
(2017) 03 KAR CK 0186
In the Karnataka High Court
Case No : 200157 of 2016

Timmappa S/o Timmappa

APPELLANT

Vs

The State of Karnataka Through Yaragera P.S., Dist. Raichur

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Constitution of India, Article 20(3) -
Protection in respect of conviction for offences
Code of Criminal Procedure, 1973, Section
313, Section 164,</p>
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<div data-bbox=139 428 471 446>
Citation : (2017) 03 KAR CK 0186
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<div data-bbox=139 452 414 470>
Hon'ble Judges : B. A. Patil
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<div data-bbox=139 478 371 494>
Bench : SINGLE BENCH
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<div data-bbox=139 502 472 520>
Advocate : Ganesh Naik, P.S. Patil
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<div data-bbox=139 526 403 543>
Final Decision : Dismissed
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<div data-bbox=452 566 601 587>
Judgement
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<div data-bbox=139 602 914 676>
<p>1. This appeal is preferred by the accused assailing the judgment of conviction dated 20.10.2016 passed by II Additional District and Sessions Judge, Raichur in SC No.68/2015 whereunder accused was convicted for the offences punishable under Sec. 448, 376 and 506 of IPC.</p>
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<div data-bbox=139 687 915 892>
<p>2. The case of the prosecution in brief as per the complaint are that on 5.12.2014 at about 1:00 PM when the victim was bringing the headload of firewood and keeping the same by the side of tin cattle shed in Sy.No.333/Ee at Wadwatti village went inside for drinking water, at that time accused appellant came from behind by trespassing into the said cattle shed, hugged the victim who is aged about 19 years, when she resisted, he threatened with life, thereafter by removing her clothes sexually assaulted her without her consent. It is the further case of the prosecution that on hearing the hue and cry, the mother and younger sister of the victim who were on the way to field came there, by seeing them the accused ran away from the place, thereafter they all came and informed the said fact to her father who in turn took her to the village</p>
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Page 1 of 6
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Judgement

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2. The case of the prosecution in brief as per the complaint are that on 5.12.2014 at about 1:00 PM when the victim was bringing the headload of firewood and keeping the same by the side of tin cattle shed in Sy.No.333/Ee at Wadwatti village went inside for drinking water, at that time accused appellant came from behind by trespassing into the said cattle shed, hugged the victim who is aged about 19 years, when she resisted, he threatened with life, thereafter by removing her clothes sexually assaulted her without her consent. It is the further case of the prosecution that on hearing the hue and cry, the mother and younger sister of the victim who were on the way to field came there, by seeing them the accused ran away from the place, thereafter they all came and informed the said fact to her father who in turn took her to the village

elders, thereafter to the house of the accused, there informed about alleged act of the accused. The parents of the accused compromised with the condition that they would perform the marriage of the accused with the victim. It is further alleged that thereafter accused used to have sexual act with the victim by telling that he is going to marry her, thereafter when he came to know that she became pregnant, he refused to marry her, as such the complaint came to be filed. Thereafter, police investigated the crime and filed the charge sheet against the accused.

3. After filing the charge sheet the committal court on following the procedure laid down under Sec. 207 of Cr.P.C committed the case to the Sessions Court. The Sessions Court after taking the cognizance secured the accused, after hearing charge came to be framed. Since, accused denied the charges and claimed to be tried, as such the trial was fixed.

4. In order to prove the case, the prosecution in all examined P.Ws. 1 to 14 and got marked Ex.P-1 to 14 and after closure of the prosecution case, the statement of the accused was recorded under Sec. 313 of Cr.P.C. by putting the incriminating materials as against him, which he denied and he has not led any evidence on his behalf.

5. Thereafter on hearing the arguments of both the counsel, the impugned judgment came to be passed, whereunder accused was convicted for the offences punishable under Sections 448, 376 and 506 of IPC. Assailing the said judgment and order, the accused is before this Court.

6. Heard the learned counsel for the appellant and the learned High Court Govt. Pleader on behalf of the State.

7. The learned counsel for the appellant would submit that the impugned judgment is contrary to law and facts on record. He would contend that the Court below has not properly appreciated the evidence on record and has come to a wrong conclusion. He would also contend that the trial Court has erred in not considering contradictions, omissions and non-examination of material witnesses. He would also contend that there were no ingredients to attract the provisions of Sec. 376 of IPC. The trial Court has wrongly convicted the accused. He would also contend that appellant and victim were known to each other, on multiple occasions, they had consensual sex. He would also contend that the alleged act of the victim was with free will and consent, as such the question of sexual assault against her does not arise. He would also contend that the entire evidence is without there being any corroboration. In order to substantiate his argument, he has relied upon several decisions namely, Basvaraj Vs. State of Karnataka reported in 2015 Cr.R.275 (Kant.); Deepak Gulati Vs. State of Haryana; Uday Vs. State of Karnataka; and Honayya Vs. State of Karnataka reported in ILR 2000 KAR 3336. By relying upon the aforesaid decisions he would contend that full grown girl consents to the sexual intercourse on a promise of marriage, thereafter continuous to indulge in such activity until she becomes

pregnant is an act of promiscuity on her part, not an act induced by misconception of fact and as such the provisions of Sec. 376 of IPC not attracted. On these grounds, he prays for allowing the appeal by setting aside the impugned judgment of conviction and order of sentence.

8. Per contra, the learned High Court Govt. Pleader would contend that the accused has sexually assaulted the victim without her consent by trespassing into the cattle shed, thereafter again with a false promise to marry her, had sex, thereafter he has neglected when the victim became pregnant. The said conduct of the accused is sufficient to constitute the offence punishable under Sec. 376 of IPC. He would also contend that the trial Court after considering all the material and after drawing a proper inference has rightly convicted the accused. Accused-appellant has not made out any grounds so as to interfere with the impugned judgment and hence he prayed to dismiss the appeal.

9. In order to prove case, the prosecution has got examined 14 witnesses. P.W.1 is the victim- complainant who deposed that about 1 year 3 months back after carrying the headload, she came to the cattle shed for drinking water in between 12:00 and 1:00 PM, when she was drinking the water the accused who is present before the Court came from behind, hugged her, thereafter making her to fall on the ground had a forceful sex. She further deposed that she made hue and cry, but accused did not leave her. She has further deposed that her mother and sister came there by running, at that time accused threatened her that, if she tells the same thing, he will take away her life, thereafter he ran away. She has further deposed that he informed the same to her parents, thereafter they took her to the house of the accused and informed the said fact to the parents of the accused who argued that accused would marry the victim. She has further deposed that subsequently accused by inducing her that he is going to marry her used to have sexual act 2-3 times in a week in the hut. She has also deposed that even though she resisted he used to have sex, thereafter she became pregnant. She has further deposed that when herself and her parents went and told the said fact to the parents of the accused, they told her to take Rs.20,000/- and get it aborted, as such she filed the complaint. Even though this witness has been cross-examined at length on various aspects, nothing has been elicited so as to discard evidence.

10. P.W.2 and 3 are the spot mahazar panchas to Ex.P-4, where the alleged rape has taken place in a cattle shed.

11. P.W.4 is the judicial officer before whom the statement of the victim under Sec. 164 of Cr.P.C. was recorded as per Ex.P-3.

12. P.W.5 is mother of victim, has deposed that about 1 year 5 months back one hour prior to she going to the land, her daughter P.W.1 had been to the land, when they went near the cattle shed in the field, they heard hue and cry, herself, her daughter went there, saw accused sexually assaulting P.W.3. She has further deposed that after seeing them, accused ran away. She has further deposed that

thereafter P.W.3 narrated the facts. She has also reiterated the evidence of P.W.1. During the course of cross-examination nothing has been elicited to discard the evidence of this witness.

13. P.W.6 is the father of the victim, who has also deposed that P.Ws.1 and 5 came explained about the incident, thereafter they went to the house of the accused, there the parents of the accused have agreed to get her marry with the accused etc.

14. P.W.7 is the relative of the victim who went along with P.Ws.5 and 6 to the house of the accused, he was also present at the time when P.W.6 asked the parents of the accused by narrating the incident.

15. P.W.8 is the Junior Engineer who prepared the sketch as per Ex.P-6.

16. P.W.9 is the doctor who examined the victim and accused and issued Ex.P-7 to 9, 12 and 13.

17. P.W.10 is the uncle of the victim who wrote the complaint as per the say of the victim, as per Ex.P-

1.

18. P.W.11 is the Police Constable who carried the FIR to the jurisdictional Court.

19. P.W.12 is the police constable who took the photographs of the incident.

20. P.W.13 is the Police Inspector who registered the case and partly investigated.

21. P.W.14 is the CPI who took the further investigation and has filed the charge-sheet.

22. Even though all these witnesses have been cross-examined at length, nothing has been elicited so as to discard their evidence.

23. Even though several contentions were raised by the learned counsel for the accused-appellant, the only point which remains for the purpose of my consideration is that whether the prosecutrix has consented for mutual sex with the accused and whether it is a consensual sexual act. I have gone through the decisions quoted by the learned counsel for the accused-appellant consciously in detail. In order to constitute particular act as consent there must be free submission, such consent if it is obtained by intimidation, force, meditated imposition, circumvention surprise or undue influence is not considered to be a free act of mind and free consent. Keeping in view the above principle, on going through the evidence of P.W.1 the victim has not consented when the accused appellant for the first time went to the cattle shed, hugged her, thereafter against her will, he had a sexual intercourse with the victim. On going through the, the circumstances it indicates that at that time the victim has not given any consent to the said sexual act by the accused-appellant. Even though subsequently, the victim and the accused used had sexual act 2-3 times in a week, the said act was only because of promise made by the parents, accused

and the parents of the accused to the effect that they would get married. When he denied to marry, it amounts to a false promise made by the accused as well as parents of the accused. In that light, the consent given by the victim is not free consent. If there is no consent then under such circumstances the proposition of law laid down in the decisions quoted by the learned counsel by the accused-appellant is not applicable to the present facts of the case. Even on going through the cross-examination of P.W.6, the father of the victim and P.W.7 the relative of the father of the victim at page Nos.52 and 56 respectively, it has been suggested by the accused that the daughter of P.W.6 was having illicit relationship with some other person, as such she has become pregnant. Even though the said suggestion has been denied by these witnesses, the fact remains is that the accused- appellant has taken up a false plea. If accused takes a false plea or inconsistent pleas, such a false plea can be taken as an additional circumstance against the accused. Though Article 20 (3) of Constitution of India incorproates the rule against self incirimation, the scope and contents of the said rule does not require the Court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is vital additional circumstance against the accused. This proposition of the law has been laid down in a decision of the Apex Court in the case of State of Karnataka Vs. Suvarnamma and Another reported in (2015) 1 SCC 323.

24. Leave apart this, there is corroboration in the evidence of P.W.1. P.W.1 consistently has deposed that accused in the first instance forcefully had a sexual act, thereafter again under the guise of promise, he used to have sex with her 2-3 times in a week. So far as the first act of the accused is concerned P.W.5 the mother of the victim is an eyewitness to the alleged incident. Even it is not disputed during the course of cross-examination that the parents of the victim came to the house of accused, and narrated the alleged incident, thereafter, the parents of the accused agreed for their marriage. Keeping in view all these cirumctances, if subsequently the victim has consented for the sexual act of the accused, in a real sense, it will not be a free consent. Be that as it may, so far as the first act of the accused is concerned it will be amounting to nothing but rape against the the victim. Looking from this angle, the decisions quoted by the learned counsel for the accused are not applicable to the present facts of the case. If a grown up girl who is having capacity to take decision, if she indulged herself in sexual activity there should be some semblance of materials to show that only on the basis of promise made by the accused to marry her she joined hands with him and only due to promise, she surrendered herself to the said sexual act of the accused. Under such circumstances the benefit of consent can be given to the accused, but in the instant case, there is no such semblance of material to show that when the first incident took place at that time the victim gave consent. On close scrutiny of the entire cross-examination, no such suggestion or evidence has been brought on record to substantiate the case of the accused. In the absence of such material only on the basis of the contentions

raised at this appellate stage, such benefit cannot be made available to the accused. In the first instance he has to make out a case, thereafter he has to take such contention. Even the evidence indicates that the accused has taken inconsistent stand at various stages of cross- examination. Looking from any angle, there is no such material before the Court so as to extend the benefit of doubt to the accused.

25. On going through the entire case of the prosecution it indicates that there is material to show that there was no consent by the victim. Accused by entering into the cattle shed had sexually assaulted her against her will. Even there is no such circumstances brought in the record to discard the evidence of the prosecution. Even though the learned counsel has brought some contradiction and omission etc. they are not so helpful so as to discard the evidence of the prosecution. Be that as it may, when accused-appellant has made out a specific case that the act of the accused was with free consent, then the contradictions and omissions will not go to the root of the case of the prosecution so as to disbelieve the same. I have gone through the judgment of the trial Court. The learned District and Sessions Judge after considering all the aspects has rightly convicted the accused appellant and has imposed the sentence in proportion to the crime committed by the accused. As such there is no need to interfere with the impugned judgment and the same is liable to be confirmed.

26. For the aforesaid reasons and the discussions, I pass the following;

ORDER

Appeal is dismissed.