



CNR: KAHC010513652018

NC: 2026:KHC:59117-DB
CRL.A No. 2047 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.2047 OF 2018

BETWEEN:

1. M

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

...APPELLANT

(BY SRI. VIRUPAKSHA T.T., ADVOCATE
VIDE ORDER DATED 10.08.2026,
SRI. SAMPANGI RAMAIAH,
[APPOINTED AS AMICUS CURIAE])

AND:



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TURUVEKERE TALUK
TUMKUR DISTRICT
PIN CODE-572215.

2. STATE OF KARNATAKA
BY DANDINASHIVARA POLICE
TURUVEKERE TALUK
TUMAKURU DISTRICT
PIN CODE-572221.

...RESPONDENTS

(BY SRI. SUHAS GOWDA M., HCGP FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 03.10.2018 PASSED IN S.C.NO.10010/2013 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIPTUR, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 417, 376 AND 506 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

ORAL JUDGMENT

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

This matter is listed for final hearing today and this Court heard the matter on the previous date of hearing in part, directed to keep PW.1 and accused-respondent No.1 to be present before the Court on the next date of hearing. Now, the respondent No.1-accused is present before the Court.



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2. Learned counsel appearing for the accused - respondent No.1 placed on record the copy of the order passed by the trial Court granting maintenance in favour of the victim as well as daughter of the victim in Crl.Misc.No.30/2019, wherein, the trial Court granted maintenance amount Rs.2,000/- to each of them. In reply, learned *amicus curiae* appearing for the *de facto* complainant would submit that even that maintenance amount is also not paid.

3. The order passed by trial Court is taken on record in granting maintenance of Rs.2,000/- each in Crl.Misc. No.30/2019.

4. The factual matrix of the case of the prosecution is that:

a) The accused-respondent No.1 is the resident of Siddanahatti Village, Dandinashivara Hobli, Turuvekere Taluk. By making the prosecutrix to believe that he will marry her, had sexual intercourse with her at the house and continued to have physical relationship with her. That lastly till July 2012, he had forcible sexual intercourse with her and had threatened to take away her life if she discloses the same to anyone. Due to



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which, prosecutrix became pregnant of 3 months. Based on the complaint, police have registered the case for offences punishable under Sections 417, 376 and 506 of IPC. The police having registered the case investigated in the matter and filed the charge sheet. The accused was subjected to the trial before the trial Court. He did not plead guilty and claimed trial.

b) The prosecution in order to prove its case, examined PWs.1 to 13 and got marked the documents as per Exs. P1 to P14. The accused did not choose to lead any defence evidence and he was subjected to Section 313 Statement. The trial Court having considered the material on record, they extracted the provisions of Section 375 and fails to extract Section 417 of IPC and also taken note of Section 90- *consent known to be given under fear or misconception*. Having assessed the evidence available on record taken note of the receipt of complaint by PW.11 and registered the FIR and handed over the further investigation to PW.12, who sent the prosecutrix for medical examination to ascertain the fact that whether rape was committed on her. PW.8 is the doctor who on examination of the prosecutrix has given the report as per Ex.P11. The doctor



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has given the opinion that prosecutrix was pregnant of 3 months. The PW.12 for further investigation, conducted the spot mahazar at Ex.P2, in the presence of PWs.2 and 3. PW.2 is none other than the uncle of PW.1 and PW.3 is a neighbour. The PW.12 Investigating Officer along with PWs.11 and 10 traced the accused and subjected him for potency test and there obtained the report at Ex.P6 from PW.6 that he is capable to do the sexual act. The PW.12 also collected the katha extract of Ex.P3 from Panchayat Secretary-PW.4 and Ex.P4-sketch from PW.5- Assistant Engineer. But trial court having considered the evidence that PW.1 has stated that accused had subjected her to sexual act and she has admitted that since from school days they were in love and they have developed a physical relationship with consent. The Trial Court also taken note of the same and earlier also case was registered and the allegation that accused made an attempt to outrage her modesty and the same was ended in acquittal.

c) It is also an admission that in year 2011-12, they worked under one Sham and resided in this garden and also taken note of lodging of the complaint and respondent No.1-



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accused used to visit her once in a week and they have continued their physical relationship. It is also the evidence of PW.1 that she used to reside alone in the hut and her parents are residing away from her and once in a week she used to meet her parents. She used to cook food for herself and she was not going for any job. The trial Court also taken note of that she has admitted that they lived at the garden of Shyam and since three and half years they were residing at the garden of some other person. Having taken note of this admission and also considering the material i.e., the document of House Extract as per Ex.P3 which is spoken by PW.4 and also PW.5 who is the Assistant Engineer who prepared the sketch and considering the material on record comes to the conclusion that it was a case of consent and she was in deep love with the accused-respondent No.1.

d) The trial Court took note of that both of them were having physical relationship and as a result, she became pregnant. The doctor who examined as PW.8, deposed that there was no marks of forceful sex found on the body of PW.1 and hence, comes to the conclusion that Investigating Officer



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has subjected the accused for potency test and report was obtained in terms of Ex.P6. Thereafter, blood samples of accused-respondent No.1, PW1 and the child were drawn for a DNA test and DNA report-Ex.P12 was also obtained. According to Public Prosecutor, accused-respondent has not cross-examined PW.7 and that there were no suggestions against the contents in Exs. P6 and P12. Hence accused has admitted that he is the father of the child.

e) The trial court inspite of discussing the same in detail about the evidence available on record, comes to the conclusion that the victim has not denied the love affair and also considering that there was no forcible sex or intercourse, comes to the conclusion that the said sexual intercourse against the will of the prosecutrix, or that her consent was obtained by misconception of fact. The trial court comes to the conclusion that there is no forcible commission of rape or threat to life of prosecutrix. The trial judge failed to consider the ingredients of the very offence under Section 478, there is no discussion at all. Except discussing the ingredients of Section 375, fails to consider the contents of the document of complaint



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Ex.P1. Having perused the Ex.P1, it is very clear that both of them fell in love and accused-respondent No.1 promised the prosecutrix that he would marry her and he is not going to marry anyone else. It is also specifically stated that repeatedly he was making phone call that he is going to marry her and he will not leave her and he is going to give a life to her, in that guise, he was visiting her and also he pressurized her to withdraw the case which was given earlier and she insisted first to marry her and then only she is going to withdraw the complaint. But, when she withdrew the complaint, he went to Bangalore. It is specifically stated that forcibly he had sexual intercourse with her and thereafter he was visiting her and believing his words, she gave the consent in view of the promise made to her. In view of his promise, she did not inform the same to her family members and also his frequent visit. When bodily changes appeared, she went and examined herself and came to know that she was a pregnant of three and half months and immediately informed to accused-respondent No.1. Then he instructed her to abort the same, but she did not agree for the abortion. But he promised that he is going to come to



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Court on 09.11.2012 as date is fixed and she believed his promise and that on 09.11.2012, he came to village, But he refused to marry her. Thereafter, he caused the life threat that if she discloses the same, he is going to take away the life. When he tried to create fear in her mind, she screamed at the spot and by leaving her, accused ran away from the spot. Then she informed the same to her family members and gave the complaint stating that promising to marry her, accused subjected her for sexual act and also caused the life threat. Hence, based on her complaint, the case was registered.

5. The very contention of the learned amicus curiae as well as the learned High Court Government Pleader appearing for the State that the Trial Court committed an error in acquitting the accused without considering the material available on record.

6. Per contra, the counsel appearing for the accused/respondent in his arguments would vehemently contend that Trial Court has passed an order considering the material available on record and rightly comes to the conclusion that it was a consensual sex and ingredients of offence under



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Section 376 of IPC not attracts and so also Section 417 of IPC.
Hence, it do not require any interference.

7. Having heard the learned counsel appearing for the appellant and learned counsel for the respondents, the point that would arise for the consideration of this appeal are:

1. Whether the Trial Court committed an error in acquitting the accused and the same amounts to perversity which leads to miscarriage of justice and whether it requires interference of this Court converting the judgment of acquittal into conviction?

2. What order?

Point No.1:

8. Having heard the learned counsel appearing for the respective parties and also on perusal of the material available on record, it discloses that the very contents of the complaint are not discussed by the Trial Court and so also the evidence of PW1-victim in a proper perspective. No doubt, PW1 says that both of them were going to school together and they fell in love and accused used to visit her house whenever her father was not in the house and there was a galata to that effect and



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earlier also given the police complaint in this regard. It is also specifically deposed that accused was making phone call repeatedly promising her that he is going to marry her only and not anybody else. The same is found in the evidence of PW1 in paragraph 2. The evidence of PW1 is very clear that when she became pregnant, informed the same to the accused over the phone and he insisted her to terminate the pregnancy and when she refused for the same, he caused the life threat. It is also admitted that earlier she gave the complaint against him and the said case is pending.

9. In the cross-examination of PW1, it is elicited about the earlier complaint. It is also elicited that she has studied upto SSLC but not completed. Accused also promised her that he is going to marry her. At that time, she was aged about 19 years. At the time of giving evidence, she was aged about 21 years and the child was aged about 3 years. It is elicited that before filing the complaint on 21.04.2012, both of them had sexual intercourse. At that time, she was not pregnant. It is also admitted that when complaint was given earlier, she has stated that both of them are loving each other from last 2



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years. When suggestion was made to the witness, she deposed that on the first day, accused kissed her and also promised that he is going to marry her. The said answer is elicited from the mouth of PW1 by making suggestion by the defence itself. It is elicited from the mouth of PW1 that when first time complaint was given, accused continued to have the sexual intercourse because even subsequent to the lodging of the complaint also he promised to marry her and insisted her to withdraw the earlier case. But PW1 informed him that after marriage only, she will withdraw the complaint. But accused did not agree to marry her.

10. Having taken note of the material available on record, it discloses that the Trial Court proceeded with an erroneous approach only considering the admissions of PW1 with regard to that both of them have affair and had sexual intercourse. But nothing is discussed with regard to the promise made by accused that he will marry her. On the guise of promise of marriage, accused forced the victim for sexual intercourse and on the misconception of the fact by promising, subjected her for sexual act.



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11. The Trial Court also fails to take note of the DNA report which is available before the Court which is marked as Ex.P12. The Ex.P12 is very clear that this accused is the biological father of the child since the conclusion of DNA is very clear that DNA profile of female baby Jayalaxmi sample blood sent in Item No.3 is consistent with having come from the offsprings of D and M is matching with the DNA profile of the sample blood sent in Item Nos.1 and 2 respectively. Based on this DNA profile, it is very clear that the accused is the biological father and M is the biological mother of the female baby.

12. It is unfortunate to say that Trial Court fails to consider the evidence of PW1 with regard to the promise of marriage and subjecting her for sexual act by the accused. Both of them are having an affair cannot be a ground to acquit the accused. No doubt, there is no cross-examination of PW7 in respect of DNA test and DNA report and the same was brought to the notice of the Trial Court and the same is discussed by the Trial Court in paragraph 42 of the judgment. But comes to the conclusion that accused has admitted that he is the father



of the child. Though such finding is given by the Trial Court that accused is the biological father of the child, no reasoning is given with regard to the promise to marry her and subjecting her for sexual act. As a result of the same, victim gave birth to a female child and nothing is discussed in the judgment by the Trial Court.

13. Having perused these materials, it discloses that it is nothing but a perversity in the finding of Trial Court and the Trial Court fails to consider the ingredients of the offences invoked against the accused i.e., Sections 417 as well as 376 of IPC. Though there was no any injury as per the medical report, it is very clear that with the promise of marriage, accused subjected the victim for sexual act. Hence, the Court cannot expect any injuries on the private part of the victim when accused had promised to marry her and obtained the consent by making that promise and subjected her for sexual act. The continuation of sexual intercourse by both of them with the promise of marriage, cannot be a consensual sex. The Trial Court fails to take note of contents of Ex.P1 and the evidence of PW1 before the Court which corroborates with each other.



Hence, the Trial Court fails to discuss the contents of Ex.P1 as well as the evidence of PW1 when the same is in corollary to the contents of Ex.P1 and nothing is discussed and proceeded in an erroneous approach in coming to the conclusion that it was a consensual sex which has resulted in giving a birth to a child.

14. No doubt, the Trial Court while passing the judgment relied upon the principles laid down in the judgment of Apex Court reported in **2003 (7) KCCR 1297** in paragraph 37. But not discussed the very scope of Section 417 of IPC and ingredients of both the offences under Section 417 as well as 376 of IPC and erroneously proceeded to acquit the accused even though in paragraph 42, Trial Court held that accused is the biological father and DNA test is also proved against the accused. Thus, Trial Court committed an error in not considering the evidence of PW1; Ex.P1 as well as Ex.P6 and Ex.P12 which all goes against the accused.

15. The Trial Court also fails to take note of the very averments made in the complaint wherein specifically stated that when victim had requested the accused to marry her, he



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insisted her to terminate the pregnancy and also specific allegation is made in the complaint that when she insisted to marry, accused made an attempt with the dupatta to take away her life causing life threat to her. The very ingredients of Section 506 of IPC are found in the document of Ex.P1-complaint as well in the evidence of PW1. But nothing is discussed in the judgment by the Trial Court in respect of offence under Section 506 of IPC. The witnesses in the evidence categorically deposed that victim has believed the promise of the accused that he will marry her and but not expected that accused will cheat her. In the complaint also it is specifically mentioned that accused caused the life threat and the same is not discussed by the Trial Court while considering the offences which were invoked against the accused. In the cross-examination of PW1, nothing is elicited with regard to causing of life threat to PW1 and only concentrated that it is a consensual sex. When PW1 was subjected to cross-examination, only a suggestion was made that accused has not put any life threat and the said suggestion was denied by the PW1 and the same is also not discussed by the Trial Court while



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considering the ingredients of the offence under Section 506 of IPC.

16. Even in respect of the ingredients of Section 417 are concerned, there is no any effective cross-examination. Thus, the Trial Court failed to consider the materials available on record in a proper perspective and the same is nothing but a perversity in appreciation of both oral and documentary evidence placed on record which has led to miscarriage of justice in acquitting the accused for all the offences. Hence, the judgment of the Trial Court is very cryptic and not discussed the evidence available on record. Even the evidence of the IOs who have been examined before the Court i.e., PW8, PW9, PW10 and PW11 was also not touched upon by the Trial Court and not discussed anything in detail including the evidence of doctor who has been examined as PW7 except in 3 lines observation is in paragraph 42 of the judgment of the Trial Court. Hence, the Trial Court fails to take note of all these materials available on record which has resulted in miscarriage of justice. Hence, it is a fit case to reverse the finding of the Trial Court in view of the principles laid down in the judgment



reported **(2024) 3 SCC 544** in a case of **MALLAPPA AND OTHERS vs STATE OF KARNATAKA** and in the case of **P. YUVAPRAKASH vs STATE rep. by Inspector of Police** dated **18.07.2023** wherein the Apex Court held that if the cogent evidence is not properly appreciated and if any miscarriage of justice in view of non-appreciation, then the Appellate Court can reverse the order of acquittal into a conviction. Having considered all these materials available on record, this Court finds that it is a fit case to convert the judgment of acquittal into conviction. Hence, we answer the above point as affirmative.

17. When the Trial Court acquitted the accused, even failed to apply its judicious mind since there is a material before the Court i.e., DNA report at Ex.P12 which clearly shows that the accused is the biological father of the victim's daughter. Even though, Trial Court fails to invoke the provisions of Section 357A of Cr.P.C. as well as the scheme which is formulated to give protection to such people and evolve and direct the District Legal Service Authority to compensate the victim. The Trial Court even fails to exercise the powers of



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granting of compensation or referring the matter to the DLSA to pay the compensation. It is unfortunate that the Trial Court failed to invoke such provision when the victim is before the Court and in view of the act of the accused, she became pregnant and gave birth to a child who was aged about 3 years as on the date of giving the evidence. Thus, Trial Court fails to apply its judicious mind and proceeded in a capricious manner without looking into the material available on record and passed the order of acquittal. Hence, it is a fit case to invoke the provisions of Section 357A of Cr.P.C. and direct the DLSA to pay the compensation to the victim.

18. This Court has also taken note of the fact that as on the date of filing of the complaint, the victim was aged about 19 years. It has also emerged during the course of her evidence and also complaint that even prior to subjecting her for sexual act, she was a minor. The specific evidence of the victim is that both of them were studying together in the same school and promise was made when she was minor and taking the advantage, later, subjected her for sexual act.



19. The accused is also having a property and capacity to pay the fine. The conduct of the accused is that he did not marry, inspite of there was a promise and subjected her for sexual act. As a result, the victim gave birth to a girl child. Even at the time of giving evidence, the girl child was also aged about 3 years and DNA also confirms that this accused is the biological father. Hence, the court while imposing the sentence also to take note of the said fact into consideration. As a result of the act of the accused, he had spoiled the life of the victim and also no respect to the society in respect of the child born to this petitioner. The same has to be taken note of while imposing the sentence and ordering for compensation in favour of girl child by name Jayalakshmi.

20. It is unfortunate that the counsel appearing for the appellant also brought to notice of this Court proceedings initiated under Section 125 Cr.P.C. against this accused in Criminal Miscellaneous No.30/2019, the Trial Court vide order dated 25.07.2026 allowed the petition directing to pay an amount of Rs.2,000/- to both the victim as well as the child.



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The counsel appearing for the appellant would submit that even the said amount was also not paid.

21. The counsel appearing for the respondent also not disputes the said fact. This Court has to take note of said fact into consideration while imposing the sentence as well as the compensation and appropriate sentence has to be imposed against the petitioner.

Point No.2:

22. In view of the discussions made above, we pass the following:

ORDER

- (i) Appeal is allowed.
- (ii) Impugned judgment of acquittal is set aside.
- (iii) Accused is convicted for the offences punishable under Sections 417, 376 and 506 of IPC.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

BSV/SN



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HEARING ON SENTENCE

1. The amendment is made to Section 376 of Cr.P.C. in 2018, substituting the punishment shall not be less than 10 years, but which may extend to imprisonment for life and also shall be liable to fine.

2. This incident has taken place in 2012 i.e., prior to the amendment, wherein the punishment shall not be less than 7 years, but which may extend to imprisonment for life and shall also be liable to fine. This Court is also conscious about the said amendment. So also, recently the Apex Court held that before passing the sentence, accused must be heard. But when the Court imposes the sentence as per the statute in keeping the penal provision and also the sentence, and the same can be considered.

3. However, this Court considered the matter on 27.08.2026 and counsel appearing for the respondent took time to make submission and abruptly today, makes the submission that the respondent would make the payment to the tune of Rs.5,00,000/- as compensation, instead of taking



the conviction and sentence. This Court has taken note of the capacity of the accused to make payment, who is not ready to undergo the sentence. The same is also kept in mind while imposing the sentence by this Court.

4. As a result of the act of the respondent/accused, both the victim and child born to this petitioner is under lurch and taken the advantage of helpless lady, who belongs to a downtrodden community and helplessness of the victim girl who is aged about 18 years at the time of incident and while lodging the complaint, she was pregnant. Even this court also when he was secured before the court, advised him to marry the victim, but he refused to marry her and still the accused is not married. All these factors were also taken note of while imposing the sentence after hearing the accused.

ORDER ON SENTENCE

(i) The accused is sentenced for an offence punishable under Section 417 for a period of 1 year with fine



of Rs.1,00,000/- and in default of payment of fine, he shall undergo further punishment for a period of 3 months.

(ii) The accused is sentenced to undergo life imprisonment for an offence punishable under Section 376 of IPC and also pay a fine of Rs.5,00,000/- and in case of default of payment of fine, he shall undergo further sentence for a period of 2 years.

(iii) The accused is also sentenced for an offence punishable under Section 506 of IPC and sentenced to undergo imprisonment for a period of 2 years with fine of Rs.1,00,000/- and in default of pay of fine, he shall undergo default sentence for a period of 6 months. The sentence shall concurrently.

(iv) The accused is directed to be taken to the custody and send him to Central Prison at Bangalore by issuing a conviction warrant to undergo the sentence.

(v) On depositing of fine amount of Rs.7,00,000/- by the accused, an amount of Rs.5,00,000/- shall be kept in FD



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in the name of the child-Jayalakshmi till the age of majority. PW1 is not permitted to withdraw that amount till the attainment of the majority. The remaining amount of Rs.2,00,000/- is ordered to be released in favour of the PW1-victim for livelihood as well as to meet the educational expenses of the daughter Kum.Jayalakshmi.

(vi) The District Legal Services Authority is directed to pay the compensation amount. Even trial Court while acquitting the accused has not directed to pay the compensation. In the case of acquittal also, the victim is entitled for compensation since the victim has supported the case before the trial court, but the Trial Court has not exercised the same while acquitting the accused. Hence, District Legal Service Authority is directed to pay maximum compensation keeping in view the pathetic condition of victim as well as the child from the corpus of DLSA and the same has to be done within a period of 4 months from today.



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(vii) The Registry is directed to send a copy of this judgment to the DLSA of the Tumkur District, forthwith to enable the DLSA to take decision in this regard.

(viii) The Registry is directed to furnish a copy of this Judgment to the accused/respondent.

(ix) The Registry is also directed to pay the fee of Rs.10,000/- to the Amicus Curiae, forthwith who rendered his services in this matter.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

BSV/SN