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Court : Karnataka Kalaburagi

Decided On : Jul-01-2017

Judge : B.A. Patil

Appeal No. : Criminal Appeal No. 3614 of 2011

Appellant : Ningappa and Another

Respondent : The State through Chincholi Police Station, Gulbarga

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to allow the appeal and set aside the judgment and order passed in S.C.NO.219/2009 on the file of II Addl. Sessions Judge at Gulbarga dated 18.06.2011 convicting the appellant for the offence U/Sec.354, 109 of IPC R/w Sec.34 of IPC and acquit the accused/appellants of the alleged offence.)

1. The present appeal has been preferred by the appellants-accused Nos.1 and 2 by assailing the judgment and order of conviction passed by II Addl. Sessions Judge, Gulbarga, in Special Case No.219/2009 by order dated 18.6.2011.

2. The brief facts of the case of the complainant are that; complainant was working as a daily wage labourer in Murarji Residential School, at Nadagunda and she was a widow. It is the case of the complainant that the warden of the said school

accused No.1 Lingappa, used to sexually harassed her. It is further alleged that accused No.2 Munichaluvaiah also used to insist her to have a sexual intercourse with him. When the matter was so stood, on 5.9.2009 at about 1.30 p.m. when the complainant was working in the kitchen of the school for preparing food, accused No.1 Lingappa came there and asked her to come to the room of accused No.2 Munichaluvaiah, by saying that, he had got affection towards her and he is ready to confirm her employment. It is the further case of the complainant that, accused No.1 pulled her hand, when she resisted, accused No.3 Anjamma came and instigated accused No.1 to have a sexual contact with accused No.2 Munichaluvaiah. When that being the case, Devamma, Narsamma and Sakamma came there and pacified the quarrel. On the basis of the complaint a case was registered in Crime No.95/2009 and after investigation charge sheet was came to be laid against the accused. Since the said Sessions Court is the trial Court for the cases pertaining to Schedule Caste and Schedule Tribe under the SC/ST (PA) Act, it took the cognizance, registered the case and after securing the accused and after hearing the learned prosecutor and the learned counsel for the accused, charge was framed. Accused persons denied the charge and as they intended to be tried, the trial was fixed.

3. In order to prove the case of the prosecution, prosecution got examined 12 witnesses as PWs.1 to 12 and got marked 10 documents as per Exs.P1 to P10 and after closure of the evidence of the prosecution, the statement of the accused was recorded under Section 313 of Cr.P.C. by putting the incriminating material as against them. The accused persons denied the same. On behalf of accused, they have not led any defence evidence. But however, during the course of cross examination they got marked Ex.D1.

4. In order to prove the case of the prosecution, prosecution got examined PWs.1 to 12. PWs.1 and 2 are the eyewitnesses to whom CW1 told about the sexual harassment by the accused person. They have not supported the case of the prosecution. They have been treated as hostile. PW.3 is the complainant. She has deposed that, about ten months prior at about 1.30 p.m. when she was preparing the food in the kitchen, along with CWs.4 to 6, accused No.3 Anjamma came there and told that the Sir is calling, as he is intending to have a sex favour. She has

further deposed that, at that time, accused No.1 came there and by holding her hand pulled her and when she made a hue and cry he assaulted and when the other persons who are there in the kitchen, they came and at that time accused No.1 and accused No.3 by taking the name of the caste abused her and told that, she has not been made permanent in her job. She has also deposed that accused No.2 is also used to sexually harassed her. She has further deposed that, she went to the house and after discussing with the relatives she filed the complaint after seven days.

5. During the course of cross-examination it has been brought on record that, on the date of the incident accused No.2 was attending the meeting in Sadipur village in Janaspandana programme. The said suggestion has been denied. She has admitted that accused No.1 has filed a criminal case against person by name one Devendrappa on 12.9.2009. she has further admitted that, one Kottappa is a relative of her and he is a active participant in D.S.S. She has also further deposed that, before filing the complaint she has not told about the incident to the Head Master. She has further deposed that accused No.1 has not behaved indecently with her. Except that nothing has been elicited from the mouth of this witness. PWs.4 and 5 are spot mahazar pancha to Ex.P4. They have not supported the case of the prosecution. They have been treated as hostile. Even during the course of cross- examination, the prosecution has not elicited anything to substantiate the case of the prosecution. PWs.6 to 9 are the eyewitnesses to the alleged incident. They have deposed about 10 months back at about 1.00 p.m. when they were in the kitchen they heard the screaming voice of PW3 Suvarna and they went there, there accused Nos.1 and 3 by holding her, were dragging to take her and also used to abuse her by taking the name of her caste. Except that, they have not supported any other evidence. They have been treated as partly hostile. Even during the course of cross-examination by the learned Public Prosecutor, nothing has been elicited so as to substantiate the case of the prosecution. PW.7 has further deposed that when the quarrel was going on accused Nos.1 and 3 abused the complainant by taking the name of the caste and they were dragging her by saying that her employment will be made permanent and accused No.2 is calling her as he wants to confirm her employment. So also the evidence of PWs.8 and 9. PW.10 is the PSI who registered the complaint and

issued the FIR and thereafter he handed over further investigation to PW.11. PW.11 took further investigation and thereafter he filed the charge sheet. PW.12 is the Junior Engineer who prepared the sketch of the place of incident as per Ex.P9.

6. I have heard the learned counsel Sri Babu Rao Mangani and the learned High Court Government Pleader.

7. The learned counsel for the appellants would contend that, there is a delay in filing the complaint. Further he contends that, PW.11 the Investigating Officer who also attended the Janaspandana meeting has admitted in his evidence that on 5.9.2009 accused No.2 Munichaluvaiah participated in the said meeting and as such the trial Court ought to have acquitted accused No.2. Even though the complainant has admitted that, there was no harassment by accused No.1 earlier to the incident, the trial Court convicted the accused persons without proper appreciation of the evidence. It is the further contention of the learned counsel for the appellants that, because of the adulteration in the food by the complainant, a complaint was filed and the amount has been recovered and as such a false complaint has been registered against the accused appellants. He would further contend that, where exactly the offence took place has also been properly brought on record. He would further contend that, the material witnesses have not supported the case of the complainant and without there being any corroboration the accused appellants have been convicted by the trial Court. On these grounds he prayed for allowing the appeal by setting aside the impugned order.

8. Per contra, on behalf of the respondent State the learned High Court Government Pleader vehemently argued and contended that mere presence of accused No.2 in the meeting of Janaspanda, does not probabalize that, he has not harassed the complainant. He would further contend that, there is no material to show that, whole day the accused was present in the meeting. He would further contend that the place of the meeting and the place of incident are very short and there is every possibility of accused No.2 coming at the place of incident.

9. As could be seen from the evidence it is not in dispute that PW3 complainant was working in Murarji Model Residential School at Nidagunda Village and so also PWs.6 to 9 were also working along with her on daily wages. It is also not in

dispute that accused Nos.1 to 3 are working as a Warden in the said school. As could be seen from the evidence of PW3, she has deposed that, about ten months' back when she was working at about 1.30 p.m. in the kitchen of the school and at that time accused No.3 came and told her as the Sir is desirous of her and calling her and at that time accused No.1 came there and by holding her hand pulled her and when she tried to resist and made a hue and cry, at that time accused Nos.1 and 3 abused by taking the name of her caste. She has further deposed that accused Nos.1 and 3 used to ill-treat her. This evidence of PW.3 has also been corroborated with the evidence of PWs.6 to 9, so far as the accused No.1 coming there and by holding her hand pulled her and abused her by taking the name of the caste. When there is a clear cut evidence of PW.3 that accused No.1 pulled her by holding her hand, that itself clearly goes to show that accused No.1 has used the criminal force against a woman with an intention to outrage her modesty and admittedly she is working in a public place along with the other witnesses who were present and at that time if accused No.1 pulled her hand and told that accused No.2 is calling and he is interested to have a sex with her. Then, under such circumstances the provisions of Section 354 of IPC are attracted.

10. As could be seen from the order of the trial Court, the order of the trial Court indicates that the accused persons have been convicted under Sections 354 and 109 r/w Section 34 of IPC. Section 109 of the IPC is meant for abetment and to abet a particular person to commit an offence. But, if an act or offence is committed in consequence of the abetment or at the instigation or in pursuance of the conspiracy, then under such circumstances it constitute abetment. But as could be seen from the evidence of PW3, even though she has deposed that the accused No.1 came there and by holding her hand pulled her by saying that accused No.2 is having affection towards her and he is ready to confirm her employment and at that time accused No.3 instigated accused No.1 to have a sexual contact with accused No.2 and told PW.3 to go along with accused No.1. By going through the said evidence nowhere either directly or indirectly the evidence has been placed to show that accused No.2 abetted or instigated the accused Nos.1 and 3 by telling to commit any such offence or asking her about the sexual harassment. Prosecution has not placed any material to show that accused no.2 instructed or asked to get P.W.3 or any other direction. In the absence of

such evidence the conclusion of the trial Court and convicting the accused No.2 for the offence under Section 354 of IPC is not sustainable in law.

11. Be that as it may. If we peruse the evidence of PW.11 he has admitted that on 5.9.2009 accused No.2 also participated in the Janaspandhana programme. When he was not present at the place of incident and there is no evidence to show that at the instigation and abetment accused Nos.1 and 3 came there at the place where PW.3 was working in the kitchen and pulled her hands and abused by taking the name of the her caste. In the absence of evidence the conviction of the accused No.2 appears to be not justified and the same is liable to be set aside.

12. Insofar as the accused Nos.1 and 3 are concerned, there is a corroboration in the evidence of PWs.3, 6 to 9 and as such the conviction of accused No.1 is sustainable. So far as accused No.2 is concerned, there is no credible and trustworthy and reliable evidence so as to convict accused No.2, either under Section 354 or under Section 109 of IPC. In that light, accused No.2 is entitled to be acquitted. Though the learned counsel for the accused has brought to my notice some contradiction and omissions in the evidence of prosecution, but in the case of State of Punjab and Gurmith Singh and Others reported in (1996)3 SCC (Criminal) 316, it has been held that, minor contradiction or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out, if the evidence is otherwise reliable.

13. Keeping in view the ratio laid down in the above decision the evidence of PWs.3, 6 to 9 repose the confidence of this Court for having committed the offence by accused Nos.1 and 3 and as such the same is liable to be confirmed and so far as accused No.2 is concerned, the evidence creates a doubt about the presence of accused No.2 and also that calling the victim PW3 for sexual favour. Under such circumstances the said benefit go to accused No.2 and as such he is liable to be acquitted.

14. Keeping in view the above said facts and circumstances, I pass the following

ORDER

The appeal is partly allowed.

The judgment of conviction passed against accused No.1 has been confirmed and appeal is dismissed as against him and insofar as accused No.2 is concerned appeal is allowed and he is acquitted from the offences punishable under Section 354 r/w Section 34 of IPC.

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