

State of Karnataka Vs. Gowtham

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Court : Karnataka

Decided On : Feb-29-2016

Judge : Mohan M. Shantanagoudar & B. Veerappa

Appeal No. : Criminal Appeal No. 964 of 2011 (A)

Appellant : State of Karnataka

Respondent : Gowtham

Judgement :

(Prayer: This Criminal Appeal is filed under Section 378 (1) and (3) Cr.P.C. by the state P.P. for the state praying that this Hon ble Court may be pleased to grant leave file an appeal against the judgment dated 7.3.11 passed by the II Addl. Dist., and S.J., Mysore in S.C. No.77/10 acquitting the respondent for the offence P/U/S 366 A and 376 of IPC.)

Mohan M. Shantanagoudar, J.

1. The judgment and order of acquittal dated 7.3.2011 passed by the II Addl. District and Sessions Judge, Mysore, in S.C.NO.77/2010 is called in question in this appeal by the State. By this impugned judgment and order the Trial Court has acquitted the respondent/accused who was charged with the offence punishable under Sections 366A and 376 of IPC.

2. Case of the prosecution in brief is that the victim PW2 was aged about 15 years at the time of incident; her date of birth is 27.4.1995; PW.3 C.V. Mohan is her father and PW.12 Rajeshwari is her mother, PW.1 C.V. Yathish Kumar is her junior paternal uncle. The accused used to force the victim/PW.2 to marry him; about 2 months prior to 3.12.2009, the accused with the help of his brother Abishek and sister Tejaswini took the victim to Chamundi Hills and all of them told her to marry the accused; after some time said Abijith and Tejaswini went back to the house in Maruthi Van, whereas the accused and the victim stayed back for some time near Nandi Statue of Chamundi Hills, Mysore, and they came back to Mysore on motor cycle of the accused, on 3.12.2009 around 6.00 p.m. when PW.2 was returning to the house from the shop to which she had gone for purchasing shop, the accused came on a Hero Honda Motor Cycle and forcibly took the victim on the motor cycle; PW.1-uncle of the victim saw the accused taking her on the Motor Cycle; PW.1 chased the accused but could not catch him; the accused took the victim to Nanjangud and stayed in a lodge i.e., Mahadeshwara Palace and committed sexual assault on the victim during the intervening night of 3.12.2009 and 4.12.2009; between 9.30 and 10.00 a.m. of 4.2.2009, the accused went along with the victim on Motor Cycle towards Mysore and on the way the police stopped the Motor Cycle and apprehended the accused, inasmuch as by then the complaint came to be lodged by PW.1 as per Ex.P.1. After securing the presence of the victim, her statement is recorded as per Ex.P.3 on 4.12.2009. Based on Ex.P.1 the complaint lodged by PW.1. Crime No.213/2009 came to be registered in Saraswathipuram Police Station at 10.30 a.m. on 4.12.2009 for the offence punishable under Sections 366A and 114 of IPC r/w 34 of IPC. Initially the brother and sister of the accused viz., Abishek and Tejaswini were arrayed as Accused Nos.2 and 3. After registration of the crime, the statement of the victim came to be recorded as per Ex.P.3. Based on such statement, the offence punishable under Section 376 of IPC also came to be added. After completion of investigation, the police laid the charge-sheet for the offence punishable under Sections 366A and 376 of IPC against accused.

3. The Trial Court framed the charge under Section 366A and 376 of IPC.

4. In order to prove its case, the prosecution in all examined 20 witnesses and marked 34 documents and 11 material objects. Three documents were got marked as Court documents; on behalf of the defence Ex.D1 came to be marked.

5. The Trial Court on evaluation of the material on record and after hearing the defence acquitted the accused of all the charges leveled against him. Hence this appeal by the State against the judgment and order of acquittal.

6. As mentioned supra, PW.1 is the first informant who is none other than the paternal uncle of the victim. He lodged first information as per Ex.P.1. According to the prosecution, PQ1 saw the accused forcibly taking the victim on the Motor Cycle at 6.30 p.m. on 3.12.2009. PW.2 is the prosecutrix; PW.3 is father of the prosecutrix, he has deposed about the date of birth of the victim as 24.7.1995- ExP4 is the birth certificate of the victim which has been obtained from Mysore City Corporation; PW.12 is the mother of PW.2/prosecutrix, she has also deposed that the date of birth of the victim is 24.7.1995 and her second daughter was born on 17.6.1997 and third daughter was born on 15.3.1999; PW.4 is the owner of Lodge Mahadeshwara Palace, Nanjajud, wherein the accused and the victim stayed during the night intervening 3.12.2009 and 4.12.2009; PW.5 is the Head Mistress of Christ King Convent, Mysore, wherein the victim was studying. Therefore, Ex.P7 is the admission register maintained by the School wherein the date of birth of the victim was shown as 24.07.1995, other school certificates are also marked through PW.5; PW.6 is the manager of Mahadeshwara Palace lodge. His evidence is also on par with the evidence of P.W.2; PW.7 is the police constable who carried the first information and delivered it to the Magistrate; P.W.8 is the woman police constable; PW.9 is the head constable. All these police constables have participated during the course of investigation during different intervals; PW.10 is the Doctor who examined the victim PW.2, she has given the certificate and copy of the Medico Legal Certificate which is marked at Ex.P.14. The said Doctor has collected the vaginal swab for evidence of sperms and the vaginal smear for evidence of sperm etc., for examination to Forensic Scientific Laboratory; PW.11 is the Doctor who examined the accused he has deposed there is nothing to suggest that accused was capable to perform the act of sexual intercourse, the medical certificate issued by the said Doctor is at Ex.P.16; PW.13

is the witness for Mahazar Ex.P.2, which is the Mahazar relating to the palace from where the accused allegedly kidnapped the victim. PW.15 is the Health Officer of Mysore City Corporation who has issued the birth certificate Ex.P.4 pertaining to PW.2. He has deposed about the procedure that is followed while making entries in the birth register; PW.16 is the Teacher working in Vishwa Pragna High School, Mysore, she has deposed that during the relevant point of time PW.2 had joined the Vishwa Pragna High School, Ex.P.16 is the transfer certificate submitted by PW.2 when she joined the said school. Therefore, the said certificates Exs.P.19, 20 and 21 are marked to show that the date of birth of the victim was 27.4.1995; PW.17 is the Head Mistress of Deepa School at Mysore, she has deposed that the other sister of PW.2 viz., Rohini was studying in 6th standard during the academic year 2008-2009, Exs.P.22 and 23 are marked these records are pertaining to admission of Rohini to school, which discloses that the date of birth of Rohini is 17.6.1997; PW.18 is another witness for the scene of offence Mahazar Ex.P.2, he is also witness for seizure Mahazar Ex.P.17; PW.19 is the Head Mistress of C.K.C. convent in Mysore, she has deposed about the certificates Exs.P.24, 25, 26, 27, 28 and 29 which are produced and proved by prosecution in order to show the date of birth of the victim as well as her sisters Rohini and Chandana M. Naik. PW.20 is the inspector of Police, he has not only registered the complaint but also completed the investigation and laid the charge sheet.

7. The Trial Court in our considered opinion, has rightly concluded that the date of birth of PW.2 was 27.4.1995 and her two younger sisters as 17.6.1997 and 15.3.1999. Voluminous records produced before the Court including the birth certificate issued by the Municipal Authorities as well as records of the two schools which amply prove that the date of birth of the victim is 24.7.1995. Though suggestions are made on behalf of the defence that the victim was aged more than 16 years at the time of incident, no useful purpose was served, inasmuch as suggestions are denied. In the light of the documents produced at Exs.P.4, 7, 8, 9, 19, 20, 21, 22, 23, 24 to 29, it is clear that date of birth of the victim is 24.7.1995 and her two younger sisters were born on 17.6.1997 and 15.3.1999 respectively. Not only were the Health Officer of the Municipality, but also the teacher and Head Mistress of the two schools examined before the Court to prove the said date of

birth of the victim.

8. Thus in our considered opinion, the Trial Court is justified in concluding that the date of birth of the victim is 24.7.1995. Even otherwise, there is nothing on record to suggest that the victim was born on a different date. There is no scope for speculation at all in order to visualize any other date as the date of birth of the victim. Hence it is clear that the victim was aged 15 years at the time of the incident in question. Apart from the evidence of the Head Mistress, teachers and the Health Officers, the evidence of PWs.1, 2 and 12 the parents and uncle of the victim fully support the case of the prosecution that the victim was aged 15 years at the time of the incident in question.

9. Case of the prosecution is that about 2 months prior to the incident in question the accused had taken the victim to Chamundi Hills and had pressurized her to marry him; along with the accused his brother and his sister had also gone to Chamundi Hills. Though the said factor was made known to the family members including her parents, no complaint whatsoever was lodged either by the victim or by her parents. Ex.P.3 is the statement of the victim duly signed by her, based on which the offence under Section 376 is added, also clearly reveals that the victim was talking with the accused since six months prior to the incident. From the aforementioned admission of PW.2 it is clear that she was knowing the accused at least since six months prior to the incident in question. History as given by the accused before the Doctor who examined him also discloses that she was in love with the victim. The very fact that no complaint came to be lodged either by the victim or by her parents when she was allegedly taken by the accused to Chamundi Hills would show that the family members of the victim knew that the accused and the victim were moving in and around Mysore City freely. None of the family members of the victim objected for the same. It is a specific case of the prosecution that the family members of the accused were also consenting parties for the said affair.

10. Ex.P.3 further discloses that on the date of incident on 3.12.2009 at 6.30 p.m. i.e., when the victim was going back to her house from the shop, the accused was standing near 8th Cross along with his motor cycle and he took the accused

forcibly.

PW.1 had allegedly seen the accused taking the victim and he tried to chase the accused to certain distance. However, the accused drove the motor cycle fast and took her to Nanjangud; both of them stayed in a lodge at Mahadeshwara Palace and the victim was subjected to sexual assault. It is also specifically stated in Ex.P.3 by the victim that she had worn the very clothes on 4.12.2009 i.e., at the time of her giving statement before the police. It is clearly admitted by her that the very clothes which she had worn at the time of kidnapping and at the time of sexual assault were worn at the time of giving her statement as per Ex.P4. It is needless to observe that such clothes of the victim were seized for panchanama.

11. The uncle of the victim PW.1 has deposed that he saw the victim being taken away by the accused on the motor cycle. Though he saw such incident at 6.30 p.m. on 3.12.2009 and though he informed about the same to all the family members of the victim, neither PW.1 nor any of his family members lodged the complaint till 11.30 a.m. on 4.12.2009. As mentioned supra, it is the deposition of PW.1 that he chased the motor cycle of the accused but he could not stop the accused and thereafter search was made by PW.1, which means PW.1 and his family members tried their best to find out the whereabouts of the victim. There is no reason as to why they had not informed about the same to the police immediately after the incident.

12. PW.3 the father of the victim has deposed that on 2.12.2009 he had gone to Poona from Mysore as the driver of a KSRTC Bus and when he came back to Mysore on 3.12.2009, he received the telephonic call from PW.1.

13. PW.12 the mother of the victim has also deposed that she came to know about the accused taking the victim at 6.30 p.m. from PW.1.

Though in the examination-in-chief PW.2 has deposed that the accused used to ask her to marry him, she was not responding for the same. In her deposition before the Court, PW.2 has started that there was threat to her with dire consequences of pouring acid not only on the face of the victim but also on the face of her two sisters. But such story is created by PW.2 for the first time before

the Court inasmuch as, in the statement of PW.2 recorded by Police during investigation, no such allegations are forthcoming. She has further admitted that she had told her parents, PW.1 and other members of the family about the illegal activities of the accused. She had even given the phone number of the accused to her family members; the accused used to go near her house every day prior to the incident. It is also not in dispute that the incident had taken place in the residential locality, that too, in the peak hours of the evening i.e., at 6.30 p.m. The incident had not taken place either during night or in a lonely place, it was not too dark during the relevant point of time. Though PW.1 and PW.12 chased the accused while the accused took the victim on the motor cycle forcibly, they had not informed any of the persons in the locality. None of the persons from the locality is examined before the Court. It is but natural that at least few people in the locality could have noticed the accused taking the victim on the motor cycle, if really the accused had taken the victim forcibly. From the aforementioned facts and circumstances, it is clear that the alleged incident which had happened at 6.30 p.m. on 3.12.2000 was not a total surprise to the family members of PW.1. It is also admitted by PW.3-the father of PW.15 that he is Union Leader of Employees of KSRTC. He could have filed the complainant immediately after the incident took place. Number of material omissions are brought on record in the evidence of PWs.1, 2, 3 and 12. In our considered opinion, such material omissions coupled with the answers elicited in the cross-examination of PWs.1, 2 and others would cause doubt about the claim of PWs.1 and 12 that PW.1 was standing in front of her house and saw the accused forcibly taking the victim on the motor cycle. The Investigation Officer has deposed that none of the allegations made in the deposition of victim before the Court are found in her statement Ex.P.3 and all of them are material omissions. The depositions of the victim that the accused threatened her with dire consequences of taking away her life by pouring acid are all material improvements. It cannot be termed as inconsequential improvements.

14. Ex.D1 (portion of Ex.P.3) marked during the examination of PW.2 clearly reveals that she was knowing the accused and they were talking with each other intimately since six months prior to the incident. If really the accused had taken the victim forcibly on the motor cycle. She would have raised hue and cry, so as to grab the attention of public at large. It is the case of the prosecution that the

accused had taken the victim from Mysore to Nanjangud which is about 30 kilometers from Mysore. It is also clear from the evidence that there was not threat whatsoever from the accused on the way of Nanjangud. The victim was studying in Convent School in English Medium. As mentioned supra, the incident has taken place in a busy locality of Mysore. During her journey till Nangangud with the accused, the victim did not raise hue and cry. Even when they reached the lodge at Nanjangud the accused introduced himself as the husband of the victim and victim did not object for the same. There is nothing on record to show that the victim was under threat at that time also. There was no hurdle for the victim to state boldly about the true facts before the owners of the lodge as well as the Manager of the lodge. Ex-P.7 which is marked through Head Mistress of the convent school PW.5 discloses that from 17.11.2009, PW.2 did not attend the school. The incident is said to have taken place on 3.12.2009 which means the victim has not attended the school from 17.11.2009 to 3.12.2009 PW.12 had admitted before the Court that PW.2 the victim was not sent to school prior to 3.12.2009. The evidence of PW.12 is fully supported by Ex.P.7. May be PW.12 and other family members were apprehending such incident and therefore, they have not sent the victim to the school. Despite the same they did not lodge the complaint, particularly, when PW.1 had allegedly seen the accused taking the victim on the motor cycle. In this context, the Trial Court has rightly observed that from 17.11.2009 till final examination, PW.2 was not sent to the school. Therefore, it could be inferred that something was wrong somewhere and the family members of the victim have not placed the entire true facts before the Court. All was not well in the family of PW.2, inasmuch as the elders in the family had suspicion about PW.2 and that therefore they had not sent her to the school. There is nothing on record to show that she was on medical leave. On the other hand the defence of the accused discloses that his sister Tejaswini and PW.2 were friends and often PW.2 used to come his house and on such occasions she was talking with the accused, whereas she declined to marry him, therefore, in order to avoid meeting him they stopped her from going to the school and she was upset by that. In that view of the matter, the Trial Court is justified in concluding that it is not the case of enticement at all and that it is a case of victim voluntarily consenting to go along with accused. Therefore, the offence punishable under Section 366 is held rightly

not proved, by the Trial Court.

15. Coming to the second charge, i.e., for the offence punishable under Section 376 of IPC, we have already mentioned supra that the age of the victim is 15 years i.e., below 16 years. Therefore, consent or no consent of the victim would be of no importance. If it is proved that the accused had sexual intercourse with the victim, then it would certainly amount to offence of rape.

16. To show that accused and PW.2 stayed in a lodge at Mahadeshwara Palace, Nanjangud, PW.4 Owner and PW.6 Manager of the Lodge were examined, they deposed that the accused and PW.2 stayed in a room in their lodge and in 4.12.2009 they vacated the room. Therefore, the concerned page from the lodge register is marked as Ex.P.5.

17. We have perused Ex.P.5. The name of the lodge is not found on it. It appears Ex.P.5. is a sheet of some ledger, but something more than that could have been secured by the Investigation Officer PW.20 to indicate that it really related to that lodge.

18. P.W.2 in her examination in chief itself has deposed that the accused took her to a building, it looked like a hostel, in which there were number of rooms and he told that his aunt was there. She has deposed that the accused had told that it was his aunts house. From the aforementioned it is not proved beyond reasonable doubt as to whether the victim was taken by the accused to the lodge owned by P.W.4 and managed by PW.6. As mentioned supra, PW.2 has stated before the Court that she was threatened with dire consequences of pouring acid, by the accused. Such a Statement is not made before the police. It is a clear case of material improvement by PW.2 on that aspect of the matter.

19. PW.2 has further deposed that the accused took her from Nanjangud on 4.12.2009 at 9.30 a.m. and went to the house of the accused directly on the motor cycle and at that point time, the father of the accused cycle and at that point of time, the father of the accused was in the house; during the talks with the father of the accused, it was made known to PW.2 and the accused that the complaint is already lodged against the accused and hence the accused his father and the

victim came to the police station, wherein the accused was apprehended; at that time, the victim was not at all under threat of anybody, she voluntarily went with the accused and talked with the father of the accused and thereafter she came to the police station along with the accused and her father; therefore, in our considered opinion that, the factum whether the victim was sexually assaulted or not is not clear. It is the case of the prosecution that the victim was sexually assaulted by the accused during night hours of 3.12.2009 and 4.12.2009, but the same is not proved beyond doubt.

20. Ex.P.33 is the report received from the Forensic Science Laboratory, Mysore. The presence of seminal stains was not detected in item 1(a), 1(b), 2(a), 2(c) and item 4 to 8 and that the presence of spermatozoa was not detected in item No.3. The semen collected from the accused and sent for analysis was decomposed and the same was not suitable for examination. The items referred to in Ex.P.33 are the clothes of the accused and PW.2. Ex.P.33 does not support the case of the prosecution. Undisputedly the inner garments of the victim were collected. It is also admitted by the victim that she had worn the very clothes at the time of incident and those clothes were seized by the police from her. If really the victim was subjected to sexual intercourse forcibly, there is every likelihood that the inner garments of the victim would have been soiled with semen or spermatozoa.

21. In view of the above, and having regard to the totality of the facts and circumstances of the case in our considered opinion, the Trial Court is justified in concluding that the prosecution has not proved its case beyond reasonable doubt.

22. There is not reliable material to show that the victim was subjected to sexual assault by the accused during the relevant point of time. The prosecution has also not proved beyond reasonable doubt that the accused had taken the victim to a lodge Mahadeshwara Palace at Nanjangud and committed sexual assault on her spermatozoa.

23. In view of the same, we are of the considered opinion, that the view taken by the Trial Court is one possible view. Hence no interference is called for. Appeal stands dismissed.

24. Sri N.S.Sampangiramaiah, learned amicus curiae shall be paid honourarium of Rs.10,000/- by the Registry.

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