

State of Karnataka Vs. S. Narayanamurthy

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Court : Karnataka

Decided On : Feb-05-1998

Reported in : 1998CriLJ2481; ILR1998KAR2052; 1998(3)KarLJ42

Judge : M.F. Saldanha and;B.N. Mallikarjunal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 378(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 376(2)

Appeal No. : Criminal Appeal No. 90 of 1998

Appellant : State of Karnataka

Respondent : S. Narayanamurthy

Advocate for Pet/Ap. : Sri S.S. Koti, Additional State Public Prosecutor

Judgement :

M.F. Saldanha, J.

1. We have heard the learned State Public Prosecutor at some length in this case because this is one more of the instances that are vitally disturbing to the conscience of the Court. The case concerns a sexual assault on a girl who was aged hardly 7 at the time, an act that should normally have been visited with punishment that befits such an atrocity. The victim was virtually a child and was taken under a tree and sexually assaulted. Having regard to her age, undoubtedly

she got injured and was bleeding and she came and told her mother that the accused had decoyed her on the pretext of giving her ice cream and that when they reached a lonely place, he stripped her and lay down on her. She described the act, being a child of tender age, and obviously unaware of what had taken place, in the following words.-

'Translated into English it would really mean that she did not describe the sexual assault but stated that the accused did 'all sorts of things' to her'.

2. A reading of the judgment indicates that the learned Trial Judge has virtually taken off at a tangent and has gone into the technicalities of the offence of rape which undoubtedly requires that it must be a sexual assault and if it is to be punished under Section 376, Indian Penal Code, the aspect of penetration is one of the necessary ingredients. The reasoning proceeds on the footing that the girl has not specifically described the act and that therefore, the evidence falls short of the requirement of establishing that it was an act of rape. We are rather distressed at this line of approach because the Legislature in this country has consciously stepped up the punishments prescribed for any form of atrocities against females particularly offences of rape and in cases where the victim is a minor the law views the offence so seriously that it provides for a minimum sentence of 7 years R.I. It is necessary for the Courts to appreciate the trauma which a victim of any age undergoes in these situations when one has to virtually relive the horrifying incident and in the background of this emotional struggle, the very serious limitations when it comes to the question of describing before a Court as to what happened. It virtually means that the victim has to almost re-enact the incident particularly while facing cross-examination, which is one of the most traumatic aspects even in cases where, due to the passage of time the victim has to some extent recovered. This is therefore not a category of cases where Courts are to look for elaborate picturesque and computer like precise descriptions of every gory detail of the incident. Even if the evidence is sufficient to convey to the Court that a sexual assault of a particular type had taken place, that should be more than sufficient because the Courts always look to the important supportive evidence such as the medical evidence and the forensic evidence relating to the clothes, C.A. Report etc. The rate of failures of prosecutions even in the category of

reported rape cases is alarmingly high. One reason for this is because of the very poor quality of investigation which is almost universal because the victims are invariably poor and even in the few instances where this is not the case, there is no tangible gain to the police which appears to be the sine quo non for them to show any real interest. At a point of time when society professes militant action to contain such deviant activities, the custodians of the law will have to behave more responsibly if they are not to invite serious action from the Court for displaying close to zero level of efficiency and work culture. Broadly speaking, the success of such prosecutions is virtually sabotaged by the carelessness on the part of the Investigating Officer in the matter of not only not taking down the complaint correctly along with that of the supportive witnesses but more importantly by not taking charge of the clothes that may be torn and stained with blood, semen and the like and above all, ensuring that a correct, proper and competent medical examination is done at the earliest point of time and that all material aspects of the case such as noting of injuries etc., is properly recorded. Also, in this category of cases the forensic evidence is extremely important and it is therefore necessary that the clothes not only of the victim but also of the aggressor as also the samples such as hair-clippings etc., taken by the doctors, especially the swabs, must be properly preserved and expeditiously sent for chemical examination and the C.A. Reports collected and produced in evidence. We are very much distressed by the regularity with which it is reported that the material evidence such as the clothes, were never attached, that the samples have deteriorated, that the medical examination was late, careless, haphazard and incorrectly recorded and that the C.A. Reports were never collected or even worse, collected and not produced. Such levels of criminal negligence make one seriously suspect as to whether or not all this has been done to help the accused, and if that is so, as to whether or not this corruption can be contained. These sexual attacks on young children will invariably be unsuccessful considering the obvious and sheer physical limitations, but this does not in any way alter the complexion of the offence. On the other hand, the law prescribes much heavier sentences in such cases and in our considered view, even if the act is not a completed rape it should make no difference because an attempt would attract the same sentence.

3. The learned Additional Special Public Prosecutor is right when he submits that having regard to the atrocious nature of the offence that the State has filed an appeal in the present case. We have heard him on merits and we have grasped the importance of trying to ensure that such instances do not go unpunished. We fail to see the logic behind a situation in which State appeals are mechanically filed in cases that have been so completely ruined in the Trial Court that no salvage operation is possible. The remedy lies in corrective action, which unfortunately is not being effected. The difficulty in the way of the Appeal Court is that the offence being a serious one which is visited with a heavy jail sentence, it becomes equally necessary for this Court to ensure that the prosecution has discharged its obligation by establishing the offence as required by law. Where the damage before the Trial Court is complete, appeals are both useless and meaningless. Having regard to the wrong signals that acquittals in rape cases send out to society, it is imperative that somebody responsible in the State Government grasps the need to put a full stop to this sordid state of affairs.

4. Coming to the facts of the present case, both the Trial Court and this Court are totally handicapped by the fact that the mother of the girl has virtually turned hostile. She has even gone to the extent of saying that the injury sustained by the girl was as a result of a fall and she has totally and completely exonerated the accused to the extent of saying that she does not even know him. With this type of record, which gets compounded by the fact that the Doctor has also not supported the prosecution case, the Court is therefore left with absolutely no material on the basis of which a conviction could be sustained. As indicated earlier, having regard to the seriousness of these cases and the graveness and the complexion of the offences, we have examined the facts thoroughly on merits, as is evident from the observations in this judgment and it is with a degree of deepest regret, that we need to record that it would be impossible to disturb the acquittal order passed by the Trial Court.

5. Before parting with this judgment, we need to reiterate that there are deep-seated expectations not only from the Police who are the investigating agency but also from the doctors and the chemical analysts and most of all from the prosecutors before the Trial Courts. Efficiency has plummeted to an all-time low

level and we expect an immediate cleanup operation. Again, the Trial Judges will have to show more interest in avoiding a 'failure of justice' situations. They are not to function as mute and helpless spectators when prosecutions are sabotaged. We expect them to actively prevent such disasters. The strictures passed in this judgment are long over due.

6. Having dealt with the other areas that are contributory to the failure of prosecutions, we need to come down heavily on the Government Doctors at different levels who do not take their responsibilities seriously. Many prosecutions such as the present one fail for want of proper medical evidence. The injuries are not noted down properly, samples are not drawn nor are they preserved, the records are not reliable and above all, we have come across cases in which the Doctors have given shocking opinions in the Court room, often contradicting documents and records, obviously to favour the accused. In serious dowry death cases, the most crucial evidence, i.e., the dying declaration is not correctly certified and the whole case goes to pieces. The time has come when several of these errant professionals will not only have to be dismissed from service but prosecuted thereafter --this is a final warning from the High Court which they shall heed carefully and display standards of efficiency, honesty and professionalism hereafter.

7. The appeal accordingly fails and stands dismissed.

(We would however consider it desirable, having regard to the importance of the observations made by us, that the Registrar General should circulate a copy of this judgment to all the Session's Judges who would have occasion to deal with this category of cases and to also forward a copy of the same to the Director General of Police, Karnataka State, as also to the Director of Prosecutions and Secretary to Government, Health Department, with a request that these authorities bring it to the notice of the Investigating Authorities and also the Prosecutors that utmost care and professionalism is expected from them while handling this class of cases.)