

**State of Karnataka Vs. Thimmama**

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**Court :** Karnataka

**Decided On :** Nov-08-2010

**Judge :** K.N.Keshavanarayana J.

**Acts :** Code of Indian Penal Code (IPC), 1860 ;

**Appeal No. :** CRIMINAL APPEAL No. 1308 OF 2005 (A)

**Appellant :** State of Karnataka

**Respondent :** Thimmama

**Advocate for Def. :** Sri. Amith Deshpande Adv

**Advocate for Pet/Ap. :** H.S.Chandra Mouli. Adv

**Judgement :**

1. The State is in appeal before this Court being aggrieved by the judgment and order dated 31.11 2005 passed by the Additional District and Sessions Judge, Fast Track Court-III, Bangalore in S.C.No. 144/2003, acquitting the respondent - accused of the charge leveled against him for the offence punishable under Section 376 of IPC.

2. The case of the prosecution is that on 19.11.2004 at about 12 noon, the respondent - accused committed rape on the victim girl aged about two years 5 months, the daughter of PW. 1-Smt.Tilakavathi, inside Om Shakti Provision Stores

situated at 9th Main, Saibabanagar Main Road, Srirampura. The respondent - accused pleaded not guilty for the charge leveled against him. The prosecution to bring home the guilt of the accused examined PWs. 1 to 11 and got marked Exs.P. 1 to P. 18.

3. After hearing both sides and on assessment of oral and documentary evidence, the learned Sessions Judge by the judgment under appeal acquitted the accused holding that the prosecution has failed to establish the guilt of the accused for the charge leveled against him beyond reasonable doubt.

4. We have heard Sri.H.S.Chandra Mouli. State Public Prosecutor and also Sri.Amith Deshpande, learned Amicus Curiae for the respondent - accused. We have perused the records and the judgment under appeal.

5. The victim girl being a minor aged about 2 years 5 months is not examined before the court. It is her mother, the complainant who was examined as PW. 1, set the criminal law into motion. However, though PW. 1 in her evidence speaks as if she is an eye-witness; her evidence has been disbelieved by the learned Sessions Judge as being highly exaggerated.

6. The medical evidence in the form of oral evidence of PW.7-Dr.K.V.Nagraj. PW.8-Dr.Swarnagowri and PW.9-Dr.Sudha are inconsistent. PW.7-Dr.K.V.Nagraj, who is a private practitioner to whom the victim girl was been taken immediately after the alleged incident, in his evidence has stated that the victim girl was brought to him with a history that she has been subjected to forcible sexual intercourse and she was bleeding in her private part. Immediately he cleaned the private part and applied some ointment and referred her to K.C.General Hospital. PW.8-Dr.Swarnagowri-states that on examination of the private part of the victim girl she noticed a scratch injury measuring about Vi centimeter inside the private part and. she did not examine as to whether hymen was intact or not. PW.9-Dr.Sudha-Senior Specialist, Vani Vias Hospital has stated in her evidence that when she examined the victim girl on 20.12.2002 she did not notice any external injury on the private part of the victim girl and hymen was found intact.

7. Having regard to the inconsistent medical evidence placed by the prosecution, the learned Sessions Judge has found that the case of the prosecution with regard to the alleged incident of forcible rape on the victim girl cannot be accepted. The reasoning adopted by the learned Sessions Judge and the findings recorded by him, having regard to evidence on record cannot be termed as perverse or illegal. Having regard to the facts and circumstances of the case, we find no ground to interfere with the judgment of acquittal recorded by the court below. Under these circumstances, we find no merit in this appeal. Accordingly, the appeal is dismissed.

The remuneration of the Amicus Curiae is fixed at Rs.7,000/-.

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