

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CR I M I N A L AP P E A L NO(s). 605 OF 2002

RAJ U SANT A R A M K A M B L E

Appellant (s)

VE R S U S

STAT E OF K A R N A T A K A

Respondent(s)

(With appln(s) for bail and office report)

Date: 16/04 /2009 This Appeal was called on for hearing today.

COR A M :

HON' B L E M R. JUST I C E LO K E S H W A R SIN G H PA N T A
HON' B L E M R. JUST I C E B. SUD E R S H A N R E D D Y

For Appellant(s)

Mr. S.N. Bhat,Adv.

For Respondent(s)

Mr. Sanjay R. Hegde,Adv.
Mr. A. Rohen Singh, adv.
Mr. Vikrant Yadav, adv.
Mr. Anul Varma, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed and the appellant is acquitted of the offence under Section 376 I P C by giving him benefit of doubt in terms of the signed order. The appellant is on bail. His bail bond shall stand discharged.

(Ajay Kr. Jain)
Court Master

(Vinod Kulvi)
Court Master

(Signed order is placed on the file)
IN TH E SUP R E M E C O U R T O F I N D I A
CR I M I N A L AP P E L L A T E JUR I S D I C T I O N

CR I M I N A L AP P E A L NO. 605 OF 2002

Raju Santaram Kamble

.... Appellant

Versus

State of Karnataka

.... Respondent

O R D E R

1. Heard learned counsel for the parties.
2. This appeal arises out of the judgment and final order dated 19.2.2001 passed by a learned Single Judge of the High Court of Karnataka

at Bangalore in CrI. Appeal No. 129/1999 dismissing the appeal filed by the appellant-accused and confirming the order of conviction dated 11.1.1999 recorded by the Ist Addl. Sessions Judge, Belgaum in S.C. No. 270/1996 under Section 376 of the Indian Penal Code and sentencing him to imprisonment for a period of 7 years.

3. Briefly stated the prosecution case against the appellant-accused is that on 11.10.1995 P W - 1, the victim of sexual intercourse went to the house of her aunt P W - 5 Malu Babu Sanadi for getting 'rasam'. P W- 5

disclosed to her that as they had already taken their food, therefore, there was no 'rasam' left which could be given to P W- 1. On this P W- 1 started returning to her house at about 9.00 p.m., but suddenly the electricity supply went off and in the darkness, according to the prosecution, P W- 1 was physically lifted by two unknown persons who tied a towel around her mouth preventing her from raising any alarm. It was alleged that the said two unknown persons took her to a nearby land and entrusted her to the appellant-accused. The appellant laid her on the ground and forcibly committed sexual intercourse. As a result thereof, she became unconscious.

She was allegedly thrown near her house in the early hours at about 2.00 a.m. on 12.10.1995. P W - 2 Annappa Siddappa Vaddarale, father and P W- 3 Bayabai, mother of the prosecutrix noticed her lying on the ground in front of their house in unconscious state of mind. P W- 1 was immediately taken to P W- 6 Dr. Ramachandra Dinakar Gijari in the morning at about 7.00 a.m. where the prosecutrix regained her consciousness, therefore, P W- 6 discharged her. The prosecutrix was brought back to her house when on inquiry by P W s 2 and 3, she narrated the incident to them. The prosecutrix went to the police station in the company of parents and made an oral complaint, which was reduced into writing by the police officials, on the basis of which FI R Ex.P- 1 came to be registered by P W- 10 Yallappa Krishnappa Talawar, PC B 2004 at Chikkodi Police Station.

4. P W- 11 P.S.I. Jiddappa Mohadevappa Desura secured two panch witnesses and seized the blouse, bra, saree, peticoat and cheddi, produced by P W- 1 as per MOs. 1 to 5 under mahajar Ex. P- 7. The prosecutrix was examined by Dr. Shakuntala Gadigayya Sambremath, a lady Medical Officer at Kabbur Hospital. The investigating officer inspected the place of incident and in the presence of panches drew up site plan Ex. P- 5 and

collected bangle pieces found at the place of incident, which were marked as M.O. 6 under Ex. P- 6. He recorded the statements of P W- 1 and P W s 2 to 5 and handed over the case to C.P.I. The appellant was arrested at about 9.00 a.m. on 12.10.1995 at Ankali and after interrogation the underwear and cheddi MOs 8 and 7 were taken into possession. The appellant-accused was got medically examined by the Medical Officer, Chikkodi who opined that he was capable of committing sexual intercourse.

The investigating officer on 16.10.1995 got the prosecutrix medically examined from a doctor at District Hospital, Belgaum regarding her age.

P W - 7, Dr. Ishwar Shivalingappa Ingalagi, Medical Officer issued a certificate Ex. P- 4 based on X- ray Report Ex. P- 3, on the basis of which the age of the prosecutrix was between 17-18 years. After receiving the medical report certificate regarding age of the prosecutrix and the report from the Chemical Examiner, the investigating officer filed chargesheet against the accused-appellant for the alleged offence.

5. The accused pleaded not guilty to the charge and claimed to be tried. During trial, the prosecutrix examined as many as 15 witnesses and marked 14 documents in support of its case. The appellant-accused in his statement under Section 313 Cr.P.C. denied all the incriminating circumstances and pleaded that P W- 1, the prosecutrix, P W- 2 her father and P W - 3 her mother have implicated him in a false case. However, no evidence was led by him in his defence.

6. On the appreciation of the entire evidence on record, the trial court found the accused guilty of the offence under Section 376 I P C and accordingly convicted him as aforesaid.

7. Being aggrieved against the conviction, the accused filed an appeal before the High Court which was dismissed. Now the accused is before us in this appeal by special leave.

8. We have heard learned counsel for the parties and independently scrutinized the evidence of the material witnesses.

9. The oral testimony of the prosecutrix is that on the day of incident, she was lifted by two unknown persons at about 9.00 p.m. when she was returning from the house of her aunt P W- 5. However, in the darkness, she could not identify those two unknown persons. It is the evidence of the prosecutrix that she was taken by those two unknown

persons and handed over to the appellant-accused who later on made her to lie down in the field. According to her version the accused lifted her sari and peticoat and removed her cheddi and committed sexual intercourse forcibly with her. She lost her consciousness and regained the same in the hospital at about 7.00 a.m. in the next morning when she was medically examined by P W- 6. It is her categorical statement before the Court that after regaining consciousness she informed her father P W- 2 at his house about the incident after returning from the hospital. But, P W- 2 in his cross-examination has not supported the prosecutrix on this aspect of the matter. The testimony of the prosecutrix has not been corroborated by the medical evidence of P W- 6, who is a private doctor in the village of the prosecutrix where she was in first point of time for medical examination. It is the evidence of P W - 6 that when the prosecutrix was brought to her hospital by her parents she was in unconscious state of mind and on regaining consciousness at about 7.00 a.m. on 12.10.1995, the prosecutrix was discharged from the hospital. P W- 6 inquired from the prosecutrix as to what had happened, but the prosecutrix did not reveal anything to her. It was only told to her by the prosecutrix that she felt giddiness and had fallen in the house. It is the evidence of P W- 6 that on examination of the prosecutrix she did not notice any contusion over her body and the general condition of the prosecutrix was not bad and she was found to be clean and neat.

10. P W- 12 Dr. Shakuntala Gadigayya Sambramath, who again examined the prosecutrix at about 8.45 a.m. on 12.10.1995 at Kabbur Hospital also found no scratch, mark of struggle, scratches external or internal injuries on any part of the prosecutrix's person. P W- 12 placed on record her medical certificate Ex. P- 10 clearly opining that no positive signs of rape, the hymen of the prosecutrix was found intact. She also stated in her statement that if a person commits intercourse in 10 minutes in a hurry, there are not chances of rapture of hymen and sometimes in case of intercourse rapture of hymen may not be there. In her cross-examination she categorically stated if the sexual intercourse was not properly done, there will be no rapture but in such circumstances semen will appear on the undergarments. The prosecution has produced on record Chemical Examiner's Report Ex. P- 14 in which it was noticed that the tests for the

presence of semen stains was found negative on all the articles including the wearing apparels of the prosecutrix sent for chemical analysis. The Ossification age of the prosecutrix has been found to be between 17-18 years by the doctor.

11. On an independent analysis of the evidence of the prosecutrix, we find that her testimony is not consistent and free from doubt. Therefore, no implicit reliance can be placed on uncontroverted and uncorroborated evidence of the prosecutrix. The medical evidence has not at all corroborated the oral testimony of the prosecutrix to prove that she was sexually assaulted by the appellant-accused. We are conscious of the settled principle that no corroboration is required for accepting the evidence of the victim of rape, if her evidence is found reliable and trustworthy, but where the evidence inspires no confidence nor it is reliable and trustworthy, corroboration may have some bearing on the veracity of the victim's testimony. It is in that context that we have looked into the evidence of the prosecutrix and her father and mother P W s 2 and 3 respectively coupled with the medical evidence of P W- 6 and P W- 12, the two doctors who examined her.

12. In the facts and circumstances of the case, we are inclined to accept this appeal for the above reasons. The appeal is accordingly allowed. The judgment of the High Court confirming the judgment and order of the Trial Court holding the appellant guilty of the offence under Section 376 I P C is set aside. The appellant is acquitted of the offence under Section 376 I P C by giving him benefit of doubt.

13. The appellant is on bail. His bail bond shall stand discharged.

.....J.
(LO K E S H W A R S I N G H P A N T A)

.....J.
(B. S U D E R S H A N R E D D Y)

New Delhi; April 16, 2009