

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF FEBRUARY, 2013

BEFORE

THE HON'BLE MR. JUSTICE A.S. PACHHAPURE

CRIMINAL APPEAL No.1368 OF 2012

BETWEEN:

THE STATE BY KARNATAKA
BY WILSON GARDEN POLICE
BANGALORE.

... APPELLANT

(BY SRI: RAJESH RAI K, HCGP)

AND:

SRI MADHUSUDHAN @ MADHU
S/O VENKATESH
AGED 22 YEARS
R/AT NO.108, IST MAIN,
2ND CROSS, VINAYAKNAGAR
BANGALORE-560 072.

... RESPONDENT

THIS CRL.A. IS FILED UNDER SECTION 378(1) AND (3) CR.P.C AGAINST THE JUDGEMENT AND ORDER OF ACQUITTAL DATED 13.07.2012 PASSED BY THE XLV ADDL. CITY CIVIL & S.J., BANGALORE IN S.C. NO.372/2008 -ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 376(2)(f) READ WITH SECTION 511 OF IPC.

THIS CRL.A. COMING ON FOR ORDERS, THIS DAY THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

The State has challenged the judgment and order acquitting the respondent for the charge under Section 376(2)(f) read with Section 511 IPC on a trial held by Addl. City Civil and Sessions Judge, Bangalore City.

2. The facts reveal that on 09.12.2007 in the morning at about 10.30 a.m., accused (respondent herein) visited the house of victim and took the victim PW3, a minor girl aged about 10 years to his new building situated at Vinayakanagar saying that he would give the key of his house and said to have tried to commit rape on the victim girl. On a complaint, investigation was held and chargesheet was laid against the accused for the offence punishable under Section 376(2)(f) read with Section 511 IPC.

3. During the trial, prosecution examined PWs.1 to 10 and got marked Exs.P1 to P11 and Mos.1 to 7. After recording the statement of respondent under Section 313 Cr.P.C., DWs.1 and 2 the defence witnesses were examined and Ex.D1 was got marked. The Trial Court after hearing the counsel for parties and on appreciation the material on record, convicted the respondent for the charge under Section 354 IPC and acquitted for the charge under Section 376(2)(f) read with Section 511 IPC. Aggrieved by the acquittal, the present appeal has been filed.

4. I have heard learned High Court Government Pleader for the appellant.

5. PW3 is the victim minor girl. She was a student of 5th standard aged inbetween 10 to 11 years. Her evidence discloses that she was taken by the respondent (accused) to his new house and he opened her kacha and pant, she made

hue and cry and she tried to escape from the hands of respondent (accused). The respondent caught hold and removed her clothes, at that time, she escaped and ran away from the spot. This is what all have been stated by PW3 - the victim in her evidence as regard to the act of respondent. Apart from the evidence of PW3 - the victim, it is PW2 her mother who has deposed before the Court that she has stated what all has been stated by the victim to her. The evidence of PW5 - Dr.H S Sandhya discloses that there were no injuries on the body of victim. There were no sperm stains on the articles. Ex.P3 is the certificate issued by the expert. So from this evidence on record, the Trial Court was of the view that prosecution has not proved the act of attempting rape on the victim to find him guilty for the offence under Section 376(2)(f) IPC.

6. Taking into consideration the evidence of victim and also the report of expert, I do not think there are any grounds to admit the appeal. In the result, the appeal fails and is dismissed.

In view of dismissal of the appeal, IA.I/2013 filed for condonation of delay does not survive for consideration and hence, it is accordingly rejected.

Sd/-
JUDGE

*bgn/-