

Karnataka High Court Krishna Raja Varna vs The State Of Karnataka on 21 January, 2015 Author: Anand Byrareddy 1

IN THE HIGH COURT OF KARNATAKA AT
BENGALURU

DATED THIS THE 21ST DAY OF JANUARY 2015

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL PETITION No.7593 OF 2014

BETWEEN:

Krishna Raja Varna, Son of Ramachandra Varna, Aged about 25 years, Occupation: Private Employment, Resident of No.177, Pooja Elite, S-1, Vittala Nagara Main Road, ISRO Layout, Bangalore - 560 078. ... PETITIONER

(By Shri. H.S.Chandramouli, Advocate for Shri. Mallikarjun S Masali, Advocate)

AND:

The State of Karnataka by Kumaraswamy Layout Police Station, Represented by the State Public Prosecutor, High Court of Karnataka, Bangalore. ... RESPONDENT 2

(By Shri. M. Narayana Reddy, State Public Prosecutor) *****

This Criminal Petition is filed under Section 439 of the

code of Criminal Procedure, 1973, praying to enlarge the petitioner on bail in Crime No.358/2014 of Kumaraswamy Layout Police Station, Bangalore City, for the offences punishable under Sections 376, 420, 506 read with 34 of Indian Penal Code, 1860 and under Section 3(1)(x)(xii) of SC/ST (POA) Act, 1989.

This petition coming on for Orders this day, the court

made the following:

ORDER

Heard the learned counsel for the petitioner and the learned State Public Prosecutor. 2. The petitioner is accused of offences punishable under Sections 376, 420, 506 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC', for brevity) and Sections 3(i)(x) and (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC & ST Act', for brevity). The case of the prosecution is as follows: One Shruthi had filed a complaint alleging that she was working in ITC Fortune Hotel in Bangalore and that accused No.1 was also employed in the said Hotel in the Finance Department. They were familiar with each other and it transpires that Accused No.1 had proposed to marry her. Though Shruthi was hesitant in the beginning, the constant wooing of the accused had persuaded her to reciprocate and they had started dating. The petitioner is said to belong to a Brahmin caste, whereas the complainant was of a scheduled caste. It transpires that the petitioner who was assuring the complainant that he would talk to her parents as well as his own, insofar as their marriage was concerned and it would be arranged soon, two months went by when nothing happened except that they were enjoying each other's company and they were indulging in sex. On 10.08.2014, the petitioner had taken the complainant to his sister's house in the pretext of introducing her to their family. Though after three hours no one turned up, the petitioner had persuaded her to have sex with him and they went away without meeting anyone. In any event, he again took her to his sister's house on 22.8.2014 when again there was no one at home and he had sex with the complainant. In this manner, the petitioner had persuaded the complainant to have sex with him time and again but ultimately, turned cold towards her and refused to meet her. It is in this background that the complainant had alleged the offence in respect of which the petitioner has been charge-sheeted. The petitioner has been taken into custody and his application for bail has been rejected by the court below. Hence, the petitioner is before this Court. 3. The learned counsel for the petitioner would point out that the circumstances would clearly indicate that it was a consensual sexual relationship between the petitioner and the complainant and the question of whether the said circumstances could be construed as 'rape' would have to be answered in the negative, for there is no indication that there was force used on the complainant at any point of time and that it was always willful and with the consent of the complainant, though for the sake of the complaint it is claimed that it was against her will or without her consent. And the contention that there was a promise to marry and there has been breach, by itself would not also establish that there was a crime committed. In this regard, the learned counsel seeks to place reliance on a decision of the Bombay High Court. 4. Whereas the learned State Public Prosecutor would point out that not only is the petitioner accused of rape but there are offences alleged even under the SC & ST Act. 5. However, insofar as the offence alleged under the provisions of the SC & ST Act is concerned, the sections invoked are, Sections 3(i)(x) and 3(1)(xii). Section 3(i)(x) pertains to whoever not being a member of the scheduled caste or scheduled tribe, intentionally insulting or intimidating with intent to humiliate a member of a scheduled caste or a scheduled tribe, in any place within public view. It

is not clear as to how this Section could be invoked. Insofar as sub-clause (xii) of Section 3 is concerned which states that, whoever not being a member of a scheduled caste or a scheduled tribe being in a position to dominate the will of a woman belonging to a scheduled caste or a scheduled tribe and use that position to exploit her sexually, to which she would not have otherwise agreed, also would not be applicable on the face of it. It would be for the prosecution to establish the same. 6. Admittedly, the complainant and the petitioner were co-employees in a Five Star Hotel and therefore, the petitioner being able to dominate the will of the complainant just because she was a woman of a scheduled caste, cannot be readily accepted. Insofar as the allegations pertaining to the promise of marriage and thereby having persuaded the complainant to have sex without her consent and against her will and thereafter having ravished her, whether it would amount to an offence or a crime, has been answered in a case decided by the Supreme Court in *Uday vs. State of Karnataka* (2003) 4 SCC 46 to state as follows: “21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.” However, in a later judgment of the Supreme Court in *Deelip Singh alias Dilip Kumar* (2005) 1 SCC 88, the Supreme Court has distinguished the opinion in *Uday vs. State of Karnataka*, to add that it would indeed be a crime if the accused had from the very inception, intended to deceive the complainant and thereby had sexual intercourse, it can be brought within the definition of ‘rape’ as contained in Section 375 IPC. This is expounded in Paragraphs 27, 28, 29 and 30 onwards of the said judgment. 7. Therefore, in the present case on hand, it is evidently a case of consensual sex on the alleged was a promise to marry. However, the fact whether the petitioner intended to deceive the complainant from inception, would be the moot point for consideration at the trial. Therefore, incarceration of the petitioner, indefinitely, pending trial would lead to a miscarriage of justice. The petitioner has made out a case for enlargement on bail. Accordingly, the petition is allowed and the petitioner shall be enlarged on bail subject to the following conditions: (i) The petitioner shall execute a self bond for a sum of Rs.50,000/- with one surety for a like sum to the satisfaction of the court below. (ii) The petitioner shall not tamper with the evidence or

prevail upon the prosecution witnesses in any manner. (iii) The petitioner shall attend the court on all dates of hearing and shall co-operate with the Investigating Authority. (iv) The petitioner shall not leave the jurisdiction of the court below without prior permission. Sd/- JUDGE KS