate has recorded that no external injuries have occurred due to the alleged assault but only bodily pain. At no place in the said wound certificate at Ex.P.8 is there a mention of sexual assault nor any examinations which were conducted on the complainant as required in any case of sexual assault. The Doctor has only stated that the victim has only a complaint of pain all over the body and that there were no external injuries seen.
24. Ex.P.9 is the First Information Report on the basis of the complaint filed. Ex.P.10 is the FIR and Crime No.340/2013 based on the compliant as per

Ex.P.11. The said complaint having been filed by the brother of the complainant against the accused and his father alleging that on 24.08.2013 around 15.00 hours, the accused had abused the complainant by using unparliamentarily words as also physically assaulted him and threatened the life of the brother of the complainant. Ex.P.12 is the FIR in Crime No.343/2013, registered on the basis of the complaint dated 25.08.2013 lodged by the father of the complainant against the accused and his father wherein, it is alleged that on 25.08.2013 at about 13.13 hours that the accused therein had barged into the house of the father of the complainant, abused in an unparliamentarily language, physically assaulted him and threatened his life.

25. Ex.D.1 is the FIR in Crime NO.337/2013, registered on 20.08.2013 on a complaint dated

20.08.2013 filed by the accused against the father and brother of the complainant as also P.W.3 and P.W.4, wherein it is alleged that on 19.08.2013 P.W.2 was angry with the accused herein as the accused had told P.W.2 not to graze his buffalos on his farm. On 22.08.2013, while the accused was constructing a shed for Ganesha festival PW2, his son, PW9 and 10 came in a vehicle bearing registration number KA/47/1192, blocked the accused's path and started using unparliamentary words and began to assault him. The accused filed a complaint and the said FIR was registered against PW2, his son, PW9 and 10, for offences under Section 341,323,324,504,506 R/w 34 of IPC

26. It is in the above background, that if the complaint at Ex.P.1 is considered, it is rather shocking that no averment or statement was made in the complaint that the accused is the son of the

brother of the complainant's father. The complaint is given as if the accused is a third party who is residing near the house of the complainant. The complainant also during the course of her cross-examination has denied several facts which ought to have been in her knowledge more so, when a series of complaints and counter complains have been filed between the family of the complainant and that of the accused.

27. The wound certificate as abovementioned does not make any reference to sexual assault. There is no medical evidence of any attempted sexual assault, let alone sexual assault. The complainant has also denied the existence of a school, when in fact such a school is in existence near the spot. She has also denied the existence of the road when in fact such a road is in existence, an appreciation of all the evidence of P.W.1, gives rise to the various

contradictions as stated above, thus, we are of the opinion that the testimony of the P.W.1 cannot be taken to be truthful nor her testimony be trusted.

28. The evidence on record indicates several complaints and counter complaints between both the families having been filed. The relationship not having been mentioned in the complaint filed by the present complainant would also give rise to the doubts as to why the relationship with the accused is not mentioned. Thus, we are unable to believe the version of the complaint.
29. As regards the investigation carried out, less said the better as there is absolutely no evidence on record, medical or otherwise, which the Investigating Officer has been able to secure in the present matter.

30. It is rather shocking that when a person who alleged [rightly or wrongly] to have been sexually assaulted, no requisition to the Doctor has been issued as regards the examination to be conducted to the complainant. The wound certificate at Ex.P.8 issued by P.W.8 does not refer to any sexual assault, but a general assault. There is no medical examination of the victim or the accused which has been conducted. The clothes of neither the victim nor the accused have been collected and sent for forensic examination. More so, when there is an allegation that the accused tried to have forcible sexual intercourse with the victim. In the words of the victim-complainant, the accused tried to rape her by forcefully trying to take her clothes off when she hit him with a stone. In order to prove all these aspects, it was required that necessary

evidence to be secured and forensic examination be done.

31. On enquiry with Sri. Banakar, as regards the process and investigation method to be followed.

Learned S.P.P submitted that till now the procedure prescribed in the Police Manual was being followed and henceforth the Standard Operating Procedure (SOP), issued by Karnataka State Police, regarding the procedures that are needed to be adopted for management of cases relating to Child Sexual Abuse will be followed.

32. We have examined the Police manual unfortunately

even the procedure prescribed therein has not been followed.

33. The SOP mentioned above is a step in the right

direction, it is required that all investigating officers are trained and sensitized in this regard

and a monitoring agency set up by the Director-General of Police for the State of Karnataka to ensure that the SOP is followed and implemented both in letter and spirit. Learned Additional SPP is directed to bring the above to the notice of the Director-General of Police. The Additional Registrar General of this Court is also directed to forward a copy of this order to the Director-General of Police for the State of Karnataka forthwith.

34. Coming back to the present case for all the above reasons, the evidence of P.W.1 being untrustworthy, the evidence of P.W.2, P.W.3 and P.W.4 being interested witnesses against whom a complaint has been lodged by the accused, the testimony of the Doctor and or the exhibits marked in this regard does not establish sexual assault, we are of the considered opinion that the order of acquittal passed by the trial Court is just and

proper and does not require any interference.

Hence, we pass the following :

ORDER

The appeal filed by the State is ***dismissed***.

**(SD/-)
JUDGE**

**(SD/-)
JUDGE**

*Svh/-