

M.R. Niranjana Murthy Vs. State of Karnataka, Represented by State Public Prosecutor

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Court : Karnataka

Decided On : Apr-05-2013

Judge : A.S. Pachhapure

Appeal No. : Criminal Appeal No. 465 of 2006

Appellant : M.R. Niranjana Murthy

Respondent : State of Karnataka, Represented by State Public Prosecutor

Judgement :

(Prayer: This CrI.A. is filed u/s.374 Cr.P.C. by the advocate for the Appellant against the judgment dated 2.8.2005 passed by the III Addl. District and Sessions Judge, Tumkur in S.C. no. 26/1999 convicting the Appellant - Accused No.3 for the offence u/s.366 of IPC and sentencing him to undergo R.I. for three years and to pay fine of Rs.1,000/- I.D., to undergo R.I for 2 months.)

1. The appellant has challenged his conviction and sentence for the offences punishable under Sections 366, 366(A), 323, 506 r/w Section 34 IPC on a trial held by the Sessions Judge, Tumkur.

2. The facts reveal that the prosecutrix PW1 was a student in SPC college and used to attend the tuition classes in between 7.00 to 10.00 p.m. conducted in the premises of the said college. On 24.3.1997 after the tuition classes she was

returning to the home with her friends. A car was chasing her and later her friends went to their home and when she was proceeding to her home, the car was stopped ahead of her and a person alighted caught her hands and forcibly took her in the said car. He instructed the driver to proceed ahead towards Tiptur. There were in all three persons in addition to the driver. She tried to escape from the hands of the accused. Though the driver tried to stop the car, the accused said to have threatened him to proceed ahead and when the car was stopped by the driver, she escaped from the clutches of the accused and cried for help. People gathered and later on the next day she approached the police and submitted her complaint of this fact, which came to be registered in Crime No.43/1997 for the offences under Sections 366, 323, 506 IPC. During investigation the spot mahazar was held as per Ex.P2. A van was seized. The accused were arrested. The statements of the witnesses were recorded. After collecting the relevant documents, a charge sheet came to be laid against the accused for the charges under Section 366, 366-A, 323, 506 r/w 34 IPC. In the trial, the prosecution examined PWs.1 to 12 and got marked the documents Exs.P1 to P6 and MO.1. The statement of the accused were recorded under Section 313 Cr.P.C. and got marked Exs.D1 and D3 in the cross-examination of the prosecution witnesses. The trial Court convicted all the accused for the offence under Section 366, 323, 506 r/w 34 IPC and extended the benefit of probation to accused Nos.1 and 2, whereas, request of the appellant accused No.3 was rejected and he was ordered to undergo imprisonment for three years and to pay fine of Rs.1,000/- for the offence under Section 366 IPC and no sentence was ordered for other offences. Aggrieved by the conviction and sentence, the 3rd accused has approached this Court in appeal.

3. I have heard Sri Dinesh Rao, advocate for the appellant and the learned High Court Government Pleader.

4. The point that arises for my consideration is:

"Whether the sentence ordered by the trial Court requires reduction?"

5. It is the submission of learned Counsel for the appellant that accused Nos.1 and 2 who are the main offenders have been granted benefit of probation by the Trial

Court. Though no role is attributed against the appellant/accused No.3, the sentence ordered against him by the Trial Court is harsh and disproportionate. It is also his submission that appellant has married recently and at this stage, if he is ordered to undergo the sentence, his family life will be spoiled. That part, he contends that accused Nos.1 and 2 were aged 25 and 22 years respectively, whereas appellant was 20 years at the time of incident and it is mitigating circumstance to reduce the sentence.

6. On the other hand, learned High Court Government Pleader has supported the judgment and order of the Trial Court and also the quantum of sentence.

7. The victim is examined as PW1. As seen from her evidence, it is the first accused who stopped the van at the place of incident and caught hold of the victim and forcibly pushed her into the van. PW1 does not attribute any role to the appellant who is the third accused in the Trial Court. What she states in her evidence is that accused No.3 was sitting in the car. Even as against accused No.2 is concerned, she states that the driver was driving the vehicle slowly and it is accused No.2 who asked the driver to drive it in an high speed. So, nowhere there is any part attributed against the appellant, except to the extent of the fact that he was in the car when the incident took place or she was carried in the vehicle. She further states that even though she cried for help, nowhere she states any overt-act of the appellant. Furthermore, when the vehicle was stopped she escaped and when cried for help, the people gathered and she was rescued.

8. The whole of the incident was completed within half an hour and she was back to her parents home. If these circumstances are taken into consideration in the context to the fact that accused Nos.1 and 2 have been granted benefit of probation though they were mainly responsible for the offence under Section 366 IPC and when there was no such positive role by the appellant i.e., accused No.3, asking him to undergo imprisonment for 3 years appears to be harsh. The material placed on record reveals that he was in custody for about two months during the trial and two months after the conviction. I think, the interest of justice would be met, if the sentence is confined to the custodial period and he is ordered to pay fine.

9. The appellant was aged 20 years at the time when the incident took place. That apart, he is married recently. Accused Nos.1 and 2 were elders to him and they were the persons who took a positive role in the incident. Hence, considering all these circumstances, the sentence ordered by the Trial Court has to be modified.

10. In the result, the appeal is allowed in part affirming the conviction of appellant for the charges proved. The sentence of imprisonment is modified restricting it to the custodial period and the appellant is ordered to pay fine of Rs.20,000/-, in default to undergo simple imprisonment for three months. On depositing of the fine amount, a sum of Rs.10,000/- shall be paid to PW1.

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