

Pradeep vs the State of Karnataka

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Court : Karnataka

Decided On : Apr-22-2025

Judge : S Rachaiah

Appeal No. : CRL.RP/1084/2017

Appellant : Pradeep

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2025 BEFORE THE HON'BLE MR JUSTICE S RACHAIAH CRIMINAL REVISION PETITION NO. 1084 OF 2017 BETWEEN: PRADEEP S/O HANUMANTHAPPA, AGED ABOUT 32 YEARS, PHYSICALLY HANDICAPPED PERSON, R/A KONDAPURA VILLAGE, HOSADURGA TALUK, CHITRADURGA DISTRICT - 577527 PETITIONER (BY SRI. N. D.MANJUNATH, ADVOCATE) AND: THE STATE OF KARNATAKA, BY HOSADURGA P. S, HOSADURGA TALUK, CHITRADURGA DISTRICT-577527, (REPRESENTED BY HIGH COURT OF KARNATAKA, SPP, BENGALURU - 01) RESPONDENT (BY SRI K. NAGESHWARAPPA,

HCGP)

Digitally signed by RENUKA THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C
PRAYING TO Location: HIGH COURT OF SET ASIDE THE ORDER DATED
09.10.2017 PASSED BY THE IST KARNATAKA ADDITIONAL DISTRICT AND
SESSIONS JUDGE, CHITRADURGA IN

CRL.A.NO.18/2017 AND ORER AND CONVICTION DATED 27.02.2017
PASSED BY THE PRINCIPAL CIVIL JUDGE, AT HOSADURGA IN
C.C.NO.472/2015. THIS CRIMINAL REVISION PETITION HAVING
BEEN HEARD AND RESERVED ON 21.02.2025 COMING ON FOR
PRONOUNCEMENT OF ORDER, THROUGH VIDEO
CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:
CORAM: HON'BLE MR JUSTICE S RACHAIAH -2-

CAV ORDER

1. This Criminal Revision Petition is filed by the

accused/petitioner, being aggrieved by the judgment of conviction and
order on sentence dated 27.02.2017 in C.C.No.472/2015 on the file of
the Prl. Civil Judge and JMFC, Hosadurga and its confirmation judgment
and order dated 09.10.2017 in Crl.A.No.18/2017 on the file of the Court
of the I Addl. District and Sessions Judge, Chitradurga, seeking to set
aside the concurrent findings recorded by the Courts below, wherein the
accused / petitioner was convicted for the offences punishable under
Sections 354-A and 326 of IPC.

2. The rank of the parties in the Trial Court will be considered henceforth for
convenience. The factual matrix of the case:

3. It is the case of the prosecution that the accused is stated

to have attacked the complainant in order to outrage her modesty when she was
going to her land alone. The complainant somehow managed to escape from the

clutches of the accused and tried to run away from the -3-

spot. However, in the meantime, the accused took the machete from the inside of his shirt and assaulted the complainant on the back side of the head, consequently, she sustained injuries. Immediately, she was taken to the hospital for treatment at Hosadurga. While she was taking treatment, the respondent-police are said to have recorded her statement as per Ex.P1. After registering the case, the respondent police have conducted investigation and submitted the charge sheet against the accused for the offences stated supra.

4. To prove the case, the prosecution examined 8 witnesses

as P.Ws.1 to 8 and got marked 6 documents as Ex.P1 to P6 and identified a machete as M.O.1. The Trial Court after appreciating the oral and documentary evidence on record, recorded the conviction for the aforesaid offences. Being aggrieved by the same, the accused approached the Appellate Court. The Appellate Court dismissed the appeal by confirming the judgment of conviction passed by the Trial Court. Hence, this Revision Petition. -4-

5. Heard Sri. N.D. Manjunath, learned counsel for the petitioner/accused and Sri. K. Nageshwarappa, learned High Court Government Pleader for the respondent.

6. It is the submission of learned counsel for the accused that the concurrent findings of the Courts below are not proper and contrary to the evidence on record. Therefore, the same is liable to be set aside.

7. It is further submitted that the Courts below have

completely erred in believing the evidence of the complainant by discarding the evidence of the accused which is erroneous. Therefore, the findings of the Courts below are required to be set aside.

8. It is further submitted that even though the ingredients of

Section 354-A is not attracted, the Courts below recorded the conviction based on the evidence of the victim alone. The said conviction cannot be sustained for the reason that the victim is not a reliable witness.

9. As regards, Section 326 of IPC is concerned, the production of X-ray is sine-qua-non. In the absence of production of the X-ray, it cannot be said that the -5-

ingredients of Section 326 of IPC would be attracted. Both the Courts have committed error in recording the conviction. Therefore, the said conviction is liable to be set aside. Making such submissions, the learned counsel for the accused prays to allow the petition.

10. Per contra, the learned High Court Government Pleader

for the respondent justified the concurrent findings and further, he submitted that the prosecution has examined eight witnesses, out of which, there are some eye witnesses to the incident. As per their version, the accused has assaulted the victim on the backside of the head with machete as she could not co-operate for his sexual activities. Therefore, the said offences are made out against the accused. Hence, the findings of the Courts below in recording the conviction is proper and relevant. Interference with the said findings may not be necessary. As such, he prays to dismiss the petition.

11. After having heard learned counsel for the respective parties and also perused the findings of the Courts below in recording the conviction, it is relevant to refer the -6- evidence of victim for the purpose of arriving at a

conclusion as to whether the Trial Court and the Appellate

Court have appreciated the evidence of witnesses and gave its findings properly or not in recording the conviction.

12. P.W.1 deposed in her evidence that on 11.12.2014 at

about 1.30 p.m., when she reached the land of one Maheshwarappa Papanna to go to her garden alone, the accused who was sitting near the bush suddenly, jumped on her and tried to outrage her modesty by pulling her saree. In the meantime, she escaped from his clutches and tried to flee away from the spot. By that time, the accused took the machete and assaulted twice on her head, consequently, she sustained bleeding injuries. In the meanwhile, C.Ws.2 and 5 rushed to the spot and took her to the hospital for treatment and she narrated the incident to the police in the hospital while she was taking treatment. Even though she had been subjected to cross examination, she withstood the cross examination and supported the case of prosecution. -7-

13. P.W.2 is an eye witness to Exs.P.2 and 3 which are spot mahazar and seizure mahazar respectively. He supported the case of the prosecution.

14. P.W.3 who is stated to be the witness to Ex.P.2 and 3 and also circumstantial witness and she supported the case of the prosecution.

15. P.W.4 is said to be the circumstantial witness deposed

that he heard screaming of P.W.1 and immediately, he rushed to the spot where P.W.1 was standing and crying for help. Immediately, he took her to the hospital for treatment. According to him, he learnt that the accused had assaulted on the head of P.W.1 with the machete.

16. P.W.5 being a circumstantial witness deposed that he was present at the spot when P.W.1 was importuning for help.

17. P.W.6 who was working as a PSI at Hosadurga police station deposed that he conducted part of the investigation and handed over the case file to C.W.10 for further investigation. -8-

18. P.W.7 who was working as a Doctor at General Hospital,

Hosadurga has stated to have treated the victim on 11.12.2014 around 1.55 p.m. After having given first aid, he referred the victim to the higher hospital for better treatment. He is said to have subjected the patient/victim for X-ray. As per the X-ray, the bone and the skull of injured are stated to have fractured and the said injuries are grievous in nature. The wound certificate has been marked through him as per Ex.P.6.

19. P.W.8 being a PSI at Hosadurga police station deposed that he received Ex.P.6-wound certificate and conducted investigation. After completion of investigation, he submitted the charge sheet.

20. After having analyzed the evidence of all the witnesses, it

is found that, P.W.7 being a doctor stated in his evidence that, he subjected the injured for X-ray. As per X-ray report, the bone and skull of the injured were fractured. However, to substantiate the same, the X-ray has not been produced. Non production of X-ray would be fatal -9- to the case of the prosecution and the ingredients of Section 326 of IPC cannot be sustained.

21. Taking into consideration, the evidence of P.Ws.1, 4 and

5 and Ex.P.6-Wound certificate, it can be inferred that the prosecution has made out a case for the offence punishable under Section 324 of IPC rather Section 326 of IPC.

22. As regards Section 354-A of IPC is concerned, it is

needless to say that, nowhere in the IPC the word outraging modesty has been defined. However, it can be inferred on the basis of settled principle of law that the outraging of modesty would mean that ultimately it is for the purpose of exploiting a woman for sex.

23. Having considered the settled principles of law, in the

present case, though P.W.1 stated that she had been subjected to outrage her modesty, except her evidence, none of the witnesses have spoken about the same. Even though, on reading of her evidence, it can be inferred that the accused for the purpose of outraging her modesty, he tried to pull her saree. However, she escaped from his - 10 -

clutches and tried to run away from the spot. The said incident has been witnessed by P.Ws. 4 and 5. Therefore, I am of the considered opinion that the prosecution has proved the case beyond reasonable doubt in respect of the offence under Section 354-A of IPC.

24. On overall analyzing of the evidence of all the witnesses

and also analyzing the findings of the Courts below, I am of the considered opinion that, the Courts below have not committed any error in respect of Section 354-A of IPC whereas Section 326 of IPC is concerned, both the Courts have committed error in recording the conviction. Hence, I proceed to pass the following:

ORDER

i) The Criminal Revision Petition is allowed-in-part. ii) The judgment of conviction and order on sentence dated 27.02.2017 passed in C.C.No.472/2015 Prl. Civil Judge and JMFC, Hosadurga and the judgment and order dated 09.10.2017 passed in CrI.A.No.18/2017 by the Court of the I Addl. District and Sessions Judge, - 11 -

Chitradurga in respect of offence under Section 354-A is confirmed whereas in respect of offence under section 326 of IPC is modified. iii) The accused is convicted for the offences punishable under Sections 324 of IPC instead of 326 of IPC. iv) The accused/petitioner shall undergo simple imprisonment for a period of three years and pay a fine of Rs. 10,000/- for the offence punishable under Section 324 of IPC. In default of payment of fine, he shall further undergo simple imprisonment for a period of six months. v) The registry is directed to send the records to

the Trial Court along with the copy of this order

forthwith to execute the sentence in accordance with law. Sd/- (S RACHAIAH)
JUDGE JS List No.: 19 SI No.: 5

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