

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.511 of 2007

ORDER:-

The revision is directed against the Judgment dated 30-03-2007 in Criminal Appeal No.161 of 2001 on the file of the V-Additional District and Sessions Judge (III-FTC), Nalgonda at Miryalaguda, by and under which the learned Judge has confirmed the conviction and sentence imposed on the petitioner/accused for the offences punishable under Sections 363 and 506 I.P.C., by the learned Judicial Magistrate of First Class, Huzurnagar, in C.C.No.190 of 1998, dated 30-07-2001. The petitioner/accused has been sentenced to undergo simple imprisonment for one year and a fine of Rs.500/- for the offence under Section 363 I.P.C., and fine of Rs.500/- for the offence under Section 506 I.P.C., with default clause.

2. The facts, in brief, are as under:-

PW.1 is the mother, PW.5 is the father and PW.13 is the grandfather of the victim girl – Vaishnavi (PW.6). PW.13 is running a Lodge at Kodad in the name and style of Kalyanchakravarthi Lodge. On 20-09-1996, PW.1 sent the victim girl to Kodad Public School, as usual, at about 09.00 a.m., through their employee PW.2. In the evening, at about 04.00 p.m., PW.1 sent L.W.3, who is a servant in the lodge of PW.13, to bring the victim girl to home from school. He found the victim girl was missing and informed the same to PW.1. Then, they made efforts to trace her out but in vain. As PWs.5 and 13 went to Hyderabad, she informed the same to them over telephone and she lodged the complaint-Ex.P.1 at about 05.30 p.m., with the Police, Kodad (Town) and the same was registered as Cr.No.131 of 1996

PWs.5 and 13 returned from Hyderabad on the same day night. On the next day i.e., 21-09-1996, PW.5 came to the Police Station at about 10.00 a.m., and informed the telephone calls received by them from the accused with respect to the kidnapping of the victim girl and

demanded the amount from their parents for releasing the girl.

3. The accused, who is temporarily residing at Kodad, came to know the financial status of PW.5 and PW.13 and in order to get rid of his financial problems, made a plan to kidnap the victim girl. 15 days prior to the incident, the accused, in order to implement his plan, continuously watching the movements of the inmates of the house of PWs.5 and 13 by sitting in the shop of PW.19. On the date of the offence, at about 04.00 p.m., the accused went to the school and saw the victim girl was standing at the gate of the school, and went near her and made her believe that her father met with an accident and he was shifted to the hospital at Suryapet, and asked her to accompany him. Accordingly, the victim girl sat as pillion rider on the scooter driven by the accused. The same was witnessed by PW.3, who is the classmate of the victim girl. Thereafter, the accused forcibly took the victim girl towards Suryapet. As it became night, they slept in a nearby mango garden where the girl was forced to wear his shirt. Next day morning, the accused left his scooter at the hotel of PW.11 and took the victim girl towards Jangaon in a lorry. After collecting the telephone numbers of PWs.5 and 13 from the victim girl, he made telephone calls from the STD booth of L.W.15 which were received by PWs.5 and 13, and the accused demanded Rs.2,00,000/- for releasing the victim girl and intimated the venue as Raigiri for handing over the amount. Subsequently, the accused made a call from Kothuru village and kept the victim girl in the custody of L.W.8 and PW.8 by introducing the victim girl as his niece and insane one and left the house to make a telephone call from the telephone booth of PW.10. After the accused left the house, the victim girl disclosed the facts to L.W.8 and PWs.9 and 10 with regard to her kidnapping by the accused and gave the phone numbers. In turn, PW.9 informed the matter of tracing out of victim girl to PW.13 and also handed over the victim girl to PW.14/SHO of Kothur P.S. The victim girl was identified by her father PW.5.

4. Section 164 Cr.P.C., statements of the victim girl and other

witnesses were recorded and the witnesses have identified the accused.

5. The investigation revealed that the accused with pre-plan kidnapped the victim girl, who is a minor, from the lawful guardianship of PWs.1 and 5 in order to fulfil his demand for ransom of Rs.2,00,000/- for releasing the victim girl and in that process, the accused also threatened PWs.5 and 13 with criminal intimidation not to disclose the demand of the amount to police, otherwise, the victim girl will be killed. Further, the accused also threatened the victim girl not to disclose her identity and she should follow him, otherwise killed. After completion of the investigation, charge-sheet was filed on the file of the Judicial Magistrate of First Class, Huzurnagar, where it was registered as C.C.No.190 of 1998. Charges were framed, to which the accused denied. In order to prove its case, the prosecution examined PWs.1 to 24 and marked Exs.P.1 to P.7 and M.Os.1 to 11. The accused was examined under Section 313 Cr.P.C. He denied the evidence on record. No defence was produced, but marked Ex.D.1. After hearing the argument of both sides and perusing the oral and documentary evidence on record, by Judgment, 30-07-2001, the learned Magistrate found the petitioner/accused guilty of the charges under Sections 363 and 506 of I.P.C., and accordingly convicted and sentenced him as stated supra. The said Judgment was challenged in appeal and the same was confirmed by the learned V-Additional District and Sessions Judge (III-FTC), Nalgonda at Miryalaguda. Hence, the revision.

6. PW.1 is the mother; PW.5 is the father; PW.13 is the grandfather; PW.3 is the classmate; and PW.4 is the class teacher of the victim girl/PW.6. PW.2 is said to be working as Manager under PW.13. PWs.7 to 11 and 19 to 21 are the circumstantial witnesses. PWs.12 and 15 are the panchas for recovery panchanama. PWs.16 and 22 are the panchas for confession and recovery panchanama. PW.18 is the house-owner of the accused. PWs.14, 17 and 23 are the Investigating Officers. PW.24 is the then Judicial Magistrate of First Class,

Huzurnagar, who conduct T.I.Parade.

7. Learned Counsel appearing for the petitioner/accused submits that both the Courts below have erred in holding the petitioner/accused guilty of the charges, that the evidence on record is far from satisfactory and it do not conclusively establish that it is the accused who committed the crime, that the evidence of the material witnesses namely PW.5 – the father; PW.6 – the victim girl; PW.13 – the grandfather; and the other witnesses who speak about the other circumstances sounds more improbable and cannot be believed. Learned Counsel further submits that in a case of this nature, the evidence or Investigating Officers will be crucial and in the instant case, there are two Investigating Officers namely PWs.17 and 23 and even though they gave their evidence in chief-examination, they were not produced for the purpose of cross-examination even though sufficient adjournments were given and therefore the trial Court has closed the prosecution. Without the Investigating Officers being cross-examined, their evidence cannot be accepted and the non-production of the Investigating Officers for the purpose of cross-examination is fatal to the case of the prosecution. Learned Counsel further submits that the evidence of PW.6 – the victim girl, who appears to be very intelligent and smart girl, studying III-Class in a reputed school namely Kodad Public School, is difficult to be believed for the reason that even though she was said to be in the company of the accused, who was an utter stranger to her, for more than 24 hours, she did not raise any cries and tried to attract the attention of others even though she was aware that she has been kidnapped by the accused. The evidence of the victim girl, if carefully analysed, goes to show that she would have been kidnapped by known persons but not the accused who was admittedly an utter stranger to her. She was a girl, aged about 9 years, and five years prior to the present incident, she was already kidnapped by 5 or 6 persons in the year 1991 and was taken to Vijayawada, therefore the evidence on record do not prove the case of the

prosecution beyond reasonable doubt and hence the accused is entitled for acquittal.

8. Learned Public Prosecutor on the other hand submits that the evidence of all the witnesses is cogent, convincing and consistent and both the Courts below have appreciated the same in proper perspective and held the accused guilty, which do not warrant any interference.

9. The point for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt?

10. The admitted facts may briefly be stated. PW.6 – the victim girl, aged about 9 years, was studying III-Class in Kodad Public School. She was the fourth issue of PWs.1 and 5. After three sons, PW.6 was born. The three sons of PWs.1 and 5 are also studying in the same school. In 1991, the same girl viz., PW.6 was kidnapped by 5 or 6 persons and was rescued from Vijayawada. PW.13 is the grandfather of the victim girl. He is a businessman so also his son PW.5. PW.5 is the adopted son of PW.13. The specific contention of the accused is that there are certain family disputes in between the brothers and others and they might have kidnapped the girl as was done five years back i.e., in 1991. It is specifically suggested that only in order to save the honour of the family and its reputation, the prosecution witnesses have implicated the accused who is an innocent person and a stranger to the family, who is a native of Warangal. The accused himself is aged about 30 years. He is having a wife and son. He came to Kodad for eking out his livelihood.

11. It is also on record that PW.6 was kidnapped from the gate of the Public School at about 04.30 p.m. on 20-09-1996. In view of the previous kidnap of the girl, the entire family of the victim girl were very alert and they had been repeatedly giving specific instructions both to the school management and also to the victim girl not to come or go with any strangers. It is also on record that PW.6 has been repeatedly told by her parents that she should not come and go to school even in

rickshaw. The car will be sent in which she must go to school and come back. PW.2 and one Venkateshwar Rao are the employees of PW.13, who is having a Lodge in Kodad. At times, PW.2 and said Venkateswara Rao and some times, the father – PW.5 used to take the girl, drop her at school and bring her back at 04.00 p.m. The fact that the victim girl attended the school on 20-09-1996 is abundantly established from the evidence of PWs.2, 3 and 4. PW.2 is an employee of the Lodge who dropped the girl in the school at about 09.00 a.m., and PW.3 is a classmate of the victim girl who said that in the evening after the school hours, she has seen the victim girl going on a scooter as a pillion rider. PW.4 is a class teacher, who also confirmed that the victim girl was in the class till 04.00 p.m., on 20-09-1996.

12. It is not in controversy that on 21-09-1996, at about 09.00 p.m. in the night, the victim girl was produced before the police at Kothur Police Station of Mahabubnagar District, by PWs.7, 8 and 9, and thereafter, the girl was handed over to her parents. It is also on record that having been kidnapped from Kodad Public school at about 4.30 p.m., the victim girl was taken to different places such as firstly she was taken on a two wheeler towards Huzurnagar, that the victim girl and her kidnapper have slept in the garden without any shelter through out the night and next day morning at about 07.00 a.m., the victim girl was taken in a lorry up to Jangaon and from Jangaon the victim girl was taken in the bus to Narkatpalli and thereafter to Hyderabad and from Hyderabad, the victim girl was taken to Thimmapur, all in the public conveyance namely the RTC Bus. The distance between Kodad and Thimmapur is about 250 KMs. As per the evidence on record, the girl was taken from Kodad to Suryapet, which is 44 KMs. From Suryapet, she was taken to Thirumalagiri, which was at a distance of about 42 KMs. From Thirumalagiri, she was brought to Jangaon, which is at a distance of 44 KMs. From Jangaon, the girl came to Hyderabad, which is about 90 KMs., and from Hyderabad, she was taken to Thimmapur,

which is about 20 KMs. The distance between Thimmapur and Kothur is about 8 KMs. All the travelling took place during day time since whole of the night, the victim girl and the alleged kidnapper slept in a garden.

13. The contentious issue however is as to whether it is the accused who kidnapped the victim girl for ransom.

14. The case of the prosecution is that the accused has kidnapped the girl from the school on his scooter, forcibly made her to sit as a pillion rider, took her towards Tirumalgiri, where the scooter was punctured, the accused and the girl slept in the garden nearby, next day morning the victim girl and the accused boarded a lorry and came to Jangaon, from Jangaon the accused after having taken the telephone numbers from the victim girl, spoke to her people over telephone and demanded the amount which was directed to be paid at Raigiri in the afternoon, the demand was for a sum of Rs.2 lacs, that from Jangaon, that from Jangaon in a RTC Bus up to Hyderabad, and from Hyderabad, she was taken to Thimmapur. The further case is that at about 01.00 p.m., in the afternoon, the accused again contacted the father of the girl and expressing suspicion that they might have informed the police people, asked the ransom amount to be brought to Kothur by about 07.00 p.m., in the evening. Accordingly, PW.5 along with PW.15 went in their car from Kodad to Thimmapur and reached there by about 07.00 p.m. There they met the accused who asked for the money. In the meantime, PW.5 was informed that the girl has been traced and is being handed over to Kothur Police by the villagers of Thimmapur. Both the Courts below have minutely discussed the evidence on record and having perused the voluminous oral and documentary evidence and the Judgments of both the Courts below, I am constrained to observe that there are several material circumstances, which goes to show that the prosecution has not placed before the Court the entire true story and has suppressed certain aspects and in such a scenario, the non-completion of the

evidence of the Investigating Officers, who have not been produced for cross-examination, gives credence to the contention of the accused that the kidnap, if any, might have been done by some of the family members of the victim girl herself and in order to save the family honour and prestige, the accused has been made the scapegoat. Learned Counsel brings once circumstance to the notice of the Court to show that the prosecution witnesses, for reasons best known to them, wanted to see that the petitioner/accused is severely punished, which in the ordinary circumstances would not have been the case. Learned Counsel submits that admittedly the petitioner/accused is an utter stranger to the family and they have no enmity with him. In 1991, the same girl was kidnapped by 5 or 6 people and the prosecution witnesses could not even say as to who those kidnappers were and they do not even know the details of that case. In the instant case, however, the petitioner/accused is sentenced by the Courts below to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 363 of I.P.C. As against the natural human conduct, the de facto complainant/PW.1 preferred CrI.R.C.No.1152 of 2001 for enhancement of the sentence. However, this Court by Judgment, dated 08-07-2010, rejected the said revision holding that there are no grounds to enhance the quantum of sentence.

15. Before going into the evidence of the material witnesses, certain circumstances which supports the contention of the petitioner/accused may briefly be noticed. According to the prosecution witnesses, while PW.2 has dropped the victim girl in the school at about 09.00 a.m., on 20-09-1996, it is another employee – Venkateshwar Rao who went at about 04.00 p.m., to school to bring her back. It is he who has firstly come to know about the disappearance of the victim girl. He has not been examined. He is a material witness to throw sufficient light on the incident which commenced at Kodad Public School at about 04.15 p.m.

16. According to the prosecution and the victim girl, she was taken

on a scooter from Kodad towards Thirumalagiri and on way, the scooter was punctured, that the accused and the girl slept in the night in an adjacent garden and next day morning, the accused took the victim girl and proceeded towards Thirumalagiri to the hotel of PW.11 by pushing the scooter. At the hotel of PW.11, the accused left the scooter saying that there is no petrol therein. From there, the girl and the accused proceeded in a lorry to Jangaon. According to the prosecution, when the incident took place on 20-09-1996, the accused was arrested on 30-09-1996. However, according to the hotel owner – PW.11 and also the panch witness – PW.12, so also the Investigating Officer – PW.17, the scooter was seized from the hotel of PW.11 on 23-09-1996. At whose instance, the scooter was recovered is not known. The scooter is marked as M.O.1. The registration certificate of the scooter stands in the name of a Muslim gentleman of Malakpet, Hyderabad. How the police people came to know about the scooter lying at the hotel at Thirumalagiri is not explained. Admittedly, the said scooter – M.O.1 was not recovered at the instance of the accused. Other than the accused and the victim girl, none knew that the scooter used in the commission of the crime was abandoned at the hotel of PW.11. When the accused was arrested on 30-09-1996 and is said to have made the confession, the recovery of the incriminating object, namely the scooter – M.O.1, on 23-09-1996 itself goes to show that the prosecution is suppressing certain material aspects.

17. According to the prosecution, in the night when the accused and the victim girl was sleeping in the garden since the victim girl was on her school uniform, the accused is said to have given his shirt to the victim girl and the girl was wearing the shirt in the night and till she was handed over to Kothur police in the late hours of 21-09-1996. No endeavour, whatsoever, is made to establish the nexus in between the shirt – M.O.11 and the accused. If the investigating agency could establish that the shirt – M.O.11 belongs to the accused, it would have been a strong circumstance for presuming the involvement of the

accused.

18. As already stated, originally the case was pending on the file of the Judicial Magistrate of First Class, Kodad where it is numbered as C.C.No.434 of 1996. Subsequently, the case was transferred to Judicial Magistrate of First Class, Huzurnagar, and the same has been registered as C.C.No.190 of 1998. Part of the evidence was recorded at Kodad Court and the same was concluded at Huzurnagar Court. In criminal cases, the Investigating Officer should be the last witness to be examined by the prosecution and that is intended to help both the prosecution and the accused. No private witnesses should generally be examined after the Investigating Officer. The logic is simple. In the event of there being any material omissions or contradictions or if a private witness turns hostile, it is for the Investigating Officer to clarify and certify about the omissions, contradictions and the contents of the statements recorded during the course of investigation from which the private witnesses resiled during the trial. Contrary to that, in the instant case, the main Investigating Officer is examined as PW.17 and his evidence in chief was recorded on 17-12-1997. After his evidence, PWs.18 to 24 are examined, out of whom PW.18 is the house owner of the accused, PWs.19, 20 and 21 speak about their acquaintance with the accused and PW.22 is the witness in whose presence the accused is alleged to have made the confession and led to the recovery of material objects. Having given his evidence in chief on 17-12-1997, for nearly four years, even though summons were issued to the Investigating Officer on several occasions, he failed to turn up. This is evident from the docket proceedings of the trial Court. The final endorsement of the learned Magistrate on 25-07-2001 reads as under:-

“Accused present. At the time of call work at 10.30 a.m., police and witnesses called absent. Again at 03.30 p.m., police and witnesses called absent. No representation. The prosecution took many adjournments even though they did not produce witnesses. The case is identified case. The period of identification ends 31-07-2001. In the circumstances, I feel the prosecution is not

showing any interest to produce PWs.17 and 23 (Police Officers) who already examined in Chief. Hence, the evidence of prosecution side is closed. For 313 Cr.P.C., call on 26-07-2001”

19. Thereafter, on 26-07-2001, the accused was examined under Section 313 Cr.P.C. and the arguments were heard and on 30-07-2001, the Judgment was pronounced by the trial Court.

20. Had the Investigating Officers been subjected to cross-examination, the entire truth probably would have come out. As already stated, the accused was a stranger. The Investigating Officer asking his Head Constable-PW.23 to go and seize the scooter from the hotel of PW.11 more than a week prior to the apprehension of the accused remained unexplained. So also according to the Investigating Officer – PW.17, he sent PW.23 to arrest the accused on 30-09-1996 from Keethavarigudem. How the identity of the accused was established is not known. What was the basis for the investigating agency to suspect the involvement of the accused also is not explained.

21. Adverting to the evidence of the material witnesses, as has already been stated, the victim girl PW.6, aged about 9 years, studying in III-Class, from the way in which she answered the questions in Court clearly shows that she is a very intelligent, sharp and clever girl. To the preliminary questioning made by the learned Magistrate, when she was asked as to who he is, the child witness told that he is a Magistrate. Not only that the way her evidence proceeded amply demonstrates that she knows several things and the names of the localities, names of the people and also she was in a position to give the telephone numbers of her parents and others. It may be recalled that the victim girl – PW.6 was repeatedly cautioned almost everyday by her people that she should not go with the strangers and she must go and return from the school only along with known persons such as PW.2 and Venkateshwar Rao, who were working in the business

establishment of PWs.5 and 13. On the date of the incident, namely 20-09-1996, PW.2 dropped her in the school, she was in the school till 04.00 p.m., which fact is spoken to by PWs.3 and 4. She was also aware of the fact that on the same day in the morning at about 06.00 or 07.00 a.m., her father –PW.5 and grandfather – PW.13 went in their family car to Hyderabad. It is also admitted that there are about 1,000 students in the Kodad Public School and just nearby, there is another school by name Bharati Vidya Mandir. It is also on record that there will be heavy rush of people at about 04.00 p.m., when both the schools are left and all the guardians, parents etc., will be assembled at the gate to pick up their wards. From such place, PW.6 claims to have been forcibly taken on a scooter as a pillion rider by the accused. It is in the evidence of PW.6 that when she came out of the school, the accused an utter stranger approached her and told her that her father met with an accident and was taken to a Hospital at Suryapet. Immediately, the victim girl is said to have retorted that her father has gone to Hyderabad. However, the accused made her believe and is said to have forcibly made her to sit on the scooter and they proceeded to Suryapet. The victim girl was aware about the names of the localities, towns etc. That is the reason why she deposed that the accused took her towards the main canal of Huzurnagar and from there, they came on to the main road towards Suryapet, and on the way, the scooter got punctured. Kodad to Hyderabad is a National Highway and on that National Highway is Suryapet. Hundreds of vehicles will be passing on that road at any point of time. PW.6 further deposed that as it was dark, the accused took her to a nearby garden and herself and the accused took shelter in the garden. She further deposed that on the next day morning, the accused took her to a nearby hotel and from there, they boarded a lorry and went towards Jangaon. She further deposed that the accused collected the phone numbers of her house and went to the STD Booth and thereafter, the accused took her to Narkatpalli by bus and from

there, she was brought to Hyderabad. She further deposed that from Hyderabad, she was taken to Kothur to the house of one Gundamma (PW.8) another stranger to PW.6. She further deposed that at the time of sleeping at garden, the accused gave his shirt to wear and the same shirt was with her up to her reaching PW.8 at Kothur. It is not known as to whether the accused was carrying a spare shirt of his or he removed from his person and gave it to PW.6. She further deposed that the accused informed PW.8 that she (the victim girl) is his niece. She further deposed that she informed a neighbouring person by name Singh (PW.9) who came there and gave telephone number of her house and thereafter, PWs.7, 8 and another girl took her to the Police Station, Kothur where the police people also came from Kodad and after sometime, her father – PW.5 also came to the Police Station. She further deposed that her statement was recorded by the police, as also the Magistrate under Section 164 Cr.P.C. She further deposed that she has also identified the accused in the Test Identification Parade held in Sub-Jail. In the cross-examination, it is in her evidence that while she was studying in LKG in the same school, she was kidnapped, that when she was being taken either on the scooter, in a lorry or in the bus, she did not raise any cries, that at Jangaon, when the accused went inside the STD Booth to telephone her people after having taken number from her, she also went inside the telephone booth, which was manned by L.W.15, that there were several passengers in the buses also when she was taken by the accused and that she did not raise cries as the accused threatened to kill her.

22. A bare reading of the evidence of PW.6 leaves no room for doubt that she is a fully tutored witness who being an intelligent student has repeated the parrot like version as was told to her by people outside the Court. The way she gave all the minute details with names etc., even of strangers, clearly shows that either she was a very smart and intelligent girl or she has been fully tutored and prompted by her people at the time of giving evidence.

23. The other material witness is PW.5, who is the father of the victim girl. He is a man aged about 35 years. It is in his evidence that while at Hyderabad on 20-09-1996, they came to know that their daughter has been kidnapped. They returned to Kodad by about 11.00 p.m., in the night. Next day morning at about 07.00 a.m., he received telephonic message from an unknown person demanding a ransom of Rs.2 lacs for handing over his daughter. He was asked to come to Raigir and again at 01.00 p.m., he received another telephone call asking him to come to Thimmapur village in Mahabubnagar District along with the demanded amount. Then he collected the amount from his different business premises and along with his relatives, he went to the place in his car. He reached there at about 07.00 p.m. Even though he waited for about an hour, the culprit did not turn up. At 08.00 p.m., PW.5 contacted his family at Kodad and his family members told him that his daughter has been procured and produced before Kothur Police Station. Immediately, he rushed to Kothur Police Station and enquired, but was told that the girl has not yet been produced. Again he returned back to Thimmapur bus stage and was waiting at the STD Booth. Then a boy came to him and asked him to come towards Vinayaka idol, which was installed on the other side of the road (that was the time when Ganesh idols were installed in view of Vinayaka Chavithi). He further deposed that he noticed the accused there and also some two or three people at Vinayaka idol. The accused took him to the lane beside and asked for the money. PW.5 told him that he will give the money if his daughter is shown. Thereafter, PW.5 again spoke to his family members in Kodad by phone and his family members confirmed that his daughter has already been produced at Kothur Police Station and Kodad police also went to Kothur Police Station. Then he went to Kothur Police Station and found his daughter there. A perusal of the chief-examination of PW.5 does not inspire the confidence. According to him, he reached Thimmapur bus stop at about 07.00 p.m., and was waiting there. From

that bus stop, at a distance of about one kilometre, there is a STD Booth. He went to the STD Booth along with his relation PW.15 who was with him in the car. Even before PWs.5 and 15 met the accused, PW.5 came to know that his daughter has already been traced and has been produced before Kothur Police Station. This information itself would have given sufficient courage to PWs.5 and 15 not to walk into the trap of the accused and to believe him when he was claiming that the victim girl was still in his custody, for the reason that by that time itself PW.5 had information that the villagers of Thimmapur have produced the victim girl at the Police Station and even the police from Kodad were reaching Kothur Police Station. In spite of that, the conduct of PWs.5 and 15 in agreeing to pay the amount if the girl is shown to them and leaving the accused even without touching him though he was unarmed, creates doubt about the claim of PW.5. That apart, when it was confirmed that the victim girl has already been produced and is in the safe custody of the jurisdictional police, neither PW.5 nor PW.15 tried to take the help of several people at the Vinayaka idol to apprehend the accused. It appears that they did not even bother to catch hold the accused even though they came to know that the child is safely in Kothur police and that the accused standing before them all alone unarmed is still claiming the girl is in his custody and demanding a ransom of Rs.2 lacs. It is also on record that PW.5 was regularly in touch with Kothur police, which was just about 1 ½ KM., from Vinayaka idol and he came to the STD Booth leaving the accused alone in the lane to speak over telephone to speak his people at Kodad, he did not alert the Kothur police to come over to that spot where the accused was present and demanding money to set free the girl, who was already in the custody of the police. PWs.5 and 15 are experienced businessmen and they would have certainly alerted the police to go over to that place to apprehend the accused since by then, the accused was alone standing there waiting for PW.5 to come to him and give the money. Even after PW.5 went to Kothur Police Station

leaving the accused alone near the Vinayaka idol, he did not appear to have informed the police that the person who kidnapped his daughter and is demanding ransom is there near the Vinayaka idol at Thimmapur bus stop. No attempt, whatsoever, has been made to apprehend the accused then and there. According to the investigating agency, the accused was arrested nine days thereafter. The relevant portion of the evidence of PW.5 reads as under:-

“We waited for about one hour or one and half hours at the bus stage and thereafter I went to a phone booth to make a call to my house at Kodad. The phone booth is one kilometre from the bus stage. When we made phone call to our house we were informed that my daughter was kept in a house belonging to somebody and those people informed them and my family members instructed them to handover my daughter to the Police, Kothur. From there we went to Kothur Police Station which is about 1 ½ KM. The ASI of Police was present in P.S. Kothur and he told me that my daughter was not brought to the Police Station. We went to Telephone Booth and Police Station in our car. The Police, Kothur, did not inform me that any call was received by them with regard to my daughter. Then we again returned to same telephone booth and I made a call to Kodad. Then a boy came to me that I was being called by one Ravinder and asked me to come to near Ganesh Idol installed. That idol was situated opposite to the booth on the other side of the road. One or two persons were present at the idol. At the idol, the accused was present when I went there. He took me into a lane where there were no lights. He asked me whether I brought money. I told him that I brought money. I demanded the accused to show my daughter before I made payment. The accused insisted the payment of money by me but I insisted that first he has to show my daughter before I paid money and when accused refused, I told him that I would contact my father and the accused told me that he would wait till I contacted my father. We took 15 or 20 minutes to go to Kothu P.S. from the telephone booth and returning from the P.S., to the telephone booth and the talk with the accused. When I contacted my father on phone, my father told me that the

girl was handed over to Police Kothur, then I made phone call to P.S. Kothur and the police told me that a girl was brought to Police Station. The girl was handed to police while the accused was standing in the lane. From there, I went to Police Station, Kothur, and we found our daughter in the Police Station. I was handed over my daughter by the Police, Kodad after taking her from P.S.Kothur.”

24. It may also be stated that those were the days of Vinayaka celebrations and whenever Vinayaka idols are installed in the localities, in between 07.00 p.m., to 09.00 p.m., several people will be there at the idol performing poojas etc. It is difficult to believe that at that place, PW.5 spoke to the accused who was demanding money and threatening to kill his daughter if the amount is not paid, more particularly, by then, PW.5 had already information from his family members from Kodad that the victim girl has been traced at Thimmapur village and she has been produced before the jurisdictional police namely Kothur P.S.

25. It may also be stated here that even though it is admitted by PW.2 and others that the Kodad police have taken into custody the two employees of the Lodge and have interrogated them suspecting their involvement, but PW.5 denies any such development. In view of the above, I find it difficult to believe that PW.5 is a reliable witness whose testimony can be believed for holding that it is the accused who met him and demanded the ransom for setting free his daughter-PW.6.

26. The other material part of the evidence is that of PWs.7, 8 and 9. They are the resident of Thimmapur. According to the prosecution, some time in the past, the accused used to work in a factory during 1993. According to the prosecution, the accused took the victim girl to the house of PWs.7 and 8 and left her there saying that the girl is his niece and that she is suffering from mental disease and thereafter he disappeared from there. These are the person who took the victim girl to Kothur P.S., since the victim girl informed them that the accused is not her uncle and that she has been kidnapped by him. The victim girl

also gave the telephone numbers of her family at Kodad and accordingly, the neighbouring resident PW.9 spoke to his family and informed about the victim girl being there. On the basis of that information, PW.5 when he was at Thimmapur bus stop and was negotiating with the accused, was informed that the girl has been traced in Thimmapur village and has been produced in Kothur Police Station.

27. It is in the evidence of PW.7 that the accused came along with the girl to his house and left her there saying that she is his niece. It is in his evidence that after the accused left the house, the victim girl informed them that she has been kidnapped. However, PW.7 could not produce any evidence to show that he is acquainted with the accused and that both of them worked together at any point of time in a factory at Kothur in the year 1993.

28. PW.8 is the mother of PW.7. She deposed that the accused came to her house along with the victim girl and enquired about her son. The accused further informed PW.8 that the girl is his niece and that the accused and the victim girl were in her house till about 06.00 p.m. Thereafter, the accused left the house and thereafter the victim girl informed her that she has been kidnapped by the accused who is not her uncle. Thereafter, the matter was informed to a neighbour – PW.9 who took telephone number from the girl and spoke to her people at Kodad. It may be stated here that PW.8 by herself has no acquaintance with the accused. She is the mother of PW.7. PW.7 has not accompanied with the accused when he came to their house along with the child. Still PW.8 wants it to be believed that she allowed the strangers namely the accused and the victim girl – PW.6 to stay in the house from afternoon till 06.00 p.m., in the evening and not only that she claims that the accused and the girl also had lunch in the house. That story could have been believed had it been the case that PW.8 has acquaintance with the accused or that her son PW.7 introduced his mother PW.8 to the accused as his erstwhile colleague. It is

difficult to believe that PW.8 would have entertained utter strangers namely the accused and the victim girl into her house and allowed them to stay till 06.00 p.m., and also have lunch etc. Further more, at the house of PW.8, the victim was in the company of PW.8 and another girl by name Padma. It is also in the evidence that after taking lunch, the accused slept in the house of PW.8 for some time. Still the victim girl PW.6 did not inform PW.8 that the accused is not her uncle and that she has been kidnapped. Had she done so, PW.8 would have alerted the neighbours who could have detained the accused. Only after the accused left the house of PW.8 at about 06.00 p.m., it is claimed that the victim girl informed PW.8 that she has been kidnapped by the accused.

29. The evidence of PW.9 is to the effect that the victim girl was crying and she gave the phone number of her parents, on the basis of which he spoke to them and informed about the presence of the victim girl. He has not seen the accused in the company of the victim girl and therefore from his evidence it cannot be said that it is the accused who brought the victim girl to the house of PW.8.

30. The testimony of other witnesses is touching upon the other aspects of the matter such as the people of the hotel, the STD booth etc. Their evidence also do not inspire the confidence for believing that they have seen the accused on the date of the incident in the company of the victim girl. PW.10 is the STD booth operator at Thimmapur. More than a year after the incident, he was giving evidence in the Court. He deposed that on 21-09-1996, at about 06.30 p.m., the accused came to him and gave a telephone number – 08683 – 55994 asking him to connect it. He connected the phone and the accused spoke over that phone. For a person who is running a STD Booth to identify the accused as a person who came to his booth more than one year prior to 01-09-1997 to do a phone call cannot be believed and his giving the telephone number also speaks about the unreliability of the witness.

31. PW.11 is a person who is running a hotel at Thirumalagiri. As already stated, it is at that hotel the accused is said to have left his scooter saying that there is no fuel. The scooter was recovered from his hotel two days thereafter by the police. At that time, the accused was not there. He admits that the accused was not known to him. His remembering the number of the scooter which he gave as AP-29-A-5108, and saying that it is the accused who left the scooter at hotel cannot be believed. PW.11 admits that his hotel is on a busy road and there will be several people coming to the hotel and his identifying the accused as the person who came a year prior to giving his evidence and leaving behind the scooter thereat cannot be believed.

32. The other evidence is that of PW.12. He is said to be a panch witness for recovery of M.Os.1 to 10. As already stated, it is not the accused who led to the recovery of M.Os.1 to 10. How the police and the panch witnesses came to know about the crime scooter being left at the hotel of PW.11 remained unexplained.

33. PW.14 is the ASI of Police, Kothur P.S. PW.15 is the relation of PW.5 who accompanied him from Kodad to Thimmapur in his car. He also acted as the panch witness for the recovery of the shirt – M.O.11. PW.16 is the person who is said to have acted as the panch witness in whose presence the accused is said to have made the confession. His evidence, instead of supporting the case of the prosecution, adversely affects it. According to PW.16, on 30-09-1996, he was called to Kodad P.S., where the accused was and upon his enquiry, the accused confessed that he kidnapped PW.6 and gave all the details and at his instance, the scooter – AP 28 A-5108 with light blue colour was seized under panchanama. This is not at all the case of the prosecution and on the other hand, there is specific evidence of the Police Officers that the scooter bearing No.AP-29-A-5108 was recovered from the hotel of PW.11 on 22-09-1996. According to the Investigating Officer – PW.17, the scooter M.O.1 along with M.Os.2 to 10 were seized under panchanama on 22-09-1996 itself and at that

time, the accused was not in their custody. Contrary to that, P.W.16 would have it that the scooter-M.O.1 and M.Os.2 to 10 were recovered at the instance of the accused on 30-09-1996.

34. The other evidence on record has no material bearing to the case in hand. However, the evidence of PW.13 who is the grandfather of the victim girl is there on record which is similar to that of PWs.1, 5 and 6. He speaks about taking PW.5 in adoption and also speaks about the previous kidnapping incident of PW.6. He denied the suggestion that due to the disputes between his brothers, the girl was kidnapped and that he is deposing falsehood implicating the accused falsely with an intention to save the honour of the family.

35. Upon carefully perusing the oral and documentary evidence on record, I find it difficult to hold that the prosecution proved its case against the accused beyond reasonable doubt. May be the evidence on record creates suspicion about the involvement of the accused, but howsoever strong the suspicion may be, the same cannot be made the basis for convicting the accused holding that the case of the prosecution stand proved beyond reasonable doubt. The accused is therefore entitled to the benefit and consequently acquittal. Both the Courts below have not properly appreciated the evidence on record in proper perspective and therefore the Judgments cannot be sustained and the same is liable to be set aside. The order with regard to the material objects namely the scooter, as ordered by the Courts below shall stand confirmed. The point is accordingly answered.

36. In the result, the Criminal Revision Case is allowed acquitting the revision petitioner/accused. The fine amount, if any, paid by the revision petitioner/accused shall be refunded to him.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

October, 2015

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