Allabax S/O Mohammadsab vs The State Of Karnataka By Yellapur on 24 July, 2019

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IN THE HIGH COURT OF K ARNAT AKA
DHARWAD BENCH

DATED THIS THE 24 H DAY OF JULY 2019

BEFORE

THE HON'BLE MR. JUSTICE BELLUNK E A .S.

CRL.A.NO.2668/2011

BETWEEN:

ALLABAXA S/O MOHAMMADSAB
AGE : 25 YEARS, OCC: CARPENTER,
R/O HOSANAGAR, MANCHIKERI,
TQ: YALLA PUR, DI ST. UTTARA KANNADA.
... A PPELLANT
(BY SRI S .S.YADRAMI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY YELLA PUR POLI CE (U.K .),
REP. BY THE STATE PUBLI C PROS ECUTOR,
HIGH COURT OF K ARNATAKA CIRCUI T,
BENCH DHARWAD.
... RES POND ENT

(BY SRI RAJA RAGHAVENDRA NAIK, HCGP)

THIS CRIMINAL APPEAL IS F ILED UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE PRAYI NG TO SET ASIDE THE CONVICTION AND SENTENCE D ATED 24.03.2011 PASSED BY THE SESSIONS JUD GE, FAST TRACK COURT-I , UTTARA KANNADA DISTRICT, KARWAR IN S.C.NO.29/ 2010 AND ACQUIT THE A PPELLANT OF THE CHARGES LEV ELED AGAINST HIM IN THE INTEREST OF JUSTICE AND EQUITY.

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THIS CRIMINAL APPEAL COMING ON FOR FIN AL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is preferred by the accused - appellant being aggrieved by the judgment of conviction and order of sentence dated 24.03.2011 passed by the Sessions Judge, Fast Track Court-I, Uttara Kannada, Karwar, in S.C.No.29/2010 for the offences punishable under section 376(2)(f) of IPC.

2. Brief facts for the purpose of this appeal are as under:

> That on 23.01.2010 at about 5.00 p.m., when the minor CW.9 (daughter of complainant) was returning back from school by walk. The accused who is neighbourer called her inside his house situated at Hosanagar, Manchikeri village saying that he will give her Rs.1.00/-. After taking her inside he committed rape on her in his house. He is also said to have told the victim not to disclose the same to anybody. The mother of the victim who noticed that she was not able to sit properly for passing urine. Hence, questioned her after noticing pain in her private part, she questioned the girl. The victim told her about the incident. The victim was taken to Government Hospital, Yellapur for treatment. A complaint was lodged to Police in Crime No.21/2010 registered in Yallapur Police Station for the offences punishable under section 376 (2) (f) of IPC. Victim was also subjected to medical test. Statement of witnesses was recorded. After arrest of the accused he was subjected to medical examination. After completion of investigation, the Investigating Officer has filed charge sheet before the jurisdictional magistrate for the aforesaid offence. Thereafter the case was committed to the Sessions Court for trial as the offence is trial by Sessions Court.

3. The learned Sessions Judge after hearing both the sides, framed the charge against the accused for the alleged offence and the accused pleaded not guilty and claims to be tried.

4. In order to prove the offence, prosecution has examined in all 11 witnesses as P.Ws.1 to 11, got marked Exs.P.1 to P.23 as well as M.Os.1 & 2. Statement of the accused was recorded provided under Section 313 of Cr.P.C. The accused produced two documents with a memo. The accused has not adduced any evidence on his behalf.

5. The learned Sessions Judge after appreciating the evidence on record, convicted the accused for the offence punishable under sections 376(2)(f)/511 of IPC. The said judgment and order of conviction and sentence has been questioned by the appellant on the following grounds.

6. The learned sessions Judge has committed error in convicting the appellant on the prosecution evidence which is highly interested, contradictory, artificial and unreliable. The trial court

committed serious error in holding that the prosecution has proved the case beyond all reasonable doubt.

7. The learned Sessions Judge has committed error in believing the interested testimony of PWs.5, 6 and 7 who are the victim and her parents. There was no penetration which is sine-qua-non to hold any accused persons guilty for the offence punishable under Section 376 of IPC. The allegation of rape is concoction and creation of PW.5.

8. The evidence of PW.7 father of the victim is highly doubtful and not believable. There was a delay in filing the complaint. Though there was a Government Hospital in the village itself, but victim was taken to hospital at a distance i.e., at Yellapur. Therefore, the appellant contends that The trial court has misinterpreted the expert report. The accused is falsely implicated. Hence the appellant-accused has prayed for allowing the appeal.

9. Heard learned counsel Sri S.S.Yadrami, appearing for appellant and as well as Sri Raja Raghavendra Naik, learned High Court Government Pleader at length and both sides have relied on several authorities.

10. Some and substance of arguments of the learned counsel appearing for appellant is that, the victim girl was suffering from scabies which is admitted by her in the evidence. The actual happening of penetration has not been deposed. There was no rupture of hymen. No injuries were found on the person of the accused. The evidence of doctor is not at all believable, having regard to the admission given by him in the cross- examination.

11. The handicapped mother of the accused was always used to be in the house itself. Therefore, the question of accused taking the girl inside his house and committing rape on her was totally unbelievable story. On account of ill-will between the mother of the victim and the accused, a false case has been registered. It is also submitted that the victim instead of taking to a nearby Government hospital, was taken to hospital at a distance situated in Yallapur town.

12. Alternatively, the learned counsel for the appellant submitted that at the most the offence could have been said to be falling under section 354 of IPC and not under Section 376(2)(f) of IPC. Further punishment imposed is quite severe. The accused is now married and settled in his life and victim is also married and settled in her file. Therefore, learned counsel has prayed to extend the benefit of section 4 of Probation of Offenders Act.

13. The learned High Court Government Pleader for State strongly submitted that in the absence of injuries either on the accused or on the victim is not a ground to disbelieve the case of prosecution of commission of rape. The victim was a tender aged girl. Therefore, she cannot be expected to depose with regard to actual happening the manner of rape. The evidence stated by her is sufficient to show that an act like rape must have been attempted. He also due my attention that the minor discrepancies in the evidence should not be taken to acquit the accused who is alleged of a serious offence.

14. However, learned High Court Government Pleader would submit that the state has not preferred any appeal against the accused not being convicted for an offence of rape, but convicting only for attempting to commit an offence of rape. Hence, he prayed to dismiss the appeal.

15. On the basis of the above said facts and circumstances of the case and the arguments addressed by both the counsel, the following points would arise for consideration of this Court:

1. Whether the prosecution had proved before the trial court that the accused had attempted to commit rape on a minor girl below 12 years old and thereby committed an offence punishable under Section 376(1)(f)/511 of IPC?

2. Whether the appellant proves that the judgment and order of conviction and sentence passed by the trial court against the accused is perverse, capricious and against the principles of natural justice and it is liable to be set aside?

3. Whether it is a fit case to reduce the quantum of sentence of imprisonment imposed on the accused?

4. What order

16. Findings of this Court on the above points are as under:

Point No.1 : In the affirmative. Point No.2 : In the negative.

Point No.3 : In the negative.

17. Before applying any citation in a criminal case, it should be borne in mind that the facts and circumstances of the case in hand and facts and circumstances of the case involved in the citation should be at least similar, if not, identical. The law of precedent in criminal cases mainly depends on facts and circumstances of each case. Therefore, the punishment i.e., imposed in the cited case or acquittal of a accused as a precedent alone cannot be taken into consideration and apply them universally. Keeping in mind regarding the application of precedent of law, I will proceed to examine material available on record.

18. PW.5 is the mother of the victim and also complainant in this case. She has categorically stated about the conditions of the victim that existed as on the date of offence i.e., on 23.01.2010. On that day she found that the victim was very tired. She was hold her stomach with hand she had also developed fever at night. At about 10.00 p.m., she found difference in her pasture for urination of the victim. She was found unable to sit properly as she used to sit to pass urine. When questioned she reported about the incident that happened on that day. According to her, the accused took the victim inside the house, removed her cloths and slept on her and had offered to give Rs.1/- to the girl. She also had told before her the rape committed on her. She complained pain in her genitals. Therefore, she filed a complaint before the police at Ex.P.4. She was also taken to Government Hospital. The cloths of the victim were also handed over by her and seized them under mahazasr at

Ex.P.3. After arrest of the accused his cloths were seized by the police under mahazar Ex.P.2.

19. The ground on which the evidence of mother of the victim is sought to be disbelieved are that, she has not taken to the victim to the nearest hospital situated in the Manchikeri village, which is at distance of half kilometer from her house. She told incident to her husband on the next day at about 10.00 a.m. She admits that her daughter had scabies and there used to be itching on her body. She had on account of itching, sustained injuries on her body. But she denies that an injury caused to the genital on account of itching. In the cross-examination most damaging suggestion has been made by the defence counsel that the accused had requested her not to make this incident public and he will bear the hospital expenses and after 18 years he will marry her.

20. PW5 claims to have told the matter before Police. Then to disbelieve her evidence the allegation is that there is dispute regarding site between them i.e, complainant's family and family of the accused and therefore, in order to get money and on the advise of the others she got concocted this case in order to extract money from the accused. Except the above said grounds, absolutely, there are no grounds which would make the evidence of PW5 unbelievable or unreliable. No doubt, there is no universal law that in all cases, the evidence of prosecutrix or the mother of the prosecutrix should be believed on the ground that they will not tell false hood by putting their prestige of the family at stake. But, at the same time, it should also be borne in mind that no mother would come forward to use the prestige of tendered age daughter who is to marry in future, for a petty quarrel or dispute of site or for some sort of difference of opinion with the accused family. Admittedly, they are all nebourers. To show that there was any serious dispute of any property, there is no evidence about it. Therefore, on the above said grounds alone evidence of PW5 can be trusted.

21. Now coming to the evidence of PW6 the victim, she who was found to be competent to give evidence. In the evidence she has stated that the accused attracted her by offering to pay one rupee and then took her inside the house and he closed the door, removed his clothes and also removed her clothes then made her to lie on bed and fell on her body. She complains that she is getting body pain and also pain in the thys. Thereafter, the accused left her after applying some oil to her private parts and asked her to go. She was experienced pain in her vegina and also thys. When she got up to urinate she felt pain, then she told the facts to her mother.

22. The learned counsel for the appellant- accused strenuously urged that the act of penetration was not at all by the accused and therefore, the offence of rape or attempt to rape has not at all taken place. It is important to note that there is evidence to show from the experts that seminal stains were found not only clothes of the accused but also in the cloths of the victim. A tendered aged victim cannot be expected to say with a photographic memory as she cannot expected to be aware of act of sexual intercourse. If the evidence stated by PW6 victim is taken as it is, it would definitely prove that the accused has made an attempt to commit rape. He must have been excited while committing the act alleged, and possibility of ejaculation stain was found on the cloth of the accused. The pain suffered by the victim on her genital and the injury noticed by the doctor certainly shows that the accused had made an attempt of rape. That is the reasons the learned Sessions Judge at the end came to the conclusion that there was no rape, but it was attempt to rape.

23. To disbelieve the evidence of prosecutrix PW6, the learned counsel has relied on the portion of the cross examination. Particularly the fact that the victim was suffering from satyriasis (itching) and another ground urged is that there was no injury on the private part of the victim. It is important to note that if actual penetration had taken place there would have been possibility of sustaining injury on the organ of the accused. As he is an young man and penetration has not taken place therefore, semen stains on the clothes of the victim and the accused must have been on account of emotion and as there was no sufficient time or freeness for the accused to complete the act of penetration. The victim has specifically denied that she has gone to the hospital on account of itching committed by her on private part and therefore, she was taken to the hospital. Having regard to the age of the victim, it cannot be said that the victim was capable of having an act like sexual intercourse. The accused being a grown up young man. Therefore, he might not have sustaining any injuries on the other parts of his body. No other discrepancies or circumstances are brought out in the cross examination to disbelieve the version of PW6.

24. As already stated, the suggestion made by the counsel in the cross examination to the mother of the victim that the accused requested not to tell the public about the incident and he will pay money and offering to marry her daughter after the victim attaining the age of 18 years, clearly goes to show that accused had an eye over the girl. Having regard to the facts and circumstances, I find that evidence of PW5 and 6 cannot brushed aside on any ground. The age of the victim as per school certificate at Ex.P5 issued by Head Master, her date of birth is mentioned as 29.12.2000.

25. Doctor PW9 has stated that there was seminal stains in the underwear of the accused. The accused was found fit person to commit act of intercourse. The FSL reports are at Ex.P7, 8 and

9. The opinion given after receipt of the FSL report is at Ex.P11. It is admitted by the Doctor in the cross examination that no injuries were found on the person of accused.

26. Then PW10 is the Lady Doctor who had examined the victim aged about 9 years, on 24.01.2010 at about 4.30 p.m. She found that the girl was having fewer. She did not notice any external injuries on her body. But found swelling on the genital part. There was no rupture of hymen, even though she found redness and injury on that spot. The Doctor collected articles pertaining to the victim. She has issued medical certificate as per Ex.P13. She has also explained that she had forgotten to write the date and time of examination of the victim. She had also brought the MLC register to the Court after verifying the same by learned Sessions Judge, Ex.P13 was produced. It was pointed out by the learned counsel for the appellant that pages have been torn from the MLC register. No page numbers ware written. The Doctor was told by the Police that the girl has been raped. She has not noted with regard to word 'antibiotic' in the medical certificate. She has not written in wound certificate that there was swelling on the outer portion of the vegina. She has not written any details as to in which portion of vegina she had found the injury.

27. In the cross examination Doctor it is admitted that there was redness injury at the private part, is not written in the certificate. She has further stated that in case of tendered age girl, it is difficult to state the age of the injury of minor girl. She admitted that at least one finger has to go inside the vegina to find out injury inside the vegina. It is difficult to put one finger inside the vegina of the girl

of 9 years old. She admitted that she had not mentioned in Ex.P13 with regard to collecting of clothes of the victim and nails. Doctor has admitted that if a person attempt to commit rape of a minor girl, there will be injury on the organ of that person also. She denied that the girl had sustained injury on account of itching as she was having itching problem (satyriasis) and the victim herself has caused the injury. On admission she cannot say whether rape has taken place or not. The evidence on record and the evidence of medical expert cannot be thrown out of the court to held that the case of the prosecution is concocted one. Moreover mistakes of Investigation Officer or a doctor cannot be a ground to discard their evidence on record.

28. So far as the evidence of Investigation Officer is concerned, he had no reasons to implicate the accused falsely in this case. On re- appreciation on record, I find that there was attempt to commit rape, is proved by the evidence on record.

29. The learned counsel for the appellant has relied on rulings LAWS (SC) 1972 4 51 in the case of Rahim Beg V/s. State of Uttar Pradesh. In the said case, no injury was detected by the Doctor on the male organ of any of the two accused. Therefore, the absence of such injuries on the male organs of the accused would thus point to their innocence. In the said case, the accused persons were prosecuted for the offence punishable under Section 302, 376 and 404 of IPC and the accused persons were sentenced to death on the first count, rigorous imprisonment for a period of 10 years on the second count and rigorous imprisonment for a period of one year on the third count.

30. In this case, the evidence on record proves an attempt to commit rape, the situation and fearing that somebody would come there, might have been an early ejaculation for the accused. On account of stiffness of the vegina and on account of tender age of the girl, injury might not have been occurred to the organ of the accused. Even one finger could not be inserted while testing the victim by the doctor. Therefore, actual act of rape has not taken place that's why the trial Court rightly came to a conclusion that it is a case of attempt to commit rape. Therefore, on these grounds, the counsel for the appellant- accused cannot rely upon the above said authority and ask for the acquittal.

31. The learned counsel for the appellant- accused has also relied on LAWS(SC) 1997 5 92 in the case of State of Haryana V/s. Prem chand that is the case where the accused was coming benefit of Section 360 of Cr.P.C. or under Section 4 of Probation of Offenders Act, 1958.

32. The accused was found guilty for the offence punishable under Section 376/511 of IPC. He was less than 21 years old as on the date of offence. Section 511 of IPC describe an act as attempt to commit an offence. It reads:

> "Whoever attempts to commit an offence punishable by this Code with [imprisonment, for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case

> may be, one-half of the longest term of imprisonment provided for the offence], or with such fine as is provided for the offence or with both."

33. In this case the offence alleged against the accused under Section 376 (2)(f) of IPC r/w

511. It is punishable with minimum imprisonment for 10 years. It is only for special reasons the Court can award punishment less than 10 years. Having regard to the facts of this case, I find that the accused does not deserve benefit under Section 4 of Probation and Offenders Act or Section 360 of Cr.P.C. As already stated each case is governed by its own facts and circumstances. Having regard to the facts and circumstances of the case, tender age of victim being less than 12 years and having regard to the social background of the victim, I find that the accused cannot be shown leniency.

34. The learned counsel for the appellant also relied on the judgment in the case of State of Karnataka V/s. Sureshbabu Puk Raj Porral reported in LAWS(SC) 1993 10 64.

> "(a) Penal Code IPC, 1860 Section 376 RAPE Rape Connivance Evidence shows that prosecutrix went with accused voluntarily Age of victim not been satisfactorily proved. In the cross examination victim went on saying that accused did something to her which he ought not to have done High Court was right in holding that offence under Section 376 RAPE IPC not made out. (B) Rape Connivance Evidence shows that prosecutrix went with accused voluntarily Age of victim not been satisfactorily proved. In the cross-

examination victim went on saying that accused did something to her which he ought not to have done High Court was right in holding that offence under Section 376 RAPE IPC not made out."

35. Therefore, under those facts and circumstances it was held that the offences of rape was not made. The evidence of the above said case was that the victim found to be anxious to go with the accused to see places. There was no evidence on inducement. In the cross examination victim went on saying that accused did something to her which he ought not to have done. The Hon'ble High Court was right in holding that offence under Section 376 RAPE IPC not made out. Therefore, the appellant cannot rely on the above said authority.

36. The learned SPP also relied on the following citations.

AIR 2012 SC 2301 in the case of State of Rajastan V/s. Vinod Kumar and State of Rajastan V/s. Heera Lal the facts to be taken into consideration for awarding punishment in a case under Section 376 of IPC are stated the Conduct state of mind of the accused and the age of the victim and gravity of the criminal act are relevant considerations. It is held as under:

> "Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. Punishment has to be decided after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of

the accused and age of the sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The Court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case."

37. Therefore, having regard to the above said facts and circumstances of this case, I find that the accused does not deserve any leniency as such. In my opinion the trial Court has given sufficient leniency by awarding lesser punishment, than the minimum punishment prescribed under Section 376(2) of IPC.

38. The next authority relied on by the learned counsel for State in the case of Ranjit Hazarika V/s. State of Assam, reported in 1998 8 SCC 635, wherein it was held "6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In the State of Punjab Vs. Gurmit Singh to which one of was a party, while dealing with this aspect observed (SCC pp.395-96 para 8) "The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be

overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

39. In this case the victim is a tendered aged and below 9 years. She has categorically stated that the accused made her naked and made her to lie on bed and removed his clothes and fell on her body. Therefore, this act cannot constituted as only the act of outrage of modesty but this has to be considered attempt to commit rape and nothing more than that or nothing-less act. Therefore, support can be drawn from the above said authority.

40. Counsel for State has also relied on the ruling reported in AIR 2005 SC 3570 in the case of State of Madhya Pradesh V/s. Dayal Sahu, wherein, it is held that "Once the statement of prosecutrix inspires confidence and accepted by the Courts as such, conviction can be passed only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case. If the statement of the prosecutrix and other prosecution witnesses inspire confidence."

41. The evidence of prosecution, prosecutrix and other witnesses in this case, I have already come to the conclusion that evidence of PW5 the mother of the victim and victim herself-PW6 is trust worthy. They have stood the test of cross examination. In addition to that no material is brought out in the cross examination to show that the procecutrix and her mother had any strong reasons to implicate the accused falsely in this case.

42. The learned counsel for the State has also relied upon the decision reported in 2005(4) Kar.L.J.404(DB) of this Court in the case of State of Kadur Police V/s. Revannaiah. In the said case semen was absent and it was held that it is the only case of ejaculation. But it does not nullify the sexual assault. Doubts entertained by the trial Court were based on minor discrepancies and inconsistencies.

43. The testimony PW4, the medical Officer

-PW6 Ex.P2 and 3 proved injury and confirmed the sexual assault. Therefore, in this case the accused was found to be guilt of attempt to commit rape. Therefore, on evaluating entire evidence on record, I find that the prosecution had proved the guilt of the accused beyond any reasonable doubt. Therefore, the conviction and sentence imposed by the trial Court against the accused for the offence punishable under Section 376 (2)(f)/511 of IPC does not call for any interference at the

hands of this Court. The learned counsel for the appellant-accused Sri.S.S.Yadrami strenuously urged before the Court that the victim and accused settled in their life. Accused got wife and children to maintain. Therefore, the learned counsel for the appellant prays to reduce the sentence of imprisonment. As already stated, the sentence imposed by the trial Court itself is lesser than what the minimum sentence that was to be imposed for the offence. Having regard to the fact that it was found to be an attempt to rape, therefore, the trial Court has awarded lesser sentence. In my opinion, it does not call for any interference at the hands of this Court. However, the accused would be entitled to set-off of the period of detention which has undergone during the trial as provided under Section 428 of Cr.PC. Hence, for all the aforesaid reasons, I find no grounds to interfere with the judgment of the trial Court, hence, appeal is devoid of merits, Hence, the following:

ORDER

(i) Appeal filed by the appellant-

accused against the judgment and order of conviction and sentence passed by Sessions Judge, Fast Track Court-I, Uttara Kannada, Karawar dated 24.03.2011 in SC No.29/2010 is hereby dismissed. The impugned judgment stands confirmed.

(ii) Send back the LCR along with the copy of this judgment to the trial Court. Send intimation to the concerned trial Court to secure the presence of the accused to suffer remaining part of the sentence. Accused is granted 30 days time to surrender before the trial Court.

Sd/-

JUDGE