



NC: 2026:KHC-D:374-DB
CRL.A No. 100249 of 2020
C/W CRL.A No. 100060 of 2020
CRL.A No. 100084 of 2020
CRL.A.No.100087 of 2020

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 13TH DAY OF JANUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO.100249 OF 2020 (A)

C/W CRIMINAL APPEAL NO. 100060 OF 2020

CRIMINAL APPEAL NO. 100084 OF 2020 AND

CRIMINAL APPEAL NO. 100087 OF 2020

IN CRL.A NO. 100249/2020
BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY THE
CIRCLE POLICE INSPECTOR,
BAGALKOT TOWN POLICE STATION,
DIST. BAGALKOT,
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA, DHARWAD BENCH.

...APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP)

AND:

1. BASAVARAJ S/O. BAIREGOUDA ALAGUNDI,
AGE: 31 YEARS,
OCC. LAB TECHNICIAN,
2. BASAVARAJ S/O. SHANKARAPPA HULLUR,
AGE: 27 YEARS,
OCC. AGRICULTURE,

VIJAYALAKSHMI
M KANKUPPI

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3. CHANNABASAPPA S/O. BASAPPA TOTAD,
AGE: 23 YEARS, OCC. CAR DRIVER,

ALL ARE R/O. NANDAKESHWAR,
BADAMI TALUK-587201.

...RESPONDENTS

(BY SRI. S.S. YADRAMI, SR. COUNSEL FOR
SRI. S.C. HIEMATH, ADVOCATE FOR R1;
SRI. SHIVANAND MALASHETTY, ADVOCATE AND
SRI. H. N. GULARADDI, ADVOCATE FOR R2;
SRI. SANTOSH MALAGOUDAR, ADVOCATE FOR R3)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C., PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 24/01/2020 PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOTE IN S.C.NO.19/2013 SO FAR IT RELATES TO ACQUITTAL OF RESPONDENTS / ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 364(A) R/W SECTION 34 OF IPC (NOT CONVICTING UNDER SECTION 364(A) R/W SECTION 34 OF IPC AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION FOR LESSER OFFENCE DATED 24/01/2020 PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOTE IN S.C.NO.19/2013 AND CONVICT AND SENTENCE THE RESPONDENTS / ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 364(A) R/W SECTION 34 OF IPC, IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.A NO. 100060/2020
BETWEEN:

BASAVARAJ S/O. BAIREGOUDA ALAGUNDI,
AGE: 38 YEARS, OCC. LAB TECHNICIAN,
R/O. NANDIKESHWAR, TAL. BADAMI,
DIST. BAGALKOTE, PIN: 587201.

...APPELLANT

(BY SRI. S.S. YADRAMI, SR. COUNSEL FOR
SRI. S.C. HIEMATH, ADVOCATE)

AND:

THE STATE OF KARNATAKA
(BAGALKOTE TOWN POLICE STATION)
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,



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HIGH COURT BUILDINGS, DHARWAD.

...RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOTE FOR THE OFFENCES PUNISHABLE UNDER SECTION 363 R/W SECTION 34 OF IPC AND SENTENCING HIM TO UNDERGO RIGOROUS IMPRISONMENT FOR 3 YEARS AND ALSO PAY THE FINE OF RS.5,000-00 IN S.C.NO.19/2013 AND ACQUIT THE APPELLANT / ACCUSED NO.1 FOR OFFENCE PUNISHABLE UNDER SECTION 363 R/W SECTION 34 OF IPC, IN THE INTERST OF JUSTICE.

IN CRL.A NO. 100084/2020
BETWEEN:

BASAVARAJ S/O. SHANKARAPPA HULLUR,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. NANDKESHWAR, TQ. BADAMI,
DIST. BAGALKOTE.

...APPELLANT

(BY SRI. SHIVANAND MALASHETTY, ADVOCATE AND
SRI. H.N. GULARADDI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD,
THROUGH BAGALKOTE TOWN POLICE STATION,
TQ AND DIST: BAGALKOTE-587103.

...RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C., PRAYING TO CALL FOR RECORDS IN S.C. NO.19/2013 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSION JUDGE BAGALKOTE AND ALLOW THIS CRIMINAL APPEAL BY SETTING ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 24.01.2020 PASSED BY THE II ADDITIONAL DISTRICT AND SESSION JUDGE BAGALKOTE IN S.C. NO.19/2013 IN OFFENCE PUNISHABLE UNDER SECTION 363 R/W SECTION 34 IPC, IN THE INTEREST OF JUSTICE



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AND EQUITY, IN SO FAR AS (A2) IS CONCERNED.

IN CRL.A NO. 100087/2020
BETWEEN:

SRI.CHANNABASAPPA S/O. BASAPPA TOTAD,
AGE: 30 YEARS, OCC. DRIVER,
R/O. NANDKESHWAR, TQ. BADAMI,
DIST. BAGALKOTE.

...APPELLANT

(BY SRI. SANTOSH B. MALAGOUDAR, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH PSI, BAGALKOTE TOWN POLICE STATION,
REPRESENTED BY ADDL. STATE PUBLIC PROSECUTOR,
SPP OFFICE, HIGH COURT OF KARNATAKA,
DHARWAD.

...RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDL SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C., PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 24/01/2020 PASSED BY COURT OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, BAGALKOTE IN SESSIONS CASE NO.19/2013, BY ALLOWING THIS APPEAL, CONSEQUENTLY ACQUIT THE APPELLANT / ACCUSED NO.3 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 363 R/W 34 OF IPC LEVELED AGAINST HIM IN ABOVE MENTIONED CASE IN THE INTEREST OF JUSTICE AND EQUITY, IN SO FAR AS APPELLANT IS CONCERNED.

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

CORAM:

HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE MRS JUSTICE GEETHA K.B.



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ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

1. These appeals arise out of the judgment and order dated 24.01.2020 passed by the Court of II Additional District and Sessions Judge, Bagalkot, in SC No.19/2013.

2. Vide impugned judgment, the learned Sessions Judge has held accused Nos.1 to 3 guilty of the offence punishable under Section 363 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC', for short) as against the charge framed against them under Section 364A of IPC. For the convicted offence, the accused have been sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of ₹5,000/- each, in default of payment of fine, to further undergo simple imprisonment for 6 months.

3. Challenging the judgment and order of conviction and sentence, accused No. 1 has preferred Criminal Appeal No.100060/2020, accused No.2 has preferred Criminal Appeal No.100084/2020 and accused No.3 has preferred Criminal Appeal No. 100087/2020.



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4. Feeling aggrieved by the judgment of the trial Court in not convicting the accused for the charged offence punishable under Section 364A of IPC, the State has preferred Criminal Appeal No.100249 of 2020.

5. We have heard the arguments of the learned senior counsel Sri. S.S. Yadrami appearing for the learned counsel Sri. S.C. Hiremath for accused No.1, learned counsel Sri. Shivanand Malashetty appearing for the learned counsel Sri. H.N.Gularaddi for accused No.2, the learned counsel Sri. Santosh Malagoudar appearing for accused No.3 and the learned Additional SPP Sri. M.B. Gundawade appearing for the State. Perused the evidence and material on record.

6. It is the case of prosecution that on 24.12.2012 at about 16.10 hours, within the limits of Bagalkot Town Police Station, near Lions School, in furtherance of the common intention, accused No.1 to 3 kidnapped CW.6- Aravind (PW.4) aged about 9 years, in a car bearing registration No.KA.34/MD.1231 and demanded a ransom of ₹25,00,000/- from PW.3-Shivakumar Murigeppa Dandin, father of the child,



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for his release and thereby committed an offence punishable under Section 364A read with Section 34 of IPC.

7. The law was set into motion by PW.1-Suresh Sangappa Revadigar. A perusal of the complaint-Ex.P.1 reveals that the victim was studying in third standard at Basaveswara International Public School, Vidyagiri, Bagalkot. As usual, on 24.12.2012 at about 08.30 a.m., he left for school in the school bus, but did not return at 04.00 p.m. Even at 05.00 p.m., when he did not return home, his father Dr. Shivakumar Murigeppa Dandin (PW.3) made a phone call to the school and came to know that his son had already left the school. At about 05.30 p.m., his wife Dr.Archana (CW.5) received a phone call to her mobile phone bearing number 9448960186 from telephone number 08351-285405. The person who had called, asked her to hand over the phone to her husband i.e. PW.3. When the phone was handed over to PW.3, the person who called, told PW.3 that they have kidnapped his son and demanded a ransom of ₹25,00,000/- for his release, failing which, threatened to kill the boy. They also informed that they would call at about 07.00 p.m. When no further call was received at



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07.00 p.m., PW.3 and others got panic and enquired with another student by name Nisarga Kiran Kanthi (PW.5), who was also travelling in the same bus. On enquiry, he informed them that at about 04.10 p.m., the victim boy i.e. Aravinda had got down from the bus and while alighting from the bus, a silver colour Indica car with writing "Appaji" on its rear came and the inmates of the said car took the victim in the said car. Hence, complaint was lodged with the police.

8. PW11-PSI of Bagalkote Town Police Station has deposed in his evidence that on 24.12.2012 at about 09.15 p.m., PW.1 visited the police station and lodged a complaint as per Ex.P.1, based on which he registered a case and forwarded the FIR-Ex.P.6 to the jurisdictional Magistrate and then handed over the investigation to the CPI-PW.10.

9. PW.10 after taking over the investigation, instructed the PSI to send wireless intimation, to collect information about the kidnappers. PW.9, CPI of Kustagi Police Station has deposed that on receiving the information from the control room about the kidnap, he passed on the information to the SHO of his police station and other police officials. He has



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further deposed that while his staff were patrolling, at about 09.50 p.m., they noticed a Tata Indica car bearing registration number KA.34/MD.1231 with the writing "Appaji" on its back and also found the victim and the three accused in the said car. Thereafter, the car as well as the accused were brought to the police station and the matter was informed to PW.10 who came to Kustagi police station and seized the said car (MO.5) as well as 2 mobile phones (MO.1 and MO.2), a purse with cash of ₹2,700/- (MO.3) and a driving licence (MO.4) from the accused, under mahazar-Exhibit P2. PW.10 continued the investigation, recorded the statements of witnesses, conducted mahazar at place from where the victim was kidnapped, the telephone booth from where the accused made the ransom call to PW.3 etc. On completion of investigation, charge sheet was filed against the accused.

10. In order to establish the guilt of the accused, the prosecution in all examined 11 witnesses and got marked 6 documents as Ex.P-1 to P-6 and M.Os.1 to 5. On behalf of the defence, Exs.D1 and D2 were marked (portions of the statements of PW.3 and PW.5 given before the IO). However,



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the accused did not lead any evidence on their behalf. While recording the 313 Cr.P.C. statement, accused No.1 filed written statement stating that he was earlier working under PW.3 in his hospital from 2006 and he left the job in the month of September 2012 as he was not paid the salary for 6 months and whenever he demanded the salary, he was being threatened. Further stated that he went near the hospital of PW.3 along with accused Nos.2 and 3, 2-3 times to demand salary, hence, a false case was registered against him.

11. The learned senior counsel Sri. S.S. Yadrami has vehemently contended that the prosecution has utterly failed to establish the guilt of the accused beyond reasonable doubt and in spite of that, the trial Court has erroneously convicted them for the offence punishable under Section 363 of IPC. The learned senior counsel contended that, when the charge under Section 364A of IPC was not established, the trial Court was not justified in convicting the accused for the offence punishable under Section 363 of IPC. The contention of the learned senior counsel is that, as per prosecution, initially, the ransom call was received by CW.5-Archana, wife of PW.3 and



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she being a material witness, has not been examined, which throws a serious doubt on the genuineness of the prosecution case regarding the ransom call made by the accused. He contended that when PW3, father of the victim was very much available and present in the house and having gone to the police station, complaint was not lodged by him, on the other hand, complaint was lodged by PW.1, admittedly an advocate. He therefore contended that the complaint is on account of deliberation, implicating accused No.1 as the prime accused as he was demanding the salary due to him from PW.3.

12. The learned senior counsel further contended that PW.4 is aged only 9 years and being a child witness, he has been tutored by PW.3 and other witnesses to give false evidence. He contended that his evidence is not corroborated by any other independent witnesses and the evidence of PW.5 does not inspire confidence of the court and a perusal of his deposition does not show that he has seen any of the accused kidnapping the victim or identifying them.

13. The learned senior counsel further contented that according to prosecution, the victim child was kidnapped while



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returning to his house from school, whereas, the Investigating Officer has not seized the school bag, tiffin box etc. Hence, the entire prosecution case is doubtful. He contended that the records of the wireless messages are not collected or placed by the prosecution and even PW.9, namely the CPI of Kustagi Police Station has not prepared any mahazar while apprehending the accused or seizing the car along with the accused and the child. He contended that the station house diary of Kustagi Police Station has not been placed on record to show that in fact the Police attached to the said police station have found the accused and the child together and they brought them along with the car to the police station.

14. The learned senior counsel has also contended that, to establish the guilt of the accused for the charged offence under Section 364A of IPC, the prosecution has not placed the call detail records and not established as to who made the ransom call. Reiterating the arguments, he contended that only on account of admitted enmity with accused No.1, who was demanding salary from PW.3, he has been falsely implicated in this case along with the other accused.



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15. The learned counsel appearing for accused No.2 and 3 have contended that insofar as the said accused there is not an iota of evidence placed on record by the prosecution. The said accused have no motive to commit any offence much less the one alleged against them. Neither the victim boy or other witnesses have identified the said accused as the one who have either kidnapped the victim or were along with accused No.1 at the time of incident. They contended that according to prosecution, one of the accused made a ransom call from the telephone booth of PW.8 and the accused went to the petrol bunk wherein, PW.7 filled diesel to the car, but no test identification parade was conducted so as to identify the accused as the one who were in the car. Therefore, they contended that the entire approach of the trial Court in convicting accused Nos.2 and 3 is not only erroneous but also perverse, which resulted in miscarriage of justice.

16. The learned Additional SPP contented that the charge is framed under Section 364A of IPC, whereas the trial Court has convicted the accused for a lesser offence under Section 363 IPC, in spite of there being sufficient evidence on



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record to convict the accused for the charged offence. He contended that PW.3 has clearly deposed in his evidence that the accused have made a ransom call and demanded ₹25,00,000/- for release of his son and the said evidence does not suffer from any infirmity. He contended that non-examination of CW.5, wife of PW.3, is not fatal to the prosecution, as, the demand of ransom was made by the accused to PW.3 and not CW.5. He contended that even according to the defence, accused No.1 was working in the hospital of PW.3 and he had left the job 6 months prior to the incident in question and therefore, he was nurturing ill-will against the family of PW.3. He, therefore, contended that, with that motive, accused No.1 along with accused Nos.2 and 3 kidnapped the victim and made a ransom call to PW3. He further contented that, the prosecution has got marked Ex.P.5 to show that the accused have made a call from the telephone booth of PW.8 and the said witness has deposed about a person coming to his telephone booth and making a call at the relevant point of time. He further contended that the evidence of PW.7 would reveal that, on the relevant day, 3 accused had come to Nidagundi petrol bunk, where he was working and filled diesel



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to the car and he has identified the said three accused who were present in the Court as the one who came in the car and he has mentioned the registration number of the car.

17. Learned Additional SPP further contended that PW.4, the victim boy being the prime witness in this case, has supported the case of prosecution and he has identified all the three accused in the Court. In Ex.P1 itself it is stated that the accused who kidnapped the child made a ransom call of ₹25,00,000/- which averment is corroborated by the evidence of PW.1 as well as PW.3. Hence, he contended that the trial Court ought to have convicted the accused for the charged offence under Section 364A of IPC.

18. It is the specific case of the prosecution that the victim child was aged about 9 years and he was studying in third standard at one Basaveshwara International School situated at Vidyagiri, Bagalkot. He used to go to school by bus in the morning and return at about 04.00 p.m. in the evening. On the relevant day i.e., on 24.12.2012 as usual at around 08.30 a.m. he left for school, but did not return at 04.00 p.m. A call was received by PW.3-father of the victim stating that his



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son was kidnapped and the person who made the call demanded a ransom of ₹25,00,000/- to release him.

19. The learned counsel appearing for the accused tried to contend that the prosecution has not placed any material to show that the child was in fact studying in the school and on the relevant day, he had gone to the school. The said contention cannot be accepted as PW.1, PW.3 and PW.5 apart from the victim-PW.4, have categorically deposed about the said fact and there is nothing elicited from their cross-examination, to deny it. Victim has clearly deposed that he was pursuing his studies in Basaveshwara International School and he was studying in the third standard. The same has not been denied by the defence and even otherwise the material on record placed by the prosecution in the form of oral evidence is sufficient to hold that the victim child was in fact studying and on the relevant day, he went to the school in the morning as usual, but did not return in the evening at the usual time. The cross-examination conducted to PW.4, the victim, to the effect that he has not attended the school on the relevant day has been categorically denied by the said witness.



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20. According to the prosecution, at about 05.30 p.m. in the evening, a call was received by CW.5-Dr.Archana, mother of the victim, on her mobile phone from a number-08351-285405. It is contended by the learned counsel for the accused that the said Dr.Archana-CW.5 has not been examined and therefore, the entire case of the prosecution is doubtful. Firstly, it is not the case of the prosecution that the ransom demand was made to CW.5, on the other hand as per Ex.P.1 after the phone was handed over to PW.3, the accused who made the call, informed him about the kidnap of his son and then demanded a ransom of ₹25,00,000/- for his release. Since the accused had threatened PW.3 that the child would be killed, if the ransom was not paid and since no call was received till 07.00 p.m., complaint was lodged. A perusal of Ex.P.1 goes to show that, initially when the child did not return home even at 05.00 p.m., PW.3 made a call to the school enquiring about his son and informed PW.1 i.e., the first informant about the incident. The said PW.1 was very much present, when the call was received. He has reiterated the complaint averments in his evidence. It is stated that getting panic, they enquired about the victim with another student by name Nisarga Kanti (PW.5),



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who informed about the persons coming in a car and kidnapping the victim. It is relevant to mention that in the complaint itself it is stated that it was a silver colour Indica car with a writing "Appaji" on its rear side.

21. Even though motive for the kidnap has not been mentioned in the complaint, as could be gathered from the evidence adduced by the prosecution, it is clear that the motive was attributed against accused No.1. It is the contention of the defence that accused No.1 was earlier working under PW.3 in his hospital and he was not paid salary for six months and since he was demanding the salary, PW.3 has implicated in a false case.

22. From the evidence of PW.3, it can be seen that accused was in fact working in his hospital earlier, but he was removed from the job as his conduct was not satisfactory. Though, PW.3 has denied that he had not paid the salary to the accused, the material on record including the defence raised by accused No.1 goes to show that all was not well between the said accused and PW.3. Obviously, PW.3 or PW.1 were not aware as to for what reason and by whom the child was



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kidnapped, at the time of lodging the complaint. It is only after the arrest of the accused, the motive was revealed. PW.3 in his deposition has stated that accused No.1 was working as an Assistant Laboratory Technician in his hospital and he had worked for six years. About three months prior, since his conduct was not good, he had removed him from the job. Hence, insofar as accused No.1 is concerned, the prosecution has been able to establish the motive for commission of the offence.

23. As could be seen from the evidence of PW.10-IO, after registering the FIR, he flashed the news about the kidnap through wireless messages to various police stations. PW.9 namely the C.P.I. of Kushtagi Police Station has deposed that after receiving the wireless message, he instructed his staff to trace the kidnappers and on the very same day i.e., on 24.12.2012 at about 09.50 p.m. while he and his staff were searching for the culprits, they noticed the TATA Indica vehicle bearing registration No.KA-34 MD-1231 parked at the auto stand. They also noticed the child and three accused in the said



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car. Immediately, they were taken to the police station and then, he informed PW.10, the Investigation Officer in this case.

24. A contention was raised by the defence that, at the time of apprehending the accused at the auto stand and while handing over them to PW.10-CPI of Bagalkot Police Station along with the mobile phone, purse and cash, no mahazar was conducted by PW.9 and therefore, the case of the prosecution that the accused were found along with the boy in the car etc., is doubtful.

25. It is relevant to mention that the case was registered at Bagalkot Town police station and the investigation was being conducted by PW.10. Hence, the question of drawing a mahazar by PW.9 does not arise. Moreover, PW.9 has not stated that he has seized the car, mobile phone, purse and cash from the accused persons. On the other hand, he has stated that he has handed over the accused along with the articles and the car to PW.10. The mahazar, Ex.P2 under which the above articles were seized was drawn by PW.10 in the presence of panch witness, PW.2. PW.9 is a signatory to the said mahazar.



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26. It is also relevant to mention that the mobile phones, purse or cash, which are seized from the accused, are not material in this case. However, the car which was seized under Ex.P2 is a crucial evidence. Though the registration number of the car was not mentioned in Ex.P.1, it is stated that the accused had taken the victim in a car with a writing "Appaji" on the back side. A careful perusal of the evidence of PW2, panch witness to Ex.P.2, shows that the silver colour Indica car, which was seized in this case had a writing "Appaji" on its back. This evidence of PW2, the panch witness finds corroboration with the evidence of PW.5 who saw the victim when he was being taken away in the said car. Even accepting that PW.1 and PW.5 are related to PW.3, that itself is not a ground to disbelieve the case of prosecution with regard to kidnap of PW.4. Motive being a double-edged weapon, even accepting the contention of the defence that PW.3 had not paid six months salary to accused No.1, at the same time, this Court can draw an inference that the said accused had a grouse against PW.3 for not paying the salary and removing him from the job.



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27. In this case, PW.4 being the victim child himself, is a material witness. We have carefully perused the evidence of PW.4. From his evidence, it can be safely held that he was kidnapped, when he was returning home, after alighting from the bus. Further, from his evidence it can be gathered that he was very well acquainted with accused No.1, as the said accused was working under his father. PW.4 has stated in his evidence that earlier accused No.1 used to take him for tuition and to the bus stop etc., and he had gone with accused No.1 in his vehicle many times. Hence, without raising any doubt he accompanied accused No.1 in the car brought by him. PW.4 has identified all the three accused who were present before the court. The question that would arise is as to whether the prosecution has established beyond reasonable doubt the charges levelled against all the three accused either for the offence under Sections 364A or 363 of IPC.

28. To prove the charge under Section 364A IPC, the prosecution has mainly relied on the testimony of PW.3 and Ex.P5, apart from the evidence of PW.8. Further, to prove that the accused after kidnap, have demanded ransom from PW.3,



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the prosecution is mainly relying on the evidence of PW.1, PW.3 and PW.8. It is relevant to see that according to prosecution, the accused made a phone call from the telephone booth owned by PW.8. Except the oral evidence of PW.1 and PW.3, there is no material placed on record that on the relevant day, a call was made to the mobile phone of the wife of PW.3. To show that a call was made from the telephone booth, the prosecution examined PW.8, the owner of the said telephone booth. Ex.P5 is the letter issued by the BSNL, which shows that the telephone booth in respect of CCB PT 08351-285405 was owned by the said PW.8. However, the call detail records regarding call received to the mobile phone of CW.5, the wife of PW.3 are not marked in evidence, to give an opportunity to the defence to controvert the same. The relevant certificate is also not produced and marked in that regard. PW.8 though stated that one of the accused has made a call from his telephone booth, he has not identified the said accused who made a call. The evidence of the victim child is also not helpful to establish the said charge. Hence, the case of the prosecution that the accused made a ransom call of Rs.25,00,000/- is not



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established beyond reasonable doubt. In fact, the mobile phone belonging to CW.5 was not at all seized in this case.

29. The trial court while acquitting the accused for the charged offence under Section 364A of IPC has taken into consideration the above aspect. The trial Court has held that there is no concrete evidence to believe the demand made by the accused for ransom. However, it is held that for non-production of the said evidence, the entire case of the prosecution cannot be brushed aside.

30. The prosecution is placing reliance on the evidence of PW.1, PW.3, PW.4, PW.5 and PW.7 to establish that the accused has committed an offence of kidnap. As we have held that the evidence is not sufficient to prove that the accused have demanded a ransom of Rs.25,00,000/-, the evidence of these witnesses are relevant to see as to whether the prosecution has established the offence of kidnap.

31. Section 361 of IPC reads as under:

"361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under [sixteen] years of age if a male, or



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under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

32. Section 363 of IPC reads as under:

"363. Punishment for kidnapping.—

Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

33. According to the prosecution, all the three accused with a common intention kidnapped the victim/PW.4. Admittedly, PW.1 and PW.3 are not the witnesses to the kidnap. PW.5 is a student studying in the same school where PW.4 was studying. According to the prosecution, he saw the victim being taken away by the accused in the car. As per the evidence of PW.5, he has seen some person talking to PW.4 before he was kidnapped. PW.5 has not identified any of the accused. His evidence therefore, could be accepted to the fact



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of kidnap of PW.4 in the car and not with regard to identification of any of the accused.

34. It is the contention of the learned Additional SPP that PW.7, who was working in a petrol bunk has seen all the three accused coming in the car to the petrol bunk where he was working and filling diesel to the car. It is also contended by him that all the three accused were apprehended together and they were along with the boy in the car. Hence, he contended that all the three accused shared a common intention to kidnap the victim child.

35. The prosecution has got examined PW6, owner of the car in question. A perusal of his evidence goes to show that his car was given to accused No.3 and at the relevant point of time, the said accused was driving the car. In fact, the driving licence of the said accused was seized under Ex.P2. However, even accepting that accused No.2 and 3 were found along with accused No.1 and the child in the car, without any convincing or acceptable evidence, it cannot be said that even they are either part of conspiracy to kidnap the child for ransom or they



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shared a common intention to kidnap the child for the said purpose.

36. The prosecution has not proved by placing sufficient material that one of these accused, namely, accused Nos.2 and 3 have made the ransom call, to connect them with the crime or to show that they shared a common intention along with accused No.1. At the cost of repetition, the motive can be attributed to accused No.1. There is no motive for accused Nos.2 and 3 to commit any offence. As already mentioned, accused No.1 was very well acquainted with PW.4, the victim in this case and he used to take the victim along with him. PW.4 has deposed that he had accompanied accused No.1 on several occasions earlier. Further, it is not the case of prosecution that the victim was forcibly taken in the car so as to attribute accusation against accused Nos.2 and 3. The child accompanied accused No.1 in the car without raising any suspicion and therefore, it is probable that accused Nos.2 and 3 were unaware of the intention of accused No.1 to kidnap him.

37. We do find that there is some lapse on the part of the Investigating Officer in not seizing the school bag or the



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tiffin box. However, the said lapse itself is not a ground to disbelieve the case of prosecution insofar as kidnap of the victim. We find from the evidence on record that there is sufficient material insofar as accused No.1. However, insofar as accused Nos.2 and 3 are concerned, they having shared common intention with accused No.1 to kidnap the victim is not proved beyond reasonable doubt. Insofar as accused No.1 is concerned, particularly the evidence of PW.4 the victim is sufficient to hold that the said accused has kidnapped him, a minor aged about 9 years, away from the lawful guardianship. The identification of accused No.1 by the child, who was well acquainted with him, has to be accepted without any iota of doubt.

38. The contention of the learned Senior counsel that when the main charge is not proved, the accused cannot be convicted for lesser offence, cannot be accepted. The Trial Court placing reliance on the judgment in the case of **Tarkeshwar Sahu vs. State of Bihar**¹, wherein it is held that 'when an accused is charged with major offence and the

¹ (2006) 8 SCC 560



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ingredients of the major offence are missing and ingredients of minor offence are made out, then he may be convicted for the minor offence even though he was not charged with it', has recorded conviction for the offence punishable under Section 363 of IPC. The said finding is in accordance with law. However, we find that the oral and documentary evidence adduced by the prosecution is not sufficient to hold accused Nos.2 and 3 guilty even for the offence under Section 363 of IPC. The conviction and sentence passed by the Trial Court against the said accused is liable to be set aside.

39. The trial Court has imposed a sentence of 3 years rigorous imprisonment and fine of Rs.5,000/- for the offence punishable under Section 363 of IPC and default sentence for non-payment of fine.

40. The learned senior counsel appearing for the appellants would submit that accused No.1 is married and has two minor children. His mother is no more and his father has undergone bypass surgery. There is no one to look after them, as he is the sole bread winner of the family. Hence, he submitted that if the accused is sent to prison, his family



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members will be put to untold hardship. He further submitted that accused No.1 has no criminal antecedents. Hence, prayed that leniency may be shown by reducing the sentence of imprisonment, enhancing the fine amount.

41. The incident took place in the year 2012. 13 years have elapsed. Accused No.1 was arrested on 25.12.2012 and released on bail on 03.05.2013. He was in custody for about 4 months 9 days. It is not in dispute that the victim child was not harmed even minutely after he was kidnapped. The accused has no criminal antecedents. Keeping in view the submission made by the learned senior counsel, sending the accused to prison at this stage, will not serve any purpose. Hence, the sentence already undergone by accused No.1 could be held sufficient, by enhancing the fine amount.

42. For the foregoing reasons, we pass the following:

ORDER

- i) Crl.A.No.100249/2020 is ***dismissed***.
- ii) Crl.A.Nos.100084/2020 and 100087/2020 are ***allowed***.



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- iii) The judgment and order dated 24.01.2020 passed by the learned II Additional District and Sessions Judge, Bagalkote in S.C.No.90/2013 convicting and sentencing accused Nos.2 and 3 for the offence under Section 363 IPC is hereby set aside. The said accused are acquitted.
- iv) The bail bonds of accused Nos.2 and 3 are discharged.
- v) The fine amount, if any, deposited by them shall be refunded.
- vi) Crl.A.No.100060/2020 is ***allowed in part.***
- vii) The judgment of conviction of accused No.1 for the offence punishable under Section 363 of IPC is hereby confirmed.
- viii) The sentence is modified as under:
 - a. Accused No.1 is sentenced to imprisonment already undergone by him.
 - b. He shall pay fine of Rs.1,00,000/- (Rupees one lakh only) and in default of payment of fine, shall undergo simple imprisonment for a period of six months.



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- c. If the fine amount is deposited, the same shall be paid to PW.4, who is now a major.

SD/-
(MOHAMMAD NAWAZ)
JUDGE

SD/-
(GEETHA K.B.)
JUDGE

Kmv upto para 18
SSP: Para 19 to 22 and 36 to end
RKM: Para 23 to 35
CT:PA