

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22ND DAY OF AUGUST, 2013

PRESENT

THE HON'BLE MR. JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRIMINAL APPEAL NO.828/2008

BETWEEN:

STATE OF KARNATAKA
BY BALEHONNUR POLICE ... APPELLANT

(BY SRI.P.M.NAWAZ- ADDL. SPP)

AND:

1. M ADARSHA S/O K MANI
AGED 24 YEARS
VEERABHADRESHWARA NAGARA
KADLEMAKKI
BALEHONNUR
2. SHIVAKUMAR S/O CHANDRAMALYA
AGED 25 YEARS, AUTO DRIVER
R/O MASEEDIKERE,
KADLEMAKKI
BALEHONNUR ...RESPONDENTS

(BY SRI.VIVEK S REDDY – ADV. FOR
SRI.K N SUBBAREDDY- ADV. FOR R-1 & R-2)

THIS CRL.A. IS FILED U/S.378 (1) & (3) CR.P.C,
PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST
THE JUDGMENT AND ORDER OF ACQUITTAL
DT.31.3.2008 IN S.C.NO.13/07 PASSED BY THE PRL.S.J,
CHIKMAGALUR-ACQUITTING THE RESPONDENTS/

ACCUSED FOR THE OFFENCE P/U/S.366, 342, 376 R/W
SEC.511 AND 34 OF IPC.

THIS APPEAL COMING ON FOR FINAL HEARING THIS
DAY, KEMPANNA J., DELIVERED THE FOLLOWING:

J U D G E M E N T

State has preferred this appeal challenging the
legality and correctness of the judgment and order
dated *31.3.2008 passed in S.C.NO.13/2007 by the
Principal Sessions Judge, Chikmagalur acquitting the
respondents/accused of the offences punishable under
Sections 366, 342, 376 r/w.511 and 34 of IPC.

2. The respondents/accused came to be tried on
the charges for the offences punishable under Sections
366, 342, 376 r/w.511 and 34 of IPC. It is alleged that
on 30.11.2006 at about 4.45 p.m. on Chowdeshwari
Temple road at Maseedikere coming within the
jurisdiction of Balehonnur police station, the accused in
furtherance of their common intention kidnapped PW2
Nabeesa while she was returning home from the college,
took her in the Tata Sumo car bearing No.KA30/M 0990

*corrected vide order dated 30/11/2015
made on I.A. No.1/2015

near a water tank situated near the Mutt with an intention to commit rape on her and further they wrongfully confined PW2 in the Tata sumo and thereafter, they sped away from the spot after seeing PW6 and CW5 and thus they have committed the aforementioned offences.

3. It is the case of the prosecution that PW2 is aged about 16 years and was prosecuting her studies in II PUC in SJRC college, Belhonnur. On 30.11.2006 at about 4.15 p.m. she was returning to her home from the college along with her friends CW2 and PW4. While she was returning with her friends accused came in Tata Sumo car and asked her whether she intends to come with them, to which she refused. Thereafter PW4 went to her house and PW2 went to the house of CW2. While she was in the house of CW2 she noticed the vehicle in which the accused had come passing in front of the house two or two three times. Thereafter, she left the house of CW2 to her house. At that juncture accused again came in the Tata Sumo, approached her and

invited her, to which she refused. At that time A2 was on the steering wheel and A1 gagged her mouth with his hands and pushed her into the vehicle. Thereafter, they drove the vehicle to a distance of about a kilometer upto the water tank situated near the Mutt at Balehonnur. As A1 had closed her mouth she was not able to shout or raise cries. Thereafter A1 removed the buttons of her chudidar top and pressed her chest and molested her. Thereafter he untied the ladi of her chudidar pant. At that juncture PW6 and CW5 came to the spot. A2 cautioned A1 about the arrival of some persons. Immediately thereafter A1 pushed PW2 from the vehicle and sped away from the spot towards Melpal. Thereafter PW6 and CW5 brought PW2 to her house. It was about 4.45 p.m. when A1 attempted to commit crime on her near the water tank. After she was brought to her house she informed what had transpired till such time to her mother. Thereafter she was brought to the hospital at Balehonnur by her mother accompanied by PW6 and CW5. It was about 6.45 p.m. At the hospital she was

treated by PW3 the medical officer who has issued the wound certificate in respect of her as per Ex.P5. The medical officer after treating PW2 sent an intimation to Balehonnur police and the same was received by PW11, the PSI at about 7.00 p.m. Immediately he proceeded to the hospital and there he recorded the complaint Ex.P2 of PW2 and on returning to the police station, on the basis of Ex.P2, he registered a case in Crime No.167/2006 for the offence u/ss.366, 376, 511 r/w. 341 of IPC against the accused and issued FIR as per Ex.P9 to the jurisdictional Magistrate. Thereafter, he arrested the accused on the same day at about 9.45 p.m and kept them in the safe custody. On the same day he also seized the vehicle involved in the case under the Mahazar Ex.P3 in the presence of the panchas. On 1.12.2006 he visited the hospital and recorded further statement of PW2. He also seized the clothes-MOs 1 to 3 which were on the person of PW2 at the time of occurrence under the mahazar Ex.P8. On the same day he also got the accused remanded to judicial custody

after completing the formalities. Thereafter he drew up scene offence panchanama as per Ex.P4 as pointed out by PW2 in front of tyre factory. He also recorded the statements of PWs 4, 5, 6 and 9 and other witnesses cited in the charge sheet. On 8.12.2005 he collected the wound certificate Ex.P5 issued by PW3 and also the age certificate Ex.P1 from the college where PW2 was prosecuting her studies. Thereafter on completion of the investigation he submitted final report against the accused before the Jurisdictional Magistrate who in turn committed the case of the accused to the court of Sessions which on receipt of the records secured the presence of the accused, framed charges as aforesaid against them to which they pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case in all examined PWs 1 to 11 and got marked exhibits P1 to P9 and MOs 1 to 3. Accused during the course of examination of the prosecution case got marked exhibits D1 to D3.

After the closure of the prosecution evidence the accused were examined u/s.313 Cr.P.C. They denied all the incriminating circumstances put to them and also submitted that they have no defence evidence to lead. Total denial of the prosecution case is the defence of the accused.

5. The learned trial Judge on a consideration of the oral and documentary evidence placed on record held that the prosecution has failed to establish the charge leveled against the accused and accordingly, by the impugned judgment and order acquitted the respondents/accused of the charges leveled against them.

The State being aggrieved by the said judgment and order of acquittal is in appeal before this Court.

6. The learned Addl. SPP assailing the impugned judgment and order contended the evidence of PW2- the victim clinchingly establishes that on the date, time and place of occurrence, the accused had attempted to

commit rape on her. That evidence of PW2 is corroborated from the evidence of PW6 who has come to the spot at or about the time of occurrence and also in view of the evidence of PW3 – medical officer who has fortified the testimony of PW2 in respect of the injuries which she has sustained at the hands of the accused at the time of occurrence. Nothing has been brought about in the cross examination of these witnesses to discredit their testimony. The learned trial Judge without appreciating the evidence of these witnesses in its right perspective has committed an error in coming to the conclusion that the prosecution has failed to establish the charge which is contrary to the evidence on record. Therefore, he submits a case for interference is made out.

7. Per contra, the learned counsel appearing for the respondents/accused supported the impugned judgment and order of the trial Court.

8. In view of the aforementioned facts, evidence and the documents on record, the point that arises for our consideration is:-

‘Whether the impugned judgment and order of the trial Court calls for any interference?’

9. It is the case of the prosecution that on 30.11.2006 at about 4.45 p.m when PW2 was returning to her house from the college, the accused came in Tata Sumo car bearing No.KA 30/M.990 took her in the said car near a water tank situated near the Mutt at Balehonnur, wrongfully restrained her in the said car. Thereafter the accused attempted to commit rape on her. The evidence of the PW2 reveals that on date of occurrence after attending to the college, she was returning to her house along with PW4 and CW2. On the way accused came in the car and asked her whether she would come with them, but she refused. Thereafter PW4 went to her house. PW2 proceeded ahead along with CW2 and went to the house of CW2. While she was in the house of CW2 the accused moved in the car

infront of her house. After some time PW2 left the house of CW2 to her house, and at the time CW2 accompanied her till Tyre Factory. Thereafter CW2 returned back. After CW2 returned, while she was on the way the accused came in the car and among the accused, A1 forcibly took her inside the car by closing her mouth with his hands. Thereafter the car was driven to a distance of about 1 kilometer near the water tank situated near the Mutt at Balehonnur. There A1 removed the buttons of her chudidhar top and pressed her breast. Thereafter he also untied the ladi of the chudidhar. At that juncture PW6 and CW5 came in an Auto. Seeing them A2 cautioned A1. Immediately thereafter by the time PW6 and CW5 came near the car A1 pushed PW2 out of the car and thereafter they sped away in the vehicle. Thereafter, PW6 and CW5 brought PW2 to her house who in turn narrated what transpired to her mother and thereafter she was taken to the hospital at Balehonnur at about 6.45 p.m. There she was treated by PW3 medical officer. While she was in

the hospital, police came and recorded her statement/complaint as per Ex.P2. PW3 is the medical officer who has treated PW2 at the hospital. According to him PW2 had sustained the following injuries.

1. Tenderness over both the breasts.
2. Tenderness over both the thighs.
3. Tenderness with contusion over hypogastric region of abdomen measuring 4x3 cms.
4. A linear abrasion over left breast measuring 5 cms.

10. The evidence of PW3 discloses PW2 had sustained injuries on her both the thighs whereas, the evidence of PW2 herself does not disclose that she had sustained any injuries on her thighs. According to her A1 after removing buttons of her chudidhar top pressed her breasts. She has not stated about any assault having been made by the accused on her thighs. Therefore the evidence of PW2 is contra to the medical evidence on record. Apart from this though PW2 claims that A1 removed buttons of the chudidhar top and untied

the ladi of the chudidar, PW6 who had come to the spot immediately after the occurrence along with CW5, does not say in his evidence that the chudidar top buttons of PW2 and ladi of the chudidar had been opened. If according to PW2 the chudidar top buttons had been opened and ladi of the chudidar had been untied, after she was thrown out of the car, PW6 would have seen the same or at least PW2 would have stated in her evidence that she put on the buttons and tied the ladi. This is clearly absent from the evidence of both PW2 and PW6. Apart from this the evidence of PW3-medical officer reveals that after his examination of PW2 at the hospital at about 6.45 p.m, he made entries in respect of the injuries noticed on person of PW2 in the MLC register, which is now on record marked as Ex. P7(a). The learned trial judge in his judgment has observed that the signature of PW3 is not found in the MLC register and likewise Ex.P7(a) which is certified copy of the said MLC register. He has also observed that the ink used by PW3 for making entries in the MLC register

is different and it contains the signature of the father of PW2 who admittedly was not present in the hospital at the time PW2 was examined by him. The evidence on record reveals it was only PW2, PW6, CW5 and mother of PW2 who had gone to the hospital. As to how the signature of the father of PW2 was taken in the MLC register is not explained properly and the suggestion of the defence is, before PW3 tendered his evidence before the court he has taken his signature, that too in a green ink which is not the ink in which the other entries have been made in the original MLC register. Apart from this CW2 who had accompanied PW2 from the college to her house and thereafter from her house up to the tyre factory is not examined in the case. The other witness viz. CW5 who had come to the spot along with PW6 is also not examined in the case. The witnesses who have been examined in the case are all closely related to PW2. In view of the discrepant evidence of PW2 and PW6 coupled with the discrepancies that are found in the entries made at MLC register by PW3, it is difficult to

place reliance on the testimony of PW2, who is victim in the case. Since the evidence of these witnesses does not corroborate with each other and more particularly as the evidence of PW2 is in direct conflict with medical evidence, we find it difficult to accept the testimonies of these witnesses that the accused had kidnapped, wrongfully restrained and had attempted to commit rape on PW2. The learned trial judge on an appreciation of the entire evidence on record in its right perspective has come to the right conclusion in holding that the prosecution has failed to establish the charge leveled against the accused which finding in our view having been based on evidence does not suffer from any infirmity calling for interference in this appeal. Accordingly, we do not see any merit in the appeal and it is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE