

SUPREME COURT OF INDIA

Shekara

Vs.

State of Karnataka

Crl.A.No.479 of 2002

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

18.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court upholding the conviction of the appellant for offence punishable under Section 376 of the *Indian Penal Code, 1860* (in short the 'IPC') and sentence of five years rigorous imprisonment as imposed by learned IInd Additional Sessions Judge Dakshina Kannada, Mangalore in SC No. 41 of 1993.

2. Background facts in a nutshell are as follows:

“The appellant with three other accused stood tried before the IInd Additional Sessions Judge, Mangalore in S.C. No.41 of 1993 on the accusation that the accused No.1 about nine months earlier to 16.10.1992 at House No.2/92, Vishnunagar of Kelarkalabettu, Udupi Taluk committed rape of PW8, daughter of the complainant Kalyani Bai (PW1) by inducing her to have sexual intercourse on the false promise of marrying her and committed the offence punishable under Section 376 IPC and accused nos.1 to 4 on 16.10.1992 at about 10 pm entered into the house of complainant and committed criminal intimidation by threatening PW1 and her daughter (PW8) with dire consequences and threatened to do away with their lives and thereby committed offences punishable under Sections 448, 506 read with Section 34 IPC. All the accused pleaded not guilty and claimed to be tried. The prosecution examined PWs. 1 to 12 and got marked Exs. P1 to P14. The statement of the accused under Section 313 *Code of Criminal Procedure, 1973* (in short the 'Cr.P.C.') was recorded. The accused did not lead any defence evidence.”

3. Primary stand before the High Court was that the victim was more than 16 years of age and she had consented to the act. The High Court did not accept the plea and upheld the conviction as recorded.

4. Learned counsel for the appellant reiterated the submissions made before the trial court and the High Court. Learned counsel for the State on the other hand supported the judgment of the trial court as affirmed by the High Court.

5. It is to be noted that PW1 had produced the transfer certificate (Ex.P9) and has stated that it pertains to the victim and her name has been entered in the certificate. Nothing has been elicited in her cross examination to discard her evidence that Ex.P9 pertains to the victim that is the daughter of PW 1. PW 12 had issued the transfer certificate and also stated in his evidence that he was working as head master of the school in question. He remembered to have seen her when she came for applying for her transfer certificate for her children and had issued the transfer certificate to her and that Ex.P9 the transfer certificate was issued by him. It also bears the signature of the head master. He categorically stated that Ex.P9 was issued on the basis of entries made in the admission register and Ex.P10(a) as the relevant entry on the basis of which Ex.P9 was issued. As per Ex.P9 the date of birth of the prosecutrix was 10.6.1977 and the date of incident i.e. nine months prior to 16.10.1992 clearly established that the Prosecutrix was below 16 years of age. The evidence of the prosecutrix shows that she was aged about 8 to 9 years when she was sent to work as a maid servant.

6. The offence of rape occurs in Chapter XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'Sexual offence', which encompasses Sections 375, 376, 376-A, 376-B, 376-C, and 376-D. 'Rape' is defined in Section 375. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i.e. 376-A, 376- B, 376-C and 376-D. The fact that sweeping changes were introduced reflects the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape' or 'Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co. Litt. 123-b); or as expressed more fully, 'rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will' (Hale PC 628). The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape; 1 Hon.6, 1a, 9 Edw. 4, 26 a (Hale PC 628). In the crime of rape, 'carnal knowledge' means the penetration to the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Stephen's "Criminal Law" 9th Ed. p.262). In 'Encyclopoedia of Crime and Justice' (Volume 4, page 1356) it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation with violence of the private person of a woman-an-outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order.

7. In order to constitute the offence under Section 354 IPC mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to

all cases. (See *State of Punjab v. Major Singh*¹. A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

“(i) that the person assaulted must be a woman;

(ii) that the accused must have used criminal force on her; and

(iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.”

8. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case after careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is Section 354 IPC.

9. In the instant case we alter the conviction of the accused from Section 376 IPC to Section 354 IPC.

10. Considering the background facts and the position in law as indicated above, the inevitable conclusion is that the appeal is without merit deserves dismissal which we direct.

¹(AIR 1967 SC 63)