

(2011) 03 KAR CK 0249
In the Karnataka High Court
Case No : Criminal Appeal No. 272 of 2004

Chinnappaiah @ Honga

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 354, 376

Citation : (2011) 03 KAR CK 0249

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : K. Nagabhushana Reddy and Associates, for the Appellant;
Vijayakumar Majage, HCGP, for the Respondent

Final Decision : Allowed

Judgement

B.V. Pinto, J.—This appeal is filed by the accused challenging the judgment, dated 12.2.2004 passed by the Additional Sessions Judge, Fast Track Court-I, Kolar convicting him for offences punishable under Sections 354 and 323 of IPC and sentencing him to suffer imprisonment for one year and to pay fine of Rs. 1,000/- for the offence u/s 354 of IPC and to suffer imprisonment for six months and pay fine of Rs. 500/- for the offence u/s 323 of IPC, with default clauses.

2. It is the case of the prosecution that on 7.10.1996 at about 8.00 a.m., near the tank premises at Narasapura village within the limits of Gowribidanur Rural Police Station, accused committed rape on PW-5, Lakshamma by dragging her in a Hongebeli grove and caused forcible intercourse with her and thereby, he is alleged to have committed an offence u/s 376 of IPC. It is further charged against the accused that on coming to know of the incident, when PW-5 went along with her husband PW-6 to question the accused, the accused is alleged to have caused bleeding injury on the husband of victim by means of a sickle thereby he is alleged to have committed an offence u/s 324 of IPC.

3. The prosecution in order to prove the case has examined in all, 11 witnesses

and got marked Exs.P-1 to P-11. The defence of the accused was one of total denial and he has got marked Ex.D-1, the portion of statement of PW6. The prosecution also has produced the sickle, which is marked as M.O.1. However, after hearing the prosecution and the defence, the learned Sessions Judge was pleased to acquit the accused of the offence u/s 376 of IPC but convicted him as afore stated and sentenced him accordingly.

4. Being aggrieved by the said judgment of conviction and sentence, the accused has filed this appeal.

5. Heard Sri Hari Prasad, learned Counsel for accused and Sri Vijay Kumar Majage, learned High Court Government Pleader.

6. The learned Counsel for accused submits that there is vast discrepancy in the evidence of PW-1 as compared to the averments made in the complaint. The complaint has been typewritten and the complainant and her husband have gone to the police station with a prepared complaint as per Ex.P-4. He further submits that the learned Sessions Judge has disbelieved PWs.5 and 5, in so far as offence u/s 376 of IPC is concerned and it is not safe to convict the Appellant for offence u/s 354 or 323 of IPC. Hence, he submits that the appeal may be allowed.

7. The learned Government Pleader submits that the evidence of PW-5 is supported by the evidence of DRs. PW.2 Dr. Vidya Kebbar and PW.3 Dr. J.N. Raju and the wound certificates as per Exs.P-2 and P-3. Ex.P-2 is the wound certificate issued in respect of PW-5, which indicates presence of abrasions on the person of PW-5, while she was examined on 7.12.1996 itself. Ex.P-3 further indicates that the accused also had suffered scratch marks on his person and he was also examined by the Doctor on 8.10.1996. The accused has not explained the reason for the injuries on his person and therefore, the presence and participation of the accused in the commission of the offence is proved by the prosecution. Hence, he submits that the appeal may be dismissed. He submits that though the learned Sessions Judge has not mentioned in the last part of the judgment regarding seizure and marking of M.O.1 sickle, the evidence of PWs-9 and 11 clearly indicates that the sickle has been seized by the police and is marked as M.O.1. He further submits that Ex.P-1 issued by PW-1 mentioned that injuries are caused with sickle by Chinnappaiah, the accused in this case. Hence, he submits that offence u/s 323 IPC and 354 IPC are made out from the evidence of the prosecution witness and therefore, he submits that the appeal may be dismissed.

8. The prosecution in this case has commenced with the filing of a complaint by PW-5 Lakshmamma before the Gowribidanur police station on 7.10.1996 at about 8.00 p.m., (20.00 hours). In the said complaint, she has stated that on 7.10.1996 at about 8.00 a.m., when she was bringing the grass load to her house from the field, the accused Chinnappaiah came near her from the near garden land and pushed the grass load on to the ground and dragged her and thereafter committed forcible intercourse with her. She informed this to her

husband at about 3.00 p.m. Thereafter, they went to the house of the accused. The accused assaulted on her husband by means of a sickle. Therefore, they have requested for an action.

9. Based on the above complaint, Gowribidanur Rural Police registered a case in Crime No. 137/1996 for offence under Sections 376 and 323 of IPC. The police, after investigation have filed the charge sheet against the accused for the said offences.

10. PW-1 - Dr. M. Venugopal is the Doctor, who has stated that on 7.10.1996, he had examined Chikka Nanjappa, the husband of the victim and has observed a lacerated wound over the scalp at the parietal region. He has opined that the injuries could have been caused by a blunt object like reverse side of the sickle and the injuries are simple in nature.

11. PW-2 Dr. Vidya Hebbar has stated that on 7.10.1996 she has examined the victim Lakshmamma and found that she had suffered three abrasions on each breast measuring .2 to .3 cms.

12. In the cross examination she has stated that the injuries 1 and 2 may be self inflicted. PW-3, Dr. J.N. Raju has stated that on 8.10.1996 at about 3.15 p.m., he has examined the accused Chinnappaiah and has found three scratch injuries on the body of the accused. He has issued Ex.P-3, the Wound Certificate.

13. PW-4 Lokeswar is the Circle Inspector of Police, who v/as working as P.S.I during the relevant period. He has registered a case, on receipt of a complaint by PW-5 on 7.10.1996 at about 8.00 p.m., in Crime No. 137/1996 for the offences punishable under Sections 376 and 324 of IPC. He has recorded the further statement of PW-2. He has further conducted part of investigation in this case.

14. PW-5 is the victim. She has stated before the court that about 2 years prior to her giving evidence she had gone to the field to bring grass. When she came back to the house carrying grass, the accused came from the village side and pushed grass and held her tuft and dragged her near the fence and thereafter he has molested her. It was about 8 a.m., when the incident has happened. Thereafter, she came back to her house and slept at home. Her daughter asked her the reason for sleeping. She told her about the incident but when her husband came to the house, she did not narrate anything to him. Thereafter, after her husband came to the house, herself and her husband went to the house of the accused to ask about the incident. At that time, the accused has assaulted her husband by means of a sickle and told them that they could do anything. In the cross examination, she has stated that they went in a bus to Gowribidanur in the evening. She has stated that she never informed to her husband regarding the incident. She does not know as to what is written in the complaint. She has further stated that when they went to the house of the accused, the accused was in his house but she cannot say as to whether others were there near the house of the accused. It is further elicited that when she was in the hospital, her husband got her signature in the complaint and that the complaint was given to

the Police by her husband. She has also stated that her husband has only got the complaint written near Gowribidanur Court.

15. PW-6 is the husband of PW-5. He has stated regarding the incident as narrated by his wife PW-5. He has also narrated the incident regarding the assault on him by the accused on the same day. However, he has stated that MO-1 sickle is not the same which was produced by him before the police. So far as the complaint is concerned, he has stated that he got the complaint typed and came back to the hospital, his wife put thumb impression on the complaint. Thereafter, he took the complaint to the Police Station and lodged it. It is suggested to him that out of enmity, a false case has been filed against the accused.

15. PW-7 has turned hostile to the case of the prosecution. PW-8 is signatory to panchanama Ex.P-8. PW-9 is the signatory to Ex.P-6 under which the Police seized the sickle on the information of PW-6 near the house of Gangadhara. PW-10 is the daughter of PWs.5 and 6. She has stated that on the date of the incident, her mother came to the house and told her that the accused had dragged her at 8 a.m. near Honge topu, PW-11 is the Inspector of Police who has conducted the investigation.

16. On the basis of the above evidence, the learned Sessions Judge has found the accused guilty of offence u/s 354 and also u/s 324 IPC. However, the accused has been acquitted for the offence u/s 376 IPC.

17. On a careful examination of the material on record, I am of the opinion that the source of complaint is not authentic. PW-6 says that he has got the complaint typewritten near Gowribidanur court whereas PW-5 says that she has never informed about the incident to her husband. Therefore, the very information found in the complaint said to have been given by PW-5 is vague and doubtful. Hence, when the complaint was prepared, the information in the complaint was not given by the victim but by her husband. Therefore, the version as contained in the complaint and the evidence of the prosecution witnesses are not based on authentic information regarding the commission of offence Further, the doctor has stated that the injuries found on PW-6 may be self-inflicted and they are superficial in nature. Further, PW-6 has not identified the weapon MO-1 sickle as the weapon which was produced by him to the police at the time of seizure of weapon. There are no independent witnesses examined in this case to support the version of PW-6 that he was assaulted by the accused. Though the conviction can be based on the solitary version of the victim in a molestation case, having regard to the glaring discrepancy in the evidence of the witnesses, it cannot be held that the prosecution has proved the case against the accused beyond reasonable doubt. Further, the victim has also not stated anything about the injuries found on the accused person as spoken to by PW-3 Dr. J.N. Raju who clearly states that there were three scratch marks on the accused. Nowhere, in the complaint PW-5 states about the scratches sustained by the accused. Under the circumstances, I am of the opinion that it is not safe to rely on the evidence

of PWs.5 and 6. In that view of the matter, I hold that the prosecution has not proved the case against the accused beyond reasonable doubt. Therefore, the accused is entitled for benefit of doubt.

In the result, the appeal is allowed. The order of conviction and sentence passed against the Appellant is hereby set aside and he is acquitted of the offence levelled against him. Bail bonds, if any, executed shall be cancelled. The fine amount, if any, deposited by the Appellant shall be refunded to him.