IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 17TH DAY OF APRIL, 2026

PRESENT

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

CRIMINAL APPEAL NO.100559 OF 2023

BETWEEN:

HANAMANTH S/O. MAGUNDAPPA HULASAGERI,
AGE: 30 YEARS, OCC. LABOUR,
R/O. NANDIKESHWAR, TQ. BADAMI,
DIST. BAGALKOTE-587201.

- APPELLANT

(BY SRI. P.N. HOSAMANE, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY BADAMI POLICE STATION.
REPRESENTED BY S.P.P HIGH COURT,
DHARWAD-581100.

- RESPONDENT

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

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO ALLOW THIS APPEAL BY SETTING ASIDE THE JUDGMENT OF CONVICTION DATED 21.07.2023 AND SENTENCE DATED 24.07.2023 PASSED BY THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE, BAGALAKOTE IN S.C. NO. 122/2019 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 451, 376(2)(I), 307, 325 AND 380 OF I.P.C. & ETC.

THIS CRIMINAL APPEAL, HAVING BEEN HEARD AND RESERVED ON 09.04.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUSTICE ***H.P.SANDESH,*** DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

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

This appeal is filed challenging the judgment of conviction for the offences punishable under Section 451, 376 (2)(I), 307, 325 and 380 I.P.C. and the sentence imposed for the above offences and prayed this Court to set aside the judgment of conviction and sentence.

2. The factual matrix of the case of the prosecution is that on 17.05.2019 at about 3.30 p.m. in the house belonging to the complainant situated at Nandikeshwar village, the accused having observed that there is no-one in the house except the victim who is suffering from mental ill health by birth, trespassed the house and subjected the victim for sexual act and also with an intention to take away her life, an attempt is made to commit her murder by smashing her head with force on the ground and voluntarily caused hurt; so also committed theft of a mobile which was kept in the house; when family members came back to the house after attending Dyavamma Fair at 3.00 p.m. they have noticed the victim was lying unconscious in the kitchen area; the articles found in the house were also scattered, the mobile which was kept near the mirror was also missing.

Hence they lodged the complaint in terms of Ex.P.1. Based on the complaint case was registered in Crime No. 77/2019, the Investigating Officer investigated the matter, recorded the statement of witnesses and also with the help of the expert finger print at the spot were also recovered; and thereafter also obtained the opinion. After completion of the investigation, charge sheet was filed against the accused. During the course of investigation the accused was arrested on 19.05.2019; and he was also subjected to medical examination. The accused was produced before the trial Court wherein he did not plead guilty and claims the trial. Hence the prosecution relies upon evidence of PWs1 to 20, got marked documents Exs.P.1 to P.82 and also relies upon MOs 1 to 14.

3. The trial Judge having considered both oral and documentary evidence particularly the last seen theory; the evidence of PW4; recovery of chance prints at the place of incident; finger prints opinion, medical evidence, odontology report and comparison of the bite marks on the victim with the dentist of the accused person; relying upon evidence of the Doctors who have been examined before the trial Court; recovery at the instance of the accused, i.e. Mobile; considering

the injury noted on the accused, so also considering the place of incident, comes to the conclusion that prosecution has proved the guilt against the accused for the offences punishable u/S 451, 325, 307 and 380 of IPC as well as the offence of rape thereby convicted and sentenced. Being aggrieved by the conviction and sentence, the present appeal is filed.

4. The counsel appearing for the appellant in his arguments vehemently contend that the trial Judge passed judgment of conviction only on the assumptions and also on the imaginary ground without considering the oral and documentary evidence in a proper perspective. It is contended that there is no specific evidence of the victim in the case and also there is no evidence that accused had visited the place of victim before the incident. PWs.5 and 6, who are the independent witnesses have not supported the case of the prosecution regarding the last seen theory. The counsel also submit that PW4 in her evidence stated that PWs.5 and 6 have informed that they saw the accused coming outside the victim's house at 4'O clock in the evening. However, evidence of PW4 is not supported by the evidence of PWs.5 and 6 and hence the trial Judge ought not to have relied on the evidence of PW4.

5. The counsel also submits that the trial Judge relied upon circumstantial evidence. However, the victim was not deposed before the Court. Further, there is no specific medical and clinical evidence before the Court that victim was not in a position to give statement. Based on the evidence of finger print expert and also evidence of the Doctors who have examined the victim as well as the accused particularly Dentician report, the trial Court was not right in convicting the accused. It is contended that PW1 had enemity with the father of the appellant since there was a case against the brother of PW1 and the trial Court ought not to have considered the same. It is nothing but a case of false implication. The counsel also would submit that in the cross examination of PW1 it is elicited that place of incident was clean, i.e. place was cleaned after the incident. When such being the case, the finger print contained in the steel box is nothing but created and the same was not recovered in the presence of PW2, it is implanted by the Police. The entire evidence of PW2 is not believable. The recovery panchanama and place of incident is also not proved.

6. Further, the learned trial Judge relied upon evidence of PW14, finger print expert, who, in the cross examination

categorically admitted that chance print was collected in the place where there were three plates and plastic boxes that were scattered at the place of incident but the same is not mentioned in the report. Under the circumstances, the trial Court also ought not to have relied upon the evidence of PW14. The counsel would further submit that even recovery of the mobile is also doubtful. He reiterates that the prosecution mainly relied upon evidence of PW4, last seen witness and finger print evidence-PW14 and evidence of PW9, i.e., the Doctor who examined the victim, so also evidence of PW11 and 12, Dentists. The trial Judge further relied upon evidence of PW8. Though the accused had sustained injuries in the knees, it will not come to the aid of the prosecution. Admission on the part of PW8 is very clear that he has lifted the steel boxes and hence question of finger print available in the said boxes does not arise.

7. The counsel would vehemently contend that evidence of PW12 cannot be believable. He contends that when the case is rest upon circumstantial evidence of doubtful circumstances, there cannot be any conviction. The counsel would submit that mobile does not belong to the complainant, and no evidence is placed before the Court, but the prosecution only says that

accused had produced the same and hence the very recovery itself is doubtful. The counsel in support of his arguments relies upon the judgment of the Apex Court in ***Criminal Appeal No. 1682/2014*** and brought to the notice of this Court paragraph No. 46 wherein discussion was held that, "*it was clearly not given voluntarily, but perhaps unwittingly and in what seems to be a deceitful manner. To avoid any suspicion regarding the genuineness of the fingerprint so taken or resort to any subterfuge, the appropriate course of action for the Investigating Officer was to approach the Magistrate for necessary orders in accordance with Sec. 5 of the Identification of Prisoners Act, 1920"*. Further, an observation is made that "*the possibility of the police fabricating evidence and to avoid an allegation of such a nature, it would be eminently desirable that fingerprints were taken under the orders of a Magistrate"*.

8. The counsel also brings to the notice of this Court the discussion made in paragraphs No. 46 and 47 wherein the Apex Court in ***Mohd. Aman v. State of Rajasthan*** and ***State by Rural Police v. B.C. Manjunatha*** held that "*it is not incumbent upon a police officer to take the assistance of a Magistrate to obtain the fingerprints of an accused and that the provisions of*

the Identification of Prisoners Act are not mandatory in this regard. However, the issue is not one of the provisions being mandatory or not the issue whether the manner of taking fingerprints is suspicious or not".

9. The counsel in support of his arguments brought to the notice of this Court the judgment of the Apex Court rendered in the case of ***Nagaraja vs. State of Karnataka on 06.12.2019*** which is reported in ***AIR 2020 SC 288*** to contend that in paragraph No. 14 discussion was made with regard to matching the finger prints of the appellant with the chance finger prints which were found on certain utensils. The discussion was made regarding the evidence of PW14 and held that "*it is true that u/S 4 police is competent to take finger prints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of Magistrate"*.

10. The counsel also brought to the notice of this Court the Commentary in respect of "*an inconvenient tooth; forensic odontology is an inadmissible junk science when it is used to "match" teeth to bitemarks in skin"* to contend that "*while the advent of DNA analysis has paved way the way for wrongfully*

convicted individuals to contest their convictions, flaws in traditionally accepted forensic sciences are still being uncovered. Bitemark evidence has been consistently admitted in courts across the country and has formed the basis of numerous criminal convictions. However, research over the past decade demonstrates the serious fallibility of this questionable forensic science when it is used to conclusively "match" a person's teeth to a bitemark in human skin". The counsel referring the same, brought to the notice of this Court the discussion, in fact, "*there is inherent assumption that the human dentition or the imprint it creates is unique and therefore not a commonly agreed upon foundation for any declaration that a "conclusive match" could exist"*.

11. The counsel also brought to notice of this Court with regard to the forensic odontologist encounter additional problems when trying to match a dentition to a bite mark. As a surface for analysis, skin is malleable; bite marks can move, especially when made during a struggle, and fade quickly. In order for such proof to form the true scientific basis for odontological matches, the four upper and lower front teeth of each human being - and the mark these teeth would make in skin - would have to be proven

unique; and more confirmation a forensic scientist receives before and after his analysis that the suspect should be a match, the more confident his testimony is likely to be at trial.

12. The counsel also brought to notice of this Court, forensic bitemark identification which is held as weak foundation, exaggerated claims, it was held that bite mark identification was seen as a field in which forensic science professionals have yet to establish either the validity of their approach or the accuracy of their conclusions, and the Courts have been utterly ineffective in addressing these problems. Although the majority of forensic odontologists are satisfied that the bite marks can demonstrate sufficient detail for positive identification, no scientific studies support this assessment. Unfortunately, bite marks on the skin will change over time and can be distorted by the elasticity of the skin, the unevenness of the bite surface, and swelling and healing.

13. Per contra, the counsel appearing for the State, i.e., Additional State Public Prosecutor in his argument, would vehemently contend that the report is given in terms of Exhibit P53 by the fingerprint expert, who has been examined as PW14 before the Court and nothing is elicited to disbelieve the report

which was given by him. The counsel also submits that the mahazar was done in terms of Exhibit P2 by the Investigating Officer and the evidence of PW14 is also very clear that first fingerprint was found on the very day at the spot and subsequently on the next day the accused was secured and his fingerprint was also recovered, however no effective cross examination of PW14 is made except the denial and hence the evidence of PW14 is believable.

14. The counsel also would vehemently contend with regard to the character of the skin is also scientifically done. When such being the case, the citations and also the other material with regard to the fingerprint is concerned, that is relied upon, will not come to the aid of the appellant and the principles laid down in the case on hand are not applicable to the facts of the case. The prosecution not only depends upon the dentist's report as well as fingerprint expert' evidence, and taken note of the last seen witness, PW4 and though PW5 and PW6 have turned hostile, but the evidence of PW4 is very clear that the accused was seen while going towards the house of the victim and nothing is effectively cross examined while cross examining the PW4.

15. The counsel also submits that the victim's statement was recorded before the learned magistrate with the help of the specialist Doctor. Though statement u/S 164 CrPC was not clear, but with regard to incident is concerned, victim deposed before the Court on different occasions, with the assistance of the Doctors and hence Court can rely upon the same which is marked as Exhibit P79. He further submits that in the complaint itself it is specifically alleged that the accused took out the mobile which was in the house of the victim; recovery was also made at the instance of the accused; witness PW2 supported regarding recovery and Exhibit P9 is also proved.

16. The counsel also submits, apart from the victim's statement as well as recovery at the instance of the accused, the evidence of PW1, PW3, PW4 though they are the relative witnesses, but their evidence is consistent and nothing is elicited and though an attempt is made that PW1 is having enmity against the accused, the said suggestions are denied. There is no any evidence with regard to the PW1 having enmity against the accused. The counsel would submit that the treated Doctors were examined, i.e., PW8 and PW9, both have examined the victim as well as the accused, who has sustained the injuries but the

accused has not given any explanation with regard to the injuries are concerned. Though an explanation is given in the statement under Section 313 CrPC, but the same is not in the respect of the incriminating evidence.

17. The counsel also would submit that the Doctor PW18 certifies with regard to the injuries. The counsel also would submit that though suggestion was made to PW1 that there was an enmity but the same has been specifically denied. The counsel also would submit that having recorded the statement of the victim under Section 164 CrPC as per Exhibit P79, the same was proved by examining the Magistrate who recorded the statement of victim, i.e. PW19. Apart from that, PW17 and PW18, both Doctors are examined to support the case of the prosecution and the injuries on the victim and the expert's opinion is also material and there are no doubtful circumstances against the accused and the trial judge rightly taken note of the same.

18. In reply to this argument, counsel appearing for the appellant brought to the notice of this Court that in order to invoke Section 307 IPC, an allegation is made that the head of the victim was smashed on the ground, but there were no

injuries. Even with regard to the strangulation also, there is no evidence before the Court and the trial judge convicted the accused for the offences punishable under Section 307 and 325 IPC. Overall appreciation of the evidence by the trial Judge is erroneous and hence it requires interference of this Court.

19. Having heard the counsel appearing for the appellant and also the counsel appearing for the State; considering both oral and documentary evidence of PW1 to PW20, the documents of Exhibit P1 to Exhibit P86 so also the material objects which were marked, the point that would arise for the consideration of this Court is:

> *Whether the trial Court committed an error in convicting the accused for all the offences of 451, 307, 325 and 376, 380 IPC and whether it requires interference of this Court.*

20. Having considered the grounds urged in the appeal and also the oral submissions, this Court has to analyze both oral and documentary evidence while considering the case on hand, this Court would like to consider the charges for the offences u/S 307 and 325 IPC.

21. Having perused the evidence available on record, particularly Ex.P1 complaint, it is very clear that no-one witnessed the incident. But only in the complaint it is stated that after having noticed the injuries and bite marks in the body of the victim and also she was unconscious, it was found that she was subjected to sexual act and hence complaint was lodged. But on perusal of the complaint it is very clear that she was dragged near the kitchen and subjected to sexual act. Complaint was given on the next day, i.e. on 18.05.2019 at 15.30 hours and there was a delay, the complaint was given in the Bagalkot District Hospital since the victim was shifted to the District Hospital on the next day. It is also clear that incident might have been taken between the timings of 3 to 4'O clock as she was alone and no one there in the house. It is important to note that in the complaint itself, it is specifically stated that mobile was missing, which is having the SIM number 9353489193 and the same is switched off.

22. Based upon the complaint Ex.P1, case was registered. This Court has to take note of the evidence of PW2 with regard to the circumstantial evidence is concerned since the case is based upon the circumstantial evidence. This Court also keeping in

mind the principles laid down in the judgments of the Apex Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116*** and also the case of ***Subramanya Vs. State of Karnataka*** reported in ***(2023) 11 SCC 255*** to examine whether each circumstances is established or not.

23. First with regard to connecting the accused, it is specifically mentioned in the complaint that mobile was missing and the same was switched off. Hence this Court has to rely upon the evidence of PW2, who is a recovery witness. The evidence of PW2 is clear that he was a Village Accountant. The Tahsildar asked him to go to the office of C.P.I. Badami, accordingly he went to the Police Station at 05.00 p.m., another employee, CW3 was also present at that time. All of them visited the place at around 06.30 p.m. and the accused showed the place where the victim was subjected to Sexual Act; the Police have drawn the mahazar in between 06.30 to 07.30; material objects were seized, which were found at the spot. He has signed Exhibit P2; he identifies MO2 to MO4 and photographs at Exhibit P3 to P6, so also, mahazar was drawn with regard to the seizure of the clothes of the deceased in terms of Exhibit P7. He identifies his signature and also photo and MO5, 6 and 7. It is also his

evidence that on 20.05.2019 he was once again called and also called CW3 and accused was also there in the police station. The accused led him and also the C.P.I. to his village Nandikeshwara and it was around 07.30 a.m. wherein he had produced his shirt, banian; he took them inside the bedroom and produced the Samsung mobile phone. On enquiry, the accused revealed that he brought the mobile from the house wherein victim was subjected to sexual act. Mahazar was drawn in terms of Ex.P9, he identifies his signature and he also identifies the MOs 8 to 11 and the same are packed. He identifies the MO1, Samsung mobile and also says that photos were taken at that time and he also identifies the MO10 to 15. This witness is material with regard to the recovery of mobile is concerned. But in the cross-examination he says that Police staff written the mahazar but he does not remember the name; he has not given any instructions to repair the mobile. But while leaving the office he has informed Senior Officer and with regard to the recovery of the mobile is concerned, his evidence is very clear that clothes and mobile were also seized at the instance of the accused. Nothing is elicited from the mouth of PW2 to disbelieve the evidence with regard to the recovery of mobile at the instance of the accused. The evidence of PW2 is consistent with regard to the recovery

that the accused produced the same taking them to the place, taking them inside the bedroom. Nothing is elicited regarding recovery of mobile is concerned and also his cloth. Hence the first circumstance of recovery of mobile at the instance of the accused is proved.

24. Now the other circumstance with regard to the accused was seen by PW4, who is the last seen witness. PW4, no doubt, is the daughter of PW1 and also PW3, her evidence is very clear that victim is mentally retarded. She states that victim is her relative; on the day of incident, all of them went to the temple at 03.00 p.m.; they came back at about 04.00 p.m.; she found the injuries and also the unconsciousness of the victim. But her evidence is very clear that the victim was subjected to sexual violence and stools were also found with the victim, she was unconscious, till morning she did not regain the consciousness and she was taken to the hospital. She went and gave the money to the father also. At that time she has revealed with her father that accused was proceeding towards their house in the previous day. So also, CW7 and CW8 informed that at around 04.00 p.m. accused left the house of the victim and the same was informed to her by CW7 and CW8. This witness was

subjected to cross-examination with regard to the last seen by this witness is concerned, the answer is elicited that she was regularly visiting the hospital. The suggestion was made that she did not make the statement before the Police that she saw the accused and informed the same to her father. But said suggestion was denied and Police went and met her father and not met her. She admits that they discussed in the family that who have visited the house on the date of the incident, at that time she did not inform that she saw the accused and there was no any difficulty to inform the same to the father. So also she has not given receipt for having purchased the mobile. In the cross-examination, except eliciting the answer that she was not having any difficulty to inform the same to the father but having witnessed the accused while proceeding towards the house of the victim. Nothing is suggested that she did not witness the accused. There is no effective cross-examination. But the fact is that mobile was missing and the same was recovered at the instance of the accused and missing complaint mentioned in the complaint at the first instance.

25. This Court has already taken note of evidence of PW2 with regard to recovery. Even though PW2 says that she has not

produced any receipt for having purchased the mobile, but it is not the case of the defence that the mobile belongs to the accused and nowhere such suggestion was made. When such being the case, the Court can rely upon the evidence of last seen witness, PW4. No doubt, PW6 and PW7 have turned hostile but the evidence of PW4 is consistent and the court has to see the quality of the evidence and not the quantity.

26. The other witness is PW8, Doctor who examined the victim and found five injuries; X-ray report discloses her that her age was approximately 18 to 21 years and hymen was ruptured; there were multiple bite marks over the body and vulva; hymen was ruptured which is suggestive of sexual intercourse; he had given the report in terms of Exhibit P20. No doubt, in terms of FSL report, seminal stains were not detected on the samples which she had collected at the time of examination, this suggests that there is no evidence of recent sexual intercourse. The FSL report is marked as Exhibit P21. Recent sexual intercourse means the intercourse should have occurred within 24 hours. Since her sister had washed the undergarments and clothes of the victim and also given bath to the victim, this is the reason for absence of seminal stains on the samples. The above said

injuries suggest forceful sexual intercourse with the victim. This witness was subjected to the cross-examination and in the cross-examination, it is elicited that she has not mentioned the size of the bite marks. But suggestion was made that if the victim undergone sexual assault for the first time, necessarily there must be bleeding injury, and the same was denied. No doubt, it is admitted that hymen could be ruptured for other reasons also, it is elicited that if the sexual intercourse is committed, there is a possibility of sustaining injuries like tenderness, reddish on the private part. But witness says that she did not found such injuries on the private parts. If forcible sexual intercourse is committed, there is possibility of causing external injuries of nail scratches on the back side of the body.

27. Having considered the evidence of PW.8 and nature of injuries, bite marks over the upper lip, brownish in colour and bite mark over left breast brownish in colour, bite mark over vulva, brownish in colour, abrasion on right elbow measures 2x2cm, brownish in colour and abrasion on the centre of neck measuring 3x1cm were found. Hence it is clear that there was an abrasion on the centre of the neck as well as injury to the right elbow. When such injuries are found and hymen was

ruptured, Doctor's evidence is very clear that having found the bite marks over the body, vulva and also hymen was ruptured it suggests sexual intercourse. No doubt, FSL report not supports the case of the prosecution but the evidence of the Doctor is very clear that the sister of victim had washed the undergarments and clothes of the victim and given bath to the victim.

28. It is also important to note that evidence of PW4 is very clear that stools were also found at the spot and hence she subjected the victim for bath so also the washing the undergarments. There is no any cross examination of PW8 with regard to the said fact and when such material available before the Court that even though there was no any tenderness or readiness, but material is very clear that she has sustained bite marks all over the body and hymen was also ruptured. Victim was aged about 24 to 25 years. When such evidence available before the Court, medical evidence also supports the case of the prosecution, we do not find any error on the part of the trial Court in considering the evidence of PW8.

29. The other circumstance is that accused was also subjected to medical examination. PW9 conducted the medical examination

of the accused. On examination, abrasion over both the knees measuring 1.5 centimeters which is dark in colour was found. There is nothing to suggest that accused is incapable of performing sexual intercourse. Report is given in terms of Ex. P24 as per the requisition of Exhibit P23. No doubt, in the cross examination it is elicited that he has not mentioned the age of injuries found on the knees and also he cannot say as to how many days back the incident was taken place but the material available before the Court is very clear that he also sustained injuries and there is no explanation on the part of the accused in his statement recorded u/S 313 CrPC. The only explanation given in the statement u/S 313 CrPC by the accused is that there was an ill will between the family of the complainant and also his family and he is falsely implicated, but nothing is placed on record to substantiate the same. Though cross examination was made making suggestion to PW1 that there was an ill will but the same was denied and mere taking the defence is not enough to come to such a conclusion.

30. Now the other circumstance before the court is with regard to the evidence of prosecution relying upon PW11 and PW12, who are the Dentist. Their evidence is clear that that on

19.05.2019, as per the requisition of C.P.I, he visited and collected the photographs of the bite marks found on the body of the victim and also collected the photographs of bite mark found on the victim's lips, neck, right and left breasts and on the pubic area. At the time of collecting the same, CW21 Dr. Ashith B. Acharya was also present. On 28.05.2019, the accused was also produced by the CPI and he collected the oral radiograph, the upper and lower jaw impression and complete clinical history of the accused. Thereafter, collected all the details of the accused and sent to CW21 Dr. Ashith B. Acharya, SDM, Dharwad. He also identifies the document at Exhibit P29 and Exhibit P30 so also the report which is marked as Exhibit P31. He deposed that Dr.Ashith B. Acharya analyzed the bite marks and compared the same with victim and the accused. He furnished the report in terms of Exhibit P31. He had opined that accused person's teeth shows high degree of specificity in bite marks by virtue of many concurrent points including several corresponding individualistic and there is absence of any unexplainable discrepancies between bite marks and biting surfaces of the accused person's teeth. Therefore, it is most likely that the dentition of the accused person caused the bite marks visible on the photographs of the female subject. He has given the report in terms of Exhibit P32.

This witness was subjected to cross-examination. The 10 (ten) photographs of bite mark on the victim are now before the court. They are marked as Exhibit P32 to 42 and DVD is also marked as Exhibit P43. Two sets of model of the dental cast of the accused are marked as MO 12 and 13. The CD containing nine photographs of the mouth and teeth of the accused is marked as MO13. This witness was subjected to cross-examination. In the cross-examination it is elicited that with the oral permission of the Principal of the college, he examined the accused. The photographs of the bite marks have been taken at appropriate distance with the standard photocopy. He cannot say the model of the teeth alignment will be same for two individuals. The suggestion that he has not at all examined the victim and also the accused is denied.

31. The other witness is PW12. In his evidence, he says that he was also very much present along with PW11 on the day, they have taken the photographs of the bite marks found on the victim's upper lip, right breast, and on her neck as well as on her private part. The Police had also sent 49 photographs in the DVD depicting the bite marks of the victim, 10 of these photographs were provided in print format. In addition to this evidence, he

also received the evidence of the dentition of the accused person, the full mouth view X-ray image called as OPG of the accused was also sent. The sealing containing the 9 photographs depicting the accused person's mouth and teeth were also sent for his examination. He has examined the bite marks on the victim on four different locations. Some portions of the bite marks were relatively faint, but other portions were sufficiently clear to reveal the pattern, i.e. the bite marks correspondent with human upper and lower jaw teeth. Upon examination of the models and photographs of the teeth of the accused person and also peculiarities seen in the bite marks were also visible. He made the comparison of two bite marks on the left and right breast of the victim as well as the accused person’s teeth which showed concordance in the arrangement of the biting surfaces of the upper and lower teeth, specifically 4 upper incisor teeth and 3 lower incisor teeth, and the character's features of the upper jaw, left second incisor, which is placed rightly towards the lip side and the upper right second incisor which is placed rightly towards the tongue side. Overall material available on record gave the opinion that bite marks on the victim and the accused persons' dentition showed characteristic concordance in relation to tooth rotation and tooth placement, alignment of the

abovementioned teeth. He has given the report in terms of Exhibit P31. In the cross examination he admits that over the period of time as a consequence of healing in a living person from bite marks wound may also heal and also admits that he has not conducted in person physical examination of the accused. He also admits that size of the individual tooth may be the same in two persons.

32. Having considered the evidence of PW1 and PW2, 11 and 12 and also the analytical study which is placed before this Court by the counsel appearing for the appellant so also also the principles laid down in the judgment referred supra by the counsel appearing for the appellant, it is to obiter any such suspicion that the Court has held it is to be imminently desirable that fingerprints are taken before or under the order of a Magistrate. The entire exercise of fingerprint identification is shrouded in mystery and they cannot give any credence to it. Having found the material available on record with regard to those two cases discussed in Paras 46 and 47 of the judgment of ***Prakash versus State of Karnataka*** and in the case of ***Nagaraj versus State of Karnataka***, no doubt it is very clear that bite mark evidence has been consistently admitted in Courts

across the Country and has formed the basis of numerous criminal convictions and also discussed with regard to the matching of the same with comparison, i.e. teeth to a bite mark in human skin, and having considered the analytical study of the papers as well as the principles laid in the judgment and in the case on hand, the Court is not only relying upon the bite marks, but also the cross-examination of PW11 and PW12, in order to come to a conclusion that those bite marks are not that of the accused, nothing is elicited and both the accused and also the victim's fingerprints were also taken, and particularly having considered the photographs and bite marks which were found on the body of the victim as well as the opinion of these two witnesses is very clear that of the accused only, and the Court can expect similarity and the signs of upper teeth and lower teeth. The Court also cannot expect the mathematical niceties while considering the evidence of PW11 and PW12, who are the experts.

33. It is also important to note that the evidence of PW14, fingerprint expert is also very clear that on the date of visiting the incident place along with police, simultaneously panchanama as well as fingerprints were taken. The evidence of PW14 is very

clear that first he found the fingerprint on the steel box, i.e. chance print, the same is also marked as 'Q1', it was brought to the Bagalkot unit and report was prepared as per Exhibit P53, and witness signature was taken of CW16 and the same is also identified as Exhibit P53A. There was a reference of visiting the spot. It is also important to note that in paragraph No. 4 of the evidence, he categorically says that in order to compare the same with the fingerprint of the accused, a requisition was given by the Investigating Officer in terms of Exhibit P54 and the fingerprint of the accused was also taken. When the same was compared, it was tallied with each other and given the report, and he identifies the signature as Ex. P55A of the CW16. So also the Ex.P56A along with documents of Ex. P57 to Ex.P60. No doubt, this witness was subjected to cross-examination. In the cross-examination, the very presence of CW-16 was not enclosed in the document and so also there was no reference as to taking them to the spot and they visited the spot at 06.45. But nothing is elicited with regard to the fingerprint is concerned and the same is not seriously disputed by the defence that no such fingerprint was collected earlier and even not disputed the fingerprint that was taken, belongs to the accused except

denying that no such comparison was made and the report was given.

34. Having considered the evidence of all these witnesses and also the evidence of the Investigating Officer, who had conducted the investigation subsequent to the receipt of the complaint, the trial Judge while considering the evidence available on record, particularly, taken note of chain of circumstances are complete considering both oral and documentary evidence, and while coming to such a conclusion, taken note of seizure of the mobile at the instance of the accused, which was missing and the same is mentioned in the complaint itself at the first instance and also the injuries noted on the accused as well as recovery at the instance of the accused under Ex.P3 panchanama and PW2 supported case of the prosecution for recovery of the mobile phone; and no explanation was given by the accused having supported the injuries, that too on his knee and also the evidence available on record comparison of the bite marks on the victim with the dentition of the accused person and the biting surfaces of the dental models of the accused person were pressed on to a commercially available ink pad/ stamp pad, as well as inked

using a marker pen and the same is also taken note of in paragraph No.67 of the judgment, so also the Odontology Report plays a vital role in assisting the criminal justice delivery system. So also the medical evidence of five bite marks on the body of the victim and the matching of fingerprints of the accused with chance prints found at the place of occurrence and also the expert evidence of PW14. In terms of Exhibit P53 and Exhibit P54 and chance prints Q1 tallies with the right ring finger of the accused and Exhibit P59 is the opinion of the forensic expert and Exhibit P50 is the marking of comparison between the chance prints and the fingerprints of the accused.

35. The material available on record which points out the accused only done the same. Even considering the evidence of last seen theory witness of PW4, all these circumstances establishes and points out the very role of the accused in subjecting her for sexual act trespassing the house of the victim and also committing the theft of the mobile. All material evidences the involvement of the accused, points out the ingredients of the offence Section 451, 380 as well as 376.

36. The analytical study which is placed before the court by the appellant counsel and also the principles laid down in the

judgment cannot come to the aid of the appellant and in the case on hand only the expert opinion is available and all other material available before the court and point towards the role of the accused. However, the trial judge fails to take note of the ingredients of the offences in 307 and 325 IPC. If really the accused was having any intention to commit the murder, he would have committed the murder, no one interfered at the time of the incident and the family members came only at around 04.00 p.m. There must be an intention to take away the life in order to invoke Section 307 IPC. Mere an injury on the neck will not suggest that an attempt is made to strangulate her. In order to invoke the ingredients of offence under Section 307 IPC and also Section 325 IPC, nothing is found.

38. No doubt, counsel appearing for the State would submit that nature of injury is immaterial and no dispute to that effect. But there must be evidence before the Court that an attempt was made to take away the life. If he really intended to take away the life, he would have taken the life of the victim, but not done the same, and Court has to take note of circumstances and material available on record while invoking the offence of Section 307 IPC. The trial judge failed to discuss anything about

invoking of Section 307 and 325 IPC, but comes to the conclusion that accused has also committed an offence of 307 and 325 IPC. Hence it requires interference of this Court since there is no any present evidence to invoke those two offences and hence answered the points accordingly. In view of the discussions made above, I pass the following Order.

ORDER

Appeal is allowed in part.

The accused/appellant is acquitted for the offence of Section 307 and 325 IPC and consequently sentences also set aside. If any fine amount is deposited for the offences u/S 307 and 325 of IPC, is ordered to be refunded on proper identification.

The conviction and sentence of the accused for the offences of Section 451, 376 and 380 of IPC is confirmed.

SD/-
(H.P.SANDESH)
JUDGE

SD/-
(B. MURALIDHARA PAI)
JUDGE

BVV
CT-PA