



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 14TH DAY OF OCTOBER, 2024

PRESENT
THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO.100198 OF 2020 (A)

BETWEEN:

STATE OF KARNATAKA
THE CIRCLE POLICE INSPECTOR,
BALLARI RURAL POLICE STATION, BALLARI,
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...APPELLANT

(BY SRI M.B. GUNDAWADE ADDL. SPP.)

AND:

G.N. GIRISHA S/O. NANGAPPA
AGE- 29 YEARS,
OCC- KSRTC CONDUCTOR, 2ND DEPOT,
R/O- BALLARI, PINCODE-583101.

...RESPONDENT

(BY SRI BASAVANA GOUD T., ADVOCATE;
PW3/COMPLAINANT SERVED)

THIS CRIMINAL APPEAL IS FILED U/S 378 (1) AND (3) OF CR.P.C., PRAYING TO GRANT LEAVE TO APPEAL AND TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 08/01/2020 PASSED BY THE I ADDL. DISTRICT AND SESSIONS JUDGE, BALLARI IN SPL.CASE NO.111/2013 AND TO CONVICT THE RESPONDENT/ ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376, 323, 504, 506 OF IPC AND UNDER SECTION 3(1)(XI) OF SC AND ST (PREVENTION OF ATROCITIES) ACT, 1989 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The acquittal judgment dated 08.01.2020 in Spl. Case No.111/2013 on the file of 1st Addl. District and Sessions Judge, Ballari, has given rise to this appeal by the State. Accused faced trial for the offences punishable under Section 376, 323, 504, 506 of Indian Penal Code and Section 3(1)(XI) of Scheduled Caste and Scheduled Tribe Act (Prevention of Atrocities) Act, 1989 (for short, 'SC & ST Act').

2. FIR was registered at the instance of PW-3 who is the prosecutrix. Ex.P-3 is a report made by her to the police for the purpose of registration of FIR. Perusal of Ex.P-3 discloses that accused was a bus conductor and PW-3 was a nurse in a hospital at Ballari. They came in contact with each other and started loving. This intimacy



led to their having sexual intercourse several times. It appears that since accused refused to marry PW-3, she decided to approach the police.

3. The investigation led to filing of charge sheet against accused. During trial, prosecution examined 13 witnesses and got marked 20 documents as per Exs.P-1 to P-20. MOs. 1 to 7 were the material objects marked by the prosecution. Accused himself led defence evidence as DW-1 and Exs.D-1 to D-3 are the documents produced by the defence.

4. On appreciation of the evidence, the trial Court recorded acquittal giving reasons that the age of PW-3 as on the date of first sexual intercourse was more than 19 years, that she was quite intelligent to understand the consequences of the act she was indulging in with the accused, that she knew that her marriage with the accused was difficult on account of caste considerations, that it was difficult to impute to the appellant knowledge that the prosecutrix had given consent for sexual



intercourse under misconception of fact that the accused would marry her. So far as offence under Section 3(1)(x) of SC & ST Act is concerned, though PW-3 belongs to Scheduled Caste, there is no evidence in support of the allegation that accused insulted her taking the name of her caste.

5. We have heard the arguments of Sri M.B. Gundawade, learned Addl. SPP and Sri Basavanagouda T., learned counsel for respondent.

6. Sri M.B.Gundawade submits that, in-spite of concrete evidence being made available by prosecutrix-PW.3 and the medical evidence supporting her testimony, the Trial Court has gone wrong in recording acquittal. Though the age of the prosecutrix was more than 19 years, she had to indulge in the act of sexual intercourse with the accused as she strongly believed that accused would marry her. At last he declined to marry her. Therefore this circumstance would clearly indicate that the accused had no intention to marry her rather his intention



was to sexually exploit PW.3 and thus looked offence under Section 376 would get established. Instead of appreciating evidence from this angle, the Trial Court has given reasons which are not forthcoming from the evidence and therefore there is a case for interfering with the impugned judgment.

7. On the other hand, learned respondent's counsel submits that, PW.3 was a staff nurse in a hospital and she was fully aware of the consequences of what she was doing. Knowing well that the marriage was impossible because of caste barricade if she voluntarily cooperated with accused for satisfying her sexual desire, it did not amount to offence of rape. Her evidence clearly discloses that they were meeting at several places and indulging in sexual intercourse. In regard to allegation of insulting her taking the name of her caste, there is no evidence that she was humiliated within the public gaze and hence for all these reasons, the Trial Court is justified in recording acquittal.



8. He further submits that accused married PW.3 on 10.06.2022. He shows a marriage invitation card and two photographs of the marriage. PW.3 has now given birth to a male child and in proof of the same he produces the birth certificate of the child Vedanthgouda.

9. We have perused the entire evidence. Not for the reason that the accused has now married PW.3, it is for the reason that the prosecution has failed to establish case, we have to concur with the reasons given by the Trial Court. PW.3 was a nurse in a hospital. Acquaintance between them appears to have developed two years before registration of FIR and they used to meet at several places and her own evidence discloses that they had sexually intercourse more than three times, one time in a open place. It is therefore, difficult to simply believe whatever she stated that she had to co-operate with the accused in the act of sexual intercourse on the belief that accused would marry her. The Trial Court has rightly observed this. Of-course, the medical evidence discloses



that PW.3 was used to sexual act. This being the situation, the allegations made by PW.3 that accused refused to marry her on the ground of caste factor is difficult to be believed. Even if it is assumed that, accused took the name of her caste and refused to marry her, as has been stated by PW.3, it was in an isolated place, it was not within the view of the public and therefore no offence under Atrocities Act can be said to have taken place. It is enough if we just state here that, entire act was consensual. The evidence given by PW.3 is not trustworthy. In this view we do not find a good ground to interfere with the judgment of the Trial Court. Hence, appeal is dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**