

## State by H.S.R. Layout Police Station Vs Santhosh

**Court:** Karnataka High Court

**Date of Decision:** Feb. 19, 2015

**Acts Referred:** Penal Code, 1860 (IPC) - Section 182, 363, 366, 366(A), 376

**Hon'ble Judges:** Mohan M. Shantana Goudar and P.S. Dinesh Kumar, JJ.

**Bench:** Division Bench

**Advocate:** Anitha R., HCGP, for the Appellant; Derick Anil A., Amicus Curiae, for the Respondent

**Final Decision:** Dismissed

### Judgement

Mohan M. Shantana Goudar, J.

The Judgment & Order of acquittal dated 30.3.2011 passed by the 45th Addl. Sessions Court,

Bangalore in S.C. No. 334/2008 is called in question in this appeal by the State.

The accused was tried and acquitted of the offences punishable under Sections 363, 366, 376, 506 and 182 of IPC.

2. Case of the prosecution in brief is that the accused and the prosecutrix viz., Ambika (P.W. 1) went to Tamilnadu State from Bangalore on

16.7.2007 and visited Tiruvanamalai temple; they stayed there for 15 days in the house of mother of the accused; during that time, there was no

sexual intercourse between the accused and the victim; the accused allegedly tied one thread (supposed to be holy thread) to the neck of the victim

in the temple; however no other third person including Archak was present at that time; they came back to Bangalore; they started working in the

house of one Geetha Narasimhan at Koramangala; the accused was working as a driver, whereas the victim was working as a maid in the house of

Geetha Narasimhan; the accused and the victim were given car shed for residing; while they were residing so, the accused repeatedly had sexual

intercourse with the victim; from 16.7.2007 till 9.9.2007, the accused used to tell the victim that he would marry her and believing his words, the

victim stayed with the accused; on 9.9.2007 at about 3 p.m. the accused gave Rs. 1,000/- to the victim and told her to go to her mother's place;

accused also told the victim that since his mother is not well, he would be going to his mother's place; accordingly on 9.9.2007 the victim came

back to her mother's house and stayed there; on 11.9.2007, the Police came to the house of mother of the victim and took both the victim and her

mother to the Police Station on the ground that the victim had committed the theft of gold jewellery; it was alleged that the accused as well as the

victim committed theft of the gold ornaments in the house of Geetha Narasimhan apart from cash of Rs. 20,000/-; however the victim denied of

having committed theft as alleged by the Police.

The victim was sent to State Shelter Home. She stayed there up to 14.9.2007. Thereafter the victim was shifted to various places such as

Janodaya Women's Organisation, Orphanage at Wilson Garden etc., Ultimately, she was sent to Parappana Agrahara prison at Bangalore on

19.9.2007. The accused was also arrested in the meanwhile and he was also housed in the very prison. It is alleged that the accused came and met

the victim on 29.9.2007 and told her that she should lodge false complaint against the Police Constable by name Basavaraju working in the

Koramangala Police Station. He forcibly took her signature on a white paper by threatening her and went away. Such signed blank paper was

converted as complaint against Basavaraju, Police Constable and the same was sent to State Human Rights Commission for initiating action against

said Basavaraju, Police Constable. The Member of the State Human Rights Commission visited the Jail premises and recorded the statements of

the accused as well as the victim; they have stated that Basavaraju, Police Constable raped the victim repeatedly in the Police Station. In that

context, Mr. Ravikanthegowda (P.W. 3), Deputy Commissioner of Police was requested by the Police Commissioner to inquire into the matter.

On enquiry, he registered Crime No. 310/2007 against the accused for the offences under Sections 366(A), 376, 506 and 182 of IPC with an

allegation that the accused raped the victim and that the earlier allegation made by the victim against the Police Constable - Basavaraju is false and

the same was lodged by the victim due to the threat of the accused. After investigation, the Police Officer laid the charge sheet in Crime No.

310/2007 against the accused.

3. P.W. 1 is victim - prosecutrix; she lodged the complaint as per Ex. P1 against the accused, which came to be registered in Crime No. 310/2007

on 28.11.2007.

P.W. 2 is the mother of the victim.

P.W. 3 is the Deputy Commissioner of Police, South-East Division, Bangalore; on the direction of the Commissioner of Police, he was entrusted

with the investigation of the allegations against Basavaraju, who in turn requested P.W. 8 - Smt. Shobha S. Katavakar, the Sub-Inspector of

Police to assist him in investigation.

P.W. 3 has deposed that the victim told before him that she had lodged false complaint against Basavaraju due to the threat of the accused.

P.W. 4 is the doctor who examined P.W. 1. He has opined that the victim was aged in between 16 and 18 years.

P.W. 5 is the officer of Forensic Science Laboratory; the FSL report is at Ex. P8.

P.W. 6 is another doctor who examined the victim P.W. 1 and issued the certificates at Ex. P9 and Ex. P10. She has also sent the request letter to

the FSL as per Ex. P11.

P.W. 7 is the Police Sub-Inspector who registered the FIR in Crime No. 391/2007 as per Ex. P12. Ex. P12 is the first information relating to the

complaint lodged by the victim against Police Constable - Basavaraju alleging the offence of rape.

P.W. 8 is the Sub-Inspector of Police, who assisted P.W. 3 in investigating into the crime in question.

P.W. 9 is the doctor who examined the accused and issued the medical report as per Ex. P15.

P.W. 10 is the Investigating Officer who completed the investigation and laid the charge sheet.

4. In the matter on hand, though P.W. 1 has deposed against the accused, the same is rightly disbelieved by the Court below. The medical records

amply reveal that the victim was aged in between 16 and 18 years. Nothing is produced by the prosecutrix to show that the victim was below 16

years of age. Therefore the trial Court has correctly concluded that the victim was about 17 years of age, during relevant time, having regard to the

material on record.

5. Admittedly the victim did not lay the complaint against the accused till 28.11.2007 i.e., till the Police contacted her. Much prior to lodging of the

complaint on 28.11.2007 as per Ex. P1, it seems a complaint was lodged by Smt. Geetha Narasimhan against the accused and the victim alleging

that they had committed theft of gold ornaments and cash of Rs. 20,000/- from their house. In that regard, the Police were searching for the

accused and the victim. Both the accused and the victim were arrested and the crime was initiated on the basis of the complaint lodged by Geetha

Narasimhan. The victim was initially housed in State Shelter Home and thereafter in Parappana Agrahara Jail. During the course of investigation of

the said crime, the victim was taken to Police Station wherein the victim has alleged that the Police Constable - Mr. Basavaraju has committed

sexual assault on her number of times. In that regard, complaint also came to be lodged by the victim, which came to be numbered as HRC No.

211/2007 before the State Human Rights Commission. The Human Rights Commission after registering the said case against Sri Basavaraju sent

the complaint to Police Commissioner for investigation. The Police Commissioner in turn referred the matter to P.W. 3 for investigation. In turn

P.W. 3 has referred the matter to P.W. 8 - Inspector of Police to investigate into the matter. After the Police took incharge of the case, a separate

story is created perhaps to shield Police constable - Mr. Basavaraju from the departmental action as well as criminal action. The victim was made

to state that she has lodged the complaint against the Police Constable - Mr. Basavaraju inasmuch as she was under the threat by accused. Such

make believe story created by the Police cannot be believed inasmuch as the accused and the victim were in custody. Even assuming that the

accused was not in custody during the relevant point of time, it is humanly impossible for the accused to threaten the victim while the victim was in

custody. Without the permission of the jail authorities, no one can enter the jail premises. Under these circumstances, the story created by the

Police during the course of investigation as mentioned supra is unbelievable. The trial Court is justified in observing that only to safeguard the

interest of the Police Constable - Mr. Basavaraju who had acted high handedly, the Investigating Officer has created false story against the

accused. Even till that time, there was no complaint lodged by the victim against the accused. During the interregnum, Sri R.H. Raddi, the Member

of the Human Rights Commission (retired District Judge) visited the Jail premises personally and recorded the statement of the accused as well as

the victim. Those statements clearly reveal that it was the Police Constable - Mr. Basavaraju who sexually assaulted the victim and that there was

no allegation of victim against the accused.

6. All these factors are sought to overcome by the prosecution by creating false story. The trial Court has rightly disbelieved the entire case of the

prosecution as made out before the Court. The prosecution has not come before the Court with clean hands. The entire case of the prosecution

appears to be artificial and concocted. The origin and genesis of the case of the prosecution is completely suppressed. In view of the same, the

Court below is justified in acquitting the accused. The view taken by the trial Court is the only possible view under the facts and circumstances of

the case. In view of the above, we pass the following order:

The impugned Judgment and Order dated 30th March 2011 passed by the trial Court in S.C. No. 334/2008 acquitting the respondent/accused -

Santhosh @ Sebastin @ Paulraj for the offences with which he is charged, is left undisturbed.

The appeal fails and the same stands dismissed.

We make it clear that if the respondent/accused is in custody, in connection with Crime No. 310/2007 registered in H.S.R. layout Police Station

Bangalore, he shall be released forthwith if he is not required in any other case.