



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 10TH DAY OF JULY, 2025

PRESENT

THE HON'BLE MR. JUSTICE R.NATARAJ

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL APPEAL NO.100570 OF 2022 (A)

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY THE POLICE SUB INSPECTOR
SIDDAPUR POLICE STATION,
SIRISI SUB DIVISION,
UTTAR KANNADA, KARWAR,
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.

...APPELLANT

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

AND:

SRI. NAGESH
S/O. SHIVAPPA MOSSANNAVAR,
AGE: 24 YEARS, R/O. BOODIGOPPA,
TQ. SAVADATTI, DIST. BELAGAVI-590001.

...RESPONDENT

(BY SRI. JAGADISH PATIL AND
SRI. M.C.HUKKERI, ADVOCATES FOR PW12 AND PW18;
PW12-IS NOTICE SERVED)





THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378 (1) AND (3) OF CR.P.C., SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 27.08.2021 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I, U.K. KARWAR (SPECIAL COURT FOR TRIAL OF CASES FILED UNDER POCSO) ACT IN SPECIAL CASE NO.20/2016 AND TO SET ASIDE THE JUDGMENT AND ORDER DATED 27.08.2021 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I, U.K. KARWAR (SPECIAL COURT FOR TRIAL OF CASES FILED UNDER POCSO) ACT IN SPECIAL CASE NO.20/2016 AND TO CONVICT AND SENTENCE THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 376 (2) OF IPC AND UNDER SECTIONS 4 AND 6 OF POCSO ACT.

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

CORAM: THE HON'BLE MR. JUSTICE R.NATARAJ
AND
THE HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE RAJESH RAI K)

The State has preferred this appeal against the judgment of acquittal passed in Special Case No.20/2016 dated 27.08.2021 by the Addl. District and Sessions Judge - FTSC-1 U.K., Karwar (Special Court for trial of cases filed under POCSO) Act (hereinafter referred to as the 'learned Sessions Judge' for short), whereby the learned Sessions Judge acquitted the accused/respondent for the offences punishable



under Section 376(2) of IPC and Sections 4 and 6 of the POCSO Act.

2. Briefly stated, the facts of the case are as follows:

The accused being the permanent resident of Savadatti, Belagavi District, came to the village of victim-PW.12 at Kibballi Village, Balur for coolie work of cutting trees in the forest and came in acquaintance with victim, who aged about 17 years. On 15.01.2015 at about 9:00 p.m., near the garden land of one Kalla Beera Gouda within the Kyadagi forest area, the accused consummated her by persuading that he will marry her. Later, they both were sexually active. Due to the same, the victim became pregnant. Thereafter, the accused started to avoid her. Left with no other option, she lodged a complaint before the Siddapura Police, Karwar on 29.01.2016 against accused as per Ex.P20. On the strength of Ex.P20, the Police registered FIR against the respondent-accused for the offences punishable under Sections 376(2) of IPC and Sections 4 and 6 of POCSO Act in Crime No.37/2016 as per Ex.P21. Subsequently, PWs.11, 16, 17 and 21 the Police officers of the Siddapura Police conducted investigation and laid charge sheet against the



accused for the offences punishable under Sections 376(2) of IPC and Sections 4 and 6 of POCSO Act before the Special Court. In the meantime, the victim delivered a girl baby. As such, the Police filed additional charge sheet against the accused.

3. In order to prove the charges leveled against the accused before the trial Court, the prosecution examined 22 witnesses as PW.1 to PW.22 and marked 37 documents as per Ex.P1 to P37.

4. After assessing the oral and documentary evidence, learned Sessions Judge acquitted the accused for the charges leveled against him. The said judgment is challenged in this appeal by the State.

5. Heard the learned HCGP Sri A.M.Gundawade, for the appellant-State and the learned counsel Sri Jagadish Patil and Sri M.C.Hukkeri, for the respondent-accused.

6. The primary contention of learned HCGP is that the trial Court erred while acquitting the accused without appreciating the evidence on record in the right perspective. He



contended that though the victim and her parents turned hostile to the prosecution case, it is established in their evidence that the victim was aged about 17 years at the time of incident and gave birth to a child. Further, the DNA report-Ex.P33 established that the accused is the biological father of the child. In such circumstance, the prosecution has proved the charges leveled against the accused beyond all reasonable doubt. This aspect of the matter is not properly appreciated by the trial Court. Accordingly, he prays to allow the appeal.

7. *Per contra*, learned counsel appearing for the respondent-accused contended that the judgment challenged in this appeal does not suffer from any perversity or illegality. He further contended that the victim, her parents, the mahazar witnesses are turned hostile to the prosecution case. Except the testimony of official witnesses, there is no other independent corroborative piece of evidence available on record to prove the charges leveled against accused. He contended that the victim stated in her evidence that the accused has not committed sexual intercourse on her. In such circumstance, Ex.P33-DNA report cannot solely be relied to prove the charges leveled



against the accused. Hence, the trial Court rightly appreciated this aspect and passed the impugned judgment which does not call for any interference. Accordingly, he prays to dismiss the appeal.

8. Having heard the learned counsel for the parties and on perusal of the entire materials available on record, the sole point that would arise for our consideration is:

"Whether the learned Sessions Judge is justified in acquitting the accused for the offences punishable under Section 376(2) of IPC and Sections 4 and 6 of the POCSO Act?"

9. We have given our anxious consideration to the arguments advanced by both the learned counsels and perused the materials on record.

10. It can be gathered from records that, the prosecutrix-PW.12, her father-PW.18, her uncle-PW.19 and grandmother-PW.13 have turned hostile to the prosecution case. Hence, to prove the charges leveled against the accused, the prosecution predominantly relied on the evidence of Doctors-PWs.6, 7, 8, 15 and 22, PW.5-Child Development Project Officer and the evidence of Police officials. On a careful



analysis of the evidence of these witnesses, PW.6-the Doctor conducted the Ultrasound Scanning of the victim on 15.02.2016 and issued a report as per Ex.P12 that she was carrying a foetus which was 33 weeks 2 days. PW.8 the Gynecologist deposed that on 01.03.2016 the victim gave birth to a baby girl at her Hospital. Later, PW.15-the Doctor obtained blood sample of the infant, victim and the accused before the Magistrate and sent the same for DNA analysis. PW.22 conducted the DNA test and issued the report as per Ex.P33. As per Ex.P33, PW.22 stated that the victim is the biological mother and accused is the biological father of the baby born to the victim. However, PW.12-victim, her grandmother, father and other relatives, unequivocally deposed that the accused did not commit any sexual act on the victim. In such circumstance, the oral testimony of victim and her relatives goes contrary to the medical evidence. No doubt, evidentiary value can be attached to the DNA report issued by the expert as per Section 45 of the Indian Evidence Act. However, if the same does not corroborate the testimony of victim, in such circumstance, the Court has to test the veracity of the report based on facts and evidence of the case on hand.



11. The evidentiary value of the DNA report is discussed by this Court and Hon'ble Apex Court in catena of judgments. The Deoxyribonucleic Acid (DNA) is the biological blueprint of every life on earth and is made-up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-lined with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. Further, DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. DNA profiling involves identification of an individual based on the blood sample of his mother, father, brother, and so on. Successful identification from skeleton remains can also be performed by DNA profiling.

12. However, the National Forensic Science University of India's report discloses that while STR test is highly reliable method for DNA identification, no forensic test is 100% certain. National Forensic Science University in India likely uses STR (Short Tandem Repeat) analysis as a standard method, but it's crucial to understand its limitations. The probability of a random match is extremely low, especially with a large number



of loci tested. Further, even with the meticulous testing and analysis, it is impossible to achieve 100% certainty in Forensic Science. The field relies on statistical probabilities and rigorous quality control to provide the best possible evidence. Hence, a particular result depends on the quality control and quality procedure in the laboratory.

13. The Hon'ble Apex Court in the case of ***Manoj v. State of M.P.***, reported in ***(2023) 2 SCC 353***, held regarding the *Collection and Preservation of Evidence that*, if DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting and preserving. DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can



establish link among victim(s), suspect(s) and scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling.”

Further in Paragraph No.153 it is held that:

153. *The Law Commission of India in its Report [185th Report, on Review of the Indian Evidence Act, 2003.] , observed as follows:*

“DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not “match”, then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA “profile” or “fingerprint” is found. It may be, for example, that the relevant profile is found in 1 person in every 1,00,000 : This is described as the “random occurrence ratio” (Phipson 1999, 15th Edn., Para 14.32).

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law.”

14. Further, the Hon’ble Apex Court in the case of **Pattu Rajan v. State of T.N.**, reported in (2019) 4 SCC 771 held in Paragraphs No.49, and 52 as under:



"49. One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Evidence Act. Undoubtedly, an expert giving evidence before the court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the court in forming its opinion on questions concerning foreign law, science, art, etc., on which the court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.

52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

15. A Bench of the Gujarat High Court in the case of ***Premjibhai Bachubhai Khasiya v. State of Gujarat*** reported in **2009 SCC OnLine Guj 12076** relying the Apex



Court judgment in the case ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra***, reported in ***(2005) 5 SCC 294*** held in Paragraph Nos.24 to 26 as under:

"24. It is thus clear that positive DNA report can be of great significance, where there is supporting evidence, depending of course on the strength and quality of that evidence. If the DNA report is the sole piece of evidence, even if it is positive, it cannot conclusively fix the identity of the miscreant, but, if the report is negative, it would conclusively exonerate the accused from the involvement or charge.

25. The science of DNA is at a developing stage and when the Random Occurrence Ratio is not available for Indian Society, it would be risky to act solely on a positive DNA report, because only if the DNA profile of the accused matches with the foetus, it cannot be considered as a conclusive proof of paternity. Contrarily, if it is solitary piece of evidence with negative result, it would conclusively exclude the possibility of involvement of the accused in the offence.

26. The DNA Science and Report is founded on probability theory. When the profiles of accused and foetus/child are consistent, it only shows a probability as per Random Occurrence Ratio. Obviously, it cannot be treated as conclusive proof and cannot be made use of as sole basis of conviction in a criminal case, more so when the Random Occurrence Ratio is not available of Indian Society."



16. Thus, applying the findings of the Hon'ble Apex Court and the Co-ordinate Bench stated supra to the facts and circumstances of this case, except the DNA report, absolutely no other corroborative piece of evidence is available on record to connect the accused with the alleged offence. The victim herself firmly stated that the accused did not have any sexual intercourse with her. She is not aware who the father of her child is. Even her parents and relatives also deposed similarly. In such circumstance, the DNA report cannot be solely relied to convict the accused since as per the survey and study of National Forensic Science Laboratory (NFSL) in India and as per the report of International Journal of Indian Science and Research (E-ISSN 2584-0924) published in JLFJ Volume:1, Issue:1, July 2022, the legal stands on DNA profiling considered, STR (short Tandem Repeat) testing is highly reliable method for human identification in Forensic Science and it is not strictly 100% accurate in India or globally.

17. Moreover, this is an appeal against the judgment of acquittal. It is a settled position of law by this Court and the Hon'ble Apex Court that in an acquittal judgment, if the Trial



Court has taken a plausible view, then the Appellate Court shall not casually interfere with such judgment of acquittal. In that view of the matter, since the trial Court has taken a plausible view in the instant case, interference with the impugned judgment is not warranted. Accordingly, we answer the point raised above in the 'affirmative' and proceed to pass the following:

ORDER

The Criminal Appeal No.100570/2022 is hereby
dismissed.

**SD/-
(R.NATARAJ)
JUDGE**

**SD/-
(RAJESH RAI K)
JUDGE**

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CT:PA
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