

CASE NO.:
Appeal (crl.) 471 of 2008

PETITIONER:
Rathnaiah

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 11/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 471 OF 2008
(Arising out of SLP (Crl.) No.2587 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Karnataka High Court dismissing the appeal filed by the appellant. The appellant faced trial for alleged commission of offence punishable under Section 376 , 324 read with Section 34 and 342 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). While the appellant was sentenced to undergo RI for 7 years, one year and six months respectively for the three offences, other accused persons were sentenced to undergo one year and six months for each of the offence i.e. Section 324 read with Section 34 and Section 342 read with Section 34 IPC.
3. They preferred appeal before the High Court which was numbered as Criminal Appeal no.553 of 2001. By the impugned order the conviction and sentence so far as the present appellant is concerned was confirmed while the sentences were reduced so far as the accused persons are concerned, but the fine amount was enhanced.
4. The High Court by a practically non-reasoned order dismissed the appeal. The only conclusion fathomable from the impugned judgment is as follows:
"3. In fact the prosecution and the trial Court both have overlooked the fact that A1 had committed the acts of rape on two occasions which are distinct offences. A1 should have been prosecuted separately for both the incidents of rape by filing separate charge sheet. In respect of second incident of rape, the prosecution has adduced evidence to prove the guilt. Accordingly, the trial Court rightly convicted the accused U/s. 376 IPC."
5. Learned counsel for the appellant submitted that the High Court while dealing with the appeal has not even analysed the evidence and has also not recorded any findings on various submission on behalf of the appellants.
6. In response, learned counsel for the respondent-State

submitted that though the judgment of the High Court does not indicate the reasons, but the evidence on record justifies the ultimate conclusion that the appeal was to be dismissed.

7. The manner in which the appeal has been dealt with is not a correct way to deal with the appeal. No attempt appears to have been done by the High Court to appreciate the rival stand and to analyse the evidence in its proper perspective.

8. Above being the position, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law.

9. Appeal is allowed.

JUDIS