SUPREME COURT OF INDIA

Krishna @ Krishnappa

Vs.

State of Karnataka

Crl.A.No.162 of 2009

(Dipak Misra and Uday Umesh Lalit JJ.)

14.11.2014

JUDGMENT

UDAY U. LALIT, J.

1. This appeal arises out of judgment and order dated 10.06.2008 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.1360 of 2001 setting aside the judgment and order of acquittal passed by the Ld. XXV Additional Sessions Judge, Bangalore in Sessions Case NO.62 of 1994 and convicting the appellant herein for the offences punishable under Sections 376 read with Section 511 IPC and also under Section 341 IPC.

2. Crime No.48 of 1991 was registered with Devanahalli Police Station pursuant to FIR (Ext.P-9) lodged by PW-1 victim alleging that on 06.03.1991 at about 4.00 PM while she was returning from the bus stop of their village after having sent her husband and son to sell silk cocoons at Vijayapura, the present appellant wrongfully restrained her near eucalyptus grove, gagged her mouth and despite her protest had forcible sexual intercourse with her. It was alleged that her screams attracted Muniyappa (PW-2) and Venkateshappa (PW-3) and on seeing them the appellant had run away from the spot. Upon registration of such crime PW-1 victim was sent for medical examination by Dr. Manjunath (PW-4) who however, found no signs of any sexual intercourse but found two abrasions on the forearms of PW-1 victim. The appellant was arrested and also medically examined.

3. After due investigation the charge-sheet was filed and the appellant was tried for having committed the offences punishable under Sections 376 and 341 IPC vide Sessions Case No.62 of 1994. PW-1 victim in her testimony admitted her age to be 60 years. She reiterated that she was subjected to forcible intercourse by the appellant. Muniyappa (PW-2) supported her version, but Venkateshappa (PW-3) turned hostile. It was suggested to these witnesses in their cross-examination that the appellant was related to PW-1 victim, that there were civil and criminal cases pending between the parties in support of which contention certified copies of the civil suit and criminal cases Ext. D-1 and D-2 were also filed. Dr. Manjunath (PW-4) who had medically examined PW-1 victim specifically stated that nothing was found to show that the victim was subjected to sexual intercourse. Dr. S.B. Patil (PW-5) who had examined the appellant stated the age of the appellant to be 17-18 years.

4. The learned trial court found that though PW-1 victim had stated that her sari was torn in the incident, said sari was not produced before the court, that as per PW-2 there were no eucalyptus trees in between the bus stop and the village, that though as per the version of PW-1 victim the incident lasted for about half an hour during which time she was trying to escape and had bitten the right hand of the appellant, the medical evidence did not support such assertions and that because of civil and criminal cases pending between the parties the possibility of false implication could not be ruled out. Considering the entire evidence on record learned trial court found that the prosecution had failed to establish that the appellant was guilty of the offences as alleged. The learned trial court, therefore, by its judgment and order dated 06.08.2001 acquitted the appellant of the charges leveled against him.

5. State of Karnataka carried the matter further by filing Criminal Appeal No.1360 of 2001 in the High Court of Karnataka at Bangalore. The High Court observed that in view of the evidence of Dr. Manjunath (PW-4) it was clear that the prosecution had failed to prove that the appellant had sexual intercourse with PW-1 victim. The High Court thus affirmed the acquittal of the appellant under Section 376 IPC. However after considering the evidence of PWs-1 and 2 it found that it was proved beyond doubt that the appellant had attempted to commit rape on the victim. The High Court thus convicted the appellant for the offence of attempt to commit rape under Section 376 read with Section 511 IPC and also under Section 341 IPC and sentenced him suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default

whereof to undergo further imprisonment for one year under the first count and to suffer simple imprisonment for one month and payment of fine of Rs.3,000/-, in default whereof to suffer further imprisonment for 15 days for the offence punishable under Section 341 IPC.

6. The appellant being aggrieved preferred special leave to appeal and this Court after grant of special leave to appeal also directed vide order dated 13.04.2009 that the appellant be released on bail pending this appeal.

7. Mr. T. Prakash, learned advocate appearing for the appellant submitted that the view taken by the learned trial court in the instant case was quite appropriate and justified. In any case, given the reasons in support of the judgment of acquittal, such view was definitely a possible view and in an appeal against acquittal the High Court was not justified in setting aside such order of acquittal. Furthermore, the conviction under Section 376 read with Section 511 IPC was also not justified.

> In Muralidhar @ Gidda & Anr. Vs. State of Karnataka reported in (2014) 5 SCC 730 after considering various authorities, it was observed:
> Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment

of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

8. We have gone through the judgment of the trial court and the High Court and carefully perused the evidence on record. It may be mentioned that as found by both the courts below the offence under Section 376 was not established at all. The reasons given by the trial court while acquitting the appellant, in our view, are quite sound and in any case, such view is definitely a possible view. The conclusions reached by the trial court cannot be said to be palpably wrong or based on erroneous view of the law, so as to call for interference by the High Court. In our considered view the High Court was not justified in converting the case to that of attempt to commit rape and recording order of conviction. We, therefore, set aside the judgment and order of conviction passed by the High Court and restore that of the trial court acquitting the accused-appellant of the offences with which he was charged. The appeal is allowed and the appellant is discharged of his bail bonds.