



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL No. 248 OF 2012

BETWEEN:

SURESH
S/O MAHADEVU
AGED ABOUT 28 YEARS
R/AT No.2304, 2ND CROSS
6TH MAIN VINAYAKANAGARA
MYSORE.

...APPELLANT

(BY SRI HASHMATH PASHA, SENIOR ADVOCATE FOR
SRI KARIAPPA N A, ADVOCATE)

AND:

STATE OF KARNATAKA
BY JAYALAKSHMIPURAM POLICE
MYSORE
(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR)

...RESPONDENT

(BY SRI B LAKSHMAN, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374(2) Cr.P.C
PRAYING TO SET ASIDE THE ORDER DATED 23.02.2012
PASSED BY THE II ADDITIONAL SESSIONS JUDGE, MYSORE IN
S.C.No.146/10 CONVICTING THE APPELLANT ACCUSED FOR
OFFENCE PUNISHABLE UNDER SECTION 307 OF IPC AND ETC.

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





CORAM: HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

1. This appeal is filed against the judgment of conviction and order on sentence dated 23.02.2012 passed in S.C. No. 146/2010 by the II Additional Sessions Judge, Mysuru, convicting the appellant - accused for offence punishable under Section 307 of IPC sentencing to undergo rigorous imprisonment for a period of 5 years and to pay fine of Rs.10,000/- and in default to undergo simple imprisonment for a period of 6 months.

2. Factual matrix of the case is, that on 25.04.2009 at about 11.00 am when P.W.11 - victim lady was going on 6th Main Road, Vinayakanagara, the appellant - accused came in a Maruti Omni Car bearing No. KA-09-N-9174 from her hind side and came towards her right side and stood there and her attention was drawn towards the said car and she found that the door of the car was opened. The appellant - accused was sitting inside the said car and he virtually dragged P.W.11 - victim lady



into the said car, kidnapped her and took her to a room situated in second floor of his residential house. In that room the appellant - accused put a plaster to her mouth, tied her hands on the hind side and started saying that she was the main person spoiling his reputation and also the reputation of his parents by using poisoning words to the people of Kumbara Koppalu who were intending to give a girl to marry him and that she was responsible for breaking of the said marriage of appellant - accused with the girl in Kumbara Koppalu. The appellant - accused having developed anger and enmity took out a knife and caused 7 injuries over the stomach around the umbilicus causing bleeding injuries. The appellant - accused had sent her out of the room and P.W.11 - victim lady came to the main road, with the help of a boy boarded the autorickshaw and contacted P.W.12 – Deepu who took her to the nearest hospital and she was admitted as inpatient in K.R. Hospital, Mysuru. She gave a statement and on that basis a case came to be registered against the appellant - accused in crime No. 74/2009 for offence



punishable under Sections 363 and 307 of IPC. The Police, after investigation, filed charge sheet against the appellant - accused for offence under Sections 363 and 307 of IPC. The Magistrate took cognizance and committed the case to the Sessions Court for trial. The Sessions Court framed charge against the appellant - accused for offence under Section 307 IPC.

3. The prosecution has examined 15 witnesses as P.W.1 to P.W.15 and got marked Ex.P.1 to Ex.P.25. Ex.D.1 to Ex.D.8 have been marked during the cross-examination of the prosecution witnesses. M.O.1 to M.O.9 are marked. The statement of the appellant - accused under Section 313 of Cr.P.C. came to be recorded. After hearing arguments on both the sides the trial Court formulated points for consideration and convicted the appellant - accused for offence under Section 307 of IPC. Said judgment of conviction and order on sentence has been challenged by the appellant - accused in this appeal.

4. Heard learned Senior counsel for the appellant - accused and learned HCGP for the respondent – State.



5. Learned Senior counsel for the appellant - accused has argued that the sole witness for the prosecution case is P.W.11 who is the injured and her evidence is not of sterling quality. There are contradictions, omissions and improvements in her evidence. Injuries found on P.W.11, as per Ex.P.12 - wound certificate, are not stab injuries. Considering the injuries noted in Ex.P.12 - wound certificate it is clear that they are self-inflicted by P.W.11 - victim lady so as to threaten the appellant - accused. P.W.11 - victim lady has denied history given by her to the Doctor which is noted in Ex.P.12. P.W.11 - victim lady has not stated as to why she had gone to the house of appellant - accused. The alleged incident has taken place in the second floor of the building and it is not possible for a person to lift an un-conscious person to the second floor. P.W.6 - husband of the victim lady and P.W.4 - younger brother of the victim lady have not supported the case of the prosecution. The surgeon who treated P.W.11 - victim lady has not been examined to ascertain whether the injuries found on P.W.11 are self-



inflicted or not. There is no corroborative evidence. Ex.D.3 to Ex.D.5 indicate that there was affair between appellant - accused and the victim lady. As the marriage of appellant - accused was going to be fixed with another girl, the victim lady in order to see that the appellant - accused should not marry another girl inflicted the injuries by herself so as to threaten the appellant - accused. The injuries noted in Ex.P.12 – wound certificate itself indicate that they are hesitative injuries. The clothes worn by the victim lady at the time of incident do not have any holes. P.W.11 - victim lady has pleaded her ignorance to the letters – Ex.D.3 to Ex.D.5 which were shown to her even after admitting her handwriting. The contents of Ex.D.3 to Ex.D.5 indicate that there was relationship between the appellant - accused and the victim lady. The appellant - accused has given explanation in his statement recorded under Section 313 of Cr.P.C. The learned Senior counsel in support of his contentions has placed reliance on the following decisions.



- i. Khema Vs. Stte of U.P., 2023 (10) SCC 451
- ii. Periyasamy Vs. State of T.N., 2024 LiveLaw (SC)244
- iii. State of Rajasthan Vs. Rajendra Singh, AIR 1998 SC 2554
- iv. Santosh Prasad Vs. State of Bihar, 2020 (3) SCC 443
- v. State of Punjab Vs. Bhajan Singh, 1975 (4) SCC 472

6. Learned HCGP appearing for the respondent - State argued that the trial Court on proper appreciation of the evidence on record has rightly convicted the appellant - accused. He has supported the reasons assigned by the trial Court. He further argued that the sole evidence of P.W11 - victim lady is sufficient to convict the appellant - accused. On these grounds he sought for dismissal of the appeal.

7. On the grounds made out and considering the arguments advanced the following point arises for my consideration.



“Whether the trial Court erred in convicting the appellant - accused for offence under Section 307 of IPC?”

8. My answer to the above point is in the affirmative for the following reasons:

P.W.11 - victim lady is the sole witness to the alleged incident. Ex.P.13 is the statement of P.W.11 recorded by P.W.10 - Head Constable in the hospital. As per the contents of Ex.P.13 the appellant - accused kidnapped her in a car by making her unconscious by putting a kerchief containing some smell on her face and took her to his house situated in the second floor of a building. Said incident of kidnap has taken place at 11.00 am on a road of Vinayaknagar. There are no witnesses to the alleged kidnapping. P.W.11 - victim lady has given history before the Doctor who examined her in the casualty which is noted in Ex.P.12 - wound certificate. In the said history P.W.11 - victim lady has stated that the appellant - accused assaulted her with a knife when she went to his room. On being quested as to why she went to the room



of the appellant - accused she has told that she will reveal the same afterwards. Said aspect itself indicates that P.W.11 - victim lady is hiding something even though she has stated in her complaint – Ex.P.13 that the appellant - accused kidnapped her in a car.

9. P.W.4 is the younger brother of P.W.11 - victim lady and P.W.6 is her husband. Both of them have not supported the case of the prosecution. P.W.11 - victim lady has not stated before them that the appellant - accused has assaulted her with a knife in his house. In Ex.P.13 - statement of the victim lady it is stated that the appellant - accused threatened her to remove clothes and after she removing the clothes he tied her hands on her back and assaulted with knife on her stomach 2 – 3 times. P.W.11 - victim lady in her cross-examination has denied of having stated so which portion of statement is at Ex.D.1. In Ex.P.13 – complaint she has stated that appellant - accused assaulted her 2- 3 times while denying the same she has stated that he has assaulted her 8 times and said portion of the statement is at Ex.D.2. Evidence of



P.W.10 – Head Constable would indicate that he has recorded the statement of P.W.11 – victim lady in the hospital in the presence of the Doctor as per Ex.P.13. Said Ex.D.1 and Ex.D.2 indicate that P.W.11 – victim lady is deviating from her statement contained in Ex.P.13.

10. Ex.D.3 to Ex.D.5 are the letters marked in cross-examination of P.W.11 – victim lady. The contents of Ex.D.3 to Ex.D.5 are in the handwriting of P.W.11 – victim lady and the same is admitted by her. P.W.11 – victim lady on reading the contents of Ex.D.3 and Ex.D.4 has pleaded her ignorance to the contents when she was asked as to whether the contents are true. She has not denied the contents of Ex.D.3 and Ex.D.4. The contents of Ex.D.3 and Ex.D.4, on plain reading, indicate that there is some relationship between the victim lady and the appellant – accused. P.W.11 – victim lady has admitted that she has been called by the brother of appellant – accused and questioned her regarding her involvement in cancellation of marriage of appellant – accused.



11. P.W.11 - victim lady has not stated why she went to the house of appellant - accused on the date of incident. P.W.11 - victim lady has deposed that appellant - accused stabbed her with a knife – M.O.6. A perusal of the injuries noted in Ex.P.12 – wound certificate would indicate that there are no stab wounds found on the stomach of P.W.11 - victim lady. Injuries noted in Ex.P.12 are cut lacerated incised wound. It is the defence of appellant - accused that the said injuries found on P.W.11 - victim lady are self-inflicted. P.W.9 – is the Doctor who examined P.W.11 - victim lady on the date of incident. P.W.9 – Doctor has answered to the Court questions that he has not opened the injury and it has been opened by the Doctor who conducted surgery on the victim lady and without considering the depth of the injury he cannot say that the injuries are self-inflicted or not. Considering the evidence of P.W.9 – the Doctor and nature of injuries noted in Ex.P.12 – wound certificate it appears that the defence of appellant - accused that injuries found on the body of P.W.11 - victim lady are self-inflicted is probable.



Even the fact that clothes of P.W.11 - victim lady does not have any holes also supports the fact that the injuries found on P.W.11 - victim lady are self-inflicted. Learned Senior counsel appearing for the appellant - accused has argued that when a person intends to inflict injuries on herself she will remove the clothes and inflict the injuries.

12. There are serious discrepancies and inconsistencies in the evidence of P.W.11 - victim lady. Therefore it is not safe to base conviction on the sole testimony of P.W.11 - victim lady even though she is an injured witness. The testimony of P.W.11 - victim lady requires to be discarded as she is hiding something and not telling the truth before the Court. Without considering all these aspects learned Sessions Judge committed an error in holding that the appellant - accused has committed offence punishable under Section 307 of IPC. Considering the above aspects benefit of doubt requires to be extended to the appellant - accused. In view of the above, the prosecution has failed to prove the guilt of appellant - accused beyond all reasonable doubt.



13. In the result, the following;

ORDER

- i. Appeal is allowed.
- ii. The impugned judgment of conviction and order on sentence dated 23.02.2012 passed in S.C. No. 146/2010 by the II Additional Sessions Judge, Mysuru is set aside.
- iii. Consequently, the appellant - accused is acquitted for offence under Section 307 of IPC.
- iv. Fine, if any, deposited by the appellant - accused is ordered to be refunded.

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**

LRS
List No.: 1 Sl No.: 11