

Shri Monappa Parava Vs. The State By

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Court : Karnataka

Decided On : Mar-26-2018

Judge : K.Somashekar

Appeal No. : CRL.A 2163/2017

Appellant : Shri Monappa Parava

Respondent : The State By

Judgement :

:

1. : R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE26H DAY OF MARCH, 2018 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL APPEAL No.2163 OF2017... APPELLANT BETWEEN SHRI. MONAPPA PARAVA, AGED ABOUT56YEARS, S/O KORAGA PARAVA, R/O PUNKEDABETTU, TIRTHOTTU KELAGINA MANE BARADI, KANTHAVARA VILLAGE, KARKALA, PIN - 574 104. (BY SRI. SURESH H.S., ADVOCATE) AND THE STATE BY CIRCLE INSPECTOR OF POLICE, KARKALA CIRCLE, UDUPI DISTRICT. PIN - 574 104. REPRESENTED BY ITS STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENGALURU - 560 001. (BY SRI. K. NAGESHWARAPPA, HCGP) ... RESPONDENT THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT

DATED 24.10.2017 PASSED BY PRINCIPAL SESSIONS :

2. : JUDGE, UDUPI DISTRICT, UDUPI IN S.C.No.16/2016 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 376(2)(f), 506 OF IPC. THE APPELLANT/ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR 10 YEARS AND SHALL BE LIABLE TO PAY A FINE OF RS. 10,000/- AND IN DEFAULT SHALL UNDERGO IMPRISONMENT FOR 6 MONTHS FOR THE OFFENCE PUNISHABLE UNDER SECTION 376(2)(f) OF IPC. THE APPELLANT/ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR 6 MONTHS FOR THE OFFENCE PUNISHABLE UNDER SECTION 506 OF IPC. BOTH THE SENTENCES SHALL RUN CONCURRENTLY. THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON 17.03.2018 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is directed against the impugned judgment of conviction and order of sentence dated 24.10.2017 passed by the Principal Sessions Judge, Udupi District, Udupi in S.C.No.16/2016 convicting the appellant/accused for the offences punishable under Section 376(2)(f) and 506 of IPC. The accused was sentenced to undergo imprisonment for a period of 10 years for the offence punishable under Section 376(2)(f) of IPC and to pay fine of Rs.10,000/- and in default shall undergo imprisonment for 6 months. He was further :

3. : sentenced to undergo imprisonment for 6 months for the offence punishable under Section 506 of IPC. The same has been challenged in this appeal by urging various grounds.

2. The brief facts of the case of the prosecution are as under: It is alleged in the case of the prosecution that on 11.6.2015, P.W.2 Kum. Jayashri had been to the house of the accused, situated at Baradi Punkedabettu, Thirthottu, Kelaginamane,

Kanthavara Village, Karkala Taluk. While she was sleeping, on that day, during midnight, accused who came to the place where, she was sleeping, closed her mouth and extended criminal intimidation stating that he would kill her if she raised hue and cry and he had sexual intercourse with her against her will. Due to the sexual activities of the accused with the victim, she became pregnant. On filing a complaint by the complainant before the Karkala Rural police, crime came to be registered in Cr.No.215/2015 and thereafter investigation was taken up by the Investigating Officer and he laid the charge :

4. : sheet against the accused for the offences punishable under Section 376(2)(f) and 506 of IPC. The charges for the above offences were framed, read over and explained to the accused, where he pleaded not guilty and claimed to be tried.

3. In order to substantiate the case against the accused, prosecution in all examined 16 witnesses as P.W.1 to 16 and 23 documents were marked as Exs.P1 to P23. Subsequent to the closure of evidence, the statement of the accused under Section 313 of Cr.P.C. was recorded wherein the accused denied all the incriminating materials found in the evidence of the prosecution witnesses. No evidence on the side of the defence was adduced.

4. Subsequently, the Trial Court heard the arguments advanced by the counsel for the accused and learned Public Prosecutor and held conviction against the accused for the offences charged against him. It is this judgment of the Trial Court which is called in question in the present appeal urging various grounds. :

5. :

5. Heard learned counsel for the appellant/accused and learned HCGP for the State. Perused the records.

6. Whereas the learned counsel for the appellant has taken through the evidence of PW.2 Jayashri who filed a complaint before the police as per Ex.P1 which bears her signature apart from that she has given statement under Section 164 of Cr.P.C. recorded by the jurisdictional Magistrate as at Ex.P2. He contends that Trial Court erred in convicting the appellant without properly analyzing the facts

and circumstances of the case even though the prosecution failed to establish that the appellant was responsible for the commission of the offences alleged against him. He further contends that during the course of trial in order to bring home the guilt of the accused, the prosecution examined several witnesses and got marked several documents and no material object was marked. The Trial Court has passed the impugned judgment without proper appreciation of the evidence on record relating to the allegations made :

6. : against the accused in Ex.P1. He contends that the prosecution has not placed any acceptable evidence against the accused to show that he had committed rape on the victim by extending life threat saying that if she discloses about the incident she would face dire consequence by killing her. He further contends that there is no believable direct evidence against the accused and the prosecution has not proved the case beyond reasonable doubt. Even the prosecution has failed to recover any incriminating articles at the instance of the accused. Despite of it, conviction has been held by the Trial Court which is unsustainable. There are no eye witnesses and even there is no circumstantial evidence to the incident placed by the prosecution. He further submits that it is purely a case of conjugal rape and accused never have had forcible sexual intercourse on victim as she herself voluntarily went to the house of accused and had sexual intercourse with the accused. On these grounds the learned counsel for the appellant/accused seeks intervention of this court and :

7. : prays for acquittal of the accused by setting aside the impugned judgment passed by the Trial Court.

7. On controvert to the arguments advanced by the learned counsel for the accused, learned HCGP has taken me through the evidence of important witnesses and also the documents on record. He supports the entire case of the prosecution and also the oral testimony with concerned articles. He submits that P.W.2, P.W.3, P.W.4 and P.W.5 have categorically stated about the incident and the manner of offence committed by the accused. Even the oral evidence of victim is corroborated by medical evidence, hence, the prosecution has proved its case beyond all reasonable doubt. He submits that the Trial Court has delivered well

considered judgment and therefore, it does not call for interference of this court. The appeal is devoid of merits and he prays to confirm the judgment of conviction and sentence passed by the Trial Court.

8. P.W.2 Kum.Jayashree is the victim in this case and she has deposed in her evidence that she was :

8. : residing with her father, step mother, brother and her new born baby by name Dhanyashree. Her father had three wives. P.W.2 is the daughter of second wife. According to P.W.2 her father and her step mother were in the habit of consuming alcohol everyday and whenever her father consumed alcohol, he used to beat her. On 11.6.2015, her father had consumed alcohol, beat her and evicted her from the house. Hence, she went to the house of her aunt - C.W.6 who is the wife of accused. There she had dinner and slept in the said house at deity room. The accused being the uncle of P.W.2 and husband of C.W.6 came near P.W.2 removed her chudidhar pant and his lungi and had sexual intercourse for about half an hour. Even though P.W.2 raised hue and cry, he closed her mouth and threatened her with dire consequences such as killing her. Despite of raising hue and cry, none of the inmates of the said house woke up. On the next day, P.W.2 narrated the fact to C.W.6 wherein she told her to inform the villagers and get advice from them. Thus, she went to her tailoring work. P.W.2 did not inform about the incident to her father and her step mother as they would beat her. P.W.2 :

9. : deposed that during August 15, again her father under intoxication beat her and evicted her from the house. From there she again went to the house of accused and C.W.6, as she did not had other relatives in her village. On that day, she had dinner in the house of C.W.6 and slept there. At about 12.30 midnight accused once again had forcible sexual intercourse without her consent. After June 2015, her menstruation cycle was stopped as she became pregnant. She did not reveal to her father and step mother about the size of her stomach. Later she revealed this fact to her father. After that police complaint was lodged as per Ex.P1. P.W.2 was taken to KMC Hospital, Manipal for medical examination, and later she gave her statement before the Magistrate under Section 164 of Cr.P.C. She also showed the scene of offence to the police where the incident took place

and spot mahazar as per Ex.P3 was drawn. On 11.3.2016 she gave birth to a female child in the house of P.W.3.

9. P.W.3 Vittal Parava is the father of P.W.2, P.W.4 Shekar Parava is the son of P.W.3s sister and :

10. : P.W.5 Vinaya is the younger brother of P.W.2. In their evidence, they have deposed that P.W.3 was in the habit of consuming alcohol everyday and whenever, he consumed alcohol, he used to beat P.W.2, P.W.3, his wife. On enquiry, P.W.2 told them the entire incident that had took place.

10. P.W.6 Dr.Anitha, Assistant Professor, Department of Forensic Medicine, KMC., Manipal has deposed in her evidence that on 23.12.2015 she examined P.W.2 Kum. Jayashree who was brought with the history of sexual assault and she noted certain identification marks mentioned in the judgment of Trial Court. P.W.6 deposed that P.W.2 Jayashree narrated her that in the month of June 2015, she visited her aunt Yashoda, who is her stepmothers younger sister and on the same night, she was sexually assaulted by her uncle Monappa, the accused and during August 15, she had once again visited the house where accused had sexual intercourse with her against her wish and without her consent. On conducting general physical examination she found signs i.e., hymen :

11. : tear and pregnancy suggestive of vaginal penetrative intercourse.

11. P.W.12 Dr.Anantha Kamath, Senior Specialist, Government Hospital, Karkala in his evidence has deposed that P.W.11 the IO had requested him to draw blood of accused, victim and female baby before the Karkala Court. Accordingly, he drew blood sample of victim, the baby and accused for the purpose of DNA test.

12. P.W.16 Malathi, the Scientific Officer, DNA centre, FSL, Bangalore in her evidence has deposed that the sample blood sent in item Nos.1 to 3 were taken up for DNA profile examination to establish the parental (parental and maternal) identification of the individual with the female baby of Kum.Jayashree. She deposed that the alleles in the DNA profile of accused Monappa Parava and P.W.2 Kum.Jayashree sample blood sent in item Nos.1 and 2 respectively was

matching with that of the alleles in the DNA profile of female baby sample blood sent in item no.3 under short tandem repeats loci. P.W.16 had come to the conclusion that from the DNA profile results :

12. : of the blood samples sent in item Nos.1 to 3, it was found that the alleles in DNA profile of female baby sample blood sent in item No.3 is consistent with having come from the offsprings of Monappa Parava S/o late Koraga Parava and Kum.Jayashree D/o Vittala Parava and matching with the DNA profile of the sample blood sent in item Nos. 1 and 2 respectively. She opined that the accused Monappa Parava and P.W.2 Kum.Jayashree sample blood sent in item Nos.1 and 2 respectively are included from being the biological parents and source of DNA of the female baby sample blood as per item No.3. Ex.P22 is the report submitted by P.W.16.

13. In the present case, the prosecution has placed reliance on the evidence of P.W.2 Jayashree being the victim. P.W.3 being her father used to consume alcohol everyday and was beating her. On 11.6.2015, P.W.3 under intoxication beat her and evicted from the house. Hence, without there being no other relatives, she went to the house of her aunt C.W.6 who is the wife of accused and had dinner. When she was sleeping in the deity room, :

13. : accused had sexual intercourse for about half an hour without her consent. Even though she raised hue and cry, none of the inmates of the said house woke up. The said incident was narrated to C.W.6 who told her to take advice from villagers. The incident was not informed to P.W.3 father of P.W.2. During August 15, P.W.3 under intoxication beat her and evicted her from the house. Again P.W.2 came to the house of C.W.6 as she had no other relatives in the village. At about 12.30 midnight the accused once again had sexual intercourse without her consent as a result of which she became pregnant. P.W.3 Vittala Parava, who is the father of P.W.2, P.W.4 Shekar Parava, son of P.W.3s sister and P.W.5 Vinaya, the younger brother of P.W.2 have supported the case of the prosecution. They have deposed that on 11.6.2015 P.W.2 Kum.Jayashree had been to the house of accused, she had stayed and slept in his house and on that day, during midnight accused came to the place where P.W.2 was sleeping, closed her mouth and

under life threat, had sexual intercourse with her against her wish and consent, accused being a relative, guardian in a position of trust :

14. : has committed the heinous offence of rape. Even though P.W.2 raised hue and cry, the accused by extending life threat of killing her, had sexual intercourse with her. As a result of which, her menstruation cycle was stopped and she became pregnant and gave birth to a female child.

14. The medical evidence of P.W.6 Doctor who has opined that there are signs suggestive of vaginal penetrative intercourse and there is no medical evidence suggestive of application of force or restraint at the time of examination. Hence, as rightly held by the court below, the medical report as well as oral testimony of P.W.6 transpires that it is a case of rape. The DNA report as per Ex.P22 clearly reveals that the DNA profile results of the blood samples sent in item Nos. 1 to 3 found that alleles in DNA profile of female baby sample blood sent in item No.3 is consistent with having come from the offsprings of Monappa Parava, s/o late Koraga Parava and Kum.Jayashree and was matching with the DNA profile of the sample blood sent in item Nos. 1 and 2 respectively. Hence, as per the opinion of PW.16 Scientific Officer :

15. : sample blood sent in item Nos. 1 and 2 are included from being the biological parents and the source of DNA of the female baby sample blood sent in item No.3. Hence, the Trial Court was right in holding that the prosecution had proved that on the aforesaid date, time and place, the accused had forcible sexual intercourse against the wish of P.W.2- Jayashree without her consent. As the accused had not placed any rebuttal evidence, the court below was right in concluding that the accused had committed rape.

15. The evidence of P.W.2 Kum.Jayashree corroborates with the medical evidence of Scientific Officer. Her specific statement is that she had been to the house of accused on trust, where the accused had forcible sexual intercourse with her. As observed by the Trial Court, the accused has failed to prove that when he admitted and subjected P.W.2 to sexual intercourse and asserted that it was with her consent, the burden had shifted upon him to prove that sexual intercourse was with her consent. :

16. :

16. The version of the learned counsel for the appellant accused that there are no grounds to believe that the accused had committed rape on P.W.2 victim who was aged about 20 years and his age being 59 years holds no water. But as according to the Medical Officer, who conducted the medical examination of accused on 23.12.2015 has given opinion that accused was physically fit and capable for having intercourse.

17. While giving finding on the contention of the accused that only with the consent of P.W.2 she was subjected to sexual intercourse and he had not committed any offence of rape, the Trial Court had relied on Ex.P.15 medical report and also referred to some of the reported judgments of Honble Supreme Court and this court in (i)State of H.P. Vs. Mange Ram, AIR 2000 SC2798(ii) Uday Vs. State of Karnataka, AIR 2003 SC1639 (iii)Pradeep Kumar Verma Vs. State of Bihar and another AIR 2007 SC3059and applying the said preposition of law and keeping in view the facts and circumstances of the case, held that the prosecution has proved the guilt of accused beyond :

17. : reasonable doubt and that accused had forcible sexual intercourse on P.W.2 which resulted in P.W.2 delivering a female baby. P.W.2 has specifically given a statement under Section 164 of Cr.P.C. before the Magistrate that the accused had forcible sexual intercourse with her. In this regard, the evidence of P.Ws. 2 to 5 supports the case of the prosecution and their oral testimony is also supported by other surrounding circumstances.

18. In the instant case, the evidence of P.W.2 - Kum.Jayashree has found in support of medical evidence of P.W.6 relating to the case of rape on the victim and also DNA profile and the report issued by P.W.16 - Scientific Officer. It is also specifically stated by the victim that the accused had forcible sexual intercourse against her will when she had been to house of C.W.6 being the wife of accused as her father Vittal Parava had beaten her under intoxication. While she was sleeping near the deity room, in the midnight the accused came near her and had forcible sexual intercourse and also extended life threat if she disclose this activity to anybody. :

18. :

19. There is no dispute that P.W.2 had given birth to a female child as a result of forcible sexual intercourse by Monappa Parava the accused. If at all P.W.2 were not subjected to the alleged rape, she would not have filed complaint against the accused. The Trial Court has rightly appreciated the evidence on record and rightly come to the conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt. It has referred to the reported judgments of Honble Supreme Court in State of Uttar Pradesh Vs. Krishna Gopal, AIR 1988 SC2154 State of M.P. vs. Dharkole alias Govind Singh and others 2004(13) SCC308 and Shivajirao Bhobade vs. State of Maharashtra AIR 1973 SC2622 wherein the statutory presumption under Section 114-A of Evidence Act had played a vital role.

20. Accordingly, on appreciation of case of the prosecution and evidence on record, the Trial Court has rightly convicted the accused who had forcible sexual intercourse with P.W.2 victim, when she had been to his house on a trust. I find no illegality or perversity in the :

19. : findings given by the Trial Court. The prosecution has proved the guilt of the accused beyond all reasonable doubt. The appeal filed by the accused does not hold any merits for interference of this court as there is no misdirect or misread by the Trial Court in convicting the accused. It is relevant to state that the offence committed by the accused is heinous and he deserves for conviction.

21. For the above reasons, I find that there is no perversity or infirmity in the judgment rendered by the Trial Court. Hence, I am of the opinion that there is no necessity to revisit the impugned judgment. As the appeal is devoid of merits, the same is dismissed. As a consequence, the judgment of conviction and sentence dated 24.10.2017 passed by the Prl. Sessions Judge, Udupi District, Udupi in S.C.No.16/2016 convicting the appellant/accused for the offence punishable under Section 376(2)(f) and 506 of IPC, is hereby confirmed. Sd/- JUDGE Dkb/-