



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CRIMINAL APPEAL NO.100333 OF 2024 (A)

BETWEEN:

STATE OF KARNATAKA R/BY.
THE BAGALKOTE TOWN POLICE STATION,
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA, DHARWAD BENCH.

(BY SRI. M.B. GUNDAWADE, ADDITIONAL S.P.P)

- APPELLANT

AND:

1. MALLAPPA PARASAPPA GOUDANNAVAR @ KURUBAR,
AGE: 30 YEARS, OCC. PAINTER,
R/O. MUCHAKHANDI CROSS, BAGALKOTE,
TQ. AND DIST. BAGALKOTE-587101.
2. BABANNA BHEEMAPPA MADAR,
AGE: 54 YEARS, OCC. COOLIE,
R/O. MUCHAKHANDI CROSS, BAGALKOTE,
TQ. AND DIST.BAGALKOTE-587101.
3. SUVARNA BABANNA MADAR,
AGE: 39 YEARS, OCC. COOLIE,
R/O. MUCHAKHANDI CROSS, BAGALKOTE,
TQ. AND DIST.BAGALKOTE-587101

- RESPONDENTS

(NOTICE ISSUED TO R1 AND R2 IS SERVED;
R3-DECEASED)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 14-A OF SC AND ST(PA) ACT R/W SECTION 378(1) AND (3) OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL; CONVICT AND SENTENCE THE RESPONDENTS/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 378(1) AND (3) OF CR.P.C. AND SECTIONS 376, 376(1), 376(2) (1) (n), 376(3), 318 OF IPC AND UNDER SECTIONS 4 AND 6 OF POCSO ACT AND UNDER SECTIONS 9, 10 AND 11 OF THE PROHIBITION OF CHILD MARRIAGE ACT & ETC.

THIS CRIMINAL APPEAL, COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

ORAL JUDGMENT

(PER: HON'BLE MR.JUSTICE H.P.SANDESH)

The appeal is listed for admission. Though notice of this appeal is served upon respondents No.1 and 2 they remain unrepresented. Respondent No.3 is reported as dead. Heard the learned Additional S.P.P. for the appellant-State.

2. The factual matrix of case of prosecution is that accused no. 1 had enticed the victim girl aged 14 years, saying that he loves her and wants to marry her, and thereby repeatedly committed penetrative sexual act on her for the past 2 years as on 04.10.2021 in the house of the victim, when no other family members were present in the house. As a result of penetrative sexual assault committed by accused no. 1, the victim became



pregnant. When the victim had informed the said fact to the accused no. 1, he had taken the victim to a temple and tied Mangalasutra to the victim and married her. The accused no. 2 and 3, in spite of having knowledge that victim is a minor and that she belongs to the scheduled caste, they had given consent for the marriage.

3. On 17.10.2007, the victim had developed labour pain and therefore, the accused no. 2 and 3 had taken the victim to 50 Bed Hospital Bagalkot. The victim gave birth to a female stillborn child in the Hospital. The condition of the child was critical and Doctors had advised the accused to take the child to the Hospital which is having the ICU facility. The accused had intentionally expressed their inability to take the child to the other Hospital, saying that they have no financial capacity to do so. The child died in the Hospital. In order to destroy the evidence of commission of offence, the accused had taken the dead body of the child and the same was cremated on the bank of Gattaprabha river situated near Muchakandi cross.

4. On the above said facts, as per the report submitted by the first informant, this case has been registered against the accused



no. 1 to 3 for the commission of offences of 376, 318 of IPC, Section 4 and 6 of POCSO Act and Section 3(1)(w), 3(2)(v) of SC and ST (P.A.) Act and Sections 9, 10 and 11 of Prohibition of Child Marriage Act, read with Sec. 34 of IPC. The suo moto case was registered, investigation was conducted and filed the charge sheet for the above offences. The accused were secured; they did not plead guilty and claims the trial. Hence prosecution mainly based upon the evidence of PW1 to PW21. Documents Exhibit P1 to Exhibit P28 are marked and Statement of accused u/S 313 CrPC was also recorded. The trial Judge having considered both oral and documentary evidence comes to the conclusion that the prosecution has not proved the charges levelled against the accused persons and acquitted the accused persons. Being aggrieved, present appeal is filed by the State.

5. The counsel appearing for the State submits that the trial Court committed an error in acquitting the accused persons. The trial Judge fails to take note of the fact that though victim girl, PW1 turned hostile, but she is a minor and her evidence ought to have been taken note of; so also Exhibit P24 certificate issued by the Government School which shows that she is a minor and she



belongs to Hindu Madar community. Ex.P.24 shows that date of birth of victim is on 12.10.2007, which shows that this victim was aged about 14 years. The counsel also would submit that the statement was recorded Under Section 164(5) of CrPC and complaint Exhibit P1 corroborates with the statement even though victim turned hostile.

6. The counsel also would submit that PW2 who came to know about the same given the information and at the instance of PW2 case was registered. Dr. PW11 examined the victim and opined that victim was below 18 years and she was 6 months pregnant at the time of the examination and given the report in terms of Exhibit P11. The other Doctor PW10 stated that she examined the victim, the victim has given birth to a child and the child died as the parents refused to take the child for higher treatment. So also the evidence of the Doctor-PW15 and evidence of the Bagalakot Taluka Executive Magistrate which discloses that on 21.10.2021 as per request of the Investigation Officer, he was very much present, and collected the bones for DNA test. The counsel also would submit that DNA test is 'positive' that accused no. 1 is the biological father of the child.



PW7 is the official witness. PW8 and 9 have also deposed before the Court. Hence the trial Court committed an error.

7. Having heard the counsel appearing for the State and also on perusal of the material, the specific case of the prosecution is that accused no. 1 subjected her for sexual act, thereafter he married her and accused no. 2 and 3 who are the parents of the victim girl also given the consent. But none of these witnesses have supported the case of the prosecution. Records also reveal that suo moto case was registered on the information of PW2. Though PW7 deposes before the court, all are official witnesses. No doubt FSL Report Exhibit P26 discloses that accused no. 1 is the biological father. But when the victim and other witnesses have turned hostile and not supported the case of the prosecution, based on the FSL report the accused cannot be convicted and the same is not the substantive piece of evidence and the same requires corroboration so also there is no any such corroboration before the Court. When such being the case, trial judge taking into note of both oral and documentary evidence available on record in detail discussed the same in paragraph No. 33 regarding the evidence of victim plays a prominent role. It is



also not substantiated that the contents of the complaint and PW7 who is the CDPO, the evidence only says that victim has come to the Anganvadi Kendra for the purpose of getting 'Thayi Card' as she is pregnant. The trial Court also comes to the conclusion that evidence of PW7 is only a hearsay witness and so also PW8 and PW9 is also the staff of CDPO who had visited the house of victim and brought her to the District Hospital. The trial Judge in paragraph Nos.38 and 39 comes to the conclusion that in order to prove the sexual act and as a result she became pregnant and also accused no. 2 and 3 involved in the marriage of the victim, who is a minor also not substantiated the said by placing any material on record. When such reasoning is given by the trial Court we do not find any ground to admit the appeal and hence prosecution has not made out any ground to admit the appeal to consider the matter afresh for re-appreciation when there are no ground is made out.

8. The trial Court also taken note of DNA Test Exhibit P26 to come to the conclusion that report cannot be accepted and the same is doubtful since nothing is discussed with regard to the seizure of the bones of the baby from the spot, has also not



mentioned the details of the bones which were collected at the spot. Even while giving the report also nothing is mentioned in the Exhibit P26 that bones are subjected to test and hence not accepted the same. The prosecution also relies upon the evidence of PW19 to prove the date of birth. But in the cross-examination, PW19 says that he is not aware on what basis the date of birth of the victim girl was entered. Even the prosecution has not proved the date of birth of the victim. Apart from that when the victim and other witnesses have not supported so also the Doctor PW11 says that the dental age of the victim was below 18 years.

9. Having considered all these materials and record we hold that this is not a case for admitting the appeal. Hence the appeal is dismissed.

SD/-
(H.P.SANDESH)
JUDGE

SD/-
(B. MURALIDHARA PAI)
JUDGE

BVV
CT:PA
LIST NO.: 1 SL NO.: 12