

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED: THIS THE 30<sup>th</sup> DAY OF NOVEMBER, 2011

BEFORE

THE HON'BLE MR. JUSTICE V. JAGANNATHAN

CRIMINAL APPEAL NO.2353/2006

BETWEEN:

I. KALI DURGAPPA (a MUKA  
S/O CHITHRAPPA  
AGED ABOUT 28 YRS  
VALMIKI, AGRICULTURIST  
R/AT HAROHALLI VILLAGE  
HOSPET TQ, BELLARY DIST

... APPELLANT

(By Sri. T HANUMAREDDY, ADV.)

AND:

I. STATE BY P S I  
M M HALLI POLICE STATION  
M M HALLI  
REP. BY S P P HIGH COURT  
BANGALORE

... RESPONDENT

(BY SRI. ANAND KUMAR NAVALGIMATH, HCGP)

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CRL.A FILED U/S.374 CR.P.C. BY THE ADV. FOR  
THE APPELLANT AGAINST THE JUDGMENT DT.

28.10.06 PASSED BY THE DIST. & S.J., FTC-III, HOSPET, IN S.C.NO.124/06 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/SS.354, 451 AND 323 OF IPC AND SENTENCING HIM TO UNDERGO R.I. FOR 1 YEAR AND TO PAY FINE OF RS.1000/- I.D., TO SUFFER 3 MONTHS FURTHER R.I. FOR OFFENCE P/U/S.451 OF IPC AND FURTHER SENTENCING HIM TO UNDERGO R.I. FOR 1 YEAR AND SHALL PAY FINE OF RS.1000/- I.D., TO SUFFER 3 MONTHS FURTHER R.I. FOR THE OFFENCE P/U/S.354 OF IPC AND FURTHER SENTENCING HIM TO UNDERGO R.I. FOR 3 MONTHS AND SHALL PAY FINE OF RS.500/- I.D., TO SUFFER 1 MONTH FURTHER R.I. FOR OFFENCE P/U/S.323 OF IPC. ALL THE SENTENCES OF IMPRISONMENT SHALL RUN CONCURRENTLY EXCEPT THE DEFAULT SENTENCE.

THIS APPEAL COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### J U D G M E N T

This criminal appeal is by the accused who has been convicted by the trial Court in respect of the offences punishable under Sections 354, 451 of the IPC and Section 323 of IPC.



2. The case of the prosecution in short is that, a complaint was lodged by Smt. Mallamma on 16.06.2005 to the effect that on the same day, the accused came to her house when nobody was in the house and tried to outrage the modesty of the complainant. She has stated that the accused touched her chest portion and also torn her blouse and then the complainant is shouted and accused ran away from the house and this has been witnessed by one Erajja, Anjanappa and Maragadappa. It is also alleged in the complaint that, when the accused tried to outrage her modesty, the Mangalya worn by the complainant was also torn and she also sustained injuries on her back, left hand and right hand. The said complaint was lodged at 4.50 pm on the same day and case was registered under Sections 354, 323 and 448 of IPC.



3. The learned Magistrate who took cognizance of the aforesaid offences in the course of the evidence before him, thought it fit to commit the case to Sessions Court in respect of the offence punishable under Section 376 of IPC and accordingly, the case was committed to the Sessions Court to try the accused even in respect of Section 376 of IPC. The accused pleaded not guilty and the prosecution examined seven witnesses and five documents were produced apart from three material objects. The accused statement was followed by the defence evidence placed on behalf of the accused by examining DWs. 1 to 3.

4. The learned trial judge after appreciating the evidence on record found that the prosecution has failed to prove the offence of rape punishable under Section 376 of IPC and therefore, the accused was acquitted of the said offence. But however, the trial Court found

2

that the evidence was sufficient to convict the appellant in respect of the offences punishable under Section 451, 354 and 323 of IPC. The accused was convicted and sentenced to undergo one year R.I for the offence under Section 451 of IPC with Rs.1,000/- fine, a similar period of imprisonment and fine in respect of offence under Section 354 of IPC and 2 months imprisonment and Rs.500/- fine in respect of Section 323 of IPC, with default sentences. Challenging the conviction and sentence imposed on him by the trial Court, the accused is before this Court.

5. I have heard Sri. T. Hanumareddy, learned counsel for the appellant and Sri. Anand Kumar Navalgimath, learned High Court Government Pleader for the respondent-State and perused the records of this case.



6. Submission of the learned counsel for the appellant is that, the entire case rests on the evidence of PW1, who has stated to be the victim and the careful reading of her evidence in comparison with the complaint lodged by her as per Ex.P1, would go to show that PW1 is not a reliable witness. In the complaint, no mention is made of the accused having committed rape on her. But however, in the evidence before the Court, complainant has given detailed description of the act of rape committed by the accused on her. Even the complaint was lodged alleging outraging her modesty and the history given before the doctor was that of assault by the accused. Therefore, the trial Court could not have accepted the testimony of PW1, when the witness is found to be not a fruitful witness. To support the above submission, the learned counsel also submitted that the defence has examined three witnesses DWs. 1 to 3 and all of them say in their



evidence that the complainant is in the habit of filing false cases alleging outraging of modesty or rape on different persons, whenever the said persons used to ask her to repay the loan taken by her. Therefore, the defence evidence also established that the case filed by the complainant is a false one with interior motive. As such, the conviction of the appellant be set aside and he be acquitted of the other offences also.

7. The learned High Court Government Pleader on the other hand supported the view taken by the trial Court and submitted that the evidence on record is sufficient to withstand the conviction of the accused in respect of the offences punishable under Sections 451, 354 and 323 of IPC.

8. Having thus heard both sides and after going through the material on record, I do not find enough

2

force in the submission put forward by the learned counsel for the appellant for the following reasons.

9. In the complaint Ex.P1 lodged by the complainant i.e., PW1, absolutely there is no mention of the complainant having been subjected to rape by the accused. On the other hand, in the evidence before the Court, PW1 goes on to give a detailed description of the offence of rape committed by the accused. If at all the accused had committed rape on the victim, that too on a married woman, she would not have kept quite and would not have failed to say about the offence of rape in her complaint.

10. Even the history given before the trial Court was one of assault and not one of rape. Therefore, the trial Court should have scrutinized the evidence of PW1 carefully and should have examined as to whether the witness is speaking truth or not.





11. The defence has also placed evidence of DWs. 1 to 3 and the evidence of these defence witnesses in substance is that, the complainant used to take loan from several persons in the village and when the loan amount was demanded from the complainant, immediately she used to file case against the persons alleging the offence of rape on her. These witnesses DWs. 1 to 3 have also deposed that all the cases ended in compromise before the panchayat and even the police did not register any case against the said persons.

12. In view of the aforesaid evidence of DWs. 1 to 3, the possibility of a false case being filed by the complainant cannot be ruled out. If the evidence of PW1 is discarded, nothing remains on record to convict the accused person for the offence punishable under Sections 354, 451 and 323 of IPC. The trial Court ought to have taken the aforesaid material on record



and could not have blindly accepted the testimony of PW1, where the evidence given before the Court is totally different one when compared to the complaint averments. Therefore, the witnesses being found to be unreliable and not trust worthy witnesses and in the light of the background of the complainant as revealed by DWs. 1 to 3, the trial Court could have given the benefit of doubt to the accused instead of convicting him by accepting the testimony of PW1.

13. For the above reasons, the appeal is allowed. The judgment of conviction and sentence passed by the trial Court is set aside and the appellant is acquitted of the offences with which he was charged. His bail bond shall stand cancelled.

**Sd/-  
JUDGE**

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