

RATHNAIAH

v.

STATE OF KARNATAKA
(Criminal Appeal No. 471 of 2008)

MARCH 11, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Penal Code, 1860; Ss.324 r/w s.34, 342 and 376:

Non-reasoned order – Rape – Trial Court convicted accused and others for committing offence of rape, convicted and sentenced them accordingly – Affirmed by High Court reducing sentence against them except appellant – On appeal, Held: High Court did not appreciate the rival stand to analyse the evidence in its proper perspective – Hence, matter remitted to High Court for disposal afresh – Non-reasoned order – Judicial propriety of.

Appellant, accused of rape, faced trial for alleged commission of offence punishable under Sections 376, 324 read with ss. 34 and 342 read with s. 34 of the Indian Penal Code, 1860. Trial Court sentenced him to undergo RI for seven years. However, other accused persons were sentenced to undergo one year imprisonment. In the appeals preferred by the convicts, the High Court affirmed the conviction and sentence so far as the present appellant is concerned but reduced the sentences against other accused persons. Hence the present appeal.

Appellant contended that the High Court while dealing with the appeal has not even analysed the evidence and has also not recorded any findings on various submission on behalf of the appellants.

Allowing the appeal, the Court

HELD: The manner in which the appeal has been

- A dealt with is not a correct way to deal with the appeal. No attempt appears to have been done by the High Court to appreciate the rival stand and to analyse the evidence in its proper perspective. Hence, the matter is remitted to High Court for fresh disposal in accordance with law.
- B (Paras – 7 & 8) [747-E, F]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 471 of 2008.

- C From the final Judgment and Order dated 27.7.2006 of the High Court of Karnataka at Bangalore in Cri. A. No. 553/2001

Girish Ananthamurthy and P.P. Singh for the Appellant.

- D Sanjay R. Hegde, Amit Kr. Chawla and Arul Verma for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

- E 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Karnataka High Court dismissing the appeal filed by the appellant. The appellant faced trial for alleged commission of offence punishable under Section 376 , 324 read with Section 34 and 342 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). While the appellant F was sentenced to undergo RI for 7 years, one year and six months respectively for the three offences, other accused persons were sentenced to undergo one year and six months for each of the offence i.e. Section 324 read with Section 34 and Section 342 read with Section 34 IPC.

- G 3. They preferred appeal before the High Court which was numbered as Criminal Appeal no.553 of 2001. By the impugned order the conviction and sentence so far as the present appellant is concerned was confirmed while the sentences were reduced so far as the accused persons are concerned, but the fine H amount was enhanced.

4. The High Court by a practically non-reasoned order dismissed the appeal. The only conclusion fathomable from the impugned judgment is as follows: A

"3. In fact the prosecution and the trial Court both have overlooked the fact that A1 had committed the acts of rape on two occasions which are distinct offences. A1 should have been prosecuted separately for both the incidents of rape by filing separate charge sheet. In respect of second incident of rape, the prosecution has adduced evidence to prove the guilt. Accordingly, the trial Court rightly convicted the accused U/s. 376 IPC." B C

5. Learned counsel for the appellant submitted that the High Court while dealing with the appeal has not even analysed the evidence and has also not recorded any findings on various submission on behalf of the appellants. D

6. In response, learned counsel for the respondent-State submitted that though the judgment of the High Court does not indicate the reasons, but the evidence on record justifies the ultimate conclusion that the appeal was to be dismissed. E

7. The manner in which the appeal has been dealt with is not a correct way to deal with the appeal. No attempt appears to have been done by the High Court to appreciate the rival stand and to analyse the evidence in its proper perspective. F

8. Above being the position, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law. G

9. Appeal is allowed.

S.K.S.

Appeal allowed. G