

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 443

OF 2010

HANEEFA

... APPELLANT(S)

VERSUS

STATE OF KERALA & ANR.

...RESPONDENT(S)

O R D E R

This criminal appeal is by the appellant, who is convicted for the offence under Sections 376 of the Indian Penal Code ("IPC" for short) for which he has been sentenced to undergo rigorous imprisonment for 7 years and fine of Rs. 3,000/-, in default, imprisonment for one year. The judgment and order of conviction and sentence is affirmed by the High Court in Criminal Revision Petition No. 999 of 2000 vid its judgment and order dated 31.03.2009, examining the finding of fact recorded on the charges made against the appellant herein. The correctness of the same is challenged before this Court, various legal contentions.

This Court while allowing the imp application in respect of the victim on

granted leave and the appellant was released on bail to the satisfaction of the trial court

disposal of this appeal. Pursuant to said order, the appellant is on bail.

simple

e

after

urging

leadment
Signature Not Verified

Digitally signed by
Sushil Kumar Rakheja
Date: 2015.01.24
8.03.2010
13:16:38 IST
Reason:

pending

We have carefully examined the correctness of the finding recorded in the impugned judgment and order passed by the High Court in the Criminal Revision. The learned Judge of the High Court has carefully considered each one of the grounds urged in the revision petition to examine as to whether the judgment of conviction and order of sentence imposed upon the appellant for the charges levelled against him are correct or not. The High Court after adverting to the evidence of the prosecutrix, who is examined as PW-1, and the evidence of the Doctor PW-14, who has deposed in the case, has recorded a finding that the victim PW-1, became pregnant through the accused and the accused requested to arrange their marriage. The evidence of PW-1 is that the sister of the accused assuring to arrange marriage of the victim and the accused took up her for medical check up without her consent. The medical termination of pregnancy was arranged for which she had resisted and left the hospital. The trial court and the first appellate court have recorded a concurrent finding accepting the version of the victim PW-1, convicted and sentenced

3

the accused supra. The charge levelled against the accused was found to be correct by the Revisional Court. Further, the concurrent finding recorded by the trial court and the first appellate court that the prosecutrix was aged about 14 years and she was unmarried as per entry made in Exhibit P-5. The entry made as per Exhibit D-2 upon which reliance was placed by the learned counsel on behalf of the accused-appellant. Exhibit D-2, the birth certificate which is stated to have been issued in respect of the child delivered by the prosecutrix. The High Court has further rightly recorded a finding with reference to

the comments made by the Additional Sessions Judge that the entry made in Exhibit D-2, her mother is not the prosecutrix and rightly the High Court with reference to the said observation has held that the accused has not made any effort to recall the prosecutrix PW-1 for further cross-examination on Exhibit D-2. On the basis of the statement given by the prosecutrix, the said entry was put to PW-1 in her cross-examination at the time of the trial. Belatedly, the production of the birth certificate, which is not even proved having any connection with the prosecutrix will no way assist the accused to escape from the

4

conviction and the punishment imposed on the accused-appellant on the conviction founded against him as the same was established by cogent and legal evidence on record. The High Court after adverting to the finding of fact recorded by the trial court has rightly come to the conclusion and held that the accused-appellant has raped the prosecutrix PW-1, who was below 14 years of age at the time of occurrence and further he had continued to seduce her over a period of time, thereby she got impregnated and the High Court has rightly concurred with the finding of the trial court that the appellant has committed an offence punishable under Section 376 of the IPC is based on cogent legal evidence on record. The correctness of the said findings of the Courts below are not shown to be erroneous before this Court for interference with the impugned judgment and order in exercise of its appellate jurisdiction by this Court and the learned counsel appearing on behalf of the appellant is unable to show that the concurrent finding of fact recorded by the High Court in exercise of revisional jurisdiction while examining the

correctness of the findings and reasons recorded on
the charges levelled against the appellant are not
5

based on the legal evidence on record. After going
through the concurrent finding of the Revisional
Court, in the impugned judgment on the charges framed
against the appellant, we are of the view that the
confirmation of the judgment and order of conviction
and sentence is perfectly legal and valid and does not
call for our interference.

Accordingly, we dismiss this appeal and direct the
appellant to surrender before the trial court forthwith
to undergo the remaining period of sentence imposed by
the trial court. If he does not surrender before the
trial court, as directed by this Court, then the
learned District Judge may take necessary steps as
provided under the Code of Criminal Procedure by
issuing a body warrant to arrest him and send him to
jail to undergo the remaining period of sentence and a
report shall be submitted in this regard within two
weeks from the date of receipt of a copy of this order
for our perusal.

.....J.
(V. GOPALA GOWDA)

.....J.
(R. BANUMATHI)

NEW DELHI,
JANUARY 20, 2015

1

ITEM NO.101

COURT NO.12

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 443/2010

HANEEFA

Appellant(s)

VERSUS

STATE OF KERALA & ANR.

Respondent(s)

(With appln. (s) for permission to compound the offence and office

report)

Date : 20/01/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. M.K. Sreegesh, Adv.
For Mr. A. Venayagam Balan, Adv.

For Respondent(s) Mr. M. T. George, Adv.
Ms. Kavitha K.T., Adv.

RR-2 Mr. S. Gowthaman, Adv. (Not Present)

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

The appeal is dismissed in terms of the signed order.

While hearing this appeal, certain glaring facts have come to our notice. The alleged affidavit dated 18.12.2009 said to have been sworn by the victim and filed on 20.01.2010 by Mr. S. Gowthaman, Advocate on Record stating therein that the applicant-victim has married with the accused-appellant. That the victim

2

girl assured to come forward and give an affidavit in this regard for the purpose of compounding the offence and that the appellant and the victim are living as husband and wife along with the child. Along with the said application, an affidavit allegedly sworn in by the victim was also filed. On the basis of the said application, leave was granted and the appellant was granted bail on 8.03.2010. The relevant portion of the statement is extracted hereinbelow.

"In the meanwhile the applicant victim girl Sahida and accused Haneefa had decided to live together as Husband and wife along with the child. Pursuant to their decision to live together, the accused Haneefa got married the applicant victim girl Sahida as per custom. Now the accused Haneefa and the applicant victim girl Sahida are living together as husband and wife as a family in their village."

To ascertain the correctness of the said affidavit

allegedly sworn in by the victim, this Court on 28.08.2014 had directed the State to ascertain the actual position with regard to the claim of the accused-appellant. Further, on 4.09.2014, we directed the Assistant Sessions Judge, Kozhikode to examine the victim and submit a detailed report. Pursuant to our direction, the Assistant Sessions Judge, (Third

3

Additional), Kozhikode has examined the victim girl and has submitted his report. The Assistant Sessions Judge has examined the victim girl and recorded her deposition. The forwarded letter from the Assistant Sessions Judge along with the translated copy of the statement of the victim was produced in the Court by learned counsel for the State. By perusal of the said report it appears that the victim has said to have made a statement before the learned Assistant Sessions Judge that the appellant-Haneefa has never approached her for the settlement of the case and that he has not married her. She further stated that she has not signed the statement of fact stating that she and the appellant are living together as husband and wife. Since the false affidavit is the basis for getting the leave granted by allowing the special leave petition and obtained the bail from this Court, we find that there is prima facie a case for committing perjury by filing the false affidavit on behalf of the victim, hence, we have to take necessary action for filing of a false affidavit, which amounts to interference with the administration of justice of this Court, amounts to criminal contempt as defined under Section 2(c)(ii) of the Contempt of Courts Act, 1971 for which we are

4

required to initiate contempt proceedings against the counsel Mr. S. Gauthaman and also against the appellant for the reason that such an application

could not be filed by the above learned Advocate on Record without the aid and assistance of him. Because the bail was granted on the basis of the false affidavit alleged to have been filed by the appellant and he is the beneficiary of this Court's Order dated 8.03.2010, hence, we direct the Registry to issue show cause notice to both of them calling upon them to show cause as to why Contempt proceedings shall not be initiated against them for the perjury alleged to be committed by them and list the matter after service of notice on them is complete to hear them and pass an appropriate order in accordance with law in relation to the criminal contempt proceedings.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)