

CASE NO.:
Appeal (crl.) 457 of 1994

PETITIONER:
THE STATE OF KARNATAKA

RESPONDENT:
MAPILLA P.P. SOOPI

DATE OF JUDGMENT: 23/09/2003

BENCH:
N. SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The respondent herein was convicted by the Sessions Judge, Kodagu, Madikeri in Sessions Case No.30 of 1982 for offences punishable under Sections 448 and 376 IPC, and was sentenced to undergo RI for one year under Section 448 and 4 years under Section 376 IPC with a fine of Rs.500/-. The above conviction was based on the prosecution case that the respondent committed the rape of Fathima, PW-3 on 23.9.1981. The High Court in appeal reversed the judgment and conviction on re-appreciation of facts. It came to the conclusion that the prosecution has failed to establish the fact that PW-3 was a minor at the time of the incident as also the factum of rape by the respondent of the said prosecutrix. The main evidence led by the prosecution in support of its case was that of the victim herself who was examined as PW-3 and that of her father PW-4 and mother PW-7. The prosecution also relied on the medical evidence as spoken to by doctor PW-1. The High Court having come to the conclusion that PW-3 was not below the age of 16 years at the time of the incident, also did not accept her evidence because if really the incident had taken place, as narrated by her, the neighbours and others who were in the close proximity of the place where the incident had taken place, could have reached the place of incident to see the act of rape because of her cries. Since there is no such evidence led by the prosecution, the High Court held that PW-3's evidence without further corroboration cannot be accepted. It also rejected the medical evidence as to the factum of rape since the prosecution had failed to produce the original medical report. The High Court did not accept the evidence of the parents of the victim on the ground that though they came to know of the incident on 23.9.1981 itself, the Police complaint was lodged only on the next day evening and the explanation given by the prosecution for the delay was unacceptable. The two witnesses who were neighbours of the victim who were examined by the prosecution, having not supported the prosecution case, the High Court found it difficult to base a conviction on the respondent, hence, allowed the appeal.

We have heard learned counsel for the parties and are of the opinion that the High Court was justified in coming to the conclusion that the prosecution has failed to prove that the respondent had committed either the house trespass or rape of PW-3. This is primarily because of the fact that though PW-1 had examined PW-3 on 24.9.1981, the prosecution has not produced any medical report in regard to the said examination of PW-3. As a matter of fact, there is no evidence whatsoever

produced by the prosecution to show that the doctor did prepare a medical report in regard to the condition of the victim as examined by him on 24.9.1981. On the contrary, what was produced by the prosecution were certain clarifications given by PW-1 in response to the questions asked by the I.O. on 25.9.1981. These clarifications in our opinion, are too general in nature and do not indicate the possibility of a rape of PW-3. The clarifications do not indicate any injury on the person of PW-3. Though PW-1 in the said clarificatory note has stated that PW-3 had recent signs of forcible sexual intercourse, he has not indicated what were those signs. In the absence of a medical report regarding the observation of the doctor when he examined PW-3 on 24.9.1981, it will be very difficult to accept the subsequent clarification given by the doctor in reply to certain queries raised by the I.O. It is also pertinent to mention that though PW-3 had stated in her evidence that she suffered certain other bodily injuries, the same is not supported by the evidence of PW-1. In such circumstances in our opinion, the High Court was justified in holding that the medical evidence has not established the case of rape.

Coming to the evidence of PW-3 prosecutrix as noted by the High Court, we see that she has stated that immediately after the respondent entered her house, she raised an alarm but from the material produced by the prosecution, even though there were children and other adults near-about the house of the victim, none responded to the said alarm though witnesses examined by the prosecution show they heard the alarm and by the time they went to the place of incident, they could only see the accused walking away. This indicates that if at all PW-3 raised an alarm it was only after the respondent went away from her house. This coupled with the fact that there were no injuries on the body of PW-3 to indicate any forceful assault on her, we are in agreement with the finding of the High Court that the prosecution has failed to establish its case.

Undue delay in lodging the complaint without acceptable evidence has also contributed to the doubt in the prosecution case. Hence the High Court was justified in allowing the appeal.

For the reasons stated above this appeal fails and the same is dismissed.