

Nagaraju vs State of Karnataka

Nagaraju vs State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1881639

Court : Karnataka

Decided On : Dec-02-2024

Judge : Shivashankar Amarannavar

Appeal No. : CRL.A/117/2013

Appellant : Nagaraju

Respondent : State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2024 BEFORE THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR CRIMINAL APPEAL No. 117 OF 2013 BETWEEN: NAGARAJU S/O SIDDAPPA AGED ABOUT 45 YEARS WORKING IN JOHNSON FACTORY HUTRIDURGA (HO) KUNIGAL TALUK R/A JANATHA COLONY, KUNIGAL Digitally signed by TUMKUR - 572 130. LAKSHMINARAYANA APPELLANT MURTHY RAJASHRI Location: HIGH COURT OF (BY SRI A N RADHAKRISHNA, ADVOCATE) KARNATAKA

AND: STATE OF KARNATAKA BY KUNIGAL POLICE REPRESENTED BY THE STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BANGALORE - 560 001. RESPONDENT (BY SRI B LAKSHMAN, HC GP) THIS CRL.A. IS FILED UNDER SECTION 374(2) OF Cr.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE DATED 21.01.2013 PASSED BY THE PRINCIPAL DISTRICT & SESSIONS JUDGE TUMKUR IN S.C.No.65/2012 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 376, 511 AND 506(II) OF IPC AND ETC., -2-

THIS APPEAL COMING ON FOR FURTHER HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

1. This appeal is filed by the sole accused praying

to set aside the judgment of conviction and order on sentence dated 21.01.2013 passed in S.C. No. 65/2012 by the Principal District and Sessions Judge, Tumakuru, whereunder the appellant - accused has been convicted for offence punishable under Section 376 read with Section 511 of IPC and Section 506 of IPC.

2. Factual matrix of the prosecution case is that

the complainant - victim girl is the daughter of appellant - accused and when she was studying in 9th standard, during the night hours of 10.08.2011, when she was sleeping, the appellant - accused attempted to commit sexual assault on the victim girl and threatened her not to intimate the same to anyone. The victim girl has intimated the act of this appellant - accused to her grandmother and maternal uncle and therefore, the appellant - accused

-3- assaulted her. On the complaint filed by the victim girl, case has been registered against appellant - accused in crime No. 254/2011 of Kunigal Police

Station for offence under Sections 376, 511 and 506 of IPC. The case was

committed to the Sessions Court. The Sessions Court framed charge against appellant - accused for offence under Section 376 read with Section 511 of IPC and Section 506 of IPC. In order to prove the charge the prosecution has examined 9 witnesses as P.W.1 to P.W.9 and got marked 9 documents as Ex.P.1 to Ex.P.9. Statement of the appellant - accused came to be recorded under Section 313 of Cr.P.C. The trial Court, after hearing arguments, formulated points for consideration and passed the impugned judgment of conviction and order on sentence as noted supra. Said judgment of conviction and

order on sentence has been challenged by the appellant -

accused in this appeal.

3. Heard learned counsel for appellant - accused, and learned HCGP for respondent - State. -4-

4. Learned counsel for appellant - accused would contend that the alleged incident has taken place during the night hours of 10.08.2011 and complaint has been

filed on 24.08.2011 and there is a delay of 14 days in filing the complaint. There are improvements in the evidence of P.W.1 - victim girl. There are contradictions in

the evidence of P.W.1 - victim girl, P.W.4 - grandmother of the victim girl and P.W.5 - maternal uncle of the victim girl. There are improvements/omissions in the evidence of P.W.1 and if they are taken out, there is no prosecution evidence to attract the alleged offences. The very fact that victim girl has stayed with the appellant - accused after the incident for more than 14 days itself indicate that no offence has taken place. The victim girl is residing with appellant - accused and her step mother - P.W.6 - Smt. Rathnamma and her son in the same house and therefore, there is no sexual assault as alleged. The Doctor who examined the victim girl has not collected any articles at the time of examination of victim girl. P.W.4 and P.W.5 have stated that appellant - accused looked after his

daughter - victim girl well and she has been admitted to school. A false case has been foisted against the appellant - accused only in order to claim partition in the property of appellant - accused by the victim girl and her elder sister who are the children of the appellant - accused through his first wife. Learned counsel for appellant - accused has placed reliance on the following decisions:

i. Dhananjaya Reddy Vs. State of Karnataka, 2001 SCC (Cri) 652 ii. Dr. Sunil Kumar Sambhudayal Gupta and Ors., Vs. State of Maharashtra, 2011 Cri.L.J. 705 (SC) iii. Munna Vs. State of Madhya Pradesh, 2015 (1) SCC (Cri.) 59 iv. Dilip and another Vs. State of M.P., AIR 2001 SC 30049 v. Suresh N. Bhusare and others Vs. State of Maharashtra, 1998 SCC (Cri.) 1595 vi. Chhagan Dame Vs. The State of Gujarat, 1994 Cri.L.J. 56
-6-

5. He further contends that in view of omissions/

improvements/contradictions in the evidence of P.W.1 - victim girl, her testimony is liable to be discarded. The victim girl was a child and she is tutored by her grandmother and maternal uncle in order to claim share in the property of appellant - accused. Evidence of victim girl is suffering from serious infirmities. Therefore, the appellant - accused is entitled for the benefit of doubt. On these grounds he prayed to allow the appeal and acquit the appellant - accused.

6. Per contra, learned HCGP appearing for the

respondent - State would contend that the victim girl was aged 13 years as on the date of the alleged incident. The victim girl in her complaint as well as further statement has specifically stated the act of this appellant - accused attempting to commit sexual assault on her. Evidence of P.W.1 is trustworthy. The contradictions that

are pointed out are not material contradictions. Considering the evidence on record the learned Sessions Judge has rightly convicted the appellant - accused for -7- offence alleged against him. There are no grounds made

out for setting aside the judgment of conviction and order

on sentence. With this he prayed for dismissal the appeal.

7. Having heard the learned counsel for the parties, on perusal of the trial Court records and the grounds urged, the following point arises for consideration: Whether the trial Court has erred in convicting the appellant - accused for offence under Section 376 read with Section 511 and Section 506 of IPC?

8. My answer to the above point is in the affirmative for the following reasons:
P.W.1 - the victim girl is the daughter of appellant -

accused and she was studying in 9th standard as on the date of alleged incident. The appellant - accused along with his second wife - P.W.6, her son and victim girl was residing in his house at Mallaghatta. The victim girl is the daughter of appellant - accused and Smt. Chandrakala - first wife of appellant - accused. The appellant - accused

-8-

had two daughters through his first wife - Smt. Chandrakala. Name of first daughter of appellant - accused with Smt. Chandrakala is Ms. Kusuma and she is the elder sister of victim girl. The mother of victim girl went missing since several years and the victim girl was residing with her father, step mother - P.W.6 and her son in the house of appellant - accused and was attending the school.

9. Evidence of P.W.1 would reveal that her elder

sister - Ms.Kusuma was also earlier residing with her father in Mallaghatta, Kunigal and as she was harassed by appellant - accused, her grandmother took said Ms. Kusuma to her village - Toobinakere.

10. As per the averments of the complaint - Ex.P.1

the incident had taken place on 10.08.2011 when the victim girl was sleeping. In the complaint - Ex.P.1 it is stated that the appellant - accused though being father of the victim girl, during night hours of 10.08.2011, attempted to commit rape on

her and threatened her not to intimate the same to anyone. It is further stated in the -9-

complaint that again the appellant - accused tried to commit rape and therefore, she intimated the same to P.W.5 - Sri. Chandrashekar - maternal uncle and P.W.4 - Smt. Lakshamma - grandmother. It is further stated in Ex.P.1 that as she intimated the same to her maternal uncle and grandmother, the appellant - accused assaulted her. Said complaint has been filed on 24.08.2011. P.W.1 in her evidence has deposed that 3 days prior to 10.08.2011, she observed that her clothes were not intact when she got up and therefore, she was awake on 10.08.2011 and on that day, at about 10.30 - 11.00 pm, the appellant - accused put his hand on her chest and tried to remove her nicker and when she questioned, he threatened to kill her grandmother - Smt. Lakshamma and her maternal uncle - Sri. Chandrashekar. Thereafter, he slept on her and hugged her. She further stated that on the next day morning, when she was going to school, she made a phone call to P.W.5 - Sri.Chandrashekar from coin booth and intimated the incident to him and he came and got the complaint filed. There is no averment in the complaint that

- 10 - 3 days prior to the incident on 10.08.2011 the victim girl observed that her dresses were not intact in the morning and therefore, she was awake on the night of 10.08.2011.

11. P.W.4 is the grandmother of the victim girl and

she has deposed that the victim girl made a phone call in the morning on a day and intimated regarding the acts of her father on the previous night when she was sleeping and attempted to sexually assault her and she made a phone call to her and she immediately went to Mallaghatta and ascertained the incident from the victim girl and advised the appellant - accused. She did not take the victim girl to her village as it was the middle of the academic year and asked her to continue in the house of appellant - accused. She has further deposed that after 10 - 12 days again the victim girl made a phone call to her and told her that her father did not repeat the act for some days and now he has again started the same and threatened to kill her grandmother and maternal uncle. Therefore, she and her son

went to Mallaghatta and got

- 11 - filed a complaint and took the victim girl to Toobinakere village and kept her along with them.

12. P.W.5 - maternal uncle of the victim girl has

deposed that victim girl had made a phone call to his mother - P.W.4 - Smt. Lakshamma and intimated the acts of her father and the same has been intimated by his mother to him. Contrary to this, P.W.1 has deposed that she intimated over phone the act of her father to P.W.5 - her maternal uncle. There is contradiction in that regard in the evidence of P.W.1, P.W.4 and P.W.5.

13. As per the evidence of P.W.1 complaint has

been filed on 11.08.2011 - next day of the incident. But, a perusal of the complaint - Ex.P.1 indicates that it is filed on 24.08.2011. There is no explanation forthcoming in the evidence of P.W.1 and in the averments of the complaint - Ex.P.1 with regard to the delay in filing the complaint. There is also evidence of P.W.1 that this appellant - accused did not look after her elder sister when she was

residing with her father - appellant - accused and he started harassing her and therefore, her grandmother took - 12 -

her elder sister - Ms.Kusuma to her house. P.W.4 in her cross-examination has stated that appellant - accused and his family members were residing in their own house. It is the evidence of P.W.6 Smt. Rathnamma - second wife of appellant - accused that she, her son, appellant - accused and victim girl were residing in the same house and the alleged incident has not taken place.

14. P.W.2 is the Doctor who examined the victim

girl and gave a report as per Ex.P.3. P.W.2 in her evidence and in the report - Ex.P.3 has stated that there are no signs of any sexual assault and there are no injuries found on her and there are no signs of any sexual intercourse. Considering the omissions and contradictions in the evidence of P.W.1, P.W.4 and P.W.5, the

sole testimony of P.W.1 appears to be not trustworthy to convict the appellant - accused for offences charged against him. Considering all these aspects benefit of doubt requires to be extended to the appellant - accused. Without considering all these aspects learned Sessions Judge has erred in convicting the appellant - accused for offence - 13 - under Section 376 read with Section 511 of IPC and Section 506(ii) of IPC. The appellant - accused has made out grounds for setting aside the judgment of conviction and order on sentence.

15. In the result the following;

ORDER

Appeal is allowed. The impugned judgment of

conviction and order on sentence dated 21.01.2013 passed in S.C. No. 65/2012 by the Principal District and Sessions Judge, Tumakuru, is hereby set aside. The appellant - accused is acquitted of offence under Section 376 read with Section 511 of IPC and Section 506(ii) of IPC. Fine, if any, paid by the appellant - accused is ordered to be refunded to him.

Sd/- (SHIVASHANKAR AMARANNAVAR) JUDGE LRS List No.: 1 SI No.: 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com