

(2014) 09 KAR CK 0142
In the Karnataka High Court
Case No : Cri. A. No. 2803 of 2012

The State of Karnataka

APPELLANT

Vs

Chidanand Mahadev Gudame

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2014) 4 AKR 640

Hon'ble Judges : H. Billappa, J;B. Manohar, J

Bench : Division Bench

Advocate : V.M. Banakar, Addl. SPP, Advocate for the Appellant; B.S. Kukanagoudar, Advocate for the Respondent

Judgement

H. Billappa, J.—This appeal by the State is directed against the judgment and order dated 24th March, 2012 passed by the V Additional Sessions Judge, Belgaum in SC No. 180/2007. By the impugned judgment and order, the learned Sessions Judge, Belgaum, has acquitted the accused of the offence punishable under Section 376 of IPC. Aggrieved by that, the appellant/State has filed this appeal. Briefly stated the case of the prosecution is:

About eight months prior to 26.10.2006 at about 5.00 p.m., the victim had gone to attend the nature call. At that time, the accused held the victim and dragged her to a sugarcane field and had sexual intercourse with her. After about one week thereafter again at about 7.00 p.m. when the victim had gone to attend the nature call, she was taken to a wheat field and the accused had sexual intercourse with her. Due to fear and threat, the victim did not reveal the incident to her family members or other persons. After about five months, the victim noticed changes in her body. When her mother enquired her, she revealed that the accused had sexual intercourse with her twice. Thereafter, the elders enquired the accused. The accused admitted that he has committed a mistake and told that he would give some amount. Thereafter, a complaint has been lodged as per Ex.P2 on 26.10.2006.

2. Based on Ex.P2, a case in Crime No. 298/2006 of Chikkodi Police Station has been registered for the offence punishable under Section 376 of IPC. After investigation charge-sheet has been filed against the accused for the offence punishable under Section 376 of IPC.

3. At the trial, the prosecution has examined in all 15 witnesses i.e. PWs.1 to 15 and Exs.P1 to P18 have been marked.

4. On behalf of the defence, Exs.D1 and D2 have been marked.

5. The Trial Court on appreciation of evidence on record has acquitted the accused of the offence punishable under Section 376 of IPC.

6. Aggrieved by that, the appellant/State has filed this appeal.

7. The learned Additional SPP contended that the impugned judgment and order cannot be sustained in law. He also submitted that the Trial Court has failed to consider the evidence on record in proper perspective. Further he submitted that the evidence of PWs.7, 8 and 15 and Exs.P8, 9 and 14 clearly establish the guilt of the accused. He also submitted that the victim has deposed that the accused was responsible for her pregnancy. Therefore, there is no reason to disbelieve the evidence of the victim. Therefore, the impugned judgment and order cannot be sustained in law.

8. As against this, the learned counsel for the respondent/accused submitted that the impugned judgment and order does not call for interference. He also submitted that the Trial Court on proper consideration of material on record has rightly acquitted the accused. Further he submitted that there is inordinate delay of nearly eight months in lodging the complaint. The complaint reveals that the allegations are after thought. Further he submitted that the victim has deposed that she became pregnant due to the sexual act committed by the accused. But the DNA report Ex.P18 clearly shows that the accused was not responsible for the pregnancy of the victim. Therefore, it is clear, the case of the prosecution is fabricated. Further he submitted that the conduct of the victim clearly shows that the entire story is concocted. The incident has occurred twice. The victim has not revealed it to anybody including her family members. After eight months due to compulsion she has named the accused. Therefore, the prosecution case suffers from serious infirmity. He also submitted that the age of the victim is somewhere between 18 to 20 years. The material on record does not prove the guilt of the accused. Therefore, the impugned judgment and order does not call for interference.

9. We have carefully considered the submissions made by the learned Addl. SPP and also the learned counsel for the respondent.

10. The point that arises for our consideration is,

Whether the impugned judgment and order calls for interference?

11. It is relevant to note, the case of the prosecution is, about 8 months prior to

26.10.2006, when the victim had gone to attend the nature's call, the accused had sexual intercourse with her on two occasions. As a result of that, the victim became pregnant and gave birth to a male child on 31.12.2006.

12. The prosecution has examined in all 15 witnesses i.e. PWs.1 to 15. The material witnesses are P.Ws.7, 8 and 15.

13. P.W.8 is the victim. She has deposed that about four years back when she had gone to attend the nature call, the accused forcibly took her to a sugarcane field and had sexual intercourse with her. Thereafter, after about one week, again the accused had sexual intercourse with her when she had gone to attend the nature call. As a result of that, she became pregnant. When her mother and aunt forced her, she revealed about the incident. Thereafter, complaint has been lodged.

14. In the cross-examination, it is suggested to the victim that some muslim boys used to go to the bore well to bring water and she had relationship with them. It is also suggested that she had relationship with some other boys. The victim has denied the suggestions.

15. P.W.7 is Dr. Seema Manohar Gunjal. She has deposed that she examined the victim. She was pregnant. Her age was between 18 to 20 years. She cannot say as to whether the victim is pregnant because of the rape or not. She has stated that she has given certificate as per Ex.P.8. Ex.P.9 is the OPD slip and Ex.P.10 is the blood test report.

16. P.W.15 is the Head Mistress of the Government Higher Primary School, Bambanwada. She has deposed that she issued Ex.P.14-certificate. As per Ex.P.14, the date of birth of the victim is 01.06.1991. She has issued the certificate as per the entry in the school register. In her cross-examination, she has stated that she has issued Exs.D.1 and D.2. As per Ex.D.2, the date of birth of the victim is 01.01.1988.

17. The prosecution also relies upon Exs.P 8, 9, 14 and 18. Ex.P.8 is the certificate issued by P.W.7. It shows that the victim was aged about 18 to 20 years. Ex.P.9 is the OPD slip. Ex.P.14 is the school certificate issued by P.W.15. It shows the date of birth of the victim was 01.06.1991. Ex.P.18 is the DNA report which shows that the test performed is sufficient to conclude that the accused is not the biological father of the male child Mahadev.

18. Exs.D.1 and D.2 are the certificates issued by P.W.15. In Ex.D.1 the date of birth of the victim is shown as 01.06.1991. In Ex.D.2, the date of birth of the victim is shown as 01.01.1988.

19. From the evidence on record, it is clear, the victim has deposed that the accused had sexual intercourse with her about 8 months prior to 26.10.2006. As a result of that, she became pregnant. The age of the victim is not clear. Ex.P2 complaint shows the age of the victim as 16 years. The medical certificate-Ex.P.8 shows the age of victim as between 18 to 20 years. Ex.P.14 and Ex.D.1 show the

date of birth of the victim as 01.06.1991. Ex.P.2 shows that the date of birth of the victim as 01.01.1988. P.W.7-doctor has deposed that the victim was aged between 18 to 20 years. From the evidence on record, it can be inferred that the victim was aged beyond 18 years at the time of the incident. According to the victim, the incident occurred just behind her house when she had gone to attend the nature call. The victim has not revealed about the incident to anybody for several months. It is in the evidence of P.W.5 that when they compelled, the victim revealed the name of the accused. In fact, in the cross-examination, the victim herself has stated that she revealed the name of the accused when she was compelled. It is the evidence of the victim that the accused had sexual intercourse with her twice and that he was the cause for her pregnancy. But, the DNA report-Ex.P.18 shows that the accused is not the biological father of the male child. This probablises the suggestion that the victim had relationship with some other boys. The material on record does not prove the guilt of the accused. The Trial Court on proper appreciation of the material on record has rightly acquitted the accused. Therefore, the impugned judgment and order does not call for interference.

Accordingly, the appeal is dismissed.