



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 25TH DAY OF NOVEMBER, 2024

**PRESENT
THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA**

CRIMINAL APPEAL NO.2698 OF 2013 (A)
C/W
CRIMINAL APPEAL NO.2509 OF 2013 (C)
CRIMINAL APPEAL NO.2699 OF 2013 (A)

IN CRIMINAL APPEAL NO.2698 OF 2013

BETWEEN:

STATE OF KARNATAKA,
THROUGH DHARWAD RURAL P.S.,
REPRESENTED BY ADDITIONAL
STATE PUBLIC PROSECUTOR,
HIGH COURT CIRCUIT BENCH,
DHARWAD.

- APPELLANT

(BY SRI M.B. GUNDAWADE, ADDL. S.P.P.)

AND:

UDAY MALLESHAPPA BHOVI,
AGE: 26 YEARS, OCC: PRIVATE JOB,
R/O: HEBBALLI, TQ AND DIST: DHARWAD.

- RESPONDENT

(BY SRI R.H. ANGADI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1) OF CR.P.C. PRAYING TO MODIFY THE CONVICTION AND SENTENCE BY SETTING ASIDE THE ORDER OF CONVICTION AND SENTENCE IMPOSED ON 26.12.2012 PASSED BY FAST TRACK COURT-I, DHARWAD, IN S.C.NO.10/2010 FOR THE OFFENCE PUNISHABLE UNDER SECTION 376 OF IPC & ETC.,



IN CRIMINAL APPEAL NO.2509 OF 2013

BETWEEN:

UDAY
S/O. MALLESHAPPA BHOVI
AGE: 25 YEARS, OCC: DRIVER,
R/O. HEBBALLI, TQ AND
DIST: DHARWAD.

- APPELLANT

(BY SRI R.H. ANGADI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
R/BY ITS PUBLIC PROSECUTOR,
DISTRICT COURT CAMPUS,
DHARWAD.

- RESPONDENT

(BY SRI M.B. GUNDAWADE, ADDL. S.P.P)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO, ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION PASSED IN S.C.NO.10/2010 DATED 26.12.2012 PASSED BY THE COURT OF THE FAST TRACK-I, DHARWAD, AND ACQUIT THE APPELLANT/ACCUSED NO.1 & ETC.,

IN CRIMINAL APPEAL NO.2699 OF 2013

BETWEEN:

STATE OF KARNATAKA
THROUGH DHARWAD RURAL P.S.,
R/BY ADDITIONAL
STATE PUBLIC PROSECUTOR,
HIGH COURT CIRCUIT BENCH,
DHARWAD.

- APPELLANT

(BY SRI M.B. GUNDAWADE, ADDL. S.P.P.)

AND:



1. UDAY MALLESHAPPA BHOVI,
AGE: 26 YEARS, OCC: PRIVATE JOB,
R/O. HEBBALLI, TQ & DIST: DHARWAD.
2. MANJU S/O. FAKKIRAPPA MORABAD
AGE: MAJOR, OCC: COOLIE WORK,
R/O. HEBBALLI,
TQ & DIST: DHARWAD.
3. MABUSAB
S/O. YAKUBSAB RAMDURG @ PENDARI
AGE: MAJOR, OCC: COOLIE WORK,
R/O. HEBBALLI,
TQ & DIST: DHARWAD.
4. CHANDRU
S/O. NAGAPPA SUNAGAR,
AGE: MAJOR, OCC: COOLIE WORK,
R/O. HEBBALLI,
TQ & DIST: DHARWAD.
5. MALLESHAPPA
S/O. RANGAPPA BHOVI
AGE: MAJOR, OCC: COOLIE WORK,
R/O. HEBBALLI,
TQ & DIST: DHARWAD.

- RESPONDENTS

(BY SRI R.H. ANGADI, ADV. FOR R1;
SRI S.N. BENDIGERI, ADV. FOR R2;
NOTICE TO RESPONDENT NOS.3, 4 & 5-SERVED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(2) & (3) OF CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 26.12.2012 PASSED BY THE FAST TRACK COURT-I, DHARWAD, IN S.C.NO.10/2010 & ETC.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The Fast Track Court-I, Dharwad, deciding Session Case No.10/2010 recorded conviction for the offence under Section 376 of IPC against accused no.1 and sentenced him to simple imprisonment for a period of 3 years and fine of Rs.10,000/- with default imprisonment for a period of three months. It acquitted accused no.2 to 5 of offences punishable under Sections 366(A), 114, 504 and 506 read with section 34 IPC. The State has preferred two appeals, CrI.A.No.2698/2013, under Section 377(1) of Cr.P.C., seeking enhancement of sentence for accused no.1 for the offence under Section 376 IPC and CrI.A.No.2699/2013 questioning the correctness of acquitting accused nos.2 to 5. CrI.A.No.2509/2013 is filed by accused no.1 challenging his conviction and sentence for the offence under Section 376 IPC.

2. The prosecution case in a nutshell is that on 26.03.2009, the first accused on the instigation and aid of



accused nos.2, 3 and 4, kidnapped PW.7 from the village called Hebballi and brought her to Dharwad from where he took her to Udupi and married her in a temple. Thereafter he took her to the house of PW.1 on 28.03.2009 and had sexual intercourse with her. He then took her to the house of PW.5 on 30.03.2009 and had intercourse with her. Accused no.5 is the father of accused no.1. When PW.3, the father of PW.7 went to the house of accused no.5 to tell him about the kidnap, it was alleged that he abused and threatened him.

3. The prosecution examined 30 witnesses and got marked 35 documents and 11 material objects. The Trial Court came to conclusion that the prosecution was not able to prove its case about kidnap in view of evidence in that regard being not reliable. The Trial Court has found that PW.7 might have gone with accused no.1 voluntarily. Having regard to the age of PW.7, the Trial Court found him guilty of the offence under Section 376 IPC.

4. Sri R.H.Angadi learned counsel for accused no.1 assailed the judgment of the Trial Court by advancing argument in such a way that, firstly the prosecution failed to prove that



PW.7 was a minor. Though prosecution examined PW.19, the Headmaster of the School where PW.7 studied, his evidence cannot be acted upon for simple reason that PW.9, the mother of PW.7 stated before the Court that she did not know the date of birth of her daughter. For this reason the date of birth mentioned in Ex.P.23 as 01.06.1994 might not be correct date of birth. The prosecution examined PW.27, who was the Deputy Tahasildar of Dharwad. His evidence was that there was no entry in the Register of Births showing that PW.7 was born on 01.06.1994. Therefore it is not clear that there is no proof for the age of the girl.

5. His further line of argument is that PW.1, 2 and 5 have not supported prosecution case. They clearly denied that accused no.1 and PW.7 had come to their house and stayed overnight. That apart if the Trial Court found that accused nos.2 to 4 were to be acquitted for the offence of kidnap, then no conviction can be recorded against accused no.1 for the offence under Section 376 IPC. The doctor might have stated that PW.7 was used to an act like that of sexual intercourse but medical evidence alone cannot be based. Added to this, the entire evidence of PW.7 is untrust worthy. Therefore judgment



of the Trial Court to the extent of convicting accused no.1 should be set aside.

6. Sri M.B.Gundawade, Additional State Public Prosecutor for the State argues that the Trial Court holds that the age of PW.7 was 14 years on the date of incident and has also held that she was subjected to sexual intercourse by accused no.1. In this view he should have been punished with rigorous imprisonment for a period not less than 7 years. Three years imprisonment imposed on accused no.1 is disproportionate to the gravity of offence. Therefore there is a case for enhancement of sentence. He also argued that the evidence of PW.4 clearly establishes that he saw accused nos.2 to 4 bringing PW.7 and sending her with accused no.1 on a motorbike. PW.4 gave information to PW.3 and PW.9, the parents of PW.7. Their evidence is very much believable. PW.7 had also stated that accused no.1 took her to various places with the aid of accused nos.2 to 4. She has spoken about forcible sexual intercourse in spite of resistance from her. This clearly demonstrate that accused nos.2 to 4 were very much involved in the kidnap of PW.7. Further the evidence of PW.3 and PW.9 shows that accused no.5, the father of accused no.1



not only scolded PW.3, but threatened him of dire consequences. So this being the evidence, there was no scope for acquitting them. Hence, both the State appeals are to be allowed.

7. We have perused the entire evidence. The clear case of prosecution is that accused no.1 kidnapped PW.7 with the help of accused nos.2 to 4. Probably for the reason that PW.7 was a minor, the prosecution might have thought of proving her age by examining the Headmaster of the School, who issued a document in that regard. Even though PW.19 has stated that according to school records, the date of birth of PW.7 is 01.06.1994, the evidence given by PW.27 dents the prosecution case. If, in the office of Tahasildar, the Register of Births did not contain an entry in regard to birth of PW.7 between the period 01.06.1993 and 01.06.1995, then her date of birth as deposed by PW.19 could not be a correct date of birth, and to this effect the answer of PW.9, the mother that she does not remember the date of birth of her daughter becomes relevant. PW.3, the father of the girl has stated that on the date of incident the age of girl was 16 years 3 months. Be that as it may.



8. So far as the offence of kidnap is concerned, the evidence of PWs.3, 8 and 9 is not direct, what they have stated appears to be based on information given to them by PW.4. The evidence of PW.4 is that one day in the month of March, 2009, when he and PW.6 were going to bring water from a borewell at about 2.00 p.m., he saw accused no.1 standing behind a school with a red colour motorbike. He also saw 3 persons brining PW.7 forcibly and sending her with accused no.1. He has stated that 3 persons had covered the face of the girl. He identified accused nos.1 to 4 in the Court. Around 6.00 p.m., on the same day seeing PW.3 searching for his daughter, he told him about what he had seen in the afternoon. His cross examination discloses that he did not see PW.7 screaming while she was being dragged by accused 2 to 4 and she also did not shout when her face was covered. PW.6, did not support the prosecution case at all and all the efforts of the prosecutor to discredit him in the cross examination did not yield any result. The answer of PW.4 in the cross examination that PW.7 was not shouting, has some bearing which will be discussed later.

9. The evidence of PW.3, 8 and 9, as has been observed already, is based on the information given to PW.3 by



PW.6. PW.3 went to police station not on the same day but two days later and made a report about kidnap of his daughter. He gave an explanation that he informed the matter to the elders and waited for their advise.

10. The next limb of prosecution case is that accused no.1 took PW.7 to Udupi and married her in a temple and then brought her to the houses of PWs.1 and 5. PW.1 and 2 are spouses. But they do not support the prosecution case, in the same way PW.5 has not supported the prosecution case. It is true that PW.7 has given evidence that accused nos.2 to 4 forcibly sent her with accused no.1 on the motorbike. She has also stated that accused no.1 had sexual intercourse with her in spite of her resistance. Her cross examination discloses that when she was being taken on the motorbike and when they were travelling in the bus, she did not rise alarm to attract attention of others. The defence is that accused no.1 and PW.7 had a long acquaintance and were conversing with each other over the phone. She admitted of making statement before the Court for the first time that accused no.4 used to give her telephone to converse with accused no.1. She did not give this statement before the police. This shows that there was some



kind of affair between the two. This is necessary to be mentioned here as it helps to assess the evidence of PW.4 who has stated that accused 2 to 4 brought the girl forcibly and by masking her face, they sent her with accused no.1. That means his evidence to that effect does not appear to be believable. The other eyewitness PW.6 having not supported, the evidence of PW.4 cannot be so easily believed for want of corroboration.

11. It is true that medical evidence shows that probably PW.7 was used to an act like of sexual intercourse. It is not the prosecution case that accused no.1 had intercourse with PW.7 in his village. The clear case of prosecution that she was kidnapped and accused no.1 had intercourse with her in the houses of PW.1 and PW.5. But PW.1 and PW.5 have clearly stated that accused no.1 and PW.7 had not come to their houses. That means kidnapping has not been established. Another important aspect to be mentioned here is that if the evidence given by PW.11 and PW.12 is read, what appears is that the prosecution wanted to prove that accused no.1 had given a false statement before the police that he and PW.7 had been to the houses of PWs.1 and 5. That means according to prosecution, accused no.1 might have had intercourse with



PW.7 at some other places, which is not proved. In the evidence of PW.12, it is elicited that accused no.1 had showed the house of one Mallavva and said that he had intercourse with PW.7 in that house. If that was the case, Mallavva should have been examined as a witness. She was not examined. In this view the very fact that accused no.1` and PW.7 went out of their village does not get established. Since establishing the offence of kidnap, in the facts and circumstances was a prerequisite for holding that offence under Section 376 IPC could be proved, definitely it can be said that the Trial Court has committed an error in recording conviction against accused no.1.

12. Thus seen, there is no proof for the offence of kidnap. Consequently, the offence of 376 IPC also does not get established. PW.7 does not appear to be trust worthy witness. Accused no.5 happens to be unnecessarily roped in because he happens to be the father of accused no.1. Looked from any angle there is no case for recording conviction against any of the accused. Therefore acquittal of accused no.2 to 5 cannot be said to be incorrect. Accused no.1 should not have been



convicted. In this view appeal filed by accused no.1 succeeds and the appeals filed the State fail. Consequently the following;

ORDER

- i. Crl.A.No.2509/2013 filed by accused no.1 is allowed.
- ii. Accused no.1 is acquitted of the offence punishable under Section 376 IPC. Judgment of conviction in this regard is set aside.
- iii. His bail bond is cancelled.
- iv. Crl.A.No.2698/2013 and Crl.A.No.2699/2013 filed by the State are dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE