

[2011] 4 S.C.R. 200

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K. P. THIMMAPPA GOWDA

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1499 of 2004)

APRIL 04, 2011

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[MARKANDEY KATJU AND GYAN SUDHA MISRA JJ.]

*PENAL CODE, 1860:*

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*s. 376 – Sexual intercourse with a girl of about 18 years of age on the false promise to marry her – Prosecutrix giving birth to a child after few days of the FIR – Acquittal by trial court – Conviction by High Court – Held : In criminal cases the rule is that the accused is entitled to benefit of doubt – If the court is of opinion that on the evidence adduced two views are possible, benefit of doubt goes to accused – In the instant matter, prosecution has not been able to prove its case beyond reasonable doubt – Accused deserves benefit of doubt – Judgment of High Court set aside – Criminal Law – Benefit of doubt.*

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**The appellant was prosecuted on the basis of an FIR dated 4.1.1996 for committing an offence punishable u/ s. 376 IPC. The prosecution case was that the appellant had sex with the prosecutrix several times on the false promise to marry her. The prosecutrix gave birth to a child on 25.1.1996. The trial court acquitted the accused, but the High Court convicted him u/s. 376 IPC and sentenced him to imprisonment for 7 years and to pay a fine of Rs.10,000/-. Aggrieved, the appellant filed the appeal.**

**Allowing the appeal, the Court**

**HELD: 1.1. In criminal cases, the rule is that the accused is entitled to the benefit of doubt. If the court is**

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of the opinion that on the evidence two views are reasonably possible, one that the appellant is guilty, and the other that he is innocent, then the benefit of doubt goes in favour of the accused. In the instant case, the appellant deserves the benefit of doubt because on careful consideration of the evidence on record, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt. [para 11-12] [204-H; 205-A; 204-G]

1.2. The facts are that the prosecutrix herself stated in her evidence that she had sex with the appellant on several occasions. It is also an admitted fact that the FIR against the appellant was lodged just a few days before the birth of the child of the prosecutrix, which means there is delay of over 8 months in lodging the FIR. The finding of the trial court, which has not been disturbed by the High Court, is that the prosecutrix was about 18 years of age at the relevant time. On these facts a view is reasonably possible that the prosecutrix had sex with the appellant with her consent and hence there was no offence punishable u/s. 376 IPC because sex with a woman above 16 years of age with her consent is not rape. Impugned judgment and order of High Court is set aside. [para 13-14] [204-B-D]

1.3. Besides, the appellant has stated in an affidavit filed in this Court that he has agreed to transfer two acres of land due to breach of promise to marry the prosecutrix and she has given her consent to accept the same. The appellant is directed to give/transfer the said land to the prosecutrix. [para 15-16] [204-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1499 of 2004.

From the Judgment Order dated 17.9.2004 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 149 of 1999.

A Shanth Kr. V. Mahale, Harish S.R. and Rajesh Mahale for  
the Appellant.

Sanjay R. Hegde for the Respondent.

B **MARKANDEY KATJU, J.** 1. This appeal has been filed  
against the impugned judgment dated 17.9.2004 passed by the  
High Court of Karnataka in Criminal Appeal No. 149 of 1999.

C 2. The facts of the case have been stated in the impugned  
judgment of the High Court and the trial court and we are not  
repeating the same except where necessary.

D 3. The trial court had acquitted the appellant in the criminal  
case, but the High Court reversed the judgment and convicted  
the appellant under Section 376 IPC and sentenced him to  
imprisonment of 7 years and a fine of Rs. 10,000/-, and also  
sentenced him to imprisonment of 1 year under Section 417  
IPC and a fine of Rs. 10,000/-, both sentences to run  
concurrently.

E 4. The case of the prosecution is that on 4.1.1996 the  
appellant raped one Rathamma aged 18 years, but he  
assured her that he would marry her and asked her to keep  
quiet. It is alleged that subsequently also the appellant had sex  
with Rathamma several times and assured her that he would  
marry her. Rathamma became pregnant, but the appellant  
F refused to marry her. Hence an FIR was registered in the police  
station on 4.1.1996 against the appellant under Section 376  
IPC.

G 5. In the trial court the appellant contended that  
Rathamma was 20 years of age at the relevant time and she  
had admitted in her cross-examination that she had sexual  
intercourse with the appellant nearly 100 times. It was submitted  
that this showed that she was a consenting party and hence  
no case under Section 376 IPC is made out against the  
appellant. Rathamma's mother Gowamma PW-11 stated in  
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her evidence that Rathnamma was 18 years of age. Hence she was above 16 years of age and there could be no rape since there was consent.

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6. The trial court accordingly held that there was no rape as Rathnamma was above 16 years of age and had consented to the act. Subsequently Rathnamma gave birth to a female child on 25.1.1996.

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7. The trial court held that the version of Rathnamma that the appellant gagged her mouth and raped her is not believable. The fact that her child was born on 25.1.1996 means that the conception was in the month of April, 1995. This was disclosed to her parents somewhere in the month of July or August in 1995 and there was a Panchayat which failed.

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8. The complaint was filed on 4.1.1996 i.e. just a few days before the birth of the child and not when the sexual act had taken place. Thus there was a delay of over 8 months in filing the complaint which has not been properly explained.

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9. For the reasons given above, the trial court disbelieved the prosecution version and acquitted the appellant.

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10. In the appeal filed by the State Government the High court reversed the finding of the trial court and held that the appellant had raped Rathnamma and had promised to marry her. It was observed that since the accused had given the impression that he would honour his promise of marrying her, this fact was not disclosed by her to anybody, including her mother.

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11. Admittedly, the appellant has married another woman. We are of the opinion that the appellant deserves the benefit of doubt because on careful consideration of the evidence on record, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt.

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12. In criminal cases, the rule is that the accused is entitled

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A to the benefit of doubt. If the court is of the opinion that on the evidence two views are reasonably possible, one that the appellant is guilty, and the other that he is innocent, then the benefit of doubt goes in favour of the accused.

B 13. In the present case, the facts are that Rathnamma herself stated in her evidence that she had sex with the appellant on several occasions. It is also an admitted fact that the FIR against the appellant was lodged just a few days before the birth of Rathnamma's child, which means there is delay of over 8 months in lodging the FIR. The finding of the trial court, C which has not been disturbed by the High Court, is that Rathnamma was about 18 years of age at the relevant time. On these facts a view is reasonably possible that Rathnamma had sex with the appellant with her consent and hence there was no offence under Section 376 IPC because sex with a D woman above 16 years of age with her consent is not rape.

14. For the reasons given above, the appeal is allowed. The impugned judgment and order of the High court is set aside

E 15. Apart from the above, the appellant has stated in an affidavit filed in this Court that he has agreed to transfer two acres of land situated in Palavanahalli due to breach of promise to marry Rathnamma and she has given her consent to accept the same.

F 16. The appellant is directed to give/transfer two acres of land as stated in the affidavit filed before Court to Rathnamma within three months from the date of this judgment.

R.P.

Appeal allowed.