

(2002) 03 KAR CK 0052
In the Karnataka High Court
Case No : Criminal Appeal No. 128 of 1997

State of Karnataka

APPELLANT

Vs

Chandrayya Hanumanthappa Mallappanavar and Others

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 149, 376, 506

Citation : (2003) CriLJ 258

Hon'ble Judges : N.K. Patil, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : B. Bhavani Singh, Addl. S.P.P, for the Appellant; Vijayalakshmi Patil, Amicus Curiae, for the Respondent

Judgement

Saldhana, J.—The State of Karnataka has assailed the correctness of the decision rendered by the Second Addl. Sessions Judge, Dharwad, in Sessions Case No. 48/1993 through the present appeal. The six accused persons who were tried by the Court were alleged to have overpowered the complainant Kusummawwa, a 14 years old village girl who had gone to wash some clothes on the bank of river Wardha. The scene of offence is situated within Arlihalli village, within the limits of Savanur Police Station. The allegation is that taking advantage of the fact that girl was alone, that three of accused persons namely accused Nos. 1, 4 and 5 virtually attacked PW 1 and that before any one could come to her rescue, accused No. 1 had committed rape on her. She also states that she was resisting and screaming for help and that hearing her cries, her mother who is PW 3 rushed to that spot. The six accused, the three of whom are alleged to be actual participants and the remaining three are supposed to be instigators and abettors, fled from that place and since they were known persons, on the matter being reported to the police, they came to be arrested and on completion of the investigation they were charge sheeted for offences punishable u/s 376 r/w. 109, I.P.C. There is also a subsidiary charge in so far as the accused are alleged to have threatened the victim that if she discloses what had happened or if she takes any action against the accused that they would burn her and finish her off

and in respect of this part of the incident the accused has been charged for having committed the offences punishable u/s 506 r/w. 149 IPC. The evidence in this case consists essentially of the deposition of PW 1 Kusummawwa and of her mother Savantravva. PW 3 who came to the scene almost immediately. The supportive evidence has come from the doctors and the learned trial Judge after consideration of the material placed before the Court by the prosecution acquitted the accused. The present appeal assails the correctness of that order.

2. Appearing in support of the appeal, the learned Addl. S.P.P. has advanced certain submissions which are of considerable significance particularly to this category of cases. He has first dealt with the finding of the learned trial Judge that the complaint in this case was lodged after a considerable lapse of time. This is an admitted position because the complaint was ultimately lodged after about fifteen days and the reason given for this is that the victim is a poor village girl, that the incident itself was extremely traumatic, that she and her mother had thought over the entire issue and that they really did not know what they should do. It was only after some time with the assistance of one Bhaskar that the matter was taken to the police when the Circle Inspector visited that area and the complaint came to be lodged. The learned Counsel points out to us that regardless of how serious these cases are, that the Court must take cognizance of the first very important reluctance factor which is common to this class of cases of sexual attacks on minors and women is so far as the incident is not only extremely painful but is gravely embarrassing. He points out that there is always a total reluctance to approach the police authorities for the very obvious reason particularly if the victim comes from the poor or weaker strata, that they will not receive any sympathy nor are they certain of any legal redressal. His submission therefore, is that inevitably there is a high degree of reluctance to start with when it comes to the question of even approaching the law enforcing authority. Added to this, he points out and perhaps very justifiably, that there are two other factors the first of them being that inevitably the victim will have to face a very high degree of pain and embarrassment when the proceeding is taken up for hearing before the Court. It is almost like a public enquiry into very painful and private aspects of an assault. The learned Counsel again emphasised the fact that in this class of cases invariably the defence that is taken is one of taking the offensive by alleging that the victim girl was of loose moral character, that the victim was not only a willing party to what had happened but the victim had not only induced the accused but had even encouraged them but the entire defence objective is to create as much of prejudice as possible against the victim in the mind of the Court in order to secure an advantage for the victim. His submission is that these are all well known facts but that the most serious reason why the victims and the family members hesitate to approach the law enforcing authority is because not only is there precious little redressal but in fact what happens is that in this class of cases the victim finds that they are socially ostracized or finished because of the extremely embarrassing and damaging nature of the offence. In other words, the submission proceeds around the footing that the

Courts are required to take cognizance of the fact that the victims and more so parents and relatives and perhaps even the elders and advisors are seriously concerned about the future of the victim girl particularly the marriage of the victim and that is why they allow the incident to pass rather than ask for a full fledged investigation and action according to law. What the learned Counsel submits before us is that where these factors are prevalent and predominant that the mere delay in the lodging of a complaint unlike what happen in other categories of criminal complaints should not in any way damage the prosecution nor should it in any way affect the credibility. While we are willing to accept that almost every one of these submissions is absolutely faultless, we need to add a rider that the Court is still duty bound to examine the facts and circumstances of each case and if these were the only reasons for the delay then the delay alone is not enough to damage the case of the prosecution. There may however, be instances where the delay is deliberate or where the delay comes go against the prosecution or possibly indicative of the fact that the parties were hesitating, that the parties were premeditating, or that there could be a level of involvement or false exaggeration. While the respondent learned Counsel has vehemently submitted before us that the learned trial Judge was fully justified in the present case in having virtually rejected the prosecution evidence particularly on the ground of gross delay in lodging the complaint, we do not on the present record, accept this statement and to our mind the delay in the present instance is totally and fully justified.

3. We need to emphasise the fact that like all cases of violent crime or perhaps moreso in cases of sexual assault, time is of the essence and invariably with the passage of time the evidence either disappears or gets diluted and it is of paramount importance particularly as far as the medical agencies as also the forensic agencies that through and complete investigations must be carried out with the minimum amount of delay. Where a swab test is taken, where a physical examination is necessary, where evidence such as injuries, blood stains and semen stains are of crucial importance, delay in investigation could invariably be fatal to the prosecution . Even if there has been some history of delay on the part of the victim in approaching the authorities, we would like to emphasise once again the absolute need to act with a high degree of speed and efficiency at all stages thereafter.

4. The learned trial Judge has taken very serious note of the fact that as far as the main evidence of the victim girl is concerned that she has departed from the version given in the complaint when it came to the question of giving evidence. Obviously, the Court was overlooking the fact that four years had elapsed since the incident. It is true that in the evidence before the Court the victim has stated that while she was overpowered by accused Nos. 1. 4 and 5, generally that it was accused No. 1 who raped her. In the complaint before the police, she has stated that three of the accused raped her turn by turn and she has also implicated the remaining accused namely accused Nos. 2, 3 and 6 by stating that they were very much present and that they were abettors to the offence. As far

as her evidence before the Court is concerned, she has not even mentioned the presence of accused Nos. 2, 3 and 6, the learned trial Judge has held that this variation is absolutely fatal to the credibility of the victim and that consequently, no reliance can be placed on her evidence. The learned Counsel who appears in support of the appeal has sought to get over this infirmity which is very serious by pointing out. that PW 1 is a simple village girl, that she has her own limitations, that the evidence was recorded four years after the incident and furthermore, he points out that there is no material variation between the versions except for the fact that she has not specifically stated that she was raped by three of the accused in her evidence before the Court. His submission is that in situations such as this the correct procedure for the Court to follow would be not to write off the witness as a liar but to accept the evidence in the form in which it has emerged before the Court making allowances for the damage to human memory and accept whatever evidence still survives. On the other hand, respondents learned Advocate has submitted that the approach of the trial Court is absolutely right in so far as on crucial issues, such as the question as to whether one of the accused had raped the victim or three of them did it, there could be no excuse made because of the lapse of time because this is not an insignificant factor but is something that is very crucial and very fundamental to the allegations. The two learned Counsel have reinforced their arguments on the basis of the medical evidence because the learned Addl. S.P.P. points out to us that the medical evidence does support the version of the victim which is also corroborated by the evidence of her mother PW 3 and that consequently, the offences u/s 376 r/w. 109 are established. The respondents learned Counsel brings it to our notice that the medical evidence is extremely weak and she is quick to point out that there are absolutely no injuries on the person of the victim which would most certainly have been apparent particularly in the genital area if she had been raped regardless of whether it is by one person or three persons.

5. As far as the general credibility of the victim is concerned, we have very carefully assessed her evidence and we do find that apart from the variation that has been referred to by the learned Counsel above that her evidence before the Court is absolutely without blemish. This evidence is fully corroborated by the medical evidence but unfortunately due to the long lapse of time between the incident and the time when she was taken to the doctor, almost: two weeks later, it was inevitable that external signs such as marks of minor injuries would have vanished by that point of time. Also, the important secondary evidence such as bleeding, semen stains etc. would not be available two weeks after the incident. In the absence of this, we are left with the remaining medical evidence of the two doctors who have examined the girl which conclusively indicates that she had been subjected to a sexual assault. It was brought to our notice that in the cross-examination the doctor has admitted that the girl who she had examined had mole on the cheek and that this was an identifying mark of a personal nature and that the victim has admitted in no uncertain terms that she has no

such mole on the cheek as an identifying mark. The respondents learned Advocate vehemently submitted that this is to clearest indication of the fact that there is some confusion or ambiguity with regard to the medical evidence but moreso with regard to the identity of the persons who are examined by the doctors. We are not willing to accept this head of criticism because this is an insignificant aspect of the case in so far as there is enough evidence on record to indicate that the girl was taken to the doctor and that the records very clearly indicate the results of the examination. In our considered view therefore, as far as accused Nos. 1, 4 and 5 are concerned the evidence conclusively establishes that these three accused had been responsible for the assault on the victim PW 1 on that particular day. As far as accused Nos. 2, 3 and 6 are concerned, since neither PW 1 nor PW 3 have specifically referred to them in the evidence before the Court even though they are named in the F.I.R., we give them the benefit of doubt and accordingly confirm the order of acquittal passed in their favour.

6. Coming to the question of the offence, we have taken note of the fact that as far as the conclusiveness of the sexual assault on PW 1 is concerned, that the medical evidence is slightly weak particularly because of the time lag and the delay factor. Also, having regard to the infirmity in the evidence of PW-1 we would prefer to be quite prudent by giving the benefit of doubt to accused Nos. 1, 4 and 5 as far as the offence u/s 376 r/w. 109, IPC, is concerned. The reason for this is only because invariably in rape cases the Court would lean very heavily in favour of the medical evidence before holding that the offence has been conclusively established. In the present instance though these accused persons are given the benefit of doubt as far as this Section is concerned since we have held that they were involved in the assault on PW 1 which is corroborated by PW 3, we convict accused Nos. 1, and 5 of the offence punishable u/s 354, IPC.

7. We have heard the learned Counsel on both sides on the question of sentence. The learned Addl. S.P.P. points out of us from the record that the accused claimed to be local busy bodies who are also dabbling in local politics but they were generally known as persons of bad character in the village. The learned Counsel submits that the Court must take an extremely serious view of the fact that the accused persons have gone and virtually attached a poor girl on the river bank taking advantage of the fact that she was all alone and that consequently, unless the Court awards a deterrent sentence, incidents of this type will be on the increase. On behalf of the respondents, a strong plea was advanced that the complaint itself was politically motivated because the accused and the said Bhaskar belong to different parties. Secondly, though a long period of time has elapsed since the incident and thirdly and more importantly on the ground that the main charge has failed that even though the Court holds that the accused had molested the victim that they should be given an option of a fine.

8. We need to take judicial notice of the fact that incidents of this type are very much on the increase and that they are a serious affront to the concept of dignity of women quite apart from an assault on their human rights. It is very necessary

that the Courts must deal firmly, with politically connected accused persons who are found guilty of this class of cases and it makes no difference whether the incident has taken place in a rural area or urban area because public decency and public morality are sacred and there can be no compromise as far as these areas are concerned. Also, we take judicial notice of the fact that it is assumed by certain class of persons that merely because they possess some level of power or position that they can indulge in atrocities of this type and get away with them. It is necessary therefore, as a deterrent, that whenever or wherever the Court deals with this class of cases that the accused must be very firmly and effectively dealt with so that incidents of this type will not be on the increase, but that they will be stopped. Taking all these factors into consideration, we convict accused No. 1, accused No. 4 and accused No. 5 for the offences punishable u/s 354 r/w 34, IPC and we direct that each of them shall undergo rigorous imprisonment for a period of two years and that they shall also pay a fine quantified at Rs. 2000/- each. No in default sentence is awarded and if the accused do not deposit the fine amount in the trial Court within an outer limit of three months from today, the Court shall take necessary steps to recover the said amount. After the recovery of the fine amount, the trial Court shall issue notice to PW 1 or in her absence or if she is not available, to PW 3 and shall pay over the whole of the amount of Rs. 6000/- as compensation. The acquittal of the accused for the offences u/s 506 r/w, 149, IPC, is confirmed.

9. In the result, the appeal particularly succeeds and stands disposed of. The bail bonds of the accused to stand cancelled.

10. Before parting with this judgment, we need to record that we have been considerably impressed by both the industry and the perseverance with which the learned Counsel Smt. Vijayalakshmi Patil has conducted the appeal on behalf of the respondents accused. We accordingly direct the office to pay a sum of Rs. 2000/- as and by way of professional charges to the learned Advocate.