

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 09TH DAY OF APRIL 2013

:PRESENT:

THE HON'BLE MR.JUSTICE B.V.PINTO

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRIMINAL APPEAL NO.2878/2011

BETWEEN

THE STATE OF KARNATAKA,
BY KUSHTAGI POLICE STATION,
REPTD. BY ADDL. STATE PUBLIC PROSECUTOR
HIGH COURT CIRCUIT BENCH,
DHARWAD

... APPELLANT

(By Sri.Y.V.RAVIRAJ – AGA)

AND

SURESH S/O. KANAKAPPA HIREMANI
AGE: 24 YEARS, OCC: COOLIE,
R/O. HIRENANDIHAAL,
TQ & DIST: KUSHTAGI

... RESPONDENT

(By Sri. R M JAVED – ADV.)

THIS CRIMINAL APPEAL IS FILED U/S 378 (1) & (3) OF CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST JUDGEMENT AND ORDER OF ACQUITTAL FOR OFFENCE U/S 376 & 506 OF IPC, DATED 24.06.2011 PASSED BY THE PRL. SESSIONS JUDGE, KOPPAL, IN S.C.NO.34/2010 BE SET ASIDE & CONSEQUENTLY CONVICT THE ACCUSED FOR THE OFFENCE.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, **KEMPANNA, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The State has preferred this appeal challenging the legality and correctness of the judgment and order dated 24.6.2011 passed in S.C.No.34/2010 by the Principal Sessions Judge, Koppal, acquitting the respondent/accused of the offences punishable under Sections 376 and 506 of IPC.

2. The brief facts of the case are :-

The respondent/accused came to be tried on the charges for the offences under Section 376 and 506 of IPC. It is alleged that on 1.8.2009 at about 8.00 p.m. the accused committed rape on the victim-PW1 in a dilapidated room belonging to one Siddanna situated at Indranagar colony in Kushtagi against her will without her consent and further he also threatened her with dire consequences not to reveal his act and thereby has committed the aforementioned offences.

3. It is the case of the prosecution PW1, the victim is the daughter of PW4. As on the date of occurrence she was prosecuting her studies in Government Pre-University College at Kushtagi and was residing in a residential hostel meant for SC/ST students. She was aged about 15 years at that time. Her father PW4 is an agriculturist and resident of Hirenandihaal village.

4. It is further the case of the prosecution the accused is her uncle being the son of the cousin of her father. He was an agriculturist and shepherd by occupation. He is also resident of Hirenandihaal which is situated at a distance of about 15 kms. from Kushtagi.

5. It is further the case of the prosecution on 1.8.2009 in the morning at about 10.00 or 10.15 a.m. the accused went to the hostel where PW1 was staying at Kushtagi and told her that her senior uncle is not keeping well and therefore his father has sent him with a direction to bring her to the village. In response to the same, PW1 told him she is

going to the school and she is unable to accompany him at that hour. Thereafter, she went to the school and returned to the hostel at about 5.00 p.m. Thereafter, it is the case of the prosecution the accused again came near the hostel at about 6.00 p.m. and repeated the same version which he had repeated in the morning to PW1 and took her with him stating that he would take her to Hirenandihaal, her native place. After they left the hostel they came to a bakery known as Bangalore Bakery at Kushtagi. There accused bought some bread and gave it to PW1. She ate the same and thereafter, the accused took her to a dilapidated room situated at Indranagar in Kushtagi. At the said room, according to the prosecution, the accused had forcible sexual intercourse with PW1 against her will and consent after undressing her. He also threatened her with dire consequences not to reveal to anybody. They spent the night in the room. Next day at about 6.00 a.m. accused brought PW1 and left her near the hostel and went away from the said place. It is the case of the prosecution PW3 who is the watchman of the hostel on

seeing PW1, questioned her as to where she had gone in the night, to which she did not reply at that point of time and went inside the hostel. She revealed what had transpired to her on the previous night to her friends, who in turn informed the same to PW2-Superintendent of the hostel. PW2 in turn informed the same on phone to PW4, the father of PW1. Thereafter, PW4 came to Kushtagi, took his daughter to his place Hirenandihaal. On enquiry with his daughter she revealed the act done to her by the accused. Since the elder brother of PW4 was not keeping well and was in his death bed, either PW1 or PW4 or any of their relatives did not take any steps. About 2 or 3 days later the senior uncle of PW1 expired. Thereafter on completion of the ceremonies in connection with the death of the elder brother of PW4 and senior uncle of PW1, on 17.8.2009 PW1 filed her complaint as per Ex.P1 before PW10-PSI at Kushtagi police station. PW10 on the basis of Ex.P1 registered a case in Crime No.139/2009 for the offences u/s.376 and 506 of IPC against the accused and issued FIR as per Ex.P10 to the jurisdictional Magistrate.

Thereafter he forwarded the victim-PW1 for subjecting her to medical examination along with a requisition. In response to the same PW6 examined the victim and issued medical certificate in respect of her as per Ex.P5. Thereafter investigation of the case was handed over to PW8-CPI. PW8 on taking over the investigation secured the parents of the victim and made enquiries with them. Thereafter, he proceeded to the spot of occurrence and there he drew up the scene of offence panchanama as per Ex.P4 as pointed out by PW1 in the presence of the pancha-PW5. Thereafter, he recorded the statements of PWs 2, 3, 4, 5 and other witnesses in this case. During the course of investigation he also sent a requisition on 11.9.2009 to the Principal, Government Pre-University College, Kushtagi where PW1 was prosecuting her studies to furnish the date of birth certificate of PW1. In response to the same Vice Principal of the said college issued a certificate in respect of the date of birth of PW1 as per Ex.P7. In the meantime PW8 was also making efforts to trace and apprehend the accused. On 25.9.2009 the accused

appeared before PW8 along with the anticipatory bail order granted in his favour. PW8 arrested him and got him subjected to medical examination at the hands of PW7- Dr.Chandrashekara Dandi who on examination of the accused issued the medical certificate in respect of him as per Ex.P6 stating that the accused is capable of having sexual intercourse. Thereafter he released the accused on bail as per the orders of the court. Thereafter continuing the investigation PW8 also got the victim subjected to dental examination at the hands of PW9, who on examination of the victim issued the certificate Ex.P8 and opined that the victim is aged more than 15 years. Thereafter, PW8 on obtaining the relevant documents from the concerned authorities and on completion of the investigation submitted final report against the accused before the jurisdictional Magistrate, who in turn committed the case to the Court of Sessions which on receipt of the records framed charges against the accused as aforesaid to which he pleaded not guilty, but claimed to be tried.

6. The prosecution in support of its case in all examined PWs 1 to 10 and got marked exhibits P1 to P10. The accused has not got marked any defence exhibits during the course of examining the prosecution witnesses.

After the closure of the prosecution evidence, the accused denied all the incriminating circumstances found in the evidence of the prosecution in his examination under Section 313 Cr.P.C. He also submitted that he has no defence evidence to lead. Total denial of the prosecution case is the defence of the accused.

7. The learned trial Judge on considering the oral and documentary evidence on record came to the conclusion that the prosecution has failed to establish the charges levelled against the accused and accordingly by the impugned judgment and order acquitted him of the charges levelled against him.

The State being aggrieved by the judgment and order of acquittal is in appeal before this Court.

8. Sri.Y.V.Raviraj, learned AGA appearing for the State, contended the evidence of PW1, the victim, clearly goes to show that she has been subjected to forcible sexual intercourse at the hands of the accused. That is fortified from the evidence of PW6-medical officer who has opined that the victim whom she examined is used to an act of sexual intercourse. He further submitted the evidence of PW1 coupled with the evidence of PW9 the Dentist goes to show that she is below the age of 16 years. Therefore, though if the victim had given consent, it is no consent in the eye of law. As the evidence of PW1 is consistent and cogent with regard to the act committed on her by the accused, the order of acquittal cannot be sustained. He further contended insofar as the delay is concerned, it has been properly explained in Ex.P1 filed by PW1 and also in her evidence. That is also fortified from the evidence of PW4 who is the father of the

victim. Apart from the same the delay of 16 days in a nature of this case is of no consequence. Since the evidence of PW1 is consistent and cogent with regard to the act of the accused in committing rape on her, the learned trial Judge without appreciating these materials on record in its right perspective has committed an error in holding that the prosecution has not proved the guilt of the accused beyond reasonable doubt which finding is contrary to the evidence on record and being perverse cannot be sustained, it be set aside and the accused be dealt with in accordance with law.

9. Per contra, the learned counsel for the respondent/accused supporting the impugned judgment and order contended the evidence of PW1 is untrustworthy in respect of the act alleged by her against the accused. He submitted her evidence in cross examination reveals that the contents of the complaint-Ex.P1 has been got written by her uncle at the police station. Admittedly the evidence on record reveals all is not well between her uncle and the accused. He

further contended the evidence of PW1 also does not inspire any confidence for the reason it is not corroborated from any independent quarters. It is in direct conflict with the evidence of her own father PW4. In this connection he submitted though PW1 claims that she revealed the act to her father PW4, PW4 on taking her to his place told her not to precipitate the matter, which would not be the conduct of a father if really the occurrence had taken place. He further contended the spot where the alleged occurrence has taken place is a dilapidated room which did not have any door and it is located very close to the police station. Apart from the same there are shops and residential houses surrounding the said place. If according to PW1 she had been taken to the said place and had been detained in the said room and committed rape on her till next day morning 6.00 a.m., at least on hearing the cries of PW1 someone would have been attracted and they would have rescued PW1. In the absence of the same, the claim of PW1 that she was raped in that empty room for the whole night i.e. on the intervening night of

1.8.2009 and 2.8.2009 also cannot be believed. He further contended she claims that she informed her hostel mates who in turn informed the warden-PW2, who in turn informed her father on phone. PW2 has not stated to that effect and she has turned hostile to the prosecution. PW3 the hostel watchman also has not supported the prosecution case inasmuch as in her evidence she has not revealed with whom the victim went on the evening of 1.8.2009. He also further contended the prosecution has also not proved the age of the victim as below 16 years by placing any cogent evidence. The learned trial Judge on an appreciation of the entire material on record has come to the right conclusion in holding that the prosecution has failed to establish the charge levelled against the accused which finding having been based on evidence does not suffer from any infirmity calling for interference. Hence, the appeal be dismissed.

10. Taking the rival contentions, the evidence and the documents on record, the point that arises for our consideration is,

‘Whether the impugned judgment and order calls for any interference?’

11. It is the case of the prosecution on 1.8.2009 at about 8.00 p.m. in a dilapidated room situated at Indranagar at Kushtagi, the accused committed rape on PW1 against her will and consent and thereafter threatened her with dire consequences not to reveal the same to anybody. The prosecution in order to establish the same has firstly relied upon the evidence of the victim-PW1. She has claimed in her evidence that as on the date of occurrence she was 15 years old and was prosecuting her studies in SSLC in Government. P.U. college at Kushtagi. She was staying in SC/ST hostel at Kushtagi. In her complaint-Ex.P1 it is stated on the morning of 1.8.2009 the accused came to the hostel and told her that as her senior uncle is not keeping well, her father-PW4 has

directed him to bring her to their place Hirenandihaal. In response to the same she told him that she is going to school and so saying she left to the school. Again according to her she returned to the hostel from the school on that day at about 5.00 p.m. The accused came near the hostel at about 6.00 p.m. and took her by telling the very same version which he had told in the morning. After they left the hostel the accused took her near Bangalore Bakery where he bought some bread and gave it to her and after she ate the same, took her to a dilapidated room situated at Indranagar. She has narrated in the complaint that in that dilapidated room, the accused committed rape on her against her will and consent. After committing rape he also threatened her with dire consequences and thereafter on the next day morning he left her near the hostel. She has also claimed after going to the hostel she narrated to PW2-hostel warden, who in turn informed her father on phone. In her evidence before the court she has given a different version which is contrary to the version narrated in Ex.P1.

12. PW2 does not claim that she was informed by the victim and she in turn informed victim's father-PW4. However, the evidence of PW4 discloses PW2 informed his brother PW5. PW1 also does not claim that she had called up either her father or her uncle-PW5 and had informed regarding the occurrence. As already pointed out, her claim is, she informed PW2 who in turn had informed her father on phone.

13. The evidence of PW4 reveals that his brother PW5 informed him that his daughter had called him and had revealed to him about the occurrence and thereafter PW2 had informed him of what had happened to PW1 which is not the evidence of either PW1 or PW2 in the case. Apart from this PW1 in her cross-examination has admitted that the contents of the complaint Ex.P1 was got written by her uncle-PW5. The evidence on record reveals that all was not well between PW5 and accused on account of some family dispute. Admittedly the complaint has come into existence about 16

days after the occurrence. No doubt the delay is of no consequence in a case of this nature. However, having regard to the admission of PW1 that the contents of the complaint Ex.P1 was got written by her uncle PW5 that assumes more importance to hold that the accused has been falsely legged-in, in view of the differences that existed between PW5 and accused. Apart from the same the evidence of PW1 also does not inspire any confidence for the reason the dilapidated room where the occurrence according to her took place is situated very close to the police station. Further, the panchanama of the spot of occurrence reveals that there is no door to the room where the occurrence has taken place. There are residential houses and also shops close by to the place of occurrence. In that view of the matter it is very difficult to believe the testimony of PW1 that the accused committed rape in that dilapidated room which had no door and located very close by to the police station and where there are residential houses and shops on the intervening night of

1.8.2009 and 2.8.2009 and they stayed there till the morning of 2.8.2009.

14. Further the evidence of PW3-the watchman of the hostel reveals on an enquiry with PW1 as to where she had gone in the previous night, she revealed to her that she had been to her aunt's house. Though PW3 has turned hostile, her evidence has not been subverted in any manner to discard the same.

Insofar as PW4, the father of the victim-PW1, his evidence reveals though his daughter revealed to him that the accused has committed rape on her, he told her not to precipitate the same. Further in view of the inconsistent version of this witness which is not corroborated from any other angle, it does not inspire confidence to place reliance on the same.

15. Further the prosecution has relied upon Ex.P7 the certificate issued by the Vice-Principal of the Pre University college where PW1 was prosecuting her studies to prove her

date of birth. That Ex.P7 has been got marked through PW8 the investigating officer. Further no steps have been taken to examine the author of Ex.P7 or any official from the college who has issued that certificate. Further the evidence of PW9, the Dentist, would go to show that the victim was aged more than 15 years on the basis of the denture that had developed in her mouth. Even assuming that she was minor, there is no clinching evidence to show that she had been subjected to forcible sexual intercourse by the accused. The evidence of PW6 medical officer goes to show that the victim is used to an act of sexual intercourse. That by itself would not go to show that the accused has committed any intercourse on PW1 against her will and consent. Since the evidence of PW1 in the circumstances which we have adverted to above is untrustworthy, we find it difficult to accept the same.

16. The learned trial Judge on a consideration of the entire material on record has come to the right conclusion in holding that the prosecution has failed to establish the charge

levelled against the accused which finding in our view having been based on evidence does not suffer from any infirmity calling for interference in this appeal. Accordingly, we do not find any merit in this appeal and it is dismissed

Sd/-
JUDGE

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