



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.812 OF 2025 (A)

BETWEEN:

THE STATE BY
KENGARI POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01.

...APPELLANT

(BY SRI VIJAYAKUMAR MAJAGE, SPP-II)

AND:

1. ABU SALMAN SAIFAN SAB THAMBE
AGED ABOUT 39 YEARS
S/O. SAIFAN SAN THAMBE.

2. DASTAGIR SAIFAN SAB THAMBE
AGED ABOUT 39 YEARS
S/O. SAIFAN SAN THAMBE

BOTH ARE RESIDING AT
BALAGANUR VILLAGE
SINDAGI TALUK
VIJAYAPURA DISTRICT-586 128.

...RESPONDENTS

(BY SRI SHAIKH SAOUD, ADVOCATE FOR R-1 AND R-2)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND
(3) OF THE CR.P.C PRAYING TO A. GRANT LEAVE TO APPEAL





AGAINST THE JUDGMENT AND ORDER DATED 14.12.2023 IN SESSIONS CASE NO.1371 OF 2021 PASSED BY THE LIII ADDITIONAL CITY CIVIL AND SESSIONS SPECIAL JUDGE BENGALURU THEREBY ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 354, 420, 376, 504, 506 R/W 34 OF IPC AND B. SET ASIDE THE AFORESAID JUDGMENT AND ORDER DATED 14-12-2023 IN SESSIONS CASE NO.1371 OF 2021 PASSED BY THE LIII ADDITIONAL CITY CIVIL AND SESSIONS SPECIAL JUDGE, BENGALURU THEREBY ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 354, 420, 376, 504, 506 R/W 34 OF IPC AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

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

Heard Sri Vijayakumar Majage, learned State Public Prosecutor-II appearing for the State and learned counsel appearing for respondent Nos.1 and 2, on admission.

2. This appeal is filed by the complainant/victim questioning the order of acquittal passed in S.C.No.1371/2021 by the LIII Additional City Civil and Sessions Special Judge, Bengaluru, acquitting accused Nos.1 and 3/respondent Nos.1



and 2 for the offences punishable under Sections 354, 376, 420, 504 and 506 read with Section 34 of Indian Penal Code, 1860 (for short, 'IPC') and prayed this Court to convict the accused persons and impose the sentence.

3. Sri Vijayakumar Majage, learned SPP-II appearing for the State, vehemently contended that the trial Court committed an error in acquitting the accused and failed to properly appreciate the evidence of the prosecution witnesses and material available on record, thereby arriving at an erroneous conclusion that the prosecution had not proved its case. It is contended that the learned trial judge ignored otherwise reliable and acceptable evidence and failed to take note of the fact that the accused had committed an offence against the victim girl merely on the ground that the medical report did not disclose any external injuries. It is further contend that the very approach of the trial Court is erroneous, as it failed to properly appreciate the medical evidence, which discloses that the hymen of the victim was not intact, which, according to him, clearly indicates that she was subjected to sexual intercourse. Hence, he sought admission of the appeal.



4. *Per contra*, learned counsel appearing for respondent Nos.1 and 2 vehemently contend that the trial Court has discussed the material available on record in detail from paragraph Nos.36 to 53, including Ex.P4, and therefore, no grounds are made out to admit the appeal.

5. Having heard learned SPP-II appearing for the State and also learned counsel appearing for respondent Nos.1 and 2 and upon taking note of the charges levelled against the accused, it is the case of the prosecution that complainant (PW1) came into contact with accused No.1 through Shaadi.Com in the month of March 2020 and remained in contact with him for a period of three months. It is further case of the prosecution that on 22.05.2020, on the eve of Ramzan festival, during the period of lockdown, accused No.1 took the complainant to his house, where she was allegedly confined for a period of four days, during which accused No.1 is alleged to have committed rape on her against her will and consent under the guise of marrying her. It is alleged that on 28.05.2020, accused No.1 dropped her near her room and



subsequently turned hostile and stopped responding to her calls and was not traceable.

6. Based on the complaint, the Police registered the case and investigated the matter. The trial Court, however, took note of the evidence of PW1 in detail and considered the material on record, particularly in paragraph No.41. PW1 stated that due to threats posed to her life by accused No.1, she did not disclose the incident to the neighbours. However, the trial Court did not accept this explanation, as in her cross-examination PW1 categorically stated that she was active on social media and made comments thereon, and therefore the trial Court held that the alleged threat was not believable.

7. The trial Court also took note of Ex.P1, as discussed in paragraph No.42, wherein PW1 categorically stated that she was not willing to marry accused No.1 as she did not have faith in him and the same also creates a doubt in the mind of the Court to believe her version. Further, as discussed in paragraph No.43, another complaint dated 09.06.2020 made before the Deputy Commissioner of Police - South was brought on record, which was forwarded to the Kengeri Police Station



for enquiry. A perusal of the same reveals that PW1 had requested the police authorities to call accused No.1 and advise him. In Ex.P1 also, PW1 specifically stated that she was not willing to marry accused No.1 as she was not having any confidence in him. The trial Court discussed both the oral and documentary evidence available on record in detail in paragraph Nos.44 and 45.

8. The evidence of the Doctor was also considered. The Doctor did not notice any injuries on the person of PW1, including her private parts and accordingly issued Ex.P3 - Medical Report. Except for noting that the hymen was ruptured, no other injuries were found. The trial Court discussed this aspect in detail and also considered the evidence of PW3, the neighbour of accused No.1, whose testimony was not accepted.

9. The trial Court also took note of the evidence of PW2, who was witness to Ex.P2, as discussed in paragraph No.49. Further, in paragraphs Nos.50 and 51, the evidence of PW4, the Head Constable, was considered. In paragraph No.52, the trial Court noted that PW1 stated that on the eve of



Ramzan, accused No.1 took her to his room situated at Santhe beedhi, Kengeri. However, the evidence of PW2, PW3 and PW4 indicated that accused No.1 was residing at Shirke, which is about three kilometres away from Bazaar Street. If PW3, Salma, who claimed to be the neighbour of accused No.1, were indeed residing near the alleged place of incident, she would have stated so in her evidence, at least in Ex.D3, that accused No.1 had brought the complainant to the house situated near her residence, where the incident allegedly occurred.

10. In paragraph No.53, the trial Court also took note of the allegation of PW1 that accused No.1 made her stay in his house for four days and had sexual intercourse with her. The trial Court observed that even if such statement is accepted, it does not disclose forcible sexual intercourse and appears to be consensual. It was also noted that PW1 did not specifically state that she was subjected to forcible rape. Even assuming that there was physical contact, it could only be treated as consensual and not as alleged by the prosecution and even taken note of the judgment of the Hon'ble Apex Court in the case of ***Dhruvaram Murlidhar Sonar v. State of***



Maharashtra, reported in **(2019) 18 SCC 191**, wherein it has been held that "*consensual involvement in sexual intercourse by victim without there being any misconception created by the accused does not constitute rape*". The trial Court further observed that the testimony of the prosecutrix did not inspire confidence and placing reliance on the decision of the Hon'ble Apex Court in ***Anne Nageswara Rao v. Public Prosecutor*** reported in **(1975) 4 SCC 106**, held that "*the delay in lodging the complaint affected the credibility of the prosecution story*".

11. Having considered all the materials available on record, and in particular the statement of PW1 that she was not willing to marry accused No.1, and taking note of all these factors, we do not find any ground to admit the appeal. Accordingly, the appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE