

**IN THE COURT OF THE II ADDL SESSIONS JUDGE
AT KOLAR**

Dated this the 27th day of April 2019

PRESENT

Smt B.S.REKHA, B.A.(Law), LLB,
II Addl.District and Sessions Judge, Kolar.

S.C. No.1/2018

COMPLAINANT:- State by Mulbagal Rural Police.
(Rept. By Spl.Public Prosecutor)
V/s.

ACCUSED : 1. Muniraju s/o Shivashankarappa, 20 yrs,
2. Obappa s/o Bengalur Muniyappa, 50 yrs,
3. Doraiswamy s/o Obalappa, 48 yrs,
4. Lakshmiddevamma s/o Obappa, 45 yrs,
5. Ashwini w/o Doraiswamy, 30 yrs,
6. Padmamma w/o Shivashankarappa, 43 yrs,
All are r/o Bettagerahalli village, Mulbagal tq.
(by Sri GSR, Advocate)

<i>Date of Commission of offence</i>	03.09.2017		
<i>Date of Report of offence</i>	03.10.2017		
<i>Date of arrest of accused</i>	03.10.2017(A1)		
<i>Date of release of accused from J.C.</i>	Still in judicial custody (A1)		
<i>Name of the complainant</i>	Victim girl		
<i>Nature of offence complained</i>	U/s 376, 143 of IPC, 307 r/w Sec.149 IPC, Sec.4 of POCSO Act.		
<i>Date of filing of charge sheet</i>	30.12.2017		
<i>Date of commencement of recording of evidence</i>	03.05.2018		
<i>Date of closing of recording evidence</i>	01.09.2018		
<i>Date of Judgment</i>	27.04.2019		
<i>Opinion of the Judge</i>	A1 convicted; A2 to 6 acquitted.		
<i>Duration of the case</i>	<i>Year</i>	<i>Month</i>	<i>Days</i>
	01	03	27

J U D G M E N T

The accused No.1 is charge sheeted for the commission of the offences punishable under Sec.376, 143, 307 of IPC and Sec.4 of POCSO Act and accused No.2 to 6 are charge sheeted for the commission of the offences punishable under Sec.143, 307 r/w Sec.149 of IPC on the charge sheet submitted by Circle Inspector of Police, Mulbagal Rural police station, Mulbagal.

2. *The brief facts of the prosecution case is that, on 3.9.2017 at about 10-00 p.m., at Bettagerahalli village, when CW.1/victim came outside the house to attend the nature call, at that time accused No.1 being the neighbourer, taken CW.1 inside his house and committed rape and aggravated penetrative sexual assault on CW.1 who is aged less than 18 years. Further on 2.10.2017 at 5.00 p.m., when CW.1 victim was washing the utensils near the tank, accused No.1 to 6 being members of an unlawful assembly, with common object to kill CW.1 have brought rat poison, accused No.2 to 6 held CW.1 tightly, accused No.1 did an act, forcibly made CW.1 to consume the poison, with such an intention to commit her murder and CW.1 lost her conscious and that if by that act accused had caused the death of CW1, they would have been guilty of murder and thereby committed the afore said offences.*

3. *On the basis of these allegations, the PSI of Mulbagal Rural police station being the SHO, received the complaint, registered it in Cr.No.220/2017 for the offences punishable under Sec.143, 376, 307 r/w 149 of IPC and Sec.4 of POCSO Act & FIR was submitted to the Court. On 3.10.2017 accused No.1 was produced before the Court and till now he is in judicial custody. The other accused are on court bail.*

4. *After filing charge sheet, cognizance taken to the offences incorporated in the charge sheet, copies of police papers i.e., charge sheet furnished to the accused under Sec.207 of Cr.P.C., After hearing the learned counsel for the accused before framing charge, charge was framed against accused for the offences punishable under Sec.376, 143, 307 r/w Sec .149 of IPC and Sec.4 of POCSO Act, wherein accused pleaded not guilty and claims for trial.*

5. *In order to establish its case, the prosecution examined in all 17 witnesses as PW.1 to 17 and got marked Ex.P1 to 21 & MOs 1 to 16. After closure of the prosecution evidence, the accused statement as contemplated under Sec.313 of Cr.P.C., was recorded, wherein accused have denied the incriminating circumstances as appeared against them in the evidence of prosecution witnesses*

and they have not chosen to adduce any defence evidence and not stated anything else.

6. Heard arguments from both sides. On the basis of the submissions of both sides and material placed on record, the following points that arise for my consideration:

- 1. Whether the prosecution proves beyond all reasonable doubt that on 3.9.2017 at about 10-00 p.m., at Bettagerahalli village, when CW.1/victim came outside the house to attend the nature call, at that time accused No.1 being the neighbourer taken CW.1 inside his house and committed rape on her and thereby committed an offence punishable U/S **376 of IPC?***
- 2. Whether the prosecution proves that on 2.10.2017 at 5.00 p.m., when CW.1 victim was washing the utensils near the tank, accused No.1 to 6 were being members of an unlawful assembly, with common object to kill CW.1 have brought rat poison and thereby committed an offence punishable U/S **143 of IPC?***
- 3. Whether the prosecution proves that accused persons with their common object, accused No.2 to 6 held CW.1 tightly, accused No.1 did an act, forcibly made CW.1 to consume the poison with such an intention to commit her murder and said CW.1 lost her conscious and that if by that act accused had caused the death of CW1, they would have been guilty of murder and thereby committed an offence punishable under **Sec. 307 r/w S.149 of IPC ?***

4. *Whether the prosecution proves that accused No.1 committed aggravated penetrative sexual assault on CW.1 who is aged less than 18 years and thereby committed an offence punishable under **Sec.4 of POCSO Act**?*

5. *What order?*

7. *My finding to the above points are :-*

Point No. 1 & 4 : In the affirmative

Point No.2 & 3 In the negative

Point No.5 : As per final order for the following stated

REASONS

8. POINT NO.1 to 4:- *As these points are interconnected and cohesive in nature, hence to avoid repetition, answered with common reasoning.*

9. *CW.2 Venkatareddy examined as PW.1 has stated that he is having four children viz Sunitha, Shilpa, victim. Victim is his 3rd daughter. He had given his two daughters to Bettagerahalli village in marriage. Narayanaswamy is husband of Sunitha. Victim was residing in the house of Narayanaswamy from her childhood. About four years back Narayanaswamy fell from the tree and sustained fracture. About six months back said Narayanaswamy*

was admitted to Jalappa hospital for removal of rod. Himself and his wife were looking after him in the hospital. They came at 10 a.m., and victim was alone in the house. She told that on the previous day at 10 p.m., when she had been to attend the nature call, accused Muniraju had taken her to his house and committed rape. The panchayath was convened and they advised Muniraju to marry her and given one month time. However the family members of accused No.1 Muniraju were searching for alliance. Thereafter the victim went to clean the utensils and wash clothes, somebody came and told that victim was near the tank and she was unconscious. Thereafter they admitted her to SNR hospital and then to Jalappa hospital. On enquiry she told that all the accused came there and brought something in the bottle and forced her to consume. He stated the same before the police on enquiry. He is residing at Bettagerahalli village from the last eight years. His daughter Sunita married about 13 years back. They were 11 persons residing in the house of Sunita i.e., Narayanaswamy, Sunita, their two children and they have given Shilpa in marriage to Nagaraju, brother of Narayanaswamy and they are also residing in the same house. Narayanaswamy, Sunita, Lakshmiddevamma, Venkataswamy were separately. Nagaraju and Ravi are residing in

one house. When they went to the hospital, Nagaraju, Ravi, Kadiramma and Shilpa were in the house. They came to the house without telling anything. Accused is neighbourer. Nagaraj told about the incident at 8 a.m., They have not given complaint and they wanted to convene panchayath. Victim has not stated about shouting when he was taking her. He admits that mother of accused Muniraju is very weak due to heart problem. There is one aged lady and handicapped father of Muniraju are in the house. Accused have not attended the panchayath. Mother of accused Muniraju agreed to perform the marriage within one month. There are no houses near the tank. Victim alone went to wash the utensils. His daughter told that accused forced her to consume poison.

10. CW.1 victim girl examined as PW.2 has stated that they are four children to her parents by name Shilpa, Sunitha and her brother Venkatesh. Sunitha was given in marriage to Narayanaswamy. Shilpa was given in marriage to Nagaraj. About one year back there was fracture to Narayanaswamy and he was taken to hospital for removal of rod. Her sister and parents were in the hospital. About one year back on Sunday at 10 p.m., when she had been to attend the nature call, accused Muniraju had gagged

her mouth with cloth and taken her to his room and nobody were there in his house and committed rape on her. When she tried to escape, he assaulted to her head and she lost conscious and gained conscious at 6 a.m., She came out the house and her sister and brother-in-law have taken her from his house. She told the incident to her sister and her sister called her parents and there was a panchayath convened in the village and it was decided to perform marriage and they requested for time, but the accused were attempting to have other alliance.

She further stated that on the next day when she went to wash utensils, five accused came there, held her and accused Muniraju forced her to consume poison and then they left the place. Thereafter her parents came and she lost conscious and when she gained conscious she was in Jalappa hospital. She informed about entire incident to police and she had given complaint as per Ex.P1. She was in the hospital for three days. She has stated that she signed ExP2 by showing the house of accused wherein the mahazar was drawn. Police have prepared mahazar near Tank i.e., Ex.P3. On the next day she was taken before Magistrate and she stated the same. The doctor had collected her clothes and articles MO.1 & 2. She identified Ex.P4 statement.

She studied upto 2nd standard. She is not aware of educational qualification of her sisters. Her parents belong to Scheduled caste and at the time of marriage of her sister, they came to Bettagerahalli along with her parents. Herself, her parents, Venkatesh were residing in a house. Her brother was in the house at the time of incident. They were residing in the same house. She admits that from the main door of her house, the house of accused was not visible. Generally the neighbourers used to wake up till 11 p.m., by watching TV. She was unable to shout. Her sisters, brother have not come in search of her since she had been to attend nature call. They thought that she will come back. Her parents also enquired in the village. They came in the morning. Accused Muniraju assaulted to her head, but she is not aware of weapon. Her clothes were not torned. She used to wear glass bangles and her bangles were broken and fell in the house of accused. There are no injuries to her. She has not sustained any injuries like scratch injuries or bitten injuries. She has not caused any injuries to the accused. She went near the Tank after one week of incident. She admits that as the mother of 1st accused was suffering from heart disease, she did not tell the incident to mother and grand mother of accused No.1. There is no room in the house of the

accused No.1. She did not shout when the accused was removing her clothes. She told before Magistrate that she gained conscious at 3 a.m., and she came out of the house immediately. At that time her sister and brother-in-law had taken her. She admits that she told before police that she went to the house in the morning. She admits that she told before police that on 3.9.2017 the incident occurred. Muniraju did not come for panchayath. Accused brought poison in the plastic bottle, but not in the glass bottle. She had written the complaint in her own handwriting and given in the hospital. On the next day police came to the mahazar. The neighbourers came to the mahazar. The police have not taken anything from the spot. Near the tank, herself, her parents and others were there. According to her Tank is nearby her house. Accused Muniraju told in the panchayath that he is going to marry her, even his mother also came to panchayath. When she spread the washed clothes, the accused came. She went to tank to wash clothes and utensils. She saw the accused at a distance of 5 ft., She did not thought as to why the accused were coming. It was 3 p.m., Nobody were there near the tank. When she shouted, her parents came and immediately the accused left. If she did not shout her parents would not have come. She lost conscious because of the poisoning. She

is not aware that her clothes were torn. There are number of people in the house.

Narayanaswamy is her uncle. She admits that 5th accused Ashwini had filed rape case against Narayanaswamy in CC 54/2012 which is still pending. She admits that her father and uncle have forced them to compromise the matter and she did not agree for the same. She admits that she filed case in order to protect her uncle Narayanaswamy. She admits that the 1st accused has not committed rape and the accused have not made her to consume poison. She admits that she has given false complaint. Her father is no more.

11. *CW.5 Sunithamma examined as PW.3 has stated that victim is her sister, Venkatarreddy and Lakshmiddevamma are the parents, Narayanaswamy is her husband, she know the accused. Victim is in her house from four years, she is uneducated. About six months back she admitted her husband to the hospital, herself and her parents were in the hospital and there was surgery to her husband. In the morning she went to the village and her sister was crying. When she enquired she told that at 10 p.m., in the night when she went to attend the nature call, accused Muniraju taken her to his house by gagging her mouth and committed rape. She*

intimated the same to her parents and thereafter villagers convened panchayath. Accused Padmamma, A1 Muniraju came to the panchayath. Accused Muniraju admitted that he committed wrong and agreed to marry. Thereafter other accused did not come to panchayath. After 15 days of the panchayath her sister went to tank to wash the utensils and clothes, she did not return. At 6 p.m., when her parents went to see her, she was on floor and some poison was administered. All the accused have committed offence of administering the poison. Thereafter the victim was taken to hospital in Ambulance. The intention of accused was to kill her sister.

She further stated that her husband had already underwent surgery about four years back and they went to hospital to remove the rod. They have not given any documents regarding admission of her husband to the hospital. On that day in her house except victim nobody were there. Her husband was having four brothers viz Nagaraju, Ravi and Srinivasa. Shilpa is her sister and she was pregnant at that time. At that time victim and Shilpa were in the house. Nagaraju, Ravi and Srinivasa were residing at Kolar and Bangalore. Nagaraju is husband of Shilpa who were residing in neighbouring house. Srinivas is working in bricks factory at Kolar.

Herself, her husband and her parents were residing jointly. She is having two children. When she went to the hospital her children were in the house and victim was looking after them. They are having two houses. There is a tamarind tree to the eastern side of her house and to the north of her house the house of her sister is there. She know Narayanaswamy s/o Hanumanthappa. She admits that there is case lodged against Narayanaswamy as he attempted to commit rape on Ashwini. The victim is uneducated and she is unable to write anything except her name. She studied upto 1st standard. She admits that her father has taken second marriage and residing there. She is having brother by name Venkatesh who is now residing with her father at Ulavadi. Her mother is with her. When they went to hospital, her father was with her. She did not expect the like things. They came home at 10 a.m., and her father came at 4 p.m., Her mother went to the house of accused and asked about the incident at 3 p.m., at that time 1st accused and his mother was in the house.

The mother of the accused is suffering from ill health. According to her there was no toilet at that time. She has stated that as the mouth was gagged, she was unable to shout. She

admits that one Bujjappa was the leader of the village. She had not been to the Tank.

12. *CW.6 Nagappa examined as PW.4 has stated that she know the victim, her parents and sister and the accused. About 7 months back there was a panchayath in relation to committing of rape by accused on victim and he attended the panchayath. Accused have taken four days time. After four days accused Muniraju and his sister and brother-in-law came. They have decided to perform marriage of 1st accused with victim and the 1st accused agreed and he advised him. After one month there was a quarrel and the 1st accused was taken for three days in order to perform marriage with another girl. Somebody told that when victim went near the tank the accused attempted to kill her by administering the poison. There was panchayath under the leadership of Bujjappa. Generally he is the leader. There is a distance of 10 kms from Mulbagal to his village. He is not aware of the discussion held in the panchayath. There was no panchayath with regard to the attempt of the accused to perform marriage of the 1st accused with some other girl. He admits about filing of case by Ashwini against Narayanaswamy and accused Doraiswamy is the*

husband of Ashwini and Obappa is the relative. He admits that wife of Obappa is the relative of 1st accused.

13. *CW.11 Dr.Sharath Chandra examined as PW.5 has stated that on 3.10.2017 at 6 p.m., one Muniraju was produced by the police with the history of rape and there are no external injuries and there is nothing to suggest that he is incapable to do the sexual intercourse. He identified the accused.*

14. *CW.8 Reddappa examined as PW.6 has stated that he signed Ex.P2 about two years back in Mulbagal police station in relation to rape on the victim. They were about 15 persons went to the police station and he signed on blank paper.*

15. *CW.9 Manjunatha examined as PW.7 has stated that he signed Ex.P2 & 3 about two years back in Mulbagal police station in relation to rape on the victim. They were about 15 persons went to the police station and he signed on blank paper.*

16. *CW.10 Ananda examined as PW.8 has stated that he signed Ex.P3 about two years back in Mulbagal police station in relation to rape on the victim. They were about 15 persons went to the police station and he signed on blank paper.*

17. CW.13 Dr.Byappareddy examined as PW.9 has stated that on 7.10.2017 WPC 412 had produced the victim and he found her age between 16 to 18 years.

18. CW.12 Dr.Mafreed N.Dharwad examined as PW.10 has stated that on 3.10.2017 at 3 p.m., WPC 412 and 413 have brought the victim and her parents to the hospital and she told that on 3.9.2017 one Muniraju, neighbourer committed rape and on 2.10.2017 at 5 p.m., the accused have forcibly administered rat poison and on examination she did not found any external injuries. There was hymen rupture that was old one. According to her there are possibility of rape. She had given final opinion. The age of victim was 17 years as informed to her. She admits that the hymen could be ruptured for cycling and other reasons. She had not examined about poison content. She was already treated for that.

19. CW.14 Venkatasreshadri Assistant Engineer examined as PW.11 has stated that on 31.10.2017 he received requisition from CPI Mulbagal to prepare the sketch on 21.11.2017 H.C.Ramesh Kumar took him to the spot and prepared mahazar and sent to the CPI. He had noted the boundaries of the house of Narayanaswamy. There is bathroom and toilet towards east of the house, but he is not aware when it was constructed.

20. CW.15 Gemuchowhan PDO examined as PW.12 has stated that on 16.2.2017 he visited the spot and given Ex.P12 to 14, the house is standing in the name of Chinnammaiah.

21. CW.17 Vishwanath P.C.399 examined as PW.13 has stated that on 3.10.2017 he and H.C.102 were deputed to produce the accused from medical examination to Mulbagal Government hospital and they got examined and produced before Investigating Officer.

22. CW.16 Sudharani WPC 412 examined as PW.14 has stated that on 3.10.2017 she and WPC Chaitra went to Jalappa hospital and got examined the victim. On 6.10.2017 they have produced the victim to SNR hospital. On the next day after radiology examination they have produced before the Investigating Officer. They have produced before the Court.

23. CW.23 H.V.Lingaiah ASI examined as PW.15 has stated that on 3.10.2017 he got information between 7 to 8 p.m., from O.P.Station and went to the hospital and recorded the statement of the victim and thereafter came and registered the case and submitted FIR.

24. CW.19 Srinivasa H.C.07 examined as PW.16 has stated that on 3.10.2017 he and P.C.Prashanth were deputed to trace the

accused and they arrested and produced before the Investigating Officer.

25. *CW.24 Sudhakar Reddy CPI examined as PW.17 has stated that on 3.10.2017 he took further investigation from ASI and deputed the staff to trace the accused. At 3 p.m., they have produced with report. He recorded voluntary statement of accused and sent to medical examination and produced before court. On 4.10.2017 he recorded the statement of Venkatareddy, Lakshmidevamma, Narayanaswamy, Sunithamma, Nagappa and Hanumanthappa. On 6.10.2017 the victim had taken them to the spot and he had prepared mahazar at the spot. He received the documents from the hospital and the properties. He requested to get the sketch and the documents from PWD and submitted charge sheet. He is not aware that the 5th accused had given complaint against one Narayanaswamy ie., CW.4. Accused Doraiswamy is the husband of Ashwini. He shown ignorance about that case Cr.No.240/2011. He admits that CW.4 Narayanaswamy is the brother-in-law of the victim. He admits that Narayanaswamy married the sister of the victim. He went to the spot and panch witnesses came. Generally the public will wash the utensils and*

clothes in the tank. They have taken the panch witnesses with them.

26. The case of the prosecution is that on 3.9.2017 at about 10-00 p.m., at Bettagerahalli village, when CW.1/victim came outside the house to attend the nature call, at that time accused No.1 being the neighbourer, taken CW.1 inside his house and committed rape and aggravated penetrative sexual assault on CW.1 who is aged less than 18 years. Further on 2.10.2017 at 5.00 p.m., when CW.1 victim was washing the utensils near the tank, accused No.1 to 6 being members of an unlawful assembly, with common object to kill CW.1 have brought rat poison, accused No.2 to 6 held CW.1 tightly, accused No.1 did an act, forcibly made CW.1 to consume the poison, with such an intention to commit her murder.

27. In order to prove the case of prosecution, PW.1 who is father of the victim had specifically stated that victim was left in the house of Narayanaswamy from her childhood and they are looking after her. In this case PW.3 is the sister of victim. The contention of the complainant is that about four years back, Narayanaswamy sustained fracture and about six months back, they admitted Narayanaswamy to Jalappa hospital for removal of the rod and

they were in the hospital along with PW.3. However when they came to the village at 10 a.m., victim told that accused No.1 committed rape on her. thereafter panchayath was convened and it was decided that 1st accused has to marry the victim. However the accused were attempting to perform marriage of 1st accused with some other girl. Thereafter when the victim went to wash utensils and clothes, the accused went there and administered poison to her and she was unconscious and shifted to hospital.

28. *In this case there is no suggestion regarding previous ill will, but it is suggested to these witnesses that accused No.5 Ashwini had given complaint against this Narayanaswamy and in order to escape from that case, a false complaint is registered against these accused. However in this case immediately after the incident the complaint was not registered, but the complaint was registered when the accused attempted to administer poison to the victim, when she went to Tank to wash utensils and clothes. It is also suggested that the inmates of the house of the accused will be in the house and there is no chance for any such incident. However it is suggested that they are all suffering from severe ill health and hence that particular contention cannot be accepted.*

29. Further PW.2 victim has specifically stated that about one year back on Sunday at 10 p.m., when she came out of the house for attending the nature call, accused No.1 had taken her to his house and nobody was in the house and he committed rape on her. When she attempted to escape, he assaulted to her head and she lost conscious. When she came out of that house, her sister and brother-in-law have saw her and took her to the house and called her parents. There was a panchayath in that regard and it was decided in panchayath that 1st accused has to marry the victim. However in order to escape from that particular commitment, accused have administered poison to victim and thereafter the present complaint is filed.

30. In this case even though victim has stated that her brother Venkatesh and her sister were in the house. It is suggested that if at all accused No.1 had kidnapped her and the neighbouring house people used to watch TV upto 11 p.m., she should have been shouted, to which the explanation offered is, accused has gagged her mouth with cloth, hence the question of shouting does not arise. In this case the circumstance in the house also to be taken into consideration, because on that day the parents and sister of the victim went to hospital for some surgery and one has to expect the

natural conduct. Further she has stated that she was wearing glass bangles and they were broken in the house, but the police have not seized the broken bangles. Doctor has also stated that there are no resistance marks on victim. In this case even though there was some minor discrepancies in the evidence which cannot be given much importance, because victim is definite in her stand that accused No.1 had taken her to his house and committed rape and that too at 10 p.m., and she was in his house till she gained conscious.

31. *In this case the previous incident also have to be taken into consideration because after the said rape it was decided that 1st accused has to marry the victim, but as the accused were not intended to perform his marriage, they wanted to kill victim. In this case the evidence of PW.2 is of much helpful to the case of prosecution. However this witness has turned hostile because when she got examined on 3.5.2018 she supported the case of prosecution and on 22.11.2018 again she was examined and she had stated that she had given false case. However that cannot be taken into consideration. This attempt also shows that there was some incident and in order to escape from the liability, this particular evidence was given by the victim.*

32. PW.3 is sister of the victim had specifically stated that her husband was admitted to the hospital and when she came to the house, she came to know about the said incident. The victim was crying in the house and she told that 1st accused has committed rape on her. Even she went to the extent of saying that 1st accused admitted in the panchayath as he is going to marry victim. In the meantime accused wanted to perform marriage of accused No.1 with another girl and they wanted to take away the life of this victim and they administered poison. PW.3 stated that she is residing with her parents, her husband and her children in the same house and this accused is neighbourer. There is no serious defence as could be ascertained from the cross-examination of any of the witnesses. Further it is suggested as to why they left the victim alone in the house, but one cannot expect such an incident would occur because the reason as to why she was left in the house is that they wanted to be in the hospital and the children of PW.3 were in the house and hence in order to look after them victim was in the house.

33. PW.4 is witness to panchayath had specifically stated about convening of panchayath and also decision taken in the panchayath. He specifically stated that 1st accused agreed in the

panchayath that he will marry the victim. Further in this case PWs 6 to 8 are the witnesses to Ex.P2 and P3, but they have not supported the case of prosecution. In this case PW.5 the doctor who examined the accused has stated that there is nothing to suggest that the accused is incapable for doing sexual intercourse. Further with respect to the medical evidence of victim is concern, PW.10 doctor had categorically stated that victim has narrated the history that accused No.1 Muniraju committed rape and also attempted to kill her and that particular evidence is unshaken. The other witnesses are the official witnesses and their evidence is supporting the case of prosecution.

34. *In this case the hymen of victim is not intact and the doctor had opined that there is chances of rape. When there is strong material on record, it shows that accused No.1 had raped the victim. The allegation against other accused is that they have attempted to kill the victim. But in the present case on hand, there are no materials on record to substantiate the case against other accused regarding administering of poison. There is no investigation regarding the said aspect and the experts are not examined to say regarding the poison, which was administered to her. However in this case when the witnesses have categorically*

stated about commission of rape, the Court has to consider it seriously and in my opinion the prosecution is able to prove the guilt on the part of the accused No.1 only.

35. *The learned counsel for the accused has relied upon Crl.Appeal No.526/2019 dated 26.3.2019 between Ganga Prasad Mahto vs. State of Bihar wherein it is observed that “it was not disputed that there was enmity between the appellant and the husband of the prosecutrix, due to which their relationship were not cordial and there was no eyewitness to the alleged incident and the one, who was cited as witness was a chance witness on whose testimony, a charge of rape could not be established”. In this case even though an attempt is made to prove about the enmity, but the evidence of the doctor and official witnesses will play an important role, hence this citation is not applicable to the case on hand.*

36. *He further relied upon Crl.Appeal No.2393/2010 dated 12.2.2019 between Parkash Chand vs. State of Himachal Pradesh and Crl.Appeal No.308/2018 dated 9.1.2019 Bombay High Court, between Santosh Ramachandra Solanke vs. State of Maharastra wherein it is observed that “the FIR does not offer any explanation as to why the FIR is lodged at belated stage”. However in this case proper explanation is given as to why there is delay, because of the*

compromise in the panchayath. Hence this citation is also not applicable to the case on hand.

37. He further relied upon Crl.Appeal No.438/2017 dated 19.11.2018 of Madras High Court between N.Sakthivel vs. State wherein it is observed that “the trial court has erred in holding the accused as guilty of the charge framed against him. This is a case of no evidence and therefore, the conclusion reached by the trial court, brushing aside the crucial evidence of PWs 1 and 2 cannot be countenanced either in law or on facts. In view of all the above, the court holds that the prosecution has failed to prove the case beyond reasonable doubt”. But in the present case on hand there are strong circumstance which is proved by prosecution against accused. Hence the prosecution has proved the guilt on the part of the accused No.1 beyond reasonable doubt and failed to prove the guilt on the part of accused No.2 to 6. Hence I answer the above points for consideration accordingly.

Point No.5:

38. In the light of the above discussion and findings, I proceed to pass the following:

ORDER

Acting under Sec. 235(1) of Cr.P.C. the accused No.2 to 6 are acquitted for the offences punishable under Sec.143, 307 r/w Sec.149 of IPC.

The bail bonds and surety bonds of accused No.2 to 6 stand cancelled.

Acting under Sec. 235(2) of Cr.P.C. the accused No.1 is hereby convicted for the offences punishable under Sec. 376 of IPC and Sec.4 of POCSO Act.

To hear regarding sentence.

(Dictated to the Judgment Writer on-line, computerized by her, corrected and then pronounced in open court on 27th day of April 2019).

(B.S.REKHA)

***II Addl. District & Sessions Judge
Kolar.***

Order regarding sentence:-

Heard on sentence. Learned Special Public Prosecutor submits that as the offences are heinous in nature, maximum sentence may be awarded. Learned counsel for the accused No.1 submits that he is the only son to the parents and bread earner of the family. Looking to the age of the accused, he request the court to take lenient view and impose lesser sentence.

Heard on sentence. In this case already I have discussed in detail about the circumstances, which made me to come to this conclusion, the following order is passed .

O R D E R

Accused No.1 is sentenced to undergo Simple Imprisonment for a period of Seven (7) years with fine of Rs.5000/- for the offence punishable under Sec.376 of IPC. In case of default of payment of fine, he shall undergo further imprisonment of one month.

Accused No.1 is sentenced to undergo Simple Imprisonment for a period of seven (07) years with fine of Rs.5000/- for the offence punishable under Sec.4 of POCSO Act. In case of default of payment of fine, he shall undergo further imprisonment of one month.

The sentences shall run concurrently.

MOs 1 to 16 being worthless, ordered to destroyed after expiry of appeal period.

The period of judicial custody of accused No.1 shall be set off Under Section 428 of Cr.P.C.

Furnish free copy of this judgment and sentence to the accused forthwith as per Section 353 of Cr.P.C.

(B.S.REKHA)

*II Addl. District & Sessions Judge
Kolar.*

ANNEXURE

Witnesses examined on behalf of the Prosecution:

PW-1	:	Venkatareddy
PW-2	:	Victim girl
PW-3	:	Sunithamma
PW-4	:	Nagappa
PW-5	:	Dr.Sharath Chandra
PW-6	:	Reddappa
PW-7	:	Manjunatha
PW-8	:	Ananda
PW-9	:	Dr.Byappa Reddy
PW-10	:	Dr.Mafreed Dharwadkar
PW-11	:	Venkatasheshadri
PW-12	:	Gemuchowhan
PW-13	:	Vishwanath
PW-14	:	Sudharani
PW-15	:	H.V.Lingaiah
PW-16	:	Srinivas
PW-17	:	Sudhakarreddy

2. Documents exhibited on behalf of the Prosecution:

Ex.P.1	:	Statement of victim
Ex.P.2 & 3	:	Mahazar
Ex.P.4	:	Statement of victim u/s 164 Cr.P.C
Ex.P.5	:	Doctor's certificate
Ex.P.6	:	Age determination certificate
Ex.P.7	:	Doctor's report
Ex.P.8	:	FSL report
Ex.P.9	:	Final opinion
Ex.P.10	:	sketch
Ex.P.11	:	Letter
Ex.P.12 & 13	:	demand & assessment register extracts
Ex.P.14	:	Letter
Ex.P.15	:	Acknowledgment of RFSL
Ex.P.16	:	Report regarding production Of articles before CPI
Ex.P.17	:	FIR

Ex.P.18	:	report regarding production of Accused Muniraju
Ex.P.19	:	PF 145/2017
Ex.P.20	:	report regarding production of Articles of accused
Ex.P.21	:	PF 146/2017

3. Witnesses examined on behalf of the Accused:

- N I L -

4. Documents exhibited on behalf of the Accused:

- N I L -

5. Material objects marked on behalf of the Prosecution:

MO.1	:	one top
MO.2	:	Dyper
MO.3	:	pant
MO.4	:	shirt
MO.5	:	banian
MO.6	:	underwear
MO.7	:	Neil clippings
MO.8	:	pubic hair
MO.9	:	pubic hair combing
MO.10	:	hairs
MO.11	:	penal swab
MO.12	:	penal wash
MO.13	:	blood sample
MO.14	:	pubic hair
MO.15	:	vaginal swab
MO.16	:	Anneal swab

II Addl. District & Sessions Judge,
Kolar

Judgment pronounced in open court.

Acting under Sec. 235(1) of Cr.P.C. the accused No.2 to 6 are acquitted for the offences punishable under Sec.143, 307 r/w Sec.149 of IPC.

The bail bonds and surety bonds of accused No.2 to 6 stand cancelled.

Acting under Sec. 235(2) of Cr.P.C. the accused No.1 is hereby convicted for the offences punishable under Sec. 376 of IPC and Sec.4 of POCSO Act.

To hear regarding sentence.

Vide separate judgment.

(B.S.REKHA)

*II Addl. District & Sessions Judge
Kolar.*