

K.P.Thimmappa Gowda vs State Of Karnataka on 4 April, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2564, 2011 (14) SCC 475, 2011 AIR SCW 2281, AIR 2011 SC (CRIMINAL) 1010, 2011 (2) AIR KANT HCR 696, 2011 CRILR(SC MAH GUJ) 431, 2011 CRILR(SC&MP) 431, (2011) 1 CRILR(RAJ) 431, (2011) 2 CHANDCRIC 327, 2011 (2) CALCRILR 698, 2011 (4) SCALE 224, (2011) 104 ALLINDCAS 207 (SC), (2011) 2 ALLCRIR 1604, (2011) 2 MADLW(CRI) 31, (2011) 2 ORISSA LR 172, (2011) 49 OCR 219, (2011) 2 RECCRIR 589, (2011) 2 CURCRIR 147, (2011) 4 SCALE 224, (2011) 3 KCCR 1693, (2011) 74 ALLCRIC 577, (2011) 2 ALLCRILR 416, (2011) 2 CRIMES 140

Author: Markandey Katju

Bench: Gyan Sudha Misra, Markandey Katju

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1499 OF 2004

K. P. Thimmappa Gowda

..

Appellant

-versus-

State of Karnataka

..

Respondent

J U D G M E N T

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.

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.

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.

4. The case of the prosecution is that on 4.1.1996 the appellant raped one Rathnamma 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 Rathnamma several times and assured her that he would marry her.

Rathnamma became pregnant, but the appellant refused to marry her. Hence an FIR was registered in the police station on 4.1.1996 against the appellant under Section 376 IPC.

5. In the trial court the appellant contended that Rathnamma 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.

Rathnamma's mother Gowramma PW-11 stated in 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.

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.

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.

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.

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

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.

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.

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

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, 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 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

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.

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.

.....J. (Markandey Katju)J. (Gyan Sudha Misra) New Delhi:

April 04, 2011