



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.159 OF 2018 (A)

BETWEEN:

THE STATE OF KARNATAKA
THROUGH ASHOKAPURAM POLICE STATION
MYSURU CITY
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDITIONAL S.P.P.)

AND:

1. CHANDRASHEKARA @ CHANDRU
S/O. SHIVALINGU
AGED ABOUT 25 YEARS
RESIDENT OF #153, 14TH CROSS
5TH MAIN, CHINNAGIRIKOPPALU
JAYANAGAR
MYSURU-570 014.

2. SMT. NAGAMANI
W/O. VEERAPPA CHAR
AGED ABOUT 48 YEARS
RESIDENT OF #163, V MAIN
CHANNAGIRI KOPPALU
JAYANAGAR
MYSURU-570 001.

...RESPONDENTS

(BY SRI M. SHARASS CHANDRA, ADVOCATE, FOR R-1, &
SRI GOURAV SUBRAMANYAM, ADVOCATE, FOR R-2)



THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 15-3-2017 PASSED BY THE VI ADDITIONAL DISTRICT AND SPECIAL JUDGE, MYSURU, IN SESSIONS CASE NO.343 OF 2014, ACQUITTING THE ACCUSED/RESPONDENT NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366 AND 376(2)(i)(n) OF IPC, UNDER SECTION 9 OF PROHIBITION OF CHILD MARRIAGE ACT, AND UNDER SECTION 5(1) READ WITH SECTION 6 OF POCSO ACT.

THIS CRIMINAL APPEAL IS COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

The appellant-State has filed this appeal under Section 378 (1) and (3) of the Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as "Cr.P.C.") challenging the judgment of acquittal dated 15.03.2017 passed by the VI Additional District and Special Judge, Mysuru, (hereinafter for brevity referred to as the "trial Court") in Sessions Case No.343 of 2014 acquitting the accused-respondent No.1 of the offences punishable under Sections 366 and 376(2)(i)(n) of the Indian Penal Code, 1860 (hereinafter for brevity referred to as "IPC"), under



Section 9 of the Prohibition of Child Marriage Act, 2006 (hereinafter for brevity referred to as "Prohibition of Child Marriage Act") and under Section 5(I) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter for brevity referred to as "POCSO Act").

2. The brief facts of the case of the prosecution are that on 11.06.2014 at about 1:45 p.m., respondent No.1-accused kidnapped PW1-victim girl, aged about 15 years, by inducing her, from the house bearing No.163, 14th Cross, 5th Main, Chinnagirikoppalu, Jayanagar, Mysuru, with intent to marry her. Then, the accused took the victim to Lakshminarasimha Swamy Temple, situated near Srirangapatna, and married her by tying *thali* to her. Later, the accused took the victim in train to Tirupati and stayed in Ganesh Lodge at P.K. Layout, Tirupati, and committed penetrative sexual assault on her. Further, the accused brought back the victim to Mysuru, on 13.06.2014, and stayed in Ramabai Nagar, till 16.06.2014 evening, and committed aggravated penetrative sexual



assault on her several times and thereby, committed the offences stated supra.

3. Based on the complaint of PW3, mother of the victim, a case was registered. After investigation, the Police filed the charge-sheet against the accused for the aforesaid offences. The accused was secured, he did not plead guilty and claimed to be tried. Hence, the prosecution got examined in all twelve witnesses as PW1 to PW12, got marked documents as Exs.P1 to P15. After closure of the evidence, the statement of the accused was recorded under Section 313 of Cr.P.C., however, he did not lead any defence evidence. The trial Court, having considered both oral and documentary evidence, by its impugned judgment, acquitted the accused of the aforesaid offences. Challenging the same, the appellant-State has preferred the present appeal.

4. Learned Additional State Public Prosecutor for the appellant-State vehemently contended that PW1-victim



girl was a minor, aged about 15 years and 2 months, at the time of incident. She has fully supported the case of the prosecution. Further, PW6-Dr. Sangeetha, who issued Ex.P8-Medical Certificate, clearly stated that there is evidence of vaginal penetration and the victim is aged below 17 years as per the forensic report. In such circumstances, the trial Court ought to have taken note of the fact that the victim, being minor, her consent would be of no relevance, if there was sexual intercourse between the victim and the accused. The said factum of sexual intercourse itself having been proved through the medical evidence, the trial Court ought to have convicted the accused for the charged offences. Hence, she prays to allow the appeal.

5. *Per contra*, the learned counsel for respondent No.1-accused vehemently contended that there is inconsistency in the evidence of the victim-PW1. The victim has not made any allegations against the accused regarding kidnap, marrying her, and sexually assaulting



her. The victim has not stated anything in her statement recorded under Section 164 of Cr.P.C. before the Magistrate. Therefore, the oral testimony of PW1 cannot be believed. He further contended that the manner in which the victim has stated of having gone with the accused, it only indicates that it was consensual and therefore, the trial Court rightly acquitted the accused. Hence, he prays to dismiss the appeal.

6. Learned counsel for respondent No.2-*de facto* complainant reiterates the submissions made by the learned Additional State Public Prosecutor for the appellant-State and also contend that the trial Court committed an error in not appreciating the evidence available on record in proper perspective.

7. After hearing the learned counsel for the parties, the points that arise for our consideration in this appeal are:



HC-KAR

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CRL.A No. 159 of 2018**

- i. Whether the prosecution has proved beyond reasonable doubt that PW1-victim girl was kidnapped by the accused on 11.06.2014 at about 1:45 p.m. from the house bearing No.163, 14th Cross, 5th Main, Chinnagirikoppalu, Jayanagar, Mysuru, and thereby, committed an offence punishable under Section 363 of IPC?*
- ii. Whether the prosecution has proved beyond reasonable doubt that the accused after kidnapping PW1-victim girl on the date, time and place mentioned as above, with an intention to marry her, enticed her and took her to Lakshminarasimha Swamy Temple, situated near Srirangapatna, and illegally got married by tying thali and knowing that she was minor in her age, he committed repeated aggregated penetrative sexual assault on her from 11.06.2014 to 16.06.2014 and thereby, committed the offences punishable under Sections 366 and 376(2)(i)(n) of IPC, Section 9 of Prohibition of Child Marriage Act, and under Section 5(I) read with Section 6 of POCSO Act?*



iii. Whether the impugned judgment of acquittal challenged in this appeal warrants any interference at the hands of this Court?

8. Before proceeding further in analysing the evidence led in the matter, it is to be borne in mind that it is an appeal against the judgment of acquittal of the accused for the offences punishable under Sections 366 and 376(2)(i)(n) of IPC, under Section 9 of Child Marriage Act, and under Section 5(l) read with Section 6 of POCSO Act. Therefore, the accused has primarily the double benefit. Firstly, the presumption under law is that, unless his guilt is proved, the accused has to be treated as an innocent person in the alleged crime. Secondly, the accused has already been enjoying the benefit of judgment of acquittal passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analysed.

(a) Our Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -v- State of Karnataka***



reported in **(2007) 4 Supreme Court Cases 415**, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph Nos.42(4) and 42(5) as below:

"42(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

42(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."



(b) In the case of ***Sudershan Kumar -v- State of Himachal Pradesh*** reported in ***(2014) 15 Supreme Court Cases 666***, while referring to ***Chandrappa's case (supra)***, the Hon'ble Apex Court at paragraph No.31 of its judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

(c) In the case of ***Jafarudheen and others -v- State of Kerala*** reported in ***(2022) 8 Supreme Court Cases 440***, at paragraph No.25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

"25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in



favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

The above principle laid down by it in its previous case was reaffirmed by the Hon’ble Apex Court in the case of ***Ravi Sharma -v- State (Government of NCT of Delhi) and another*** reported in ***(2022) 8 Supreme Court Cases 536*** and also in the case of ***Roopwanti -v- State of Haryana and others*** reported in ***2023 SCC OnLine SC 179***.

9. Keeping in mind the above principles laid down by the Hon’ble Apex Court, we proceed to analyse the evidence placed by the prosecution in this matter.



10. In order to prove the alleged guilt against the accused, the prosecution examined twelve witnesses from PW1 to PW12.

11. PW1-victim girl, being minor, gave evidence in her own words. She has stated as to how she was enticed by the accused and taken to Lakshminarasimha Swamy Temple, where the accused tied *thali*, took her to Tirupati, where he committed sexual assault on her and brought her back to Mysuru, where he committed repeated sexual assault on her. The victim, in her examination-in-chief, has stated regarding her kidnap by the accused, but in the statement recorded under Section 164 of Cr.P.C. before the Magistrate, she has not stated anything about the accused as to how he enticed her, took her to temple, tied *thali* and commission of sexual assault on her.

12. PW6-Dr. Sangeetha, in her examination-in-chief, has stated that there may be vaginal penetration on PW1-victim girl on the basis of history stated by the victim, but



as per her evidence, there is no evidence to show that PW1 has been recently subjected to penetrative sexual assault. Further, there are no internal or external injuries on private part of PW1 and accordingly, she issued Ex.P8-Medical Certificate.

13. We have taken note of the considerations made by the trial Court. The trial Court has considered the evidence of PW1, wherein there is discrepancy in her evidence given before the Court as well as in the statement recorded under Section 164 of Cr.P.C. before the Magistrate, which will be discussed in the later part of this judgment.

14. We have perused the oral testimony of PW6-Dr. Sangeetha. According to her, she examined the victim on 17.06.2014 at about 3:30 p.m., at Cheluvamba Hospital, Mysuru. She has stated that the victim was brought with the history of sexual assault. Hence, she conducted medical examination on her. On examination,



she found that that there is no evidence to show that the victim has been recently subjected to penetrative sexual assault. Further, there are no internal or external injuries on private part of PW1. Therefore, the oral evidence of the victim is contrary to the evidence of PW6 and the same do not corroborate with each other.

15. In the evidence given before the Court, PW1-victim girl has clearly stated that she was in love with the accused and her parents were abusing her for the same. Hence, she decided to leave her house and asked the accused to take her and marry her. Thus, the accused agreed and on 11.6.2014 at about 1:45 p.m., he took the victim to Lakshminarasimha Swamy Temple, situated at Srirangapatna and at 3:00 p.m., he tied *thali*. Later, they went to Tirupati in train, where they stayed for one day and the victim speaks about physical contact with the accused. Later, they came back to Mysuru and stayed till 16.06.2014, wherein also, the victim has spoken about the physical contact between the accused and herself. Since



her mother lodged the complaint, the accused and herself came to Ashokpuram Police Station.

16. In the statement recorded under Section 164 of Cr.P.C. before the Magistrate, she has stated about the love affair between the accused and herself, rejection of their love affair by her parents and the accused kidnapping her to Tirupati. However, the victim has not stated anything about the physical contact between the accused and herself at Tirupati as well as at Mysuru. Hence, PW1 has made material improvements in her evidence. Her evidence is not supported by the medical evidence of PW6- Dr. Sangeetha and the RFSL report, which states that no penetrative sexual assault has taken place on PW1-victim.

17. Further, the inner garments, *thali* and toe rings of the victim were not seized by the Investigating Officer at the time of investigation. Further, it is not the case of the prosecution that the victim has thrown her clothes, *thali* and toe rings before registration of the case. Hence,



in the absence of material particulars, the trial Court rightly acquitted the accused of the aforesaid offences.

18. The prosecution is able to prove that as on the date of incident, the victim was aged 15 years and 2 months. The evidence of PW7-Shobha Patil, Head Master, who issued Ex.P9-Certificate, shows the Date of Birth of the victim as 19.04.1999 and the same is corroborated with the evidence of PW11-Dr. Dayananda, who issued Ex.P13-Age Estimation Certificate, and opined that the age of the victim is above 16 years and below 17 years. Contrary to these documents, the accused has not placed any material that the victim was aged above 18 years.

19. From the evidence of PWs.1, 7 and 11, the prosecution is able to prove that the accused kidnapped the minor victim. Hence, it attracts Section 363 of IPC, which read 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."

20. From perusal of oral testimonies of the prosecution witnesses, it clearly establishes that the victim was minor, the accused enticed and kidnapped her on 11.06.2014. The accused was arrested on 17.06.2014 and he was in judicial custody till 25-8-2015, i.e. for one year, two months and eight days. Taking into consideration that the incident has taken place in the year 2014 and that the victim is now married and leading a peaceful life, sending the accused now to serve the sentence, at this stage, will not serve any purpose. Therefore, respondent No.1-accused is entitled for set off for the period already undergone by him. Accordingly, we pass the following



ORDER

- i. Criminal Appeal filed by the State is ***partly-allowed.***
- ii. The impugned judgment of acquittal passed against respondent No.1-accused for the offences punishable under Sections 366 and 376(2)(i)(n) of the Indian Penal Code, 1860, under Section 9 of the Prohibition of Child Marriage Act, 2006, and under Section 5(I) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, is confirmed. However, he is convicted for the offence punishable under Section 363 of the Indian Penal Code, 1860, and sentenced to undergo imprisonment for a period of one year, two months and eight days, which he has already undergone.
- iii. Respondent No.1-accused is given set off under Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (428 of the Code of Criminal Procedure, 1973) for the period of detention already undergone by him.

In view of the disposal of the appeal, pending interlocutory applications, if any, stand dismissed.



Registry is directed to transmit a copy of this judgment along with the trial Court records to the concerned trial Court, immediately.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

KVK
List No.: 1 Sl No.: 11