

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1439 OF 2011

STATE OF KARNATAKA APPELLANT

:VERSUS:

F. NATARAJ RESPONDENT

J U D G M E N T

Pinaki Chandra Ghose, J.

1. This appeal by special leave has been directed against the judgment and order dated 9.11.2009 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.1576 of 2007, whereby the High Court allowed the criminal appeal filed by the respondent herein and acquitted him of the offence under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2. The brief facts necessary to dispose of this appeal are that the prosecutrix (PW1), daughter of one Lakshmana (PW2), aged about 14 years, was studying in 8th standard in Swami Vivekanand School at Hiriyr Town, District Chitradurga. The respondent F. Nataraj was a teacher in the said school and the prosecutrix fell in love with him. When she expressed this before him, he told her that she is a minor and should concentrate on her studies. The prosecutrix threatened the accused respondent that if he would not consent to marry her, she would kill herself. In view of this threat, he agreed to marry her. The relationship between them continued for about three months. When the prosecutrix came to know that her parents were about to get her married to somebody else, she started pressurizing the accused to marry with her by giving him threats again. Ultimately, the accused-respondent and the prosecutrix fled away from Hiriyr Town in the early morning of 26.10.2003 and reached Bangalore. There the accused took her to Nallur Village near Whitefield and they stayed in the house of aunt of the accused - Kaveramma for about 20 days. The accused-respondent brought one readymade Mangalya

(thaali) and tied it to the prosecutrix at about 3:00 p.m. on that date in the said house and they got married to each other. The accused then started visiting factories in search of job. During the period from 26.10.2003 to 15.11.2003, the prosecutrix and the accused lived together and led a conjugal married life. Finally, the Police of Hiriya Police Station reached the said house on 15.11.2003 at about 12:15 p.m., and the accused and the prosecutrix were taken to the Hiriya Police Station by the evening. Thereafter, statement of the prosecutrix was recorded as Ex.P-1 on 15.11.2003 at Hiriya Police Station. Based on this statement (Ex.P-1), investigation was taken up. The father of the prosecutrix (Lakshmana) had already filed a missing complaint (Ex.P-2) on 26.10.2003, stating that his daughter had gone out to attend nature's call on 26.10.2003 at about 3:00 A.M. and thereafter she could not be traced despite all efforts. On 11.11.2003, Lakshmana filed another complaint (Ex.P-3) at the Hiriya Police Station stating that he suspected that the respondent might have kidnapped his daughter.

3. On the basis of the evidences collected by the police during the investigation, charge-sheet was filed against the accused respondent under Sections 366A and 376 of the IPC. The case was committed to the Court of Sessions. Since no material was found to frame a charge for the offence punishable under Section 366A of IPC, therefore, only the charge for the offence punishable under Section 376 of IPC was framed against the accused to which he pleaded not guilty and claimed to be tried.
4. The Trial Court by its judgment and order dated 21.9.2007, convicted the respondent F. Nataraj for the offence punishable under Section 376 of the IPC and sentenced him to rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, and in default of payment of fine, further simple imprisonment for three months was awarded. Being aggrieved by the aforesaid judgment and order of the Trial Court, the accused-respondent filed an appeal before the High Court of Karnataka at Bangalore, being Criminal Appeal No.1576 of 2007. The High Court by the impugned judgment and order allowed this appeal on the ground that though the prosecutrix

herein was less than 16 years of age and her consent would be of no relevance if there was sexual intercourse between her and the accused, since the factum of sexual intercourse itself was not proved beyond reasonable doubt in view of the inconsistent evidence of the prosecutrix which could not be solely relied upon.

5. The Appellant - State has challenged before us the judgment of acquittal passed by the High Court. Learned counsel for the State of Karnataka has, inter alia, made the following submissions. Firstly, that the age of the prosecutrix was less than 16 years at the time the offence was committed. The age was proved to be 13 ½ years on the date of incident by Ex.P-11, the birth certificate issued by PW7 (headmaster of Swami Vivekananda School) based on entries in the Admission Register, wherein her date of birth was specified as 8.3.1990. Secondly, the factum of sexual intercourse between the accused and the prosecutrix has been contended to be proved beyond reasonable doubt by the statement of PW1 (prosecutrix)

and corroborated by the medical officer's (Dr. Latha-PW5) testimony.

6. The learned counsel for the accused-respondent has not disputed the age of the prosecutrix as has been admitted by the High Court in the impugned judgment that the prosecutrix was aged between 13-14 years and hence less than 16 years. But the arguments advanced by the Appellant State regarding the factum of sexual intercourse have been rebutted by putting his weight on the decision arrived at by the High Court. It is submitted that the testimony of the prosecutrix is inconsistent, uncorroborated by the medical evidence which is vague and fails to establish clearly that the sexual intercourse took place and hence not reliable.

7. The Trial Court convicted the accused respondent on the basis of the testimony of the prosecutrix as being supported by the statement of the medical officer. The High Court also dealt with the issue and held that the Trial Court failed to appreciate the discrepancies occurring in the evidences. The High Court has

examined at length the record of the case and reversed the finding of the Trial Court.

8. We have heard the learned counsel on both sides and perused the judgments of the Trial Court as also the High Court. The question of age of the prosecutrix is not disputed. Hence, the only issue that remains before us is whether the factum of sexual intercourse is established or not?
9. To arrive at a conclusion as to whether actual sexual intercourse took place or not, the statements of the prosecutrix (PW1) and medical officer (PW5) need to be examined in detail. As per the averments made by the prosecutrix in the complaint (Ex.P-1) filed by her on 15.11.2003, she was in love with the respondent and it is because of her coercion that the accused took her to Bangalore where they got married and led life like a married couple for a period of 20 days. She mentioned that their marriage had consummated as well. However, the evidence in examination-in-chief of the prosecutrix (PW1), is totally inconsistent with the averments in the complaint

(Ex.P-1). In her testimony made before the Court she has stated that in the early morning of 26.10.2003, when she came out of her house to ease herself, the accused met her and forcibly took her to Bangalore saying that he loved her and would marry her. She further stated that she was made to stay in the house of Kaveramma (aunt of the accused) for about 20 days and they lived there as husband and wife. But in her examination-in-chief she also mentioned that she did not lodge any complaint or make any statement and the document Ex.P-1 though has her sign, was not read over to her by the Police. After being treated as hostile, when the Public Prosecutor cross-examined her, she admitted that after they came to Bangalore, the accused brought a ready-made Thaali and tied it to her neck and they got married and sexual intercourse took place between them. But she vehemently and categorically denied the suggestion that the averments made in Ex.P-1 are true and correct and that the complaint came to be written at her instance. In cross-examination by the advocate for the accused, she categorically stated that she was well aware of the meaning of the word “intercourse” and that it was

painful and she felt like screaming when the accused had intercourse with her for the first time.

10. The statements of the prosecutrix are highly inconsistent. The statement made by her to the police has been categorically denied and the statements made by her before the Court seem to be tutored. At the time when her statement was recorded as PW1, the age of the prosecutrix was about 17 years and it is quite natural for a girl of that age to know as to what is “sexual intercourse”. Also, the aunt of the accused i.e. Kaveramma, at whose house at Bangalore the prosecutrix and the accused stayed after fleeing from Hiriya Town, has not been examined. Further, the fact that the prosecutrix did not raise any alarm when the accused tried to kidnap her, seems to be quite unnatural. The testimony of the prosecutrix when read as a whole, is full of discrepancies and does not inspire confidence.

11. The medical examination of the prosecutrix took place on 16.11.2003 and she was examined by Dr. M. Latha (PW5) who was the Lady Medical Officer at the Government Hospital,

Hiryur. Her deposition was that upon examination, no injury was found on the private parts of the prosecutrix and her hymen was intact. She also stated that there were no signs of recent sexual intercourse as the prosecutrix was not subjected to sexual intercourse during the past seven days from the date of her medical examination and she issued a certificate Ext.P-7 to this effect. But she could not say clearly as to whether the prosecutrix was subjected to sexual intercourse previously or not.

12.It is not elicited by the evidence of PW5 as to what was the nature of the hymen that was found intact in the person of the prosecutrix. Though it may be true that the rupture of the hymen may not occur in all cases of sexual intercourse, but it is the burden of the prosecution to extract from the medical examiner examining a rape victim, that the nature of the hymen was such that it could remain intact despite there being intercourse with the girl on several occasions within a period of 15 to 20 days. The medical examiner has merely mentioned that there were no signs of recent sexual intercourse which is

inadequate to establish that sexual intercourse took place before that at all.

13.The appellant State relied upon the case of **Madan Gopal Kakkad v. Naval Dubey**, (1992) 3 SCC 204, wherein this Court has held that even the slightest penetration of penis into vagina without rupturing the hymen would constitute rape. The appellant contended that the fact that the hymen of the prosecutrix was not ruptured does not lead to the inference that there was no sexual intercourse. But we do not find any weight in this submission as there is no medical evidence even to suggest the slightest of penetration.

14.Learned counsel for the respondent relied upon the case of **Radhu v. State of M.P.**, (2007) 12 SCC 57, wherein this Court had laid down the principle that a conviction of rape can be based on the uncorroborated testimony of the prosecutrix and even the absence of injuries on the private parts of the victim will not falsify the case of rape, but at the same time, the Courts must bear in mind that the question whether there was

rape or not would depend ultimately on the facts and circumstances of each case.

15. Learned counsel for the respondent further relied upon ***Mohd. Ali v. State of U.P.***, (2015) 7 SCC 272, wherein this Court recently held as follows:

“30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony...”

16. In the present case, the gaps in the evidences of the prosecutrix and the medical officer make it highly improbable that sexual intercourse took place. It would be erroneous to rely upon such discrepant testimonies and convict the accused. It can thus be stated with certitude that the solitary evidence of the prosecutrix, in absence of any corroboration by the medical evidence, is not of such quality which can be relied

upon. The accused-respondent is, therefore, entitled to benefit of doubt.

17. Thus, in the light of the above discussion, we are of the view that the present appeal is devoid of merits, and we find no grounds to interfere with the judgment passed by the High Court. The appeal is, accordingly, dismissed.



.....J

(Pinaki Chandra Ghose)

.....J

(R.K. Agrawal)

New Delhi

October 07, 2015