

State of Karnataka Vs. Basappa

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Court : Karnataka

Decided On : Jun-02-2003

Reported in : 2003CriLJ4146

Judge : M.F. Saldanha and ;M.S. Rajendra Prasad, JJ.

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

Appeal No. : Criminal Appeal No. 155 of 2003

Appellant : State of Karnataka

Respondent : Basappa

Advocate for Pet/Ap. : G. Bhavani Singh, Addl. SPP

Disposition : Appeal dismissed

Judgement :

M.F. Saldanha, J.

1. We have heard the learned Addl. SPP on merits in this appeal, the reason being that We desire to satisfy ourselves on 'merits that the State has made out a valid case for interference with the order of acquittal. It being the premise of law that once the trial Court has recorded an order of acquittal after having the benefit of weighing the oral and medical evidence and having gone through the exercise of a

first hand assessment of the evidence; that the Appellant Court would necessarily have to be circumspect before interfering with the order of acquittal, barring instances where material evidence has either been ignored or misread or where the order of acquittal is downright perverse. Basically, the Appellate Court is required to be satisfied that the evidence on record is sufficient to sustain a conviction despite which the trial Court has wrongly acquitted the accused resulting in miscarriage of justice.

2. It is, in the light of these principles that we have considered the submissions canvassed by the learned Addl. SPP. Basically, he has contended that even though the allegation was only one of attempt to rape, that in law the accused would still be liable for a conviction, since, there is material on record to indicate that the incident in question had taken place. He has relied on the evidence of P.Ws 1 to 9 in support of his contention that on the day in question the victim lady by name BiBi was subjected to sexual assault even if it did not result in rape. He has also relied upon the injury certificate in support of his submission.

3. On a careful assessment of the evidence, we find that this is a case in which there is a serious lacuna, because, even though P.W. 8 Mehabobbi, claims to be the eye-witness principally because it is her case that she was also simultaneously sexually assaulted by one Tirupati on the same day at the same time. We find that the prosecution has not been able to produce victim BiBi, which is a very serious lacuna. The learned counsel has submitted that this lacuna cannot be treated as being fatal to the case of the prosecution because there is sufficient secondary evidence by P.W. 8. Having assessed the quality of evidence of the P.W. 8, we find it impossible to accept this submission *moreso* because there is zero medical evidence in support.

4. The real issue is as to whether there is enough material to justify interference with the order of the trial Court. Apart from the absence of the victim's evidence which is virtually fatal, even assuming that one were to adduce some level of credibility to P.W. 8, we find it difficult to hold that this evidence would be solid enough to sustain a conviction on a serious charge of attempt to rape; the reason being that the prosecution case itself is that P. W. 8 was the victim of a

simultaneous sexual assault and that if that is so, it is extremely improbable that she would be in a position to depose as to what was happening to the other victim. It is also a well defined rule of prudence in this class of cases for the Court to rely very, heavily on the secondary unimpeachable evidence, such as medical evidence, forensic evidence, etc. In this case, there is absolutely no supporting evidence and the very weak medical evidence only indicates a minor injury on the leg of the victim which could hardly be connected with a sexual assault. The learned trial Judge has also taken note of the fact that despite the prosecution allegations and efforts to sustain the case of sexual assault which lasted for one hour and is supposed to have taken place in a jawar field, that absolutely none of the standing crops was disturbed. In totality, therefore, after careful re-assessment of the evidence, we find it impossible to hold that this is a case in which the order of acquittal could be replaced by an order of conviction. Having heard the learned Addl. SPP in support of the appeal on merits, we hold that no case for interference has been made out.

5. Having regard to the aforesaid finding, we find it purely academic to issue, notice to the respondent on IA-I. However, in view of the grounds that have been set out, IA/I is allowed and the delay is condoned. The main appeal, however, fails on merits and stands dismissed.