



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 200034 OF 2025

(374(Cr.PC)/415(BNSS))

BETWEEN:

MALBA S/O PANDURANG
AGE: 31 YEARS (AS PER LCO)
OCC: AGRICULTURE
R/O KHERDA (K) BASAWAKALYANA
BIDAR-585437

...APPELLANT

(BY SRI. VISHAL PRATAP SINGH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH MUDBI PS, BIDAR
REPRESENTED BY
THE ADDL. STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585103

2. MALASHREE
AGE: 18 YEARS
OCC: COOLIE, R/O KHERDA (K)
BASAWAKALYANA, BIDAR-585437

...RESPONDENTS

(BY SRI.JAMADAR SHAHABUDDIN, HCGP FOR R1;
R2 SERVED)





THIS CRL.A IS FILED U/S.374 (2) OF CR.P.C (OLD), U/SEC. 415(2) OF BNSS, 2023 (NEW), PRAYING TO ADMIT THIS APPEAL, CALL FOR RECORDS FROM THE TRIAL COURT, ALLOW THIS APPEAL AND SET ASIDE THE ORDER OF CONVICTION PASSED BY THE II ADDL. DIST. AND SESSIONS JUDGE BIDAR SITTING AT BASAWAKALYAN IN SPL. CASE NO. 02/2018 DATED 13.03.2024 FOR THE OFFENCES U/S 341, 376, 506 OF IPC A/W 3(1)(w), 3(2)(v), 3(11) OF SC/ST ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellant has preferred this appeal against the judgment of conviction dated 13.03.2024 and order on sentence dated 14.03.2024 in Special Case No.02/2018 passed by the II Additional District and Sessions Judge, Bidar, sitting at Basavakalyan.

2. The parties are referred to as per their rank before the trial Court.

3. The brief facts leading to this appeal are as under:

The Deputy Superintendent of Police, Humnabad Division, Manthal Circle, Mudbi Police have filed charge



sheet against the accused for the offences punishable under Sections 341, 376, 506 of IPC and Sections 3(1)(w), 3(2)(v), 3(11) of SC/ST Act. It is alleged by the prosecution that on 27.09.2017, while complainant was returning home by selling Udad Dall at Lengatti village for Rs.240/- at around 11.45 a.m., the accused wrongfully restrained her from further moving at near Margemma Temple of village, knowing fully well that the victim belongs to SC/ST community and he said "where she has gone", he put his hand on her body, dragged her by the hand to the thorn in abandoned land of Gopalrao S/o: Revansiddappa, while she was screaming, he shoved his pant in her mouth and had forcible sexual intercourse with the complainant and also given life threat as caused to death, if she reveals anyone about the incident. Thus, the accused has committed the alleged commission of offences stated supra. After arrest of the accused, accused was produced before the Court, remanded to judicial custody on 28.09.2017. Since from the date of his arrest, he is in



judicial custody. On hearing the charges, the trial Court framed the charges against the accused for the alleged commission of offences, same were read over and explained to accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

4. To prove the guilt of the accused, the prosecution examined in all 12 witnesses as PWs.1 to 12 and 14 documents were marked as Exs.P1 to P14 and 3 material objects were marked as MOs.1 to 3.

5. On closure of the prosecution evidence, the statement under Section 313 of Cr.P.C. was recorded. The accused totally denied the evidence of the prosecution appearing against him. However, he did not choose to lead any defense evidence on his behalf.

6. Having heard the arguments on both sides, the trial Court convicted the accused for the commission of offences under Sections 341, 376, 506 of IPC and Sections 3(1)(w), 3(2)(v), 3(11) of SC/ST Act, and sentenced to undergo rigorous imprisonment for 10 years for the



offence under Section 376 of IPC and shall pay a fine of Rs.10,000/-. The accused is sentenced to undergo simple imprisonment for 1 month for the offence under Section 341 of the IPC and fine of Rs.5,00/-. The accused is sentenced to undergo imprisonment for 1 year for the offence under Section 506 of the IPC and fine of Rs.1,000/-. Further, the accused is sentenced to undergo simple imprisonment for 5 months and to pay fine of Rs.1,000/- for the offence under Sections 3(1)(w), 3(2)(v), 3(11) of SC/ST Act, with default sentences. Being aggrieved by the judgment of conviction and order on sentence, the appellant has preferred this appeal.

7. Learned counsel for the appellant would submit that the appellant is innocent, he has not committed any offence and there are glaring contradictions in the statement under Section 164 of Cr.P.C. so also the complaint with regard to the age of the victim. Though the victim was major at the time of alleged commission of offences, she tried to say that she was minor at the time



of alleged incident. It shows the conduct of the victim that her evidence is not reliable. The victim has stated that, she was dragged to the place full of thorny bushes and she was struggled prior to the alleged sexual assault and further stated that she has suffered injuries. However, the questionnaires to victim and final report at Exs.P7 and P10 respectively, reveals that there are no external injuries on the victim. In the light of contradictions and improvements, the offence of rape and other charges is not be established. The victim has admitted that she has received a compensation of Rs.1,00,000/- from the State. Thus, there is an active financial incentive of suppressing the truth. The evidence of the victim is not trustworthy and believable and there is a delay in submitting the FIR to the Court and delay in filing the complaint and also there is a delay in dispatching the FIR to the Court, which will create a doubt about the alleged incident. During the course of cross-examination of PW.5, she has stated that the accused tied her hands and legs and she fell on the



ground as unconscious. As on the date of incident and after 2 days from the date of incident, she stayed near Margemma temple. This evidence of PW.5, will falsify the entire case of the prosecution. Viewed from any angle, absolutely there is no trustworthy evidence before the court to convict the accused. However, the trial court without proper appreciation of the evidence on record has convicted the accused for the alleged commission of offences which is not sustainable under law. Hence, he prays to allow the appeal.

8. As against this, learned High Court Government Pleader would submit that the Trial Court has not properly appreciated the evidence on record in accordance with law and facts. Hence, there are no grounds to allow this appeal and sought for dismissal of this appeal.

9. Having heard the arguments on both sides, the following points would arise for my consideration:



(a) Whether the trial Court is justified in convicting the accused for the offence under Sections 341, 376, 506 of IPC and Sections 3(1)(w), 3(2)(v), 3(11) of SC/ST Act?

(b) What order?

10. My answer to the above points:

Point No.1: In the Negative.

Point No.1: As per final order.

Regarding Point No.1:

11. I have examined the materials placed before this court. This case arise out of the complaint filed by the victim at Ex.P2, which reads as follows:

“ನಾನು ಕು: ಮಾಲಾಶ್ರೀ ತಂದೆ ನಾಗೇಂದ್ರ ಕಾಂಬಳ ವಯಸ್ಸು 18 ವರ್ಷ, ಉದ್ಯೋಗ ಕೂಲಿ ಕೆಲಸ, ಜಾತಿ ಕೋಲಿಯಾ, ಸಾ: ಖೇರ್ಡಾ [ಕೆ] ತಾ: ಬಸವಕಲ್ಯಾಣ ರವರು ನೀಡಿದ ಹೇಳಿಕೆ ಮೋ ನಂ- 7090827296.

ನಾನು ಈ ಮೇಲೆ ನಮೂದು ಮಾಡಿದ ವಿಳಾಸದವಳಿರುತ್ತೇನೆ. ನಮ್ಮ ತಂದೆ ತಾಯಿಗೆ ನಾವು ಮೂರು ಹೆಣ್ಣು ಮಕ್ಕಳು ಒಬ್ಬನೆ ಗಂಡು ಮಗ ಇರುತ್ತೇವೆ. ನಾನು ಕೊನೆಯ ಮಗಳಾಗಿರುತ್ತೇನೆ. ಹೀಗಿರುವಾಗ ಇಂದು ದಿನಾಂಕ 27/09/2017 ರಂದು ಮುಂಜಾನೆ ಅಂದಾಜು 9-30 ಗಂಟೆಯ ಸುಮಾರಿಗೆ ನನ್ನ ತಾಯಿ ಪಾರ್ವತಿ ಇವಳು ತಿಳಿಸಿದ್ದೇನೆಂದರೆ " ದಸರಾ ಹಬ್ಬದ



ಸಲುವಾಗಿ ಮನೆಯಲ್ಲಿ ಖರ್ಚಿಗೆ ಹಣ ಇಲ್ಲಾ ಆದ್ದರಿಂದ ಮನೆಯಲ್ಲಿನ ಆರು ಸೇರು ಉದ್ದು ತೆಗೆದುಕೊಂಡು ಲೆಂಗಟಿ ಗ್ರಾಮದಲ್ಲಿ ಮಾರಾಟ ಮಾಡಿ ಹಣ ತೆಗೆದುಕೊಂಡು ಬಾ "ಅಂತಾ ಹೇಳಿ ಉದ್ದು ಒಂದು ಕೈ ಚೀಲದಲ್ಲಿ ಹಾಕಿಕೊಟ್ಟು ಕಳುಹಿಸಿದ್ದು ನಾನು ಲೆಂಗಟಿ ಗ್ರಾಮಕ್ಕೆ ಹೋಗಿ ರಸ್ತೆಯ ಪಕ್ಕದಲ್ಲಿರುವ ಖುಲ್ಲಾ ಚಿಲ್ಲರೆ ಅಂಗಡಿಯಲ್ಲಿ ಮಾರಾಟ ಮಾಡಿ 240/- ರೂಪಾಯಿಗಳು ತೆಗೆದುಕೊಂಡು ನಮ್ಮೂರಿಗೆ ವಾಹನ ಸೌಕರ್ಯ ಇರದೆ ಇರುವುದರಿಂದ ಮರಳಿ ನಮ್ಮೂರಿಗೆ ಲೆಂಗಟಿ-ಖೇರ್ಡಾ [ಕೆ] ರಸ್ತೆಯ ಮುಖಾಂತರ ನಡೆದುಕೊಂಡು ಬರುವಾಗ ಇಂದು ಅಂದಾಜು ಮುಂಜಾನೆ 11-45 ಗಂಟೆಯ ಸುಮಾರಿಗೆ ನಮ್ಮೂರ ಗ್ರಾಮ ಶಿವಾರದಲ್ಲಿರುವ ಮರಗೆಮ್ಮಾ ಗುಡಿಯ ಹತ್ತಿರ ನಾನೊಬ್ಬಳೆ ನಡೆದುಕೊಂಡು ಬರುವುದನ್ನು ನೋಡಿದ ನಮ್ಮೂರ ಮಲಬಾ ತಂದೆ ಪಾಂಡುರಂಗ ಚೋರಮಲೆ ಜಾತಿ ಮರಾರಾ ಈತನು ನನ್ನನೆ ನೋಡುತ್ತಾ ನಿಂತುಕೊಂಡಿದ್ದನು. ನಾನು ಹಾಗೆ ನಡೆದುಕೊಂಡು ಹೋಗುವಾಗ ನನ್ನ ಮುಂದೆ ಬಂದು ಅಡ್ಡಗಟ್ಟಿ ತಡೆದು " ಏ ಮಾಲಾ ಎಲ್ಲಿಗೆ ಹೋಗಿದ್ದಿ" ಅಂದಾಗ ನಾನು ಅವನಿಗೆ ಉದ್ದು ಮಾರಾಟ ಮಾಡಲು ಲೆಂಗಟಿ ಗ್ರಾಮಕ್ಕೆ ಹೋಗಿ ಮರಳಿ ಊರಿಗೆ ಬರುತ್ತಿದ್ದೇನೆ" ಅಂದಾಗ ಮಲಬಾ ಇವನು ರೋಡಿನ ಮೇಲೆ ಮತ್ತು ಶಿವಾರದ ಆಜು-ಬಾಜು ಯಾರೂ ಇಲ್ಲದಿರುವುದನ್ನು ನೋಡಿ ನನ್ನ ಮೈಮೇಲೆ ಕೈ ಹಾಕಿ ಈ ಕಡೆಗೆ ನಡೆ ಅಂದಾಗ ನಾನು ಬರುವುದಿಲ್ಲ ಅಂತ ಬಿಡಿಸಿಕೊಂಡಾಗ ಮಲಬಾ ಈತನು ನನ್ನ ಕೈ ಹಿಡಿದು ಎಳೆದುಕೊಂಡು ಮರಗೆಮ್ಮಾ ಗುಡಿಯ ಹತ್ತಿರ ಇರುವ ಕಚ್ಚಾ ರಸ್ತೆಯ ಪಕ್ಕದಲ್ಲಿರುವ ಮುಳ್ಳಿನ ಜಾಡಿಯಲಿ ಯಾರಿಗೂ ಕಾಣದಂತೆ ಕಾಲು ದಾರಿಯ ಮೂಲಕ ಕರೆದುಕೊಂಡು ಹೋಗುವಾಗ, ನಾನು ಬೇಡ-ಬೇಡ ಅಂತ ಚಿರಾಡುತ್ತಿದ್ದೆನು. ಆಗ ಅವನು ತನ್ನ ಪ್ಯಾಂಟ ಕಳಚಿ ನನ್ನ ಬಾಯಲ್ಲಿ ತುರುಕಿ ನನಗೆ ಚೀರಾಡಿದರೆ ಕುತ್ತಿಗೆ ಒತ್ತುತ್ತೆನೆ ಅಂತ ಬೆದರಿಕೆ ಹಾಕಿದನು. ನಾನು ಬಿಡಿಸಿಕೊಳ್ಳಲು ಎಷ್ಟೇ ಪ್ರಯತ್ನ ಪಟ್ಟರೂ ಬಿಡದೆ ನೆಲದ ಮೇಲೆ ಕೆಡವಿ ಅಂಗಾತವಾಗಿ ಮಲಗಿಸಿ ನನ್ನ ಮೈಮೇಲಿನ ಬಟ್ಟೆ ತೆಗೆದು ನನ್ನೊಂದಿಗೆ ಜಬರಿ ಸಂಭೋಗ ಮಾಡಿರುತ್ತಾನೆ. ಮತ್ತು ಈ ವಿಷಯ ಯಾರಿಗಾದರೂ ಹೇಳಿದರೆ ನಿನಗೆ ಖತಂ ಮಾಡುತ್ತೇನೆ ಅಂತ ಜೀವದ ಬೆದರಿಕೆ ಹಾಕಿ ಅಲ್ಲಿಂದ ಓಡಿ ಹೋದನು. ನಂತರ ನಾನು ಮನೆಗೆ ಬಂದು ಮಲಬಾ ಇವನು ನನ್ನೊಂದಿಗೆ ಜಬರಿ ಸಂಭೋಗ ಮಾಡಿದ ವಿಷಯ ನನ್ನ ತಾಯಿಗೆ ಹಾಗೂ ನನ್ನ ಮನೆಯವರಿಗೆ



ತಿಳಿಸಿರುತ್ತೇನೆ. ನಂತರ ಸದರಿ ಘಟನೆಯ ಬಗ್ಗೆ ಮನೆಯವರೆಲ್ಲರೂ ಚರ್ಚಿಸಿ
ರಾಣಿಗೆ ಬಂದು ದೂರು ಕೊಡಲು ತಡವಾಗಿರುತ್ತದೆ.

ನಾನು ಒಬ್ಬಳೆ ಬರುವುದನ್ನು ನೋಡಿ ನನಗೆ ಅಡಗಟ್ಟಿ
ಒತ್ತಾಯಪೂರ್ವಕವಾಗಿ ಎಳೆದುಕೊಂಡು ಹೋಗಿ ಬಲತ್ಕಾರ ಮಾಡಿ ಜೀವದ
ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾನೆ. ಕಾರಣ ಸದರಿ ಮಲಬಾ ತಂದೆ ಪಾಂಡು ಚೋರಮಲೆ
ಜಾತಿ ಮರಾಠಾ ಸಾ: ಖೇರ್ಡಾ [ಕೆ] ಇವನ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ
ಕೈಕೊಳ್ಳಲು ವಿನಂತಿ ಇರುತ್ತದೆ.”

12. On the basis of the complaint, the case was registered in Crime No.110/2017 against the accused and submitted the FIR to the Court. The complaint was received on 27.09.2017 at 15:00 hours. The FIR at Exhibit P.14 was submitted to the Court on 28.09.2017 at 10.30 a.m. Column No.13 of the FIR indicates that the FIR was dispatched on 27.09.2018 at 18:00 hours. The place of crime is at a distance of 15 kilometers from the police station as shown in the FIR. However, the FIR was not submitted on 27.09.2017, but same was submitted to the Court on 28.09.2017 at 10.30 a.m. The prosecution has not explained the delay in receiving the complaint as well as submitting the FIR to the Court. Accordingly, the



Investigating Officer has failed to comply the provisions of Section 157 of the Cr.P.C. In Exhibit P.2, complaint, the age of the victim is shown as 18 years, whereas, in her statement recorded under Section 164 of the Cr.P.C., the victim has stated on oath that her age is 14 years. The transfer certificate, which is marked as Exhibit P.12 reveals that the date of birth of the victim is 03.01.1999. Hence, the age of the victim comes to 18 years 8 months 24 days as on the date of commission of offences. However, the victim has stated that her age was 14 years at the time of commission of offences which is quite inconsistent with the Exhibit P.12 and also the contents of the complaint.

13. PW.5 has deposed in her evidence as to the contents of complaint. During her cross-examination on 05.04.2023 she stated that as on the date of incident and after two days of the incident, she stayed near Margemma temple and she fell unconscious on the spot. The delay in submitting the FIR to the Court and the admission made



by PW.5, victim will create doubt as to the alleged incident.

14. In the examination-in-chief, PW.5/victim has not stated in her evidence that the accused has dragged her by holding her hands near Margemma temple on Kachha road in which thorny bushes are grown. Therefore, it is clear that there is no consistent evidence as to the contents of Exhibit P.2 and evidence of victim/PW.5. Additionally, the Investigating Officer has not produced any document before the Court as to the examination of the victim on 27.09.2017. The Medical Officer or the Investigating Officer have not deposed anything as to non-compliance of mandatory provisions of Section 164A of Cr.P.C. Ex.P.10 final opinion of the medical officer reveals that there were no external injuries on the victim. If really the accused dragged the victim on thorny bushes on kachha road, she would have sustained at least abrasions all over the body or part of the body and psychological status also reveals that the status of victim was normal.



15. The clothes worn by the victim were torn. In the case on hand, the Investigating Officer has not seized the clothes worn by the victim as on the date of commission of offence. The Investigating Officer has not explained anything in this regard. Though the Investigating Officer has not seized MO.1 to 3 in accordance with law, the same were marked as MO.1 to 3 without property form and seizure mahazar. Without property form, the Trial Court has received these properties without following the procedure as contemplated under the Code of Criminal Procedure and Karnataka Criminal Rules of Practice, 1968. The prosecution has not explained anything on which date the Investigating Officer has seized MO.1 to 3 and on which date, he has reported the same before to the Jurisdictional Magistrate under Section 102 of Code of Criminal Procedure. In the absence of these material, it is not possible to say that MO.1 to 3 belong to the victim.



16. The evidence of PW.5 reveals that number of persons were present at the time of dragging the victim to Margemma temple. It is also admitted that many persons were moving on two wheelers and cycle on the road and it is stated by the victim that the incident was taken place for one hour and on spot, there are stones and mud. She has received the bleeding injuries on her body and thorns were pinched on her body. Her clothes were also bloodstained. Exhibit P.1 spot panchanama reveals that the place of incident is Survey No.30 of Kherda(B) and in the mahazar, it is clearly stated that, *ಘಟನೆ ಸ್ಥಳದಲ್ಲಿ ಜಪ್ತಿ ಪಡಿಸುವಂತಹ ಯಾವುದೇ ವಸ್ತುಗಳು ಇರಲಾರದ ಕಾರಣ ಜಪ್ತಿಪಡಿಸಿರುವುದಿಲ್ಲ*. It is clear that the Investigating Officer has not seized/recovered any properties from the scene of crime. However, the Investigating Officer has produced MO.1 to 3 before this Court. Even the Trial Court has not passed any order as to receiving of MO.1 to 3 without property form and seizure panchanama.



17. The evidence of PW.5 is quite inconsistent with the contents of Exhibits P.1 and P.2 and also the medical evidence. The evidence of PW.5/victim is not trustworthy and quite unnatural. This evidence is inconsistent with the conduct of an ordinarily prudent person. The evidence of PW.5 is also not supported with the medical evidence. The medical evidence placed before this Court will falsify the testimony of PW.5. Hence, the evidence of PW.5 is not trustworthy and believable. Viewed from any angle, I do not find any cogent, convincing, clinching and trustworthy evidence before the Court to convict the accused for the alleged commission of offence.

18. The Investigating Officer has submitted the chargesheet without proper investigation. The Medical Officer as well as the Investigating Officer has failed to comply with the mandatory provisions of Section 164A of Code of Criminal Procedure and the Investigating Officer has also failed to produce the victim before the Court at the earliest point of time. These material lapses will create



doubt as to the case of the prosecution. Accordingly, by giving benefit of doubt to the accused, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Accordingly, I answer Point No.1 in the ***Negative***.

Regarding Point No.2:

19. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

- (1) The Criminal Appeal is allowed.
- (2) The judgment of conviction dated 13.03.2024 and order on sentence dated 14.03.2024 passed in Special Case.No.2/2018 by the II Additional District and Sessions Judge, Bidar, Sitting at Basavakalyan are set aside.
- (3) The appellant/accused is acquitted of the offences under Sections 341, 376, 506 of the



Indian Penal Code and Sections 3(1)(w), 3(2)(v) and 3(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- (4) The Registry is directed to send the operative portion of the order of the judgment to the jail authorities to release the accused forthwith, if he is not involved in any other cases, as the accused is in judicial custody more than six years.
- (5) The Registry is also directed to send a copy of this judgment to the Trial Court along with TCR.

Sd/-
(G BASAVARAJA)
JUDGE

msr/RSP
List No.: 1 Sl No.: 67
CT-BH