

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF OCTOBER 2010

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

CRIMINAL APPEAL NO.1187/2004

BETWEEN:

Naveen Deepak Fernandes
S/o Alban Fernandes
Aged 22 Years
Meenandu House, Vogga Post
Anchikatte, Kaval Padoor
Village, Bantwal Taluk
Pin : 574 265, D.K.

...APPELLANT

(By Sri Sarat Chandra Bijai, Adv.)

AND:

The State of Karnataka
Rep. by State Public Prosecutor
High Court Building
Bangalore - 560 001.

...RESPONDENT

(By Sri Vijayakumar Majage, HCGP)

This CrI.A is filed under Section 374(2) Cr.P.C against the judgment dated 28.07.2004 passed by the II Additional Sessions Judge and Special Judge, Mangalore, Dakshina Kannada in Spl. Case No.7/2003 convicting the appellant-accused for the offences punishable under sections 3(1)(11) of SC.ST (P.A) Act, 1989 and sentencing him to undergo imprisonment for a term of 6 months and to pay fine of Rs.2,000/-, in default to undergo S.I. for one month.

This appeal coming on for hearing this day, the Court delivered the following:

J U D G M E N T

The appellant/accused was tried and convicted for an offence punishable under Section 3(1)(11) of SC/ST (P.A.) Act, 1989 in Special Case No.7/2003 by the II Additional Sessions & Special Judge, Mangalore. Therefore, appellant/accused has filed this appeal.

2. I have heard Sri Sarat Chandra Bijai, learned Counsel for accused and learned Government Pleader for the State.

3. In brief, the case of the prosecution is as follows:

PW.1 - Kum.Asha is a resident of Menadumane near Anchikatte of Kavalapadoor village, Bantwal Taluk. So also, accused Naveen Deepak Fernandes @ Naveen Fernandes. PW.2 - Umavathi and PW.3 - Sumithra are also from the same village and they are cousin sisters of PW.1 - Kum.Asha. PW.5 - Narayana Naik was the father of PW.1.

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4. During the year 2002, PW.1 - Kum.Asha was undergoing Computer Training at Bantwal for which purpose, she used to travel from her village to Bantwal. On 8.10.2002 at about 4.30 p.m. reached Anchikatte bus stop and got down from the bus and thereafter she was walking on a pathway located by the side of garden of accused to reach her house. When she was walking near garden of accused, accused suddenly appeared before her, held her hand and asked her to satisfy him. PW-1 scolded the accused for his behavior and raised hue and cry. On hearing the same, PWs.2 & 3 came to the place of occurrence and accused left the hand of PW.1 and ran from the place. After reaching home, she informed the matter to PWs.4 & 5 and discussed the matter and decided to lodge first information against accused.

On the following day, at about 4.30 p.m., PWs.4 & 5 lodged first information with Bantwal police station. The Investigating Officer visited the place and recorded the statements of witnesses and after completion of investigation, submitted a charge sheet against

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accused. During trial, PWs.1 to 8 were examined and documents Exs.P1 to P6 were marked.

5. The learned Trial Judge on appreciation of evidence and on hearing the learned Counsel for parties held accused guilty of an offence punishable under Sec.3 (1) (11) of the SC/ST (P.A.) Act, 1989 and sentenced him to undergo imprisonment for a period of six months and to pay a fine of Rs.2,000/- and in default to undergo simple imprisonment for a period of one month. Therefore, accused is before this Court.

6. In view of the above, following points would arise for determination:

- 1) Whether the prosecution has proved that on 8.10.2002 at 4.30 p.m. when PW.1- Kum.Asha was walking on the pathway of garden land of accused, accused held the hand of PW.1 and asked her to show sexual favours to him knowing fully well that victim is a woman belonging to Scheduled Caste and with an intent to dishonor or outrage her modesty and

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thereby committed an offence punishable under Sec.3 (1) (11) of the SC/ST (P.A.) Act, 1989 ?

- 2) Whether the learned trial Judge has properly appreciated the evidence on record?
- 3) Whether the impugned judgment call for interference?
- 4) What order ?

7. At the relevant time, PW-1 was aged about 21 years. She was not married. She used to attend Computer classes at Bantwal. She used to travel from Bantwal to her village by bus and alight from the bus at Anchikatte.

PW-1 has deposed that on 8.10.2002 at about 4.15 p.m., after completing her computer classes, she travelled in a vehicle and alighted from the vehicle near Anchikatte. She was alone walking on a pathway towards her house. When she was walking on the pathway near the garden land of accused, all of a sudden, accused appeared and held her hand and

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sought for sexual favour from her. PW-1 raised hue and cry and PWs.2 & 3, on hearing the hue and cry raised by PW-1, reached the place of occurrence. On seeing them, accused left the hand of PW-1 and ran away from that place. PWs.2 & 3 came and questioned as to what had happened and PW-1 narrated the incident to them. Thereafter, she reached her house and informed the matter to PWs.4 & 5. The elders discussed the matter as it involved the honour and modesty of PW-1 and decided to lodge first information.

On the following day, at about 4.30 p.m., PW-1 lodged first information as per Ex.P-1. The police visited the place of occurrence. PW-1 has deposed that she belongs to Marathi Parishista Pangada and accused belongs to Christian religion. During cross-examination, PW-1 has given the topography of place of occurrence and also distance between the place of occurrence and the houses of PWs.2 and 3. From the evidence of PW-1, it looks improbable that PWs.2 & 3 had reached the place of occurrence on hearing the hue and cry of PW-1.

Yet, the fact remains that PWs.2 & 3 were post

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occurrence witnesses to whom PW-1 had revealed the incident. Though there is discrepancy in the evidence of PW-1 as to whether, accused was present when PWs.2 and 3 reached the place of occurrence, yet the fact remains that PW-1 had immediately revealed the incident to PWs.2 and 3 which conduct is consistent with her evidence. Whatever that was told by PWs.1 to PW.3 can be termed as res geste evidence. PW-2 Umavathi and PW-3 Sumithra have asserted that they reached the place of occurrence on hearing the hue and cry raised by PW-1 and saw accused holding the hand of PW-1.

8. From the cross examination of PWs.2 and 3, I find that their houses are situate at a distance from the place of occurrence. In order to reach the place of occurrence, they had to cross a dam and thereafter they had to climb by a hillock and walk for a considerable time. From the houses of PWs.2 and 3, the place of occurrence is not visible. Therefore, evidence of PWs.2 and 3 that they had seen accused holding the hand of PW-1 cannot be accepted. Yet the fact remains PWs.2

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and 3 had reached the place of occurrence and PW-1 revealed to PWs.2 and 3 of the incident and the complicity of accused. The evidence given by PWs.4 and 5 relates to the information conveyed by PW-1 during the evening of date of occurrence and also lodging of first information on the following day at about 4.30 p.m. The evidence of PWs.6 to 8 relates to investigation of the case.

9. The learned Counsel for accused referring to evidence of PW-1 would submit that PW-1 has given discrepant evidence relating to the place of occurrence, location of her house as also the location of houses of PWs.2 and 3 to make it appear for PWs.2 and 3 had reached the place of occurrence, soon after she raised hue and cry and PWs.2 and 3 had seen accused holding the hand of PW-1. The learned Counsel for accused would submit that the prosecution has failed to prove that PW-1 belongs to Scheduled Caste/Tribe as defined under Section 2(1)(c) of the SC and ST (Prevention of Atrocities Act), 1989. The learned Counsel would submit that the letter of correspondence between the

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Investigating Officer and the Tahsildar marked as Ex.P-6 could hardly be construed as Caste Certificate to prove that PW-1 belongs to Scheduled Caste/Tribe.

10. In the discussion made supra, I have held that PWs.2 and 3 were post occurrence witnesses and they had not seen accused near the place of occurrence. However, the immediate revelation of the incident by PWs.1 to 3 would fall within the meaning of res geste evidence. It is true that PW-1 has given evidence to make it appear that PWs.2 and 3 had reached the place of incident when the accused was very much present near the place of incident. PW-1 appears to have given this exaggerated version.

In the discussion made supra, on consideration of evidence given by PWs.2 and 3, I have held that the place of occurrence is neither visible nor audible from houses of PWs.2 and 3. PW-1 was not married. She was aged about 21 years. She did not have grudge or grievance against accused to falsely implicate him, that too at the cost of letting down her modesty.

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11. The learned Counsel for accused referring to the evidence of PWs.2 and 3 would submit that during the year 2002, the villagers of Menadumane including PWs.4 and 5 had cleared the bushes and weeds which were surrounding the pathway connecting the village to Anchikatte bus stop and pathway is situate by the side of land of accused. In the process of clearing weeds and bushes, the villagers had cut and removed certain trees situate in the land of PW-1 on that account, there was enmity between PW-1 and villagers.

Even if there was enmity between PW-1 and villagers, it is difficult to conceive that PW-1 would concoct a story of accused outraging her modesty. PW-1 had attained marriageable age. She was aware of the consequences of the incident on her ^{marital} prospects. Therefore, she would have hardly ventured to concoct a case as contended by the defence.

The learned Counsel for accused would submit that there was delay of 24 hours in lodging first information though the jurisdictional police is at a

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distance of 10 Kms. from the place of incident. In order to appreciate this submission, it is necessary to state that after the incident, PW-1 had deliberations with her parents. They had apprehension that reputation and honor of PW-1 would be let down if they reveal the incident. However, after deliberations, they arrived at a conclusion to proceed against accused by lodging the first information. Considering the facts and circumstances and also the status of PW-1, it appears there was some hesitation on the part of PW-1 and her parents' to immediately approach the police station. It is obvious that such hesitation had caused delay in lodging first information. Therefore, delay in lodging first information cannot be a ground to discard the evidence of PW-1.

12. The prosecution has not produced the Caste Certificate to prove that PW-1 belongs to Scheduled Caste. In order to attract an offence under Section 3(1)(11) of the Act, the prosecution has to prove that PW-1 belongs to Scheduled Caste as defined under Section 2(1)(c) of the SC/ST (POA) Act.

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The prosecution has relied on the letter marked as Ex.P-6, wherein the Tahsildar, Bantwal has addressed a letter (Ex.P-6) to the Deputy Superintendent of Police, Puttur Division to inform that PW-1 belongs to Marathi Caste. On verification, he found that PW-1 belongs to Marathi Scheduled Tribe. In order to prove that a person belongs to a Schedule Caste and Scheduled Tribe, as defined under Section 2(1)(c) of the Act, the competent authority has to issue a certificate as prescribed by law which shall consist of two parts. One part shall specify the caste and it shall state the presidential order under which such caste has been classified as Scheduled Tribe or Scheduled Caste. The second part of the certificate shall indicate that caste was confirmed on proper verification as required by law.

13. In the case on hand, the prosecution apart from producing letter marked as Ex.P-6 has not bothered to produce the certificate to prove that PW-1 belongs to Scheduled Tribe as defined under Section 2(1)(c) of the Act. The Tahsildar was not examined

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before the trial Court. The letter marked as Ex.P-6 cannot be read as per se evidence. Therefore, I hold that the prosecution has failed to prove that PW-1 belongs to Scheduled Caste/Tribe to attract an offence under the provisions of SC and ST (POA) Act. However, from the evidence of PW-1, it is clear that accused No.1 holding the hands of PW-1 had sought sexual favour from her which would clearly attract an offence under Section 354 of IPC.

The learned trial Judge without considering the above aspects and without noticing that the prosecution has failed to prove that PW-1 belongs to Scheduled Caste/Tribe as required by law has held accused guilty of an offence under Section 3(1)(11) of the Act. Therefore, I am of the considered opinion that the impugned judgment requires modification.

14. In the result, I pass the following order:

The appeal is accepted in part. The impugned judgment is modified. The accused is acquitted of an offence punishable under Section 3(1)(11) of the SC/ST

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(POA) Act. The accused is convicted for an offence under Section 354 of IPC.

15. Reg. Sentence:

The learned Counsel for accused would submit that accused was in judicial custody for a period of 20 days and he has been sentenced to pay a fine of Rs.2,000/-. The learned Counsel would submit that the period of detention undergone by accused may be held as sufficient sentence in view of the fact that accused does not bear any criminal antecedents and he was aged about 20 years at the time of occurrence.

The learned Government Pleader would submit that incident took place when PW-1 was alone walking to her house. The topography of place of occurrence, situation of village would suggest that PW-1 like other girls in the village was constrained to walk on the pathway from Anchikatte bus stop. The accused had created fear in the mind of PW-1 by his illegal overtures.

Therefore, no leniency is called for in the matter of sentence.

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On hearing the learned Counsel for accused and also taking into consideration that accused does not bear any criminal antecedents and he has chances to reform himself, at the same time to deter accused from repeating such acts, I pass the following sentence:

The accused is sentenced to undergo rigorous imprisonment for a period of one month and pay a fine of Rs.10,000 in default, to undergo simple imprisonment for a period of one month. Out of fine amount deposited, a sum of Rs.8,000/- shall be paid as compensation to PW-1. The period of detention undergone by accused during trial is given set off as provided under Section 428 Cr.P.C.

Office is directed to sent back the records along with the copy of this order.

Sd/-
Judge

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