

Raja Alias Dosaval Vs. State by Devaraja Police Station

Raja Alias Dosaval Vs. State by Devaraja Police Station

SooperKanoon Citation : sooperkanoon.com/385330

Court : Karnataka

Decided On : Jul-23-2004

Reported in : ILR2005KAR339; 2005(1)KarLJ449

Judge : N.S. Veerabhadraiah, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 366 and 376

Appeal No. : Criminal Appeal No. 921 of 1998

Appellant : Raja Alias Dosaval

Respondent : State by Devaraja Police Station

Advocate for Def. : S.G. Rajendra Reddy, High Court Government Pleader

Advocate for Pet/Ap. : Tomy Sebastian and Associates

Disposition : Appeal dismissed

Judgement :

N.S. Veerabhadraiah, J.

1. This appeal is by accused 1, convicted for the offences under Sections 366 and 376 of the IPC in S.C. No. 79 of 1995 by the learned III Additional Sessions Judge, Mysore, dated 31-7-1998 sentencing him to undergo R.I. for a period of 7 years and to pay a fine of Rs. 5,000.00 for the offence under Section 376 of the IPC.

Further sentencing him to undergo R.I. for a period of 5 years and to pay a fine of Rs. 1,000.00 for the offence under Section 366 of the IPC.

2. The case of the prosecution in the nutshell is as follows.-

The village girl, P.W. 3 selling flowers and eking her livelihood was abducted by the accused, which led her life to misery. When P.W. 3 went to Devaraja Market, Mysore, for purchase of flowers, accused 1, Raja alias Dosaval, accused 2-Venkataramanasetty alias Venkatasubba alias Kajji with the assistance of one Geetha took her near a hotel and made her to drink a cup of coffee by mixing with some intoxication and she become unconscious. When she regained consciousness, found that she was brought to Bangalore. The accused by making a false promise that they will take her back to Mysore, brought to Bombay, took her to a hotel and confined in a room. Accused 1-Raja alias Dosaval committed rape. So also, another person committed rape on prosecutrix, sold her to a brothel house of one Geetha and she was made to suffer physical and mental tortures, seducing her to lead a life of prostitute. As there was no alternative, she was compelled to lead the life of prostitute till she was rescued.

A victim of a similar circumstances by name Kamala appeared before the Inspector of Police-P.W. 8, B.P. Suresh and informed him that 2 persons of such gang were standing near the bus stand who took her to Bombay and sold to a brothel house. P.W. 8 recorded her statement and registered a case in Crime No. 246 of 1994 for the offences under Sections 366 and 376 of the IPC. At her instance, the culprits by name Ashoka alias Manohar and Bangarasetty alias Bangari were arrested. On recording their voluntary statement, it revealed that the other accused viz., Raja alias Dosaval and Javarai who were also gangsters. He apprehended them, interrogated and produced before the Court and obtained orders for their detention in the police custody for investigation. The 4 accused took the Police Inspector-P.W. 8 and his staff to Bombay on 15-9-1994. P.W. 8 met the Joint Commissioner of Bombay City Police and requested for their assistance. On 16-9-1994 during early hours, the Bombay Police and the Karnataka Police teams raided on various brothel houses at Bombay. The accused Raja alias Dosaval took the team to three stars building in Lamington

road. The victim Sheela alias Malini was rescued. The Bombay Police and the Karnataka Police rescued about 27 girls from various brothel houses. P.W. 3 prosecutrix identified Raja alias Dosaval who was with the police. The rescued girls were kept in a protective home at Bombay and the investigation was continued. They left Bombay on 18-9-1994 along with the 27 rescued girls and reached Mysore on 19-9-1994. All the rescued girls were kept in the protective home at Mysore and continued the investigation. On 25-9-1994 he returned to the headquarters and recorded the statements of all the rescued girls.

He recorded the complaint of P.W. 3 as per Ex. P. 4 and registered a case in Crime No. 273 of 1994 for the offences under Sections 366 and 376 of the IPC, prepared the F.I.R.-Ex. P. 5 and forwarded the same to the concerned authority. On 26-9-1994, P.W. 3 took him near the K.S.R.T.C. Bus Stand, Mysore, situated in the limits of Devaraja Police Station and prepared the spot mahazar-Ex. P. 3. He sent all the rescued girls for medical examination to secure V.D.L.R. reports. He produced the accused persons before the Court and remanded them to the judicial custody. On 29-9-1994 he secured the elder sister of P.W. 3 from Yelwala and gave the victim to her custody. Later, he transferred the investigation papers to the Devaraja Police Station, within whose limit the incident of abduction took place. P.W. 7-S.G. Vijayakumar, PSI, Devaraja Police Station, received the case papers from Mysore South Circle Police and registered a case in Crime No. 897 of 1994 for the offences under Sections 366 and 376 of the IPC against the accused persons and forwarded the F.I.R.-Ex. P. 6 to the jurisdictional Magistrate. He received the copy of the accident register extract-Ex. P. 1. After completion of the investigation filed the charge-sheet against accused 1-Raja alias Dosaval and accused 2-Venkatasubba alias Venkataramanasetty.

The learned III Additional Sessions Judge after securing the presence of the accused, framed the charges for the offences under Sections 366 and 376 read with Section 34 of the IPC. The accused pleaded not guilty and claimed to be tried. The prosecution in all examined P.Ws. 1 to 8 and marked Exs. P. 1 to P. 7. The statements of the accused were recorded under Section 313 of the Cr. P.C. The defence is one of the total denial. The accused persons did not choose to lead any defence evidence.

The learned III Additional Sessions Judge acquitted accused 2-Venkataramanashetty alias Venkatasubba alias Kajji for the offences charged and convicted accused 1-Raja alias Dosaval for the offences under Sections 366 and 376 read with Section 34 of the IPC and sentencing as above. Accused 1-Raja alias Dosaval being aggrieved of the conviction and sentence has come up with this appeal.

3. Learned Counsel for the appellant/accused 1 contended that there is delay of 2 years in lodging the complaint by P.W. 3 and no sufficient reasons have been shown. The conduct of P.W. 3 is so unnatural when abducted by the accused, she did not try to escape and just accompanied them. Except the self-serving testimony of P.W. 3, there is no corroboration of evidence to the fact of abduction as well for committing rape by accused 1. There are lot of contradictions and omissions, which goes to the root of the case. All these facts clearly establish that the accused has been falsely implicated. That apart, after the raid by the Kamataka Police, they have not recorded any statements of the girls, who were rescued at Bombay, which also goes to the root of the case. Therefore, submits that at any cast, the testimony of P.W. 3 cannot be relied and acted upon. Therefore, prayed to allow the appeal by setting aside the conviction and sentence passed by the learned III Additional Sessions Judge.

4. Learned High Court Government Pleader, Sri Reddy submitted that it is a case of abducting and seducing P.W. 3 to illicit intercourse is nothing but sexual harassment. The sole testimony of P.W. 3 itself is sufficient, which is reliable and trustworthy. The evidence of P.W. 3 shows that she was abducted from Mysore to Bangalore, from there she was taken to Bombay by train and that she was made to suffer in the 'Hell' so as to lead the life of the prostitute under threat to her life and was compelled to do the 'Danda' by prostitution racket. When the evidence of P.W. 3 itself satisfies the ingredients of Sections 366 and 376 of the IPC, no corroboration is required. In other words, seeking corroboration is nothing but adding an insult and injury to the life of the victim. The learned High Court Government Pleader, fairly admitted that there are some weakness in the prosecution case, but does not go to the root of the case. Accordingly, prayed to dismiss the appeal by confirming the judgment of conviction and sentence.

5. In the light of the submissions, the points for consideration that arise:

1. Whether the learned III Additional Sessions Judge, Mysore, is justified in convicting accused 1-Raja alias Dosaval for the offence under Sections 366 and 376 of the IPC?

2. What order?

6. The evidence of P.W. 3-prosecutrix and P.W. 4-Meenakshi, the sister of P.W. 3 shows that they are the residents of Yelwala and their business is flower vending. They used to purchase flowers from the market and were doing business. It is in the evidence of P.W. 4-Meenakshi that her sister who went to fetch flowers did not return and in spite of their effort, her sister-P. W. 3 was not traced. It is also in her evidence that she went and informed the Circle Inspector of Police, Mysore South Circle and furnished a photograph of the victim. Subsequently, after about 3 years that her missing sister was traced and she went to the police station and found her sister along with other rescued girls. The prosecutrix narrated the torture meted out and narrated the manner as to how she was abducted from Mysore and taken to Bombay.

7. The evidence of P.W. 3-prosecutrix shows that she is a married woman having 2 children and that her business was flower vending by purchasing it from Devaraja Market. As usual, while she was going to the market, she came in contact with a lady whose name she came to know later as Geetha. It is in her evidence that when herself and Geetha returning from Devaraja Market towards a bangle shop, two persons came, the said Geetha introduced them as her cousins and that she was forcibly taken to a hotel to have a cup of coffee. Though she did not enter the hotel, Geetha and two persons who went inside the hotel brought a cup of coffee and made her to drink. After drinking coffee she was feeling giddiness, then Geetha took her in an auto. When she regained consciousness, she was found in a hotel room at Bangalore and accused 1-Raja alias Dosaval was found with Geetha on that day. The said Raja alias Dosaval is altogether a different person. It is in her evidence that when she regained consciousness, she did not find Geetha. Accused 1 and 2 and also another person were in that hotel room. She requested accused 1 to send her back to Mysore. It is in her evidence

that they advised her not to go alone and it is not safe and also promised that they will send her to her house. Virtually she was crying being a helpless. It is further in her evidence that accused 1 and another person under the pretext of dropping her made to board another bus. Two days later they reached Bombay and took her to a hotel. On that day, accused 1 and another committed rape on her. When she protested, they threatened her to beat. Though she was not willing to have sex, the other person committed rape on her first followed by accused 1. Accused 1 committed rape on her twice. On the next day, they all left the room by locking the door from outside. Thereafter, accused 2 joined accused 1 and another at Bombay. One more person was also joined there and they were virtually quarrelling with one another. They were found discussing as to how much booty themselves to share after selling her to a brothel house. It is also in her evidence that accused 1 is the person-who committed rape on her and stated that when she tried to escape from their clutches, accused 1 and another caught hold of her, brought back to the room and beat her. Also stated that accused 2 did not commit any rape on her. It is in her evidence that after an hour, a lady came to the room, in which she was confined. When she asked accused 1 about the identity of that lady, he told that the lady who had come there is his cousin sister and that she can go along with her and nothing would happen to her. It is also in her evidence that the lady took her from the lodge and then only she came to know that she was brought to Bombay. Though she was not having any desire or intention to come to Bombay or never intend to lead a life of prostitution, accused 1 and another asked her to stay with that lady for two days saying that they would come later and take her. She has further stated that even though she refused to go along with that lady, she was forced by accused 1 and another to go along with her. Also stated that she was not aware, for what purpose accused 1 and another sent her with that lady. Accused 1 and 2 and another did not accompany her. Further stated that the lady took her to the place where she was residing in Bombay. In that house there are about 10 or 15 ladies who were indulging in prostitution and stated that the lady who took her told that she should start prostitution as she has paid an amount of Rs. 14,000.00. It is then she came to know the name of that lady as Geetha and that she was earning by running brothel house at Bombay. Further stated that when she refused to act as suggested, she was threatened and not

given food for two days. Therefore, she was compelled to lead the life of prostitution for survival and she was in that profession for 2 years. During that period she was never allowed to go out from the brothel house. Further stated that the brothel house was in Jamuna Building and stated that 2 years later the Mysore Police led by Circle Inspector Suresh came along with accused 1 and two others and they showed the Jamuna Building and in turn they were rescued by them from that building, with the assistance of Bombay Police. It is also in her evidence that after she was taken to the brothel house at Bombay by Geetha, she never saw accused or two others who accompanied, and stated that she saw accused 1 only at Mysore after she was brought back to Mysore from the brothel house, Bombay. It is in her evidence that there were about 20 girls like her, who were rescued from the brothel house and that she narrated her story to the Inspector of Police. The same was reduced into writing and also stated that the police prepared a mahazar as per Ex. P. 3 after she came to Mysore and she was subjected to medical examination. It is also in her evidence that she was having a family with children even prior to accused 1 and another took her to Bombay.

Coming to the cross-examination, she denied the suggestion that she used to come to Mysore, waiting near Devaraja Market and soliciting customers for prostitution. She also denied the suggestion that she was apprehended by the police when she was indulging in prostitution in a lodge at Mysore and stated that she has not seen Suresh, Akbar and Munna near the flower market and that she might have seen them at Police Station and that they are from Mysore. In the further cross-examination, it has come out that when accused 1, Geetha and another insisted her to have a cup of coffee, she never doubted about their movements and within 5 minutes after taking the coffee she started feeling giddiness. It has further stated that she was not aware as to how she was brought to Bangalore from Mysore. From the hotel room at Bangalore to the bus stand. Also stated that she did not scream for help at Bangalore Bus Stand. It is also in her evidence that there were thousands of passengers at Bangalore Bus Stand when she was brought by accused 1 and another and that she travelled a day and a night to reach Bombay from Bangalore and that they travelled in a train to Bombay. It has come in the cross-examination that when she regained consciousness, she was found to be at Bangalore Railway Station. Further stated

that she did not ask anyone for help or screamed for help when she was brought by accused 1 at the railway station or at the hotel. It has come in her evidence that she has stated before the police that after she was taken to Bombay, both the accused committed rape, one after another and subsequently accused 1 again committed rape on her and she resisted both the accused when they committed rape at Bombay. In the cross-examination, she has clearly stated that she was confined in a hotel room at Bombay, she found both the accused quarrelling for their booty, which they are likely to get by selling her and that accused 1, Raja alias Dosaval is the person who committed rape on her. Further stated that another person also committed rape on her but not accused 2. However accused 2 was found in the company of accused 1 during that time. Apart from that no importance was elicited.

8. P.W. 1-Dr. S.N. Sathyanarayan speaks of examining accused 1 regarding his physical capacity to do sexual act and issued certificate as per Ex. P. 1. P.W. 2-Dr. Rajagopal speaks of conducting V.D.R.L. test on the 27 rescued girls and issued the V.D.R.L. test report as per Ex. P. 2. P.W. 5-Y.N. Jalendra speaks of the Police Inspector preparing the spot mahazar-Ex. P. 3 as pointed out by P.W. 3. P.W. 6-B. David, Sub-Inspector of Police speaks of the fact of registering a case in Crime No. 273 of 1994 as per instructions of the Inspector of Police and issued the F.I.R.-Ex. P. 5.

9. The learned III Additional Sessions Judge relying on the evidence of P.W. 3 convicted accused 1 for the offence under Sections 366 and 376 of the IPC. To sustain the conviction of the Trial Court, this Court has to re-appreciate the evidence to find out this accused abducted the prosecutrix and sold to a brothel house at Bombay and further accused 1 committed rape on P.W. 3. Firstly, in order to constitute an offence under Section 366 of the IPC, the prosecution has to establish:

- (1) Kidnapping or abducting any woman;
- (2) Such kidnapping or abducting must be-

(a) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or

(b) in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

If these ingredients were to be established, the accused is liable to be convicted for a term which may extend to 10 years, shall also liable to pay fine. On proof of the above ingredients, the judgment of the Trial Court is sustainable for the offence under Section 366 of the IPC. Similarly if the ingredients of Section 376 of the IPC are found, the question of interfering with the conviction and sentence does not arise.

Section 376 of the IPC thus reads:

(i) The accused had sexual intercourse with a woman in question;

(ii) That the act was done under the circumstances falling under any of the 5 descriptions specified in Section 375 of the IPC;

(iii) That such woman is not the wife of the accused;

(iv) That there was penetration.

10. In the matter of offence affecting the human body like rape and unnatural offences, the Court is expected to be guarded by the well-established principles in appreciating direct and circumstantial evidence or both. In a similar situation, in the case of *Sudhansu Sekhar Sahoo v State of Orissa*, : 2003 CriLJ4920 , the Supreme Court has observed thus:

'It is true that the evidence of the prosecutrix in a rape case is to be given due weight. Sexual violence is a dehumanising act and it is an unlawful encroachment into the right to privacy and sanctity of a woman. The Courts also should be strict and vigilant to protect the society from such evils. It is in the interest of the Society that serious crimes like rape should be effectively investigated. It is equally important that there must be fairness to all sides. In a criminal case, the Court has to consider the triangulation of interests. It involves taking into account the position

of the accused, the victim and his or her family and the public. The purpose of criminal law is to permit everyone to go about their daily lives without fear or harm to person or property'.

It is with this background, the evidence on record has to be re-appraised to find out whether the conviction of the accused is sustainable or he is entitled for an order of acquittal.

11. In the case of abduction and rape, the witness competent to give evidence is the prosecutrix alone. If the testimony of the prosecutrix is cogent, consistent and credible as to the fact of abduction, rape committed on her, further selling her to a brothel house, disbelieving such testimony of the prosecutrix does not arise.

12. The evidence of P.W. 3 clearly goes to show that she is me native of Yelwala village, a married young lady aged about 20 or 25 years, who used to eke out her livelihood by vending flowers and that too she used to purchase the flowers from Devaraja Market, Mysore. It has also come in the evidence of P.W. 4-Meenakshi that their business is of flower vending. Therefore, it is quite natural that one has to come to market for purchase of flowers. In that process it appears that P.W. 3 had came in contact with a lady. Later she came to know the name of the lady is Geetha. It is also in her evidence that on the day of the incident, the lady by name Geetha as well as accused 1 and another compelled her to have a cup of coffee and immediately by about 5 minutes, she developed giddiness. This shows some intoxicant is mixed in the coffee and administered. Thereby she remained unconscious till she was brought to Bangalore.

Her evidence further shows that after she regained conscious came to know that she was brought to Bangalore. She compelled accused 1 to take her back to her home at Mysore. But, by making her to believe that he will take her back, the accused brought her to Bombay and kept her in a hotel. She has specifically stated that it is accused 1 who committed rape twice followed by another person who was with accused 1 at Bombay. She has clearly stated that accused 2 did not commit any rape. By her evidence, it fully establishes the fact that it was accused 1 who abducted the victim-P.W. 3 from Mysore to Bangalore, thereafter from Bangalore to Bombay and later committed rape on her and sold to a brothel

house. When the testimony of P.W. 3 is consistent and trustworthy, without giving room for any doubt, the question of disbelieving her evidence does not arise. It is no doubt true that there are certain contradictions and omissions and the investigation conducted is also not up to the mark with required diligence. That itself does not give room to discredit the testimony of P.W. 3. She has categorically stated that she was abducted from Mysore to Bangalore, later on taken her to Bombay and sold to a brothel house, which made her to lead a life of prostitute for over a period of 2 years. When P.W. 8-Inspector of the Karnataka Police raided on various brothel houses at Bombay with the co-operation of the Bombay Police, could able to rescue 27 girls inclusive of the victim who were sold to various brothel houses by the gangsters running a prostitution racket. The evidence of the prosecutrix-P.W. 3 shows that the main business of accused 1 and others is to abduct young and innocent girls and selling them to brothel houses. Unless the police are vigilant, it is humanly impossible to burst such a racket. Where the accused is involved in the offence like this type, it is even difficult for the investigating agency to secure the materials for corroboration to the testimony of the victim. It is of such type of a disease like cancer in the society comprised of evil elements who are detrimental to the interest of a welfare society. In the light of the above reasons, the conviction and sentence passed by the learned III Additional Sessions Judge does not call for interference.

For the foregoing reasons, I do not find any merit in this appeal. Accordingly, the appeal is dismissed.

On a perusal of the records, it shows that accused 1 is in the custody through out and thereby has undergone the entire sentence imposed by the Trial Court. Hence no further order is required.

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