CASE NO.:
Appeal (crl.) 205 of 2001

PETITIONER:
B. C. Deva @ Dyava

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 25/07/2007

BENCH:
R. V. Raveendran & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Panta, J.

1. The appellant has filed this appeal against the judgment dated 01.03.2000 passed by the learned Single Judge of the High Court of Karnataka at Bangalore in Criminal Appeal No.334/96, confirming the conviction and sentence of 7 years R.I. imposed upon the appellant in respect of the offence punishable under Section 376 of the Indian Penal Code [for short "IPC"] and to pay a fine of Rs. 5,000/- with default stipulation for six months R.I. awarded by the learned Principal Sessions Judge, Madikeri, on 11.04.1996 in Sessions Case No. 32/93.

2. Brief facts, which led to the trial of the appellant, are as follows:

3. In the year 1991, the prosecutrix (PW-2), her mother Jayanthi (PW-3) and father Raju (PW-13) were working in Athoor Coffee Estate. They were living in the labour colony of the estate. B. C. Deva @ Dyava - accused herein, was also working as Mistry in the same Coffee Estate. On 28.03.1991, the prosecutrix and her mother had gone to the Coffee Estate for picking up coffee seeds whereas the father joined his routine duty of driving the tractor. During lunch time, the prosecutrix had gone to her house for taking mid-day meal. When after lunch break, the prosecutrix was returning to the Coffee Estate carrying lunch box for her mother, the accused suddenly came behind her, held and dragged her to a distance of about 10 feet inside the coffee garden. The accused shut the mouth of the prosecutrix with his left hand and laid her on the ground underneath the coffee plants. According to the prosecution version, the accused committed forcible sexual assault on the prosecutrix and then ran away from the spot of occurrence. The prosecutrix immediately informed her mother (PW-3) about the incident. The prosecutrix decided to commit suicide as she was unable to bear the dishonour and disgrace caused to her reputation by the act of the accused and she felt that after this incident no suitable boy will offer to marry her. The prosecutrix eventually jumped into nearby water tank located in the Coffee Estate. Shashappa (PW-4), Yashodhara (PW-5), one Babu and Vishwanath, who were doing repair work on the pump house near the water tank, heard the sound from the water tank side. They rushed to the water tank and found the prosecutrix struggling in the water. She was eventually pulled out of the water tank by PW-4 with the help of his associates. On being questioned, the prosecutrix disclosed to PW-4 that she wanted to commit suicide as she was sexually assaulted by the accused. PW-5 went and

informed PW-3, the mother of the prosecutrix, about the incident. Both PW-3-the mother and PW-13-the father of the prosecutrix took the prosecutrix to Peryase (PW-6)-Estate Writer of the Coffee Estate and informed him about the incident. PW-6 advised them to lodge police report in the Police Station. Accordingly, the prosecutrix along with her parents went to Police Station, Suntikoppa and lodged a complaint (Ex.P-2) to Naga (PW-14), PSI of the Police Station. On the basis of the said complaint, PW-14 registered a case Crime No.35/91 and submitted First Information Report (Ex.P-6) to the Ilakka Magistrate. PW-14 sent the victim to Madikeri Government Hospital for medical examination. Dr. Nagendramurthy (PW-15), a Deputy Surgeon in the District Hospital, examined the prosecutrix at about 9.15 p.m. and referred her to a Gynaecologist for further examination and opinion. On the same day, Dr. Sachidananda, Gynaecologist, examined the prosecutrix and furnished his opinion. On 29.03.1991, PW-14, the Investigating Officer, went to the place of incident and held the necessary spot mahazer (Ex. P-4) in the presence of PWs-2 and 8 Changappa. Head Constable Revanna (PW-9) arrested the accused at Suntikoppa market and produced him before PW-14, who seized the underwear of the accused vide mahazer (Ex.P-5) prepared in the presence of panch witnesses. The accused was sent for medical examination. Dr. Shivaram Naik (PW-16) examined the accused and furnished Certificate (Ex. P-10). Further investigation of this case was taken over by Dy.S.P. Sathyanarayana Rao (PW-17). After completion of the investigation, a charge sheet was filed before CJM, Madikeri against the accused for an offence punishable under Section 376, IPC. The learned CJM committed the case to the Sessions Court.

4. The learned Sessions Judge, having found prima facie case against the accused, framed the charge under Section 376, IPC. The accused pleaded not guilty to the charge and claimed to be tried.

5. The prosecution examined as many as 17 witnesses in support of its case. In his statement under Section 313, Cr. P.C., the accused denied his involvement in the crime. He pleaded that a false case has been lodged against him and he claimed to be innocent. However, no witness in defence has been examined by the accused.

6. The Trial Court, after considering the entire evidence on record, recorded conviction and imposed sentence as aforesaid upon the accused.

7. The High Court, on reappraisal and re-appreciation of the entire evidence on record, confirmed the conviction and sentence. Hence by special leave, this appeal has been preferred by the accused.

8. Mr. Naresh Kaushik, learned counsel appearing on behalf of the accused, challenged the judgment of the High Court inter alia contending that the prosecution has failed to examine any independent witness to prove the guilt of the accused beyond reasonable doubt and as per the medical opinion of the Doctors, no physical injury was found on any part of the person of the prosecutrix, which fact would clearly belie the version of the prosecutrix in regard to the sexual assault upon her by the accused. He submitted that on the facts appearing on record the Trial Court as well as the High Court have seriously erred in relying upon the sole testimony of the prosecutrix whose evidence cannot be found to be believable and reliable without independent corroboration. He lastly contended that both the courts below have held the accused guilty simply on surmises and conjecture, therefore, the accused deserves to be acquitted.

9. Mr. Anil Mishra, learned counsel for the State, on the other hand, submitted that the prosecution has clearly established the guilt of the accused and no exceptions can be taken to the reasons indicated by the Trial Court under the well-reasoned judgment. The evidence has also been analysed in great detail by the High Court and, therefore, no question of any interference is called for with the conviction recorded in the impugned judgment of the High Court.

10. We have independently analysed the entire oral and documentary evidence appearing on record in order to appreciate the respective contentions of the learned counsel for the parties. The prosecutrix in her deposition clearly and unequivocally stated that on the morning of 28.03.1991 she along with her mother (PW-3) went to the Coffee Estate of Athoor Village for attending to their routine work of picking of coffee seeds and at about 2.00 p.m., she had gone home to take mid-day meals. After taking meals, she returned to the work-site taking meals for her mother in a tiffin box, when on the way the accused, who is known to her, suddenly came behind her, held her body with force and then dragged her to some distance in the Coffee Estate in spite of her resistance and request to the accused to release her. The accused snatched the tiffin box from her hand and put his one hand on her mouth and thereafter laid her on the ground. He lifted her saree and petticoat, opened the zip of his trouser and removed his underwear and then committed forcible sexual assault upon her. After committing the crime, the accused fled away from the scene of occurrence. She stated that she picked up the tiffin box and proceeded to the place where her mother was working. She was weeping and narrated the entire incident to her mother. She told her mother that she felt ashamed of the incident and if other workers working in the Coffee Estate would come to know about the incident, she would feel disgraced and a girl of bad reputation in their estimation as the accused had spoiled her honour and now she will not get a respectable boy to marry her. The prosecutrix decided to commit suicide and suddenly jumped into a nearby water tank. She was rescued from drowning by PW-4 -Shashappa, PW-5-Yashodhara and two other witnesses, namely, Babu and Vishwanath, who were working at pump house near the water tank. She also informed PW-6, the Manager of the Coffee Estate, about the incident and on his advice, she went to Suntikoppa Police Station at about 7.00 p.m. and lodged a complaint to the police official. She was medically examined on the same day. On the following day, she produced her petticoat which was seized under mahazer (Ex. P-3) drawn by the Police. She has been put to lengthy cross-examination by the defence, but her testimony has not been shattered on material aspect. She stated in the cross-examination that after the accused laid her on the ground, she on two or three occasions pushed him aside but she could not succeed to release her from his clutches. It is clear from the testimony of the prosecutrix that the incident took place at a secluded place, which was not noticed by anyone else. The suggestion of the accused that a false case has been lodged against him because of enmity between his family members and the prosecutrix's family has been categorically denied by her. The accused has not placed on record any material to substantiate his defence of enmity between the family members of the parties and, therefore, this plea cannot be accepted in the teeth of the overwhelming trustworthy versions of the prosecutrix and other material witnesses.

11. On scrutiny of the evidence of the prosecutrix, it appears to us that the defence tried to build up a case that the prosecutrix is a consenting party to the sexual intercourse as

she did not make any attempt to resist the accused from committing the offence nor the Doctors noticed any mark of injury on any part of her body. This plea of the accused, in our view, is wholly unfounded and baseless and it is falsified by the subsequent conduct of the prosecutrix, who as noticed above after the incident rushed to her mother and disclosed the entire episode to her and the prosecutrix emotionally and mentally felt so depressed and humiliated that she could not bear the insult and disrepute imprinted on her character and moral conduct by the cruel act of the accused. The prosecutrix took the extreme step of ending her life by jumping in a water tank. Further, the incident was disclosed to PW Shashappa, PW Yashodhara, Babu and Vishwanath, who eventually pulled out the prosecutrix out of the water tank and rescued her life. The incident was also disclosed to PW-6 Estate Writer, who advised the prosecutrix and her parents to lodge a report in the Police Station, which step was promptly taken by the prosecutrix on the same night.

12. Having carefully gone through the evidence of the prosecutrix, we find no plausible and justifiable reasons whatsoever to disbelieve and discard her testimony. The prosecutrix is a trust-worthy witness and her evidence cannot be brushed aside on the above-noted flimsy plea raised by the accused.

13. The evidence of the prosecutrix finds full support and corroboration from the testimony of PW-3, the mother of the prosecutrix. It is the evidence of PW-3 that on the day of the incident after lunch break, the prosecutrix came weeping to her and narrated the entire incident to her and also disclosed that the prosecutrix had no intention to live further in this world as no good and prudent boy will extend an offer of marrying her on hearing about the unfortunate incident. It is also the evidence of this witness that the prosecutrix rushed towards a nearby water tank with clear intention of commiting suicide by jumping into the water tank and eventually she was rescued from drowning by PW-4 Shashappa, PW-5 Yashodhara, Babu and Vishwanath. It is the evidence of PW-4 that in the afternoon of the day of incident when he was working in the pump house near the water tank, he heard slight sound of somebody falling into the tank. He along with Babu, Vishwanath and PW-5 Yashodhara immediately rushed to the water tank and noticed the prosecutrix drowning in the water. He stated that the prosecutrix was pulled out of the water tank by them and when he asked her about the cause of her committing suicide, the prosecutrix disclosed that she was forcibly raped by the accused in the afternoon on the day of occurrence. This witness was cross-examined at length, but nothing could be elicited from his evidence to establish that the witness has given evidence to implicate the accused in a false case or the witness is, in any way, related to the prosecutrix and therefore, tried to help her. Yashodara (PW-5) has testified and corroborated the testimony of the prosecutrix and PW-4 in its entirety. The proseuctrix has given graphic narration of the occurrence in complaint Ex. P-2 lodged against the accused at 7.00 p.m. in the Police Station. The name of the accused, who was also working as a Mistry in the same Coffee Estate where the prosecutrix and her parents (PWs-2 and 13), besides PWs-4, 5 and other persons were working has been categorically mentioned as an offender of the crime. Thus, the entire incident narrated in the complaint (Ex.P-2) stands corroborated by the oral testimony of the prosecutrix, her mother (PW-3), her father (PW-13) and independent witnesses (PWs-4 and 5). The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference

that the accused has not committed forcible sexual intercourse on the prosecutrix. Though, the report of the Gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted. Though, the FSL Report marked as Ex.C-1 pertaining to the undergarments of the accused and the victim did not contain any seminal stains, yet the said report cannot be given any importance because the underwear of the accused was taken into possession by the police on the next day of the incident when he was arrested. There is no evidence brought on record to show that the accused handed over the same under wear to the police, which he was wearing on the day of incident or he had handed over some other underwear which was seized under mahazer (Ex.P-5) by the police. The possibility of absence of seminal stains on petticoat of the prosecutrix which she was wearing at the time of the incident, could not be ruled out due to the fact that the petticoat got drenched in the water and the seminal stains might have been washed away.

14. The Trial Court as well as the High Court have recorded the finding of guilt of the accused based upon proper appreciation of the evidence led by the prosecution in this case. In view of the aforesaid discussion, we do not find any justified and justifiable ground to interfere with the conviction and sentence awarded by the Trial Court and confirmed by the High Court. The appeal is, therefore, dismissed.

15. The accused is on bail. He is directed to surrender before the Trial Court forthwith and to suffer the remaining period of sentence.