HC-KAR

NC: 2026:KHC:59689
CRL.A No. 1130 of 2015

CNR: KAHC010406492015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1130 OF 2015 (C)

BETWEEN:

1. ANUJ ARYA
   S/O SURENDRA SINGH
   AGED ABOUT 28 YEARS,
   RESIDING AT NO.E-23,
   SRI RAMASADANA APARTMENT,
   GOKULA POST,
   BANGALORE-560054
   PERMANENT RESIDENT OF
   H-110, SECTOR-22
   NOIDA, UTTAR PRADESH,
   PRESENT ADDRESS:
   J-92, PIPELANE, PALACE GUTTAHALLI,
   BANGALORE-560014

...APPELLANT

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL FOR
SRI. SANTHOSH B., ADV.)

Digitally signed by
LAKSHMINARAYAN N
Location: High Court of
Karnataka

AND:

1. STATE OF KARNATAKA BY
   JALAHALLI POLICE, BANGALORE-24
   (REPRESENTED BY LEARNDE
   STATE PUBLIC PROSECUTOR)

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP.)

CRL.A. FILED U/S.374(2) CR.P.C BY THE ADV. FOR THE APPELLANT/ACCUSED PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDERS

OF CONVICTION DATED 14.9.2015 PASSED BY THE LIV ADDL. CITY CIVIL AND S.J., BANGALORE CITY IN S.C.NO.472/2012 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376 AND 420 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

Appellant/accused has preferred this appeal against the judgment of conviction and order on sentence dated 14.09.2015 passed in SC No.472 of 2012 by the LIV Additional City Civil and Sessions Judge at Bangalore (CCH-55) (for short, the 'trial Court').

2. For the sake of convenience, the parties herein are referred to as per status and rank before the trial court.

3. Brief facts leading to this appeal are that the Police Inspector, Jalahalli Police Station, Bangalore submitted Charge-sheet against the accused for the offence punishable under Sections 376 and 420 of Indian Penal Code. It is alleged by the prosecution that the accused and the victim girl are known to each other since six years. Subsequently, they both fell in love. On 19.10.2011, the accused invited the victim to his

House bearing No.E-23, Sri Ramsadan Apartments, Gokul, Bangalore for celebration of his birthday. Victim girl had gone to the house and accused has induced her to have sexual intercourse by promising that he will marry her. Though the victim girl has refused to have physical relationship, the accused not heeding to the words of victim, between 3.30 and 4.00 pm, without the consent of the victim girl and against her will, had sexual intercourse with her forcibly. On 29.01.2012, when the victim girl asked the accused to marry her, the accused has told her that he has done all this only for his satisfaction and he is not ready to marry her. He further said that the friendship will be continued as it is. Thus, the accused has committed the alleged offences.

4. After filing charge-sheet, case was registered in CC No.9409 of 2012 and then it was committed to the court of Sessions where it was registered as SC No.472 of 2012. The accused was enlarged on bail. Upon hearing on charges, the trial Court framed the charges for the offence punishable under Sections 376 and 420 of IPC. The same were read over and explained to the accused. Having understood the same,

accused pleaded not guilty and claimed to be tried. Thereafter, the trial Court has framed altered Charge on 10.04.2015 only for the offence under Section 376 of Indian Penal Code.

5. To prove the guilt of the accused, the prosecution has examined 11 witnesses as PWs1 to 11 and marked 18 documents as Exhibits P1 to P18 and one material object as MO1. On closure of prosecution side evidence, statement of the accused under Section 313 of Cr.PC was recorded. Written submissions of the accused also filed. Accused has denied the evidence of prosecution witnesses and adduced evidence of DW1 and marked 3 documents as Exhibits D1 to D3. Having heard the arguments on both sides, the trial Court has convicted the accused for offence under Sections 376 and 420 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of eight years and to pay fine of Rs.20,000/- for offence under section 376 IPC. The accused is also sentenced to undergo imprisonment for 2 years and to pay fine of Rs.10,000/- for the offence under Section 420 IPC.

Being aggrieved by the impugned judgment of conviction and sentence, accused has preferred this appeal.

6. Sri Hashmath Pasha, learned Senior Counsel appearing for the counsel for the appellant, would submit that the judgment of conviction and sentence passed by the trial Court is bad and opposed to law, facts and circumstances and probabilities of the case. There is no evidence to attract the offence under Sections 376 and 420 of Indian Penal Code. The evidence of PWs1 to 3 and 8 reveal that the applicant and victim were close and were moving as friends. Both were in love with each other and out of this relationship, it is the version of PW3-Roopakala, that both had sexual relationship freely without any resistance. The conduct of PW3 in not informing anyone about their sexual relationship, leave apart forcible sexual intercourse by the accused on her, suggest that the real fact was, it is a case of consensual sex.

6.1. The age of the victim was above 25 years. She had studied MBA and had worked in a reputed Hotel and thereafter, she joined a Company called Via.Com and was working as a Revenue Manager. She has full knowledge of the worldly

affairs and the consequences of indulging in continuous talk, chat and meeting each other and thereafter indulging in free sexual intercourse with the appellant and not informing anyone and was keeping secret the fact of the sexual intercourse with the appellant as it is of their personal affair and only when the appellant's family members did not agree for the marriage of the appellant with her, she suddenly decided to take revenge against the appellant by lodging complaint. One of the main reasons for not getting married was because of the caste difference and also non-agreeing by the elders of the appellant. Added to this, PW3-Roopakala imposed several conditions for marriage, like marriage should be registered, and the appellant should not go out of Bangalore, he should reside in their house etc. After full deliberations, since differences between both the families erupted, the marriage between PW3-Roopakala and the appellant was not materialised. It was only thereafter, PW3-Roopakala went to the Police Station to lodge complaint. The respondent police being fully aware of the facts refused to receive her complaint. But, ultimately on 01.02.2011, she got influenced the respondent Police through the Assistant

Commissioner of Police and filed a false complaint against the appellant stating that he had committed forcible sexual intercourse on her. PW3 was subjected for medical examination. The Doctor at M.S. Ramaiah Hospital examined her and issued certificate as per Exhibit P4 stating that, upon examination, there were no external injuries found on her person and there were no signs of recent sexual intercourse. But, she used to act like that as if there was forcible sexual intercourse. The Doctor has found other features on her body which suggest that she was in continuous process of sexual relationship. The chemical analysis report also negative the presence of any spermatozoa. Therefore, the medical evidence totally negatived the theory of committing any act of forcible sexual intercourse on her.

6.2. PW3 being a grown-up woman, aged about 25 years and well-educated, developed relationship with appellant, started moving freely, indulged in sexual intercourse and her conduct of keeping it in secret by not informing anyone or not lodging any complaint, suggest that she was a consenting party. This is supported by the evidence of PW2-Father and

PW8-Mother of the victim who have deposed that PW3 herself was loving the appellant very much and she had decided to marry him. It has also come in her evidence that both were in close relationship. On several locations, she had gone to drop the appellant to Airport whenever he was going to his native place Delhi, and she was also picking him from the Airport when he returned to Bangalore. Once, he had used her credit card to buy air ticket. Like that, both were loving and having close relationship, but due to some differences between the families, PW3 decided to lodge complaint to the police with allegation. The learned Senior Counsel would submit that the trial Court has not properly appreciated the evidence on record in accordance with law and facts. He would submit that, as per the ingredients of Section 375 of Indian Penal Code, prior to amendment, when an act of sexual intercourse is committed with a girl who is above the age of 16 years, is no offence of rape.

6.3. Further, the learned Senior Counsel would submit that on 22.11.2012, the trial Court has framed charges for offence under Sections 376 and 420 of Indian Penal Code and

the same was altered on 10.04.2015, by deleting the offence under section 420 of Indian Penal Code. However, at the time of judgment, the trial Court has convicted the accused for the offence both under Section 376 and 420 and passed the sentence. On a careful examination of the impugned judgment, it is clear that though the trial Court has deleted the offence under Section 420 of Indian Penal Code as per the altered charge on 10.04.2015, but has committed the accused for the offences under Section 376 and 420 IPC and also passed sentence for the said offence. It only shows that the trial court has mechanically passed the judgment of conviction for offence under Section 420 of Indian Penal Code. On all these grounds, it is sought to allow the appeal. To fortify his submissions, the learned Senior Counsel, has relied on the following judgments:

1. UDAY V. STATE OF KARNATAKA - (2003)4 SCC 46;
2. DR. DHRUVARAM MURALIDHAR SONAR V. STATE OF MAHARASHTRA AND OTHERS - (2019)18 SCC 191.

7. As against this, Sri K. Nageshwarappa, the learned HCGP would submit that the trial Court has appreciated

evidence record on accordance with law and facts and has convicted the accused and the same does not call for any interference in this appeal. Accordingly, it is sought for dismissal of the appeal.

8. Having heard the arguments on both sides and perusal of materials placed before this Court, the following points would arise for consideration:

1. Whether the appellant has made out a ground to interfere with the impugned judgment of conviction and order on sentence?

2. What order?

9. My answer to the above points are:

Point No.1: in the affirmative;
Point No.2: as per final order.

Regarding Point No.1:

10. I have examined the materials placed before the court. This case arise out of the complaint by the victim, PW3 as per Exhibit P1, in which it is stated as under:

"ನಾನು ರೂಪಕಲಾ, ಈ ಮೂಲಕ ದೂರ ಸಲ್ಲಿಸುವುದೇನೆಂದರೆ ನಾನು ಅನುಜ್ ಆರ್ಯ ಎನ್ನುವ ವ್ಯಕ್ತಿಯನ್ನು 6 ವರ್ಷಗಳ ಹಿಂದೆ ಹೋಟೆಲ್ ಲಲಿತ ಅಶೋಕ್‌ನಲ್ಲಿ ಕೆಲಸ ಮಾಡುವಾಗ ಪರಿಚಯವಾಯಿತು. ಈಗ ಸೆಪ್ಟೆಂಬರ್ ತಿಂಗಳಿನಲ್ಲಿ ಫೇಸ್‌ಬುಕ್ ಮುಖಾಂತರ ಭೇಟಿಯಾದೆವು. ಅನುಜ್ ಪರಿಚಯ ಮುಂಚೆ ಇದ್ದುದ್ದರಿಂದ ಅವನಿಗೆ ರಿಕ್ವೆಸ್ಟ್ ಕಳಿಸಿದೆ. ಇದಾದ ನಂತರ ಅವನು ನನ್ನೊಡನೆ sms, phone, face book, gtalk ಮುಖಾಂತರವಾಗಿ ನನ್ನೊಡನೆ ಮಾತನಾಡುತ್ತಿದ್ದ. ಇದಾದ ಕೆಲವು ದಿನಗಳ ನಂತರ ಅವನು ನನ್ನ ಪ್ರೀತಿಸುವುದಾಗಿ ಹೇಳಿ ನನ್ನನ್ನು ಮದುವೆಯಾಗಬೇಕೆಂದು ಅದಕ್ಕೆ ಮುಂಚೆ ನಾನು ನಿರಾಕರಿಸಿದೆ, ನಂತರ ಅವನು ಇದೇ ವಿಷಯವನ್ನು ಮತ್ತೆ ಮತ್ತೇ ಹೇಳಿದಕ್ಕೆ, ನಾನು ಸರಿ ಆಯಿತು ಅಂತ ಒಪ್ಪಿಕೊಂಡೆ. ಇದಾದ ನಂತರ ನಾವು ಬರಿಸ್ಥಾದಲ್ಲಿ ಭೇಟಿಯಾಗುತ್ತಿದ್ದೆವು . ಇದಾದ ನಂತರ 19/10/2011 ರಂದು ತನ್ನ ಬರ್ತಡೇ ಇದೆ ಮನೆಗೆ ಬಾ ಎಂದು ಕರೆದ ನಾನು ಅವನ ಮನೆಗೆ 3.30 pm - 4 pm ಹೋದಾಗ ಇದು ನನ್ನ ಬರ್ತಡೇ ಗಿಫ್ಟ್ ನಾನು ನಿನ್ನನ್ನು ತುಂಬಾ ಪ್ರೀತಿಸುತ್ತೇನೆ ಎಂದು ದೈಹಿಕವಾಗಿ ಬಲವಂತ ಮಾಡಿದ. ನಾನು ನಿರಾಕರಿಸಿದ್ದಕ್ಕೆ ನೀನು ನನ್ನನ್ನು ನಿಜವಾಗಿ ಪ್ರೀತಿಸುತ್ತೇನೆ ಎಂದರೆ ಇದೆಲ್ಲ ಸರ್ವೇಸಾಮಾನ್ಯ. ನಾವಿಬ್ಬರು ಮುಂದೆ ಮದುವೆಯಾಗುವವರು ಎಂದು ಹೇಳಿದ ಆದರೂ ಅಂದು ನಾನು ಈತನನ್ನು ತುಂಬಾ ಮುಂದುವರೆಯಲು ಬಿಡಲಿಲ್ಲ. ನಂತರ ನಾವು ಭೇಟಿಯಾದಾಗಲೆಲ್ಲ ಅವನು ನನ್ನನ್ನು ಹೀಗೆ ಕಾಡುತ್ತಿದ್ದ. ಒಂದು ದಿನ ಆತನ ..... ತನ್ನ ಮನೆಯಲ್ಲಿರುವಾಗ gtalk ನಲ್ಲಿ ಚಾಟ್ ಮಾಡುತ್ತಿರುವಾಗ ನಾನು ಕಾಂಡೋಮ್ ಉಪಯೋಗಿಸಿ, ದೈಹಿಕವಾಗಿ ಸೇರಿದರೆ ಏನು ಆಗುವುದಿಲ್ಲ ಎಂದು ತುಂಬಾ ಬಲವಂತ ಮಾಡಿದ. ನಾನು ಆಗಲೇ ಚಾಟ್‌ನಲ್ಲಿ ನಿರಾಕರಿಸಿದ್ದೇನೆ. ಇದಕ್ಕಿಂತ ಮುಂಚೆ ಒಂದು ದಿನ ಅವನು ನನ್ನೊಡನೆ, ಬಲವಂತವಾಗಿ ದೈಹಿಕವಾಗಿ ಹಿಕವಾಗಿ ಪೂರ್ಸಾಗಿ ದೈಹಿಕ ಸಂಬಂಧ ಮಾಡಿದ. ಅಂದು ನಾನು ಅತ್ತುಕೊಂಡು ಮನೆಗೆ ಹೋಗಿ sms ಮೂಲಕ, ಹೀಗೇಕೆ ಮಾಡಿದೇ ಎಂದು ಕೇಳಿದರೆ, ಅವನು ನನಗೆ ನಿನ್ನ ಜೀವನದಲ್ಲಿ ಬೇರೆಯಾದರು ಹುಡುಗ ಬಂದು ನನ್ನನ್ನು ಮದುವೆಯಾಗುವ ಸಾಧ್ಯತೆಯನ್ನು ಇರಬಾರದು. ನಾನು ಕೇವಲ ಅವನಿಗೆ ಸೇರಬೇಕು, ಅದಕ್ಕೆ ನನ್ನ ಹಕ್ಕನ್ನು ನಾನು ಜೋಪಾನವಾಗಿ ಕಾಪಾಡಬೇಕು ಅದಕ್ಕೆ ಹೀಗೆ ಮಾಡಿದೇ, ಇದು ನನ್ನ ಪ್ರೀತಿ ಯಾವಾಗಲೂ ನನ್ನದಾಗಿ ಉಳಿಯಬೇಕೆಂದು ಹೀಗೆ ಮಾಡಿದೆ, ನಾನು ನಿನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತೇನೆ, ಎಂದು ಸಮಾಧಾನ ಮಾಡಿದ. ಈ ಸಂಬಂದ ಹೀಗೆ ಜನವರಿ 25ನೇ ತಾರೀಖಿನವರೆಗೂ ನಡೆಯಿತು. ಈ ಮಧ್ಯ ಅವನು ಕೆಲವು ಸರಿ ಹೀಗೆ ಇಮೋಷನಲ್ ಬ್ಲಾಕ್ ಮೇಲ್ ಮಾಡುತ್ತಿದ್ದ. 25ನೇ ಜನವರಿಯಿಂದು ನಾನು ಅವನ ಮನೆಗೆ ಹೋಗಿದ್ದೆ. ಅಂದು

ಅವನು ಹೀಗೆ ಬಲವಂತ ಮಾಡಿದ. ನಂತರ ನಾನು 26ನೇ ತಾರೀಕಿನಂದು ಅವರ ಮನೆಯಲ್ಲಿ ಮಾತನಾಡಲು ಹೇಳಿದೆ. ಅದಕ್ಕೆ ನಾನು ಮಾತನಾಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದ. ನಂತರ ಅವನು ನನ್ನೊಡನೆ ಸರಿಯಾಗಿ ಮಾತನಾಡುವುದಾಗಲಿ ಅಥವಾ sms ಮಾಡುವುದನ್ನು ನಿಲ್ಲಿಸಿಬಿಟ್ಟ. ನಂತರ ಶನಿವಾರ ಹೀಗೆ ನಾನು ಏನಾಯಿತು ಎಂದು ಬಲವಂತವಾಗಿ ಕೇಳಿದಾಗ, ನಾನು ಇಷ್ಟು ದಿನ, ನಿನ್ನೊಡನೆ ಮಾಡಿದೆಲ್ಲ ನನ್ನ ಸ್ಯಾಟಿಸ್‌ಫ್ಯಾಕ್ಷನ್‌ಗಾಗಿ ಎಂದು ಹೇಳಿದ. ನಂತರ ನಾವು ಸೋಮವಾರ ಪೊಲೀಸ್ ಸ್ಟೇಷನ್‌ನಲ್ಲಿ ದೂರು ಸಲ್ಲಿಸಿದ್ದೇನೆ. ಅವರು ಯಾವ ರೀತಿಯ ಒಪ್ಪಂದಕ್ಕೂ ಒಪ್ಪದ ಕಾರಣ ನಾನು ನನ್ನ ದೂರನ್ನು ಮುಂದುವರಿಸುತ್ತಿದ್ದೇನೆ."

11. To prove the guilt of the accused, prosecution has examined the victim as PW3. She has reiterated the averments made in the complaint. PW2-father and PW8-mother of the victim, have clearly deposed that accused used to visit their house and he had promised that he will marry their daughter. Thereafter, he refused to marry her.

12. On careful examination of the material witnesses, it is crystal-clear that PW3 was aged about 25 years and studied MBA. She was working in the Department of Reservation in a reputed Hotel Lalit Ashok, and thereafter, she joined the company Via.Com as Revenue Manager and she has full knowledge of worldly affairs and consequences of indulging in talks, chat and moving freely and indulging in sexual intercourse and not informing anyone and keeping the fact of

sexual intercourse, in secret. One of the main reasons for not getting married was because of the fact that the appellant and the victim were from different castes and also because non-consent from the elders of the appellant. The evidence of medical officer and the contents of Exhibit-P4 reveals that there is no external injury on the person of the victim and that there were no signs of recent sexual intercourse. That the victim was behaving as if there was forcible sexual intercourse. The Medical evidence has totally negatived the theory of forcible sexual intercourse upon the victim.

13. The Investigating Officer has submitted charge-sheet against the accused for the offence punishable under Sections 376 and 420 of IPC on 22.11.2022. On 10.04.2015, the trial Court has altered the charge only for offence under Section 376 of IPC. Though the trial Court has deleted the offence under Section 420 of IPC, without assigning any reasons, the trial Court has convicted the accused for offence under Section 420 of IPC and passed the sentence to undergo rigorous imprisonment for two years with fine of Rs.10,000/-, which is not sustainable under law.

14. On careful examination of the entire evidence on record and keeping in mind the provisions of Sections 90 and 375 of Indian Penal Code and also the decisions of the Supreme Court and of this court relied upon by the learned Senior Counsel for the appellant, I am of the considered opinion that the prosecution has failed to place any essential ingredient to constitute the offence under Section 376 of Indian Penal Code. Hence, I answer Point No.1 in the affirmative.

Regarding Point No.2:

15. For the reasons afore, I proceed to pass the following:

O R D E R

i) Appeal is allowed;

ii) Judgment of conviction and order on sentence dated 14.09.2015 passed in SC No.472 of 2012 by the LIV Additional City Civil and Sessions Judge at Bangalore (CCH-55), is set aside;

iii) Accused is acquitted of the offences under Sections 376 and 420 of Indian Penal Code;

iv) The fine amount, if any deposited by the appellant, be refunded to him.

Registry is directed to send the trial court records along with a copy of judgment to the concerned court.

Sd/-
(G BASAVARAJA)
JUDGE

LNN
List No.: 1 Sl No.: 65