

State By Vs. Mithun Kumar

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Court : Karnataka

Decided On : Nov-03-2022

Judge : K.Somashekar and C M Joshi

Appeal No. : CRL.A 347/2016

Appellant : State By

Respondent : Mithun Kumar

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE3D DAY OF NOVEMBER, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE C.M.JOSHI CRIMINAL APPEAL NO.347 OF 2016 BETWEEN: State by Assistant Superintendent of Police Puttur, D.K., Rep. by the State Public Prosecutor Bengaluru - 574201. ...Appellant (By Sri. Abhijith K.S - HCGP) AND:

1. Mithun Kumar S/o. Shivaram Naik Aged about 23 years R/at Nekkila Near Bannur School Bannur Village Puttur Taluk - 574201.
2. Matheesha Naik S/o. Harinaksha Nak Aged about 25 years R/at Nekkila IMane 2 Bannur Village Puttur Taluk.
3. Smt. Malini, W/o. Suresh Aged about 50 years R/at Salmara Chikkamadooru Village Puttur Taluk Dakshina Kannada District. ...Respondents (By Sri. B. Lethif -

Advocate for R-1 & R-2; R-3 served and unrepresented) This Criminal Appeal filed under Sec.378(1) and (3) of Criminal Procedure Code, by the Advocate for the appellant praying to; a) Grant leave to appeal against the judgment and order of acquittal dated 08.10.2015 passed in Special Case No.2/2011 by the learned District and Sessions(special) Judge, Mangaluru, D.K., for the offences punishable under Section 376 of IPC and Section 3[2].[v]. of SC/ST Act, 1989; b) set aside the aforesaid judgment and order of acquittal dated 08.10.2015 passed in Special Case No.2/2011 by the learned District and Sessions(special) Judge, Mangaluru, D.K., acquitting the accused / respondents by allowing this criminal appeal and c) convict and sentence the accused for offence punishable under Section 376 of IPC and Section 3[2].[v]. of SC/ST Act, 1989. This criminal appeal coming on for dictating judgment this day, K Somashekar .J., delivered the following:

3.

JUDGMENT

This appeal is directed against the judgment of acquittal rendered by the Court of the II Addl. District & Sessions (Special) Judge, D.K, Mangaluru, in Spl.C.No.2/2011 dated 08.10.2015 acquitting the accused for offences punishable under Sections 376 of IPC, 1860 besides Section 3(2)(v) of the SC & ST (POA) Act, 1989. This appeal has been filed by the State seeking intervention by considering the grounds urged therein and to set-aside the judgment of acquittal rendered by the Trial Court and to consequently to convict the accused for the offences leveled against him.

2. Heard the learned HCGP for the appellant / State and so also the learned counsel Shri B. Lethif for Respondent Nos.1 and 2. In this matter, though process has been served on Respondent No.3 / Malini, she remains absent and unrepresented. Perused the judgment of acquittal rendered by the Trial Court in 4 Spl.C.No.2/2011 consisting the evidence of PW-1 to PW- 14 and several documents got marked at Exhibits P1 to P16.

3. The factual matrix of the appeal is as under: It transpires from the case of the prosecution that the victim aged about 16 years had filed a complaint making

allegations against the accused. It is stated in the complaint allegations that the victim was residing along with her mother/ PW-2, father / CW-2, sister PW- 9 / Kum. Akshatha and younger brother PW-10 / Avinash. She is said to have studied upto 7th Standard at Government School at Salmara of Puttur and thereafter had joined Kombettu High School of Puttur in the year 2009 for her 8th Standard and thereafter she is said to have discontinued her education and is said to have started working as a housemaid. In the month of March 2010, PW-8 namely the victim girl along with her younger brother namely PW-10 and younger sister 5 namely PW-9, had been to Brahmaratha festival which was held for about a weeks time at Puttur Sri Mahalingeshwara Temple. It is alleged that Accused Nos.1 and 2 who were known to the victim girl, her brother as well as her sister, is said to have taken all of them from Car Festival field to the house of Accused No.1 / Mithun at Bannur. It is stated that the victim girl, her brother, sister and Accused No.1 / Mithun had slept in the house of the said Accused No.1 / Mithun. At that time, it is alleged that Accused No.1 / Mithun had committed sexual intercourse with the victim girl. Thereafter, on the last day of the car festival, that is on 23.03.2010, again the victim girl along with her sister / PW-9 and brother PW-10 when they were returning to their house after finishing the Car festival, during the night, Accused No.2 / Matheesh is said to have had sexual intercourse with the victim girl on promising that he would marry her. As a result of these two incidents of sexual assaults by Accused Nos.1 and 2, the victim 6 girl is said to have become pregnant. The victim girl had lodged the complaint against the accused persons when she was eight months carrying woman, alleging in her complaint that the accused persons knowing fully well that the victim girl belongs to a scheduled caste, had deliberately commit the above said atrocity against her. Based upon her complaint, criminal law was set into motion by registering a case in Cr.No.221/2010 against Accused Nos.1 and 2 who are arraigned as respondents for offences punishable under Sections 376 read with Section 34 of the IPC and for offences under Section 3(2)(v) of the SC & ST (POA) Act, 1989. The FIR came to be registered as per Exhibit P8. Subsequently, the Investigating Officer had taken up the case for investigation and conducted investigation thoroughly and had visited the scene of crime at Nekkila village, namely the front room of the house of Accused No.1 / Mithun and conducted spot mahazar as per Exhibit P12 7

and also prepared rough sketch of the spot as per Exhibit P13. The Investigating Officer / PW-13 thereafter had visited another spot of the incident namely by the side of pathway leading to the house of the victim girl at Salmara, Chikkamudnur village and conducted spot mahazar as per Exhibit P1 and also drew the rough sketch of the spot as per Exhibit P2 and recorded the statement of the younger sister of the victim girl namely Akshatha / PW-9 as per Exhibit P-10. Thereafter, the I.O. had arrested both the accused on 03.11.2010 and so also recorded the statement of the witnesses including the mother of the victim girl and father of the victim girl. He also obtained the certificate of date of birth of the victim girl from the school as per Ex.P.6. Further, caste certificate of the victim girl and the accused as per Ex.P.11 were obtained from the concerned Tahasildar / PW-12. It was reported that the victim girl and Accused No.1 belonged to the scheduled caste whereas Accused No.2 was not a member of the 8 scheduled caste/tribe. After delivery of a male child on 29.11.2010, medical certificate Ex.P.5 in this regard was obtained from Lady Goschen Hospital. After obtaining the relevant documents and on completion of the investigation, the P.W.13 the then Assistant Superintendent of Police has filed the charge sheet against the accused No.1 and 2 alleging the offences as stated above. Subsequent to laying of the charge-sheet against the accused, the case in Spl.C.No.2/2011 was registered and Accused Nos.1 and 2 were secured for facing trial. Accordingly, on finding prima facie material against the accused, the Trial Court framed charges against them for offences punishable under Section 376 of IPC and Section 3(2)(v) of SC/ST (PA) Act, 1989. However, the accused persons pleaded not guilty and claimed to be tried. To bring home the guilt of the accused persons, the prosecution got examined 14 witnesses as P.W.1 to 14 and got marked the 9 documents at Ex.P.1 to P.16. Subsequent to closure of the evidence of the prosecution, they were subjected to examination as required under Section 313 of Cr.P.C. However, they denied all the incriminating circumstances appearing against them in the prosecution evidence. Accordingly it was recorded. Subsequently, the accused were called upon to enter into defence evidence as contemplated under Section 233 Cr.P.C. But the accused did not come forward to adduce any defence evidence. Accordingly, it was recorded. Subsequently, the Trial Court having heard the arguments of the learned Public Prosecutor as well as the defence

counsel and on considering the material evidence available on record, framed the points that would arise for consideration and thereafter, answered the points framed in the negative and consequently acquitted the accused from the offences leveled against 10 them. It is this judgment which is under challenge in this appeal by urging various grounds. Learned HCGP for the appellant / State has taken us through the evidence of PW-8 being the victim / prosecutrix. It is contended by the learned HCGP that there was a Brahma Rathothsava festival of Mahalingeshwara Temple at Puttur from 11th March 2010 to 22nd March 2010 wherein the prosecutrix along with her younger sister and younger brother had been to the said car festival. During the said car festival, the prosecutrix became acquainted with Accused Nos.1 and 2 and till 11.00 O clock night, all of them had participated in the Car festival. When the prosecutrix along with her younger sister and younger brother were returning home, Accused No.1 / Mithun is said to have taken them to his house by saying that there was a nema and had committed rape on the victim girl, in spite of her resistance, while all of them were sleeping in the hall. Further, on 22.3.2010 again the prosecutrix 11 had gone with her younger sister and brother to the said Car festival, on which day Accused No.2 / Matheesh is said to have followed them. When at 11 O clock in the night they were proceeding to their house, Accused No.2 is said to have followed them and is said to have committed rape on the victim girl by the side of the way to her house by promising that he would marry her. Her brother and sister are said to have slept on the side of the road since they did not want to leave the victim girl there. It is only after about six months from the date of the incident the prosecutrix felt that she was unwell and had the feeling to vomit and noticed that her stomach had become bigger. It is thereafter that she had disclosed the matter to her mother PW-2 that Accused Nos.1 and 2 had committed rape on her when she had been to the Car festival. Until that, she had not at all revealed the incident of rape to her mother. Hence, it is contended by the learned HCGP for the appellant / State that the delay in lodging the complaint 12 cannot become fatal to the case of the prosecution. It is contended that the victim girl being very young and a minor, did not know the consequences which has resulted in the delay in lodging the complaint. Hence, it is contended that the impugned judgment and order of acquittal rendered by the Special Judge is opposed to law, facts and probabilities of the case and is liable to

be set aside. Further, the learned Special Judge has committed material illegality and irregularity in acquitting the Accused / Respondents for the offences charged against them. It is further contended that the reasons assigned by the learned Special Judge to acquit the Accused / Respondents herein are not proper since the trial court has not considered the evidence adduced by the prosecution and the material collected against the Accused/Respondents herein in its right perspective. The prosecution though has proved the age of the prosecutrix was less than 16 years as on the date of 13 commission of offences by the Accused / Respondents herein, the Trial Court has committed an error in acquitting the accused. The Trial Court has further failed to note that even consent of the victim girl/prosecutrix [P.W.8]. is immaterial when the age of the victim / prosecutrix was proved to be less than 16 years. Further, the Trial Court has failed to appreciate that the prosecution witness P.W.2 - mother of the prosecutrix, has supported the case of the prosecution. The next limb of arguments advanced by the learned HCGP is that the Trial Court has failed to appreciate that initially i.e., on 29.11.2011 P.W.8 - victim/prosecutrix has fully supported the case of the prosecution, which is to a certain extent corroborated by the evidence of P.Ws.9 and 10. However, when the victim/prosecutrix was further examined after about 2 years i.e., on 25.08.2013, she has given a go by to her earlier evidence, due to which, she has been treated as hostile by the prosecution. The Trial Court has 14 overlooked the aspect of delay in the cross examination of the victim/prosecutrix, which gave sufficient time and opportunity to win over the victim/prosecutrix completely to give a go-by to her earlier evidence i.e., examination-in-chief, in which, she has supported the case of the prosecution fully. It is the further contention of the learned HCGP that the Trial Court has also failed to consider the established dictums of the Apex Court as well as this Court as regards the witness deposing earlier in examination-in-chief in support of prosecution though turned hostile to the case of the prosecution during cross examination, but however the evidence given in Examination-in-chief could be relied by the Court. The Trial Court has also failed to take into consideration the evidence of P.W.14 - Doctor - who has deposed that the victim - prosecutrix PW.8 had given her statement before her, which has been recorded by the Police as per Ex.P.7, which is also a corroborative 15 material to support the case of the prosecution. It is further

contended that the Trial Court has also failed to take into consideration that P.W.8 - victim / prosecutrix has given birth to a child and the application filed by the prosecution for DNA TEST of the Accused/Respondents has been wrongly rejected by the trial court due to strong objections raised by the accused/Respondents and in view of the same, the Trial Court ought to have drawn adverse inference against Accused/Respondents, which has not been done. The above fact has also contributed in the wrong acquittal of the accused / Respondents, which has resulted in a miscarriage of justice to the victim. The next limb of arguments advanced by the learned HCGP is that the learned Special Judge has failed to take into consideration the evidence of P.Ws.9 and 10 - hostile witnesses, only on ground that they are hostile witnesses though they have supported the case of the prosecution to a certain extent with regard to 16 victim/prosecutrix and accused/respondents being together for some time as narrated by the victim/prosecutrix. Hence, the Trial Court has erred in arriving at the conclusion that the victim/prosecutrix has not supported the case of the prosecution by overlooking the fact that she was treated as hostile after about two years when she has been cross examined by the accused / respondents. While acquitting the accused persons, the Trial Court has given more credence to the fact that P.Ws.9 and 10 have turned hostile to the case of the prosecution and has also overlooked the evidence of P.W.2 - Malini being the mother of prosecutrix, P.W.14- Doctor, P.W.4 - Doctor and other material on record and wrongly has given the benefit to doubt to the accused/respondents which has resulted in a miscarriage of justice. Hence, it is contended that the appreciation of the entire evidence by the trial court is full of surmises and conjunctures without considering 17 the evidence with reference to the material on record, circumstances and statements of witnesses in its right perspective. Hence, the Trial Court has arrived at a wrong conclusion and held that the prosecution has failed to bring home the guilt of the accused/respondents, even though the guilt of the accused/respondents has been established satisfactorily for the offences charged against them. The totality of the circumstances besides material evidence adduced by the prosecution clearly shows that the prosecution has proved the guilt of the accused/respondents beyond all reasonable doubt, but the approach of the trial court in not appreciating the evidence properly has led to the Trial Court wrongly

acquitting the accused/respondents which has resulted in a miscarriage of justice. On all these grounds, the learned HCGP for the appellant /State seeks to set aside the acquittal judgment rendered by the Trial Court and to thereby 18 convict the accused for the offences which were charged against them. On the contrary, learned counsel for the respondents / accused Nos.1 and 2 have contended that the prosecution has not been able to prove convincingly the age of the prosecutrix. It is further contended by the learned counsel that if really the victim girl had been raped by the two accused persons, there would not have been any delay in lodging the complaint. Though the alleged rape had taken place in the month of March 2010, the complaint came to be lodged only in the month of November 2010 when the victim girl was at her advanced stage of pregnancy of 8 months. It was contended that only at the instance of one Smt. Jyothi of an organization, a false complaint had been lodged by naming the accused persons. Even if the complaint averments and the evidence on record are believed to be true, it cannot be denied that it was 19 consensual sex between the victim girl and the accused persons. As can be seen from the very complaint at Ex.P.7, the victim girl has given her age as 16 years. The alleged incident had taken place in the month of March 2010. The date of birth as shown in the certificate issued by the school authorities as per Ex.P.6 is 25.05.1994. Even according to the prosecution, there was shortage of only two months for the victim girl to attain 16 years of age. As rightly submitted by the learned defence counsel, merely because the certificate issued by the school authorities as per Ex.P.6 shows her date of birth as 25.05.1994, it cannot be held that she was less than sixteen years of age as on the alleged date of incident, because the victim girl P.W.8 has stated that the date of birth that was given at the time of admission to the school was by her aunt and not by her parents. Further, it is also on record that birth certificate of the victim is forthcoming in this case to arrive at a definite date of 20 birth of the victim girl. Further, the person who had entered the date of birth in the admission register of the school has also not been examined by the prosecution. When the victim girl herself did not support the prosecution case with regard to the alleged offence of rape on her and the prime witnesses namely her younger sister and brother P.W.9 and P.W.10 who were said to have accompanied her, have not supported the prosecution version of the case, the Trial Court was justified in acquitting the

accused for the alleged offences. With regard to the offence alleged under Section 3 (2)(v) of the SC/ST Act, 1989, except producing the caste certificate, there is no other evidence to believe that Accused No.2 who is not the member of the SC/ST category has committed rape on the victim girl on the ground that she belongs to a scheduled caste. The police officials who have been examined as P.W.6 Honappa, P.C., P.W.11 Archana H.K. 21 P.S.I., P.W.13 Amith Singh, the investigating officer have spoken with regard to their respective role in the investigation, which has no consequence in view of the absence of clear and clinching evidence by the victim girl P.W.8 as well as the prime witnesses P.W.9 and P.W.10 in support of prosecution version of the case. It is also to be noticed that admittedly, the mother of the victim girl namely P.W.2 was nowhere near the alleged incident which had taken place on two different occasions during a short span of seven days. As per the prosecution version of the case, the alleged incident of rape had taken place on a certain day in the month of March 2010, the perpetrator of the offence being Accused No.1 / Mithun Kumar. Again, another rape was committed in the intervening night of 22nd and 23rd of March 2010 within a short span of 7 days from the first rape, the perpetrator of the offence being Accused No.2 / Matheesha Naik. It has come in the evidence of victim girl / P.W.8 that once she had been 22 admitted to Lady Goschen Hospital while she was 5 months pregnant. However, at that time, no complaint has been lodged either immediately after the alleged rape or after the 5 months when she took treatment in Lady Goschen Hospital. There is no corroboration in the statement of the witnesses and the victim herself inclusive of the two prime witnesses namely her brother and sister have not supported the case of the prosecution. Further, the complaint has been lodged after a long delay as a result of which the commission of rape by the accused persons could not be proved by the prosecution with regard to medical evidence in this regard. The evidence on record also is full of inconsistencies in the statement of witnesses. It is in view of these facts and since there was no evidence to convict the accused persons, the Trial Court has proceeded to acquit the accused for the alleged offences. Hence, it is contended by the learned counsel for the respondents that the judgment of acquittal rendered by 23 the Trial Court being just and proper, it does not require to call for any interference in this appeal and hence the learned counsel seeks for dismissal of

the appeal as being devoid of merits. In the context of contentions taken by the learned HCGP for the appellant / State and the learned counsel for the respondents / accused and on going through the material on record, it is necessary to refer to the evidence of PW-8 / victim girl who had given the complaint at Exhibit P7. Her complaint statement has been recorded by PW-11 / Archana, PSI, in the presence of PW-14 / Dr. Poornima. P.W.8 is the victim girl. P.W.2 / Malini is the mother of the victim girl. P.W.9 / Kum. Akshatha is the younger sister and P.W.10 / Avinash is the younger brother of the victim girl. P.W.1 / Sudharshan and P.W.7 / Rajesh Poojary are the witnesses to the spot mahazar which was conducted at the place of the incident on the way to the house of the victim girl as per 24 Ex.P.1 and sketch of the spot at Ex.P.2. They are also witnesses to another spot mahazar which was conducted at the place of incident namely the house of Accused No.1 / Mithun situated at Nekkila village as per Ex.P.12 and related rough sketch of the spot as per Ex.P.13. P.W.3 / Dr. Deepak Rai, Medical Officer of Puttur Government Hospital has medically examined Accused Nos.1 and 2 and has given medical certificate as per Ex.P.3 in respect of Accused No.1 and medical certificate as per Ex.P.4 in respect of Accused No.2, in which he has stated that the accused Nos.1 and 2 were medically fit and capable of performing sexual intercourse. P.W.4 / Dr. Sundari, Gynecologist of Lady Goschen Hospital, Mangaluru has spoken about the fact that the victim girl had been admitted to that hospital on 29.11.2010 and on the same night at about 11.55 p.m., the victim girl had delivered a male child and thereafter she was discharged on 04.12.2010 and in this regard, she has given a certificate as per Ex.P.5. 25 P.W.14 / Dr. Poornima J.

is a Senior Specialist of Lady Goschen Hospital, Mangaluru who according to the prosecution was present while P.W.11 Archana, Woman P.S.I. recorded the statement/complaint of the victim girl P.W.8 in the hospital as per Ex.P.7 on the basis of which the case was registered as per Ex.P.8 FIR. P.W.5 is the Head Teacher in the Government High School, Salmara where the victim girl had studied from 1st standard to 7th standard. This witness has given Ex.P.6 certificate in which it is stated that the date of birth of the victim girl was 25.05.1994. P.W.6 is the Police Constable who has carried the complaint Ex.P.7 and FIR Ex.P.8 to the court. P.W.12 was the then Tahasildar of Puttur Taluk who

has given a certificate relating to the caste of the victim girl and also Accused Nos.1 and 2 as per Ex.P.11, in which it is stated that the victim girl and A1- Mithun belonged to scheduled caste, whereas A2 26 Matheesh Naik was not a member of scheduled caste/scheduled tribe. P.W.13 is the investigating officer who on completion of the investigation, had filed the charge sheet. P.W.8 who is the victim girl has stated that she had participated in the Brahma Rathotsava festival of Mahalingeshwara Temple at Puttur from 11th March 2010 to 22nd March 2010. She had been to the festival along with her younger sister P.W.9 and younger brother P.W.10 where she became acquainted with Accused Nos.1 and 2. Thereafter when she along with her younger sister and younger brother were going back to their home, Accused No.1 / Mithun by saying that there was a Nema is said to have taken them to his house and committed rape on the victim girl / PW.8, in spite of her resistance while all of them were sleeping in the hall. She has further stated that on 22.3.2010, again she went to the same car festival along with her younger brother and sister. There 27 Accused No.2 / Matheesh Naik was following them. Thereafter at 11.00 p.m. when they proceeded to go to their house, Accused No.2 / Matheesh Naik followed them till Salmara and he committed rape on the victim girl by the side of the way to her house by promising that he would marry her. It is her further say that after about 6 months from the date of incident, she was not feeling well and had the feeling to vomit. Her stomach had become bigger. Then she had disclosed the matter to her mother / P.W.2 that the accused persons had committed rape on her when she had been to car festival. Till such time, she had not revealed the matter to her mother. Thereafter, her mother P.W.2 went to the house of Accused No.2 and informed the matter to them. Although the mother of Accused No.2 / Matheesh had agreed for the marriage, Accused No.2 did not agree to marry her. It is her further say that thereafter she took treatment at Lady Goschen Hospital, Mangaluru as an 28 inpatient. At that time, i.e. on 1.11.2010, the police had recorded her statement/complaint, which is at Ex.P.7. She has stated that as on the date of giving her statement/complaint, she was about 8 months pregnant. She has further stated that thereafter on 29.11.2010, she gave birth to a male child. But no evidence is forthcoming on the part of the prosecution to show that the accused persons had committed rape on the victim girl who was a minor and in view of the

fact that she belonged to the category of scheduled caste / scheduled tribe. It is relevant to refer to Section 376 of the IPC relating to rape on the victim. 376. Punishment for rape.- (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless 29 the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Whoever,- (a) being a police officer commits rape- (i) within the limits of the police station to which he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as 30 such public servant or in the custody of a public servant subordinate to him; or (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or (e) commits rape on a woman knowing her to be pregnant; or (f) commits rape on a woman when she is under twelve years of age; or (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a 31 sentence of imprisonment of either description for a term of less than ten years. But the ingredients in respect of the said offences that too committing sexual intercourse forcibly on the victim in respect of the ingredients is very much required to be established by the prosecution by facilitating worthwhile evidence and also evidence which should be corroborative,

positive and consistent, in order to secure conviction. It is the domain vested with the prosecution to establish the guilt of the accused by facilitating worthwhile evidence in order to secure conviction relating to the incident of rape on the victim girl. Even at a cursory glance of the evidence of PW-8 / victim girl who is the author of the complaint at Exhibit P7, it is seen that the evidence of PW-8 runs contrary to the evidence of panch witnesses PW-1 and PW-7. In the cross-examination, the victim girl P.W.8 has not supported the prosecution version of the case. She has stated that she has not given any complaint to the 32 police. While she was in Lady Goschen Hospital, the police had taken her signature and at that time, P.W.11 Archana was there and also one Smt. Jyothi of Mangaluru was present. She has further stated that as on the date of giving deposition on 25.9.2013, she was aged about 21 years. She has admitted that Accused Nos.1 and 2 had not committed any sexual assault on her. She has further stated that Accused Nos.1 and 2 were not responsible for her pregnancy. She has further stated that her date of birth had been provided to the primary school by her aunt one Smt. Hemavathi and not by her parents at the time of admission to the school. Hence, the Trial Court had rightly come to the conclusion that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. P.W.9 Kumari Akshatha, the younger sister of the victim girl as well has partly turned hostile to the case of the prosecution and she has denied the suggestion 33 made to her that she has given a statement to the police as per Ex.P.10. In the cross-examination by the defence counsel she has pleaded complete ignorance about any such incident as contended by the prosecution and she has stated that she had not gone to car festival at all. P.W.19 Avinash, the younger brother of the victim girl has also not completely supported the prosecution version of the case. According to the prosecution, spot mahazar Ex.P.1 and related rough sketch as per Ex.P.2 and another spot mahazar Ex.P.12 and related rough sketch of the spot as per Ex.P.13 were drawn by the investigating officer in a place as pointed out by this witness. In this regard, he has completely turned hostile to the prosecution case. In the cross-examination made on behalf of the defence counsel, he has stated that he had not gone to Puttur Mahalingeshwara car festival. He has also admitted that he had never gone to the house of Accused No.1 and also that of Accused No.2 and had never told his elder sister to sleep at

any place. 34 In the cross-examination made by the prosecution, he has denied the suggestion that he has given a statement to the police as per Ex.P.16. It is in view of all these circumstances that the Trial Court has proceeded to acquit the accused / respondents of the offences. The contention of the prosecution is that Accused No.1/Mithun committed rape on the minor victim girl / P.W.8 during night time in the month of March 2010 at his house at Nekkila, Bannur village of Puttur Taluk and it is further contended that in the same month during night time, Accused No.2 had also committed rape on her at Salmara, Chikkamadunur village of Puttur Taluk on the way to her house and it is further contended that Accused No.2 being not a member of scheduled caste/scheduled tribe has committed the rape on the victim girl since she belonged to a member of scheduled caste. The further contention that the consent of the victim girl was obtained by making false 35 promise of marriage and hence the consent given if at all, is not a free consent and hence according to him, Accused nos.1 and 2 are guilty of rape. However, all these contentions do not hold any water in view of the fact that the incident of rape by both accused Nos.1 and 2 has not been established by the prosecution beyond all reasonable doubt. On a perusal of the deposition of the witnesses, we find no suspicious circumstances to suggest that the accused might have won over these witnesses, because the chief-examination of these witnesses had been deferred at the request of the prosecution and not at the request of the defence. The victim girl P.W.8 herself and the prime witnesses P.W.9 and P.W.10 have not supported the case of the prosecution and all of them have given a go-by to the versions of their statements. The complaint of the alleged rape having been filed after a long lapse of time, and there being no medical evidence to establish the alleged offence of rape 36 committed on the victim girl itself, we find justification in the judgment of acquittal rendered by the Trial Court. Even at a cursory glance of the entire evidence and so also in the totality of the circumstances, a prudent man can infer that the prosecution has miserably failed to establish the guilt of the accused by facilitating worthwhile evidence. Though the entire investigation has been carried out by the Investigating Officer who laid a charge-sheet against the accused in respect of heinous offences under Section 376 IPC, but the Investigating Officer has not made an endeavour to secure the specific DNA report to prove the paternity of the child delivered by PW-8 / victim girl in order to establish the

offence of rape so as to secure conviction. Unless cogent, corroborative and positive evidence to probabalise that the accused and accused alone had committed the alleged offences, it is not possible for the Court to render a conviction judgment. Under the Doctrine of Criminal justice delivery system, when 37 doubt arises in the evidence of the prosecution, the said benefit of doubt should be extended to the accused and accused alone. However, minor discrepancies and inconsistencies which arise in the case of the prosecution could be ignored. But in the instant case, the victim girl / PW-8 has turned around her complaint at Exhibit P7 and moreover the material witnesses namely PW-9 and PW-10 have also turned hostile to the case of the prosecution. Therefore, the Trial Court has rendered an acquittal judgment relating to offences under Section 376 IPC and so also for offences under the Special Enactment of the SC & ST (POA) Act, 1989. Therefore, we are of the view that the acquittal judgment rendered by the Trial Court does not suffer from any infirmity and there is no perversity, absurdity or illegality committed by the Trial Court. Hence, we are of the opinion that the appeal deserves to be rejected on merits. In view of the above said reasons and findings, we find no fault in the judgment of the Trial Court 38 calling for any interference in this appeal. Hence, we proceed to pass the following:

ORDER

The appeal preferred by the State under Section 378(1) and (3) of the Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the Trial Court in Spl.Case No.2/2011 dated 8.10.2015 is hereby confirmed. Sd/- JUDGE
Sd/- JUDGE KS

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