

The State Of Karnataka Vs. Murali

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Court : Karnataka

Decided On : Nov-09-2022

Judge : K.Somashekar and C M Joshi

Appeal No. : CRL.A 1371/2017

Appellant : The State Of Karnataka

Respondent : Murali

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE9H DAY OF NOVEMBER, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE C.M.JOSHI CRIMINAL APPEAL No.1371 OF 2017 BETWEEN: The State of Karnataka By New Town P.S Bhadravathi, Rep. by State Public Prosecutor High Court Building Bengaluru - 01. ...Appellant (By Sri. Abhijit K.S.-. HCGP) AND:

1. Murali S/o. B.V. Raju Now aged about 26 years Plumber, R/o 4th Cross Hosa Siddapura Bhadravathi Taluk Shivamogga - 577301.

2. Siddaraju S/o. Ramegowda Major R/at 8th Cross 2 Bhdaravathi Shivamogga District. ...Respondents (By Sri. Umesh P.B. - Advocate for Sri. R.B. Deshpande - Advocate for R-1; R-2 served and unrepresented) This Criminal Appeal filed under Sec.378(1) and (3) of Criminal Procedure Code, by the Advocate for the appellant

praying to a) Grant leave to appeal against the judgment and order dated 02.03.2017 passed by the court of I-Addl. District and Sessions Judge, Shivamogga acquitting the respondent/accused for the offence punishable under Sections 366, 342, 506 of IPC r/w Section 5(1) punishable under Section 6 of POCSO Act 2012; b) set aside judgment and order dated 02.03.2017 passed by the court of I-Addl. District and Sessions Judge, Shivamogga acquitting the respondent/accused for the offence punishable under Sections 366, 342, 506 of IPC r/w Section 5(1) punishable under Section 6 of POCSO Act 2012; c) convict and sentence the respondent/accused for the offences punishable under 366, 342, 506 of IPC r/w Section 5(1) punishable under Section 6 of POCSO Act, 2012. 3 This criminal appeal coming on for dictating judgment this day, K Somashekar .J., delivered the following:

JUDGMENT

In this appeal the appellant/State is challenging the judgment of acquittal rendered by the trial Court in S.C.No.86/2015 dated 02.03.2017 acquitting the accused for the offences punishable under Sections 366, 342, 506 of IPC and Section 5(1) punishable under Section 6 of the POCSO Act, 2012. In this appeal seeking to set-aside the judgment of acquittal by considering the grounds urged in this appeal and convict the accused for the offences which were leveled against him.

2. Heard learned HCGP for State and learned counsel for respondent No.1 / accused namely Sri Umesh P.B. Though notice has been served against respondent No.2 - Siddaraju, but remained absent. Perused the judgment of acquittal in S.C.No.36/2015. 4

3. The factual matrix of the appeal is as under: It is transpired in the case of the prosecution that accused is the neighbour in the locality where the complainant was also residing with her parents. He had fallen in love with the complainant and making her to believe that he would marry her, took her to his house and had physical contact with the victim when his parents were in the house. Despite of refusal, he had physical contact so many times by taking her to his house. The complainant/victim was under depression when the accused went back to Bangalore. Therefore, her parents took her to children help line. Before the

officials of children help line, she had stated about the lover affairs and physical contact in between her and the accused.

4. It is further transpired in the case of the prosecution that based upon her statement before the lifeline, the police registered the case in Crime 5 No.35/2015 on 01.03.2015. On receipt of the complaint, the police recorded FIR and accused was apprehended and thereafter remanded to judicial custody. The accused and complainant had undergone medical examination in connection with the physical contact. The police secured all the required documents and laid the charge sheet before the Court having jurisdiction to proceed in further, in accordance with law. Subsequent to laying of charge sheet by the IO, accused was secured and after furnishing the copies of charge sheeted materials, the accused was put on trial and heard on charges on both sides. The charges were read over to the accused in the language known to him. But the accused did not pleaded guilty but claimed to be tried. Accordingly, the plea of accused was recorded separately.

5. Subsequent to closure of evidence on the part of the prosecution whereby examined the accused as required under Section 313 of Cr.P.C. for enabling him to record the incriminating statement appeared against him whereby the accused declined all the incriminating evidence let in against him by the prosecution. Accordingly, it was recorded. But the accused did not come forward to adduce any defence evidence as contemplated under Section 233 Cr.P.C. However, the accused was not inclined to lead any defence evidence, but got marked documents as per Ex.D1 to D5. Accordingly it was recorded.

6. Subsequent to completion of process relating to the evidence let in on both side whereby the trial Court heard the arguments advanced by the Public Prosecutor and so also, the defense counsel. The trial Court by dwelling into the evidence of PWs.1 and 2 who are the neighbourers, but these witnesses did not supported the case of the prosecution and they specifically stated that they do not know what transpired in between accused and the victim and they did not give any statement relating to the affairs in between the accused and the 7 victim. PWs.3 and 4 are the mahazar witnesses in respect of Ex.P3 - spot mahazar which was conducted by the IO in the presence of the panch witnesses. They have identified the

signature, but submitted that they do not know who have shown the spot and for what purpose mahazar has been drawn. Hence, they were treated as hostile.

7. PW.5 being the Doctor who was subjected to examination had stated that there were no injuries on the body of the victim and she has given the opinion after receipt of the FSL report which was marked as Ex.P5. PW.6 is the Doctor who had given Ex.P6 in respect of sexual potentiality of the accused. PW.7 is the retired Principal who had issued 7th and 8th standard study certificate relating to the age of the victim. PW.8 is the revenue official who had issued Ex.P11 so as to the extract of the scene of crime. PW.9 is the victim who had stated that herself and accused were residents of same locality and they were having 8 love affairs. That on 29.1.2015 and 28.2.2015 when she was alone in her house, accused had physical contact with her. Thereafter she was under depression and her parents took her to the hospital. She has also stated about drawing of mahazar and also giving statement before the judicial Magistrate. These are all the evidence let in by the prosecution inclusive of evidence of PW.10 who is none other than the father of complainant and he admits the love affairs in between accused and the victim. That on 27.01.2015, he came to know that his daughter was trying to commit suicide, therefore, he called to the help line and she was kept in Surabhi Centre for 1 years, but he does not know for what reason victim had tried to commit suicide by consuming poison.

8. PW.11 being the PSI recorded the FIR as per Ex.P16 whereby criminal law was set into motion relating to the offences. But thereafter PW.12 being the IO who took up the case for investigation and recorded 9 the statement of witnesses and also drew the mahazar in the presence of panch witnesses and on completion of requirement as under Section 173(2) of Cr.P.C. laid the charge sheet against the accused. Even falling on line as the IO has been subjected to examination in the case of prosecution, but in his evidence he has stated that the accused was enquired and sent to the medical examination and then produced before the Court. He drew the mahazar, recorded the statements of witnesses and sent the items collected by the Doctor and secured the documents as to the age and spot of the incident. After completion of investigation, charge sheet came to be laid against the accused. Despite of all these evidence let in by the prosecution and more so,

the trial Court by considering the evidence arrived at the conclusion that the prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubt. It was further observed that the evidence of PWs.9 and 10 is not in conformity and the witness 10 examined PWs.1 to 4 have turned hostile. Even though the Doctor has stated about rupture of hymen, but it cannot be attributed directly to the sexual intercourse and so also, it cannot be directly attributed to the accused without clinching evidence. The evidence of PWs.6 and 7 would be formal evidence as to the sexual capacity of the accused and the date of birth of the victim as per records. It was further observed that there was no material to prove the offence under Section 5(1) punishable under Section 6 of the POCSO Act, 2012 by the accused. Consequently, the trial Court rendered the impugned judgment acquitting the accused for the offences which were leveled against him. It is this judgment which has been challenged under this appeal by urging various grounds.

9. It is contended by learned HCGP for State by referring to the evidence of PW.9 based upon her complaint as per Ex.P12 the criminal law was set into motion by registering the case in Crime No.35/2015. 11 Subsequently, the investigation was completed by the IO and charge sheet was laid against the accused relating to the offences under the Indian Penal Code, 1860 and so also, for the offences under the special enactment of POCSO Act. The prosecution has let in the evidence of PWs.1 to 12 and even got marked several documents as per Exs.P1 to P19. On the defense side, Exs.D1 to D5 were got marked. But the trial Court has given more credentiality to the evidence of PW.9 being the victim and she has stated in her evidence relating to falling in love by herself and accused whereby accused had promised her that he would marry her and by saying so, he had developed some physical contact and had sexual intercourse. Further she had stated that accused had taken her to his house and committed forcible sexual intercourse with her. Further, PW.9 victim has categorically denied in her cross-examination that no such incident of forcible sexual intercourse had taken place. It is further 12 contended that the trial Court has failed to appreciate the evidence of PW.9 victim and also the documentary evidence such as Ex.P4 - medical certificate issued by PW.5 and also Ex.P7 to P10 with regard to the school admission record of victim issued by PW.7. The non- appreciation of the oral and documentary evidence in

the proper perspective has resulted in miscarriage of justice.

10. The second limb of the arguments advanced by learned HCGP is that PW.5 the medical officer who examined the victim has given certificate as per Ex.P4 and stated that at the time of examination, he noticed that the hymen was ruptured. The said medical evidence corroborates with the evidence of PW.9. Further, PW.7 is the Principal of the Government University College who has issued admission extract, the date of birth certificate as per Ex.P7 to P10. As per the said documents, the date of birth of victim is 02.12.1998 and as on the date of incident, the victim 13 was a minor aged about 17 years. Hence, the consent if any, given by the victim is no consent in the eye of law. The court below was not proper in disbelieving the evidence of PW.9 by pointing out minor discrepancies and also inconsistencies in the case which do not go to the root of the prosecution case. Further, the Court below erred in placing reliance on the letters at Exs.D1 to D5 and acquitted the accused on the basis of the said letters. There is no specific evidence even on the cross- examination and incisive cross-examination has been done in respect of accused committing sexual intercourse on the victim who is a minor. The trial Court has erroneously come to the conclusion by accepting the contentions put forth by the defence that there must be a birth certificate and school certificate cannot be a basis to hold that the victim is aged less than 18 years. These are all the arguments advanced by the learned HCGP to contend that the reasons assigned by the trial Court is not at all acceptable. 14 Therefore, it requires revisiting of the impugned judgment rendered by the trial Court and so also, re- appreciation of evidence of material witnesses, if not, certainly the complainant being the gravamen of incident would be the sufferer and it would result in miscarriage of justice.

11. On the contrary to the contentions made by learned HCGP for State, learned counsel Sri P.B.Umesh contends that even though PWs.1 to 4 have been subjected to examination thoroughly in respect of Ex.P3 - spot mahazar whereby subscribed signature as per Ex.P3(a) and P3(b) but these witnesses did not withstood to their statements and also given evidence contra to the contents made in Ex.P3 - Spot mahazar which conducted by the IO in the presence of panch witnesses. More so, their evidence is contrary to the evidence of PW.5 -

Dr.Bhargavi and PW.9 - victim. Though the victim has fallen in love with accused which turned into physical contact in between them and even 15 allegations of sexual intercourse upon PW.9 being minor, the same could be seen in her evidence. But her evidence does not corroborate with the evidence of other independent witnesses. Therefore, the trial Court has rightly come to the conclusion that the prosecution did not facilitate the worthwhile evidence relating to prove the guilt of the offences relating to abduction, wrongful confinement and so also, extending life threat and also took her to his house for having sexual intercourse by making her believe that he would marry her. Mere because of these allegations made in the complaint and in the FIR, but the ingredients of the offences must be established by the prosecution. It is the domain vested with the prosecution and the prosecution alone has to prove the guilt of the accused by facilitating the worthwhile evidence. In the criminal justice delivery system, when doubt arises in the case of the prosecution, the benefit of such doubt should be given to the accused alone and not to the prosecution. 16

12. Learned counsel for respondent - accused has also taken us through the evidence of PWs.3 and 4 relating to the mahazar and these witnesses have given a goby to their version and also the fulcrum of the mahazar. PW.10 being the father of the victim has stated in his evidence that he came to know about the physical contact by the victim only after reporting to the help line. Further, he has stated that he could not make out why his daughter tried to commit suicide by taking poison. He has given entirely different version in the cross examination and he has admitted that his daughter was in love affair with the accused and she wanted to marry him. When she was in Surabhi Centre she insisted to marry accused only. These are all the evidence which finds place in the record on the part of the prosecution even dwelling into detail examination- in-chief and also cross-examination inclusive of the cursory glance of evidence of PWs.9 and 10 who are the material witnesses and also principal witnesses relating 17 to the allegations made against the accused. But their evidence is inconsistent to each other and there is no corroboration to the allegation made in the charge sheet. But PWs.1 to 4 have given complete goby to their version. Though the Doctor has stated about the rupture of hymen, but it cannot be attributed strictly on the victim and directed that attribution to the accused without any clinching evidence. The

evidence of PWs.6 and 7 appears to be formal in nature. The evidence of PW.9 does not corroborate with the evidence of any independent witnesses inclusive of her own father - PW.10. But PW.11 being the IO in part who recorded the FIR - Ex.P16 and PW.12 being the IO who secured the documents and laid the charge sheet against the accused and even stood for cross-examination. But his evidence has not been fortified with any other independent evidence. Accordingly, the defence counsel vehemently addressed his arguments and the same has been considered by the trial Court in a proper perspective by rendering the acquittal judgment and there is no perversity, absurdity or any illegality seeking intervention and also seeking re-appreciation of evidence and revisiting of the impugned judgment does not arise. But the trial Court has rightly come to the conclusion and rendered the acquittal judgment. Therefore, in this appeal it does not have any bone of contention and seeking dismissal of the appeal being devoid of merits. In support of his contentions, the learned counsel has placed reliance on the following decisions: State of Karnataka vs. Somashekar @ Pintya 2022 (2) Kar.L.R.420 (DB) Whereas in this reliance under special enactment of POCSO, 2012 - Sections 5(1) and 6 - appeal against acquittal - age proof of victim - in the absence of a date of birth certificate, merely relying upon the school certificate, it is not safe to say that the victim was below 18 years. Evidence of the doctor does not play a vital role as he can certify that the accused had been 19 medically normal to indulge in a sexual act. It is a well - settled principle of law that the reliance can be placed on the statement of a witness if the court concludes that the statement is found to be the true and also correct version of the case of the prosecution witness. The issues has been extensively addressed in paras 17 and 18 of the judgment. State of Mahdya Pradesh v. Munna @ Shambhoo nath - (2016) 1 SCC696Section 375 sixthly - rape - evidence establishing sexual intercourse to be consensual - age of prosecutrix - not proved beyond reasonable doubt to be less than 16 years of age at the time of incident - Therefore, High Court was right in holding that prosecutrix was more than 16 yrs of age and was competent to give her consent - hence, held, question of rape does not arise, as consensual intercourse was proved - Therefore, acquittal of respondent - accused under Section 376 by High Court stands confirmed. 20 By placing reliances on the aforesaid decisions, counsel for respondent - accused seeks for dismissal of the

appeal by the State being devoid of merits.

13. It is in this context of the contentions made by learned HCGP for State based upon the evidence of PWs.5, 7 and 9, but PW.9 being the victim had fell in love with the accused and they were residing in the same locality. But due to the love affairs the same turned into physical contact in between them. The accused made her to believe that he would marry her and made physical contact with her even though she was minor aged 17 years. In spite of refusal, he had physical contact many times by taking her to his house. When the accused was back to Bangalore, the victim was under depression, therefore, her parents took her to children help line before whom she stated about the affairs between her and accused and so also, the physical contact. Based upon her statement criminal 21 law was set into motion by recording the FIR in Cr.No.35/2015 on 01.03.2015 for the offences under Sections 366, 342, 506 of IPC and so also, under the special enactment of POCSO Act. But Section 5 is the definition Section which is punishable under Section 6 of the Act relating to aggravated sexual assault on the victim. Even though these are all the offences which lugged against the accused and more so, the IO has laid the charge sheet against the accused by drawing the mahazar in the presence of PWs.1 to 4. But these witnesses have turned around to the fulcrum of the spot mahazar at Ex.P3. But their evidence has been contrary to the evidence of PW.9 being the victim and further contradictory to the evidence of PW.10 being father of victim. PW.10 has specifically stated in his evidence about the love affairs in between the accused and victim. In the cross - examination he has stated that victim was stubborn to marry accused only and in spite of the advice she did not given up the accused. As per 22 his evidence, victim tried to consume poison and committed suicide. For that reason victim was taken to help line. Even it appears from the evidence of PW.10 that she admits that she had quarreled with the parents that she would marry accused only and did not heed to the advice of parents and she was taken to help line and then to Surabhi Kendra and she was there for 1 years. It was agreed that after completion of 18 years, marriage was to be performed, but the parents of PW.9 were not ready to give her in marriage and she had forced her parents and they agreed for the marriage. This shows that the victim had love affairs with the accused. Further there is no specific evidence on the part of the prosecution that accused had forcible physical contact

with the victim. But PWs.10 and 11 are the prime witnesses and material witnesses on the part of the prosecution. On close scrutiny of their evidence, it indicates there are some discrepancies, inconsistencies and there is no conformity with the allegations made in 23 complaint. Even the substance of spot mahazar at Ex.P13 which was conducted by PW.11 being the IO in part but PW.12 who laid the charge sheet against the accused but their evidence are contrary to the evidence of PW.6 relating to the medical opinion report and so also, Ex.P7 - study certificate and P8 - birth register extract. Ex.P10 is the copy of the admission extract. Exs.D1 to D5 are the letters which bears the signatures of PW.9. Even though the prosecution subjected to examination of several material witnesses relating to spot mahazars at Ex.P3 and P13 which conducted by the IO in the presence of PW.9, but the fulcrum of contents of the mahazars has not been proved by the prosecution.

14. Whereas Section 506 of IPC relating to criminal intimidation extended which was committed by accused extending threat to the victim and the same should be established by the prosecution and it is the domain vested with the prosecution alone. The intent 24 mentioned was to cause alarm and the accused was clearly guilty of the criminal intimidation and even securing the conviction. But it is the domain vested with the prosecution to establish the guilt against the accused for the aforesaid offences relating to criminal intimidation by facilitating worthwhile evidence and also acceptable evidence. But in the instant case, no evidence on the part prosecution has been coming forth to appreciate and also rendering conviction, but the trial Court had appreciated the evidence relating to abduction, wrongful confinement and criminal intimidation and even the aggravated sexual intercourse against the victim as per the provisions of the special enactment of POCSO. But no ingredients relating to all these offences have been established by the prosecution even though subjected to examination and PW.9 victim and PW.10 being her father but their evidence on the part of the prosecution runs contrary to each other and contradictory to the evidence of PWs.11 and 12. PW.12 25 being the IO laid the charge sheet against the accused persons by recording the statement of witnesses and so also securing the material documents relating to the age of the victim girl and that documents were secured from the school authorities. Even though those documents have been secured but the prosecution

has miserably failed to establish the guilt against accused beyond all reasonable doubt.

15. Insofar as Section 342 of IPC relating to wrongful confinement, PW.9 in her evidence has stated that accused used to take her to his house and so also, he used to visit the house of the complainant, when there were nobody at the house. If these allegations are true, certainly she would have reported to the parents. The ingredients required under Section 342 or as to the conformity of the victim to certain place, if that is so, the victim would have informed the same and would have filed complaint, but no such report is made by the victim. If at all the victim were to be confined to certain 26 place, the parents would have filed the complaint. PW.10 has not stated anything about keeping the victim under conformity by the accused and also stated about the love affair between accused and victim. In the evidence of PW.10 also there is no material so as to the confinement of the victim to any particular place. Unless there is evidence facilitated by the prosecution it cannot be arrived at the conclusion that the prosecution has proved the guilt against the accused for securing conviction.

16. Under Section 3 of the Evidence Act, it is the domain vested with the trial Court relating to appreciation of evidence and it is based upon the evidence facilitated by the prosecution. But in this appeal, the State has urged various grounds, keeping in view the evidence of PWs.9 and 10 and so also, PWs.5 and 7 inclusive of evidence of PW.12. But Section 378 of Cr.P.C. deals with appeal against the acquittal. While dealing with an appeal against acquittal by invoking 27 Section 378 of the Cr.P.C, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. This issue has been extensively addressed by the Honble Supreme Court in the case of Ravi Sharma v. State (Government of NCT of Delhi) and

another, (2022 Livelaw (SC) 615).

17. Further in the case of Babu vs. State of Kerala (2010)9 SCC189it is held that criminal Law- Appeal against acquittal-Powers of appellate court-held- 28 Appellate court in dealing with the cases in which the trial courts have acquitted the accused/should bear in mind that trial courts acquittal bolster the presumption that he is innocent - Appellate court must give due weight and consideration to the decision of trial court as the trial court had distinct advantage of watching the demeanour of witnesses and was in a better position to evaluate the credibility of witnesses.

18. But in the given facts and circumstances of the case whereby the State has preferred an appeal by challenging the acquittal judgment and seeking intervention by re-appreciation of evidence and so also, revisiting of the impugned judgment of acquittal rendered by the trial Court. In this regard, it is relevant to refer the judgment rendered by the Honble Supreme Court in Lalit Kumar Sharma And Ors. vs Superintendent And Remembrancer reported in AIR 1989 SC2134it is held that it is now well settled that the power of an appellate Court to review evidence in 29 appeals against acquittal is as extensive as its powers in appeals against convictions, but that power is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so. Therefore, keeping in view the ratio of aforesaid reliance and so also, keeping in view the evidence of PWs.5 and 7 and inclusive of PWs.9 and 10, we are of the opinion that the trial Court had appreciated the evidence in proper perspective and also assigned justifiable and sound reasons in rendering the acquittal judgment. There is no perversity, absurdity or illegality to interfere with the impugned judgment of acquittal rendered by the trial Court. Therefore, in view of the aforesaid reasons and findings, we are of the considered opinion that the appeal preferred by the State deserves to be rejected being devoid of merits. Accordingly, we proceed to pass the following:

30.

ORDER

The appeal preferred by the appellant / State under Section 378(1) and (3) of Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the trial Court in S.C.No.86/2015 dated 02.03.2017 is hereby confirmed. Sd/-
JUDGE Sd/- JUDGE DKB

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