HC-KAR

NC: 2026:KHC:64091
CRL.A No. 859 of 2015

CNR: KAHC010355352015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 859 OF 2015 (C)

BETWEEN:

1. SRI. KESHAVA @ KESHAVA MURTHY
S/O VENKATARAMAPPA
AGED ABOUT 27 YEARS
R/O KODUR VILLAGE,
CHILAMATHURU MANDAL
HINDUPUR TALUK
ANANTHAPURA DISTRICT
ANDHRA PRADESH-515201

...APPELLANT

(BY SRI. ABHILASH KUMAR M. N., ADV. FOR
SRI. NANJUNDA GOWDA M R., ADV.)

AND:

1. STATE OF KARNATAKA
BY BAGEPALLI POLICE
CHIKKABALLAPURA
DISTRICT-577101

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP.)

Digitally signed by
LAKSHMINARAYAN N
Location: High Court of
Karnataka

CRL.A. FILED U/S 374(2) CR.P.C BY THE ADV. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED:30.6.2015, PASSED BY THE I ADDL. DIST. & SESSIONS JDUGE, CHIKKABALLAPURA, IN S.C.NO.120/2013- CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/S 366 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction and order on sentence dated 30.06.2015 passed in Sessions Case No.120/2013 by the I Additional District and Sessions Judge, Chikkaballapura (for short, 'the trial Court').

2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.

3. Brief facts leading to this appeal are that, PSI, Bagepalli has submitted charge-sheet against the accused for the offence punishable under Sections 363 and 366 of IPC. It is alleged by the prosecution that on 21.04.2013 at about 02:00 a.m. the accused kidnapped the minor girl-PW2, from the custody of her parents with an intention to marry her. Thereby, the accused have committed the alleged offences.

4. After filing the charge-sheet, the case was registered in CC No.185/2013 and the case was committed to the Court of Sessions and registered in SC No.120/2013. The accused appeared before the Sessions Court and enlarged on bail.

5. On hearing, the trial Court has framed the charges for the commission of offence under Sections 363 and 366 of IPC. Same was read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, prosecution has examined 12 witnesses as PW1 to PW12, 13 documents marked as Exhibits P1 to P13. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C has been recorded. Accused has totally denied the evidence of prosecution witnesses, however, he did not choose to lead any defence evidence on his behalf. During

the course of cross-examination of prosecution witnesses, 3 documents were marked as Exs.D1 to D3.

7. On hearing the arguments, the trial Court has convicted the accused for the offence punishable under Section 366 of IPC and accused was sentenced to undergo simple imprisonment for a period of 2 years and to pay fine of Rs.2,000/-. Being aggrieved by this judgment of conviction and order and sentence, the accused/appellant has preferred this appeal.

8. The learned counsel for the appellant would submit that the judgment of conviction and order of sentence passed by the trial Court is perverse, illegal and same is opposed to law, facts and probabilities of the case. The trial Court committed an error in relying the evidence of PW1 and PW2. They are interested witnesses. PW1 has categorically admitted in the cross-examination that there was no light at the place from where his daughter was kidnapped. Further he admits that, he do not know

whether his daughter PW2 and appellant were in love with each other or not. The complainant deliberately suppressed by the prosecution and concealed the truth and after 3 days i.e., on 23.04.2013 after thoughts, discussions and deliberations, second complaint was filed implicating this appellant. PW1 is not an eye-witness. The inordinate delay of 3 days in filing the complaint is not explained by the prosecution. There are lot of inconsistencies and un-corroborative evidence. In this regard Exs.P1 to P3 are marked. The trial Court has failed to appreciate the evidence on record in its proper perspective. On all these grounds, it is sought for allowing this appeal.

9. As against this, the learned HCGP Sri K Nageshwarappa would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts and there is no ground for interference

in this appeal. Hence, it is sought for dismissal of the appeal.

10. Having heard the arguments on both sides and on perusal of the materials placed before this Court, the following points would arise for my consideration:

(1) Whether the trial Court is justified in convicting the accused for the offence under Section 366 of IPC?

(2) What order?

11. My answer to the above points are as under:

Point No.1 in Negative.

Point No.2 as per final order.

Reasons regarding Point No.1

12. I have examined the materials placed before this Court. It is alleged by the prosecution that on 21.04.2013 at about 02:00 am, at Moogachinnenahalli Village, Bagepalli Taluk, the accused kidnapped the victim in a Tata Indica car bearing Reg.No.KA-04 P-4769 without

consent and the accused kidnapped the victim with an intent that she may be compelled to marry the accused against her will and the victim may be forced to illicit intercourse or knowing it likely that she will be forced to illicit intercourse. Thus, the accused has committed the offence under Sections 323, 363 and 366 of IPC. The trial Court has acquitted the accused for the offence under Section 363 IPC. However, convicted for the offence under Section 366 IPC. The State has not preferred appeal against the acquittal of the accused for the offence under Section 363 IPC.

13. Before appreciation of the evidence on record, it is necessary to mention here as to the essential ingredients to prove the offence under Section 366 IPC. The same reads as under:

> *"(a) That the accused kidnapped as understood in section 360 or 361 IPC or abducted the victim as understood in section 362 IPC;*

(b) That the victim of the aforesaid kidnapping or abduction was a female;

(c) That the accused during the kidnapping or abduction had intention or knew it likely that (1) such woman might or would be forced to marry a person against her will, or (2) that she might or would be forced or seduced to illicit intercourse, or (3) by means of criminal intimidation or otherwise by inducing a woman to go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse."

14. This case arise out of the complaint filed by Narayanappa, the father of the victim as per Ex.P1, in which it is stated as under:

"ಈ ಮೂಲಕ ತಮ್ಮಲ್ಲಿ ಮನವಿ ಮಾಡಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಹೆಂಡತಿ ಮಕ್ಕಳೊಂದಿಗೆ. ಸಂಸಾರ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನಮ್ಮ ಸಂಬಂಧಿಯಾದ ಆಂದ್ರ ಪ್ರದೇಶದ ಕೊಡೂರು ಗ್ರಾಮದ ಕೇಶವಮೂರ್ತಿ ಬಿನ್ ಲೇ॥ ವೆಂಕಟರಾಯಪ್ಪ ರವರು ಕೆ.ಎ–40, ಪಿ–4769 ಟಾಟಾ ಇಂಡಿಕಾ ಕಾರನ್ನು ಬಾಡಿಗೆ ಓಡಿಸಿಕೊಂಡು ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಇದ್ದರು, ಕೇಶವಮೂರ್ತಿರವರು ನನ್ನ ಮಗಳಾದ ಅಪ್ರಾಪ್ತ ವಯಸ್ಸಿನ ನಂದಿನಿಗೆ ಮನೆಯಲ್ಲಿ ಆಗಾಗ ತೊಂದರೆ ಕೊಡುತ್ತಿದ್ದು, ಈ ವಿಚಾರದಲ್ಲಿ ಈಗ್ಗೆ 05 ದಿನಗಳ ಹಿಂದೆ ನಮಗೂ ಮತ್ತು ಕೇಶವಮೂರ್ತಿಗೂ, ಮನಸ್ತಾಪವಾಗಿದ್ದು, ಆತನು ಅಂದಿನಿಂದ ತನ್ನ ವಾಹನದ ಸಮೇತ ತಮ್ಮ ಗ್ರಾಮಕ್ಕೆ ಹೋರಟು ಹೋಗಿದ್ದ. ಹಿಗಿರುವಾಗ ದಿನಾಂಕ:21/04/2013 ರಂದು ನಾನು ನನ್ನ ಹೆಂಡತಿ ಮಕ್ಕಳೊಂದಿಗೆ ನಮ್ಮ

ಮನೆಯ ಹೊರಗಡೆ ಮಲಗಿಕೊಂಡಿದ್ದಾಗ, ರಾತ್ರಿ ಸುಮಾರು 02–00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ನನ್ನ ಮಗಳಾದ ನಂದಿನಿ ರವರು ಮೂತ್ರವಿಸರ್ಜನೆ ಮಾಡಲು ಹೋಗುವುದಾಗಿ ನನ್ನನ್ನು ಎಬ್ಬಿಸಿದ್ದು, ನಾನು ಎದ್ದು ಕುಳಿತುಕೊಂಡೆ ಅಷ್ಟರಲ್ಲಿ ಅಲ್ಲಿಗೆ ಕೇಶವಮೂರ್ತಿರವರು ಬಂದು ಮೂತ್ರ ವಿಸರ್ಜನೆ ಮಾಡುತ್ತಿದ್ದ ನನ್ನ ಮಗಳಾದ ನಂದಿನಿಯನ್ನು ಬಲವಂತವಾಗಿ ಎಳೆದುಕೊಂಡು ಮನೆಯ ಸ್ವಲ್ಪ ದೂರದಲ್ಲಿ ನಿಲ್ಲಿಸಿದ್ದ ಕೆ.ಎ–40, ಪಿ–4769 ಟಾಟಾ ಇಂಡಿಕಾ ಕಾರ್‌ನಲ್ಲಿ ಅಪಹರಿಸಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದಾಗ ನಾನು ಜೋರಾಗಿ ಕೂಗಿಕೊಂಡು ಕಾರಿನ ಹತ್ತಿರ ಹೋಗುವಷ್ಟರಲ್ಲೆ ಕಾರನ್ನು ಕೇಶವಮೂರ್ತಿ ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಹೋರಟು ಹೋದ ನಂತರ ನಾನು ಸಹ ಅದರ ಹಿಂದೆ ಓಡಿ ಹೋದರು ವಾಹನ ಸಿಗದೆ ಇದ್ದು, ನಂತರ ಮಾರನೆ ದಿನ ನಾವು ನನ್ನ ಮಗಳನ್ನು ಎಲ್ಲಾ ಊರುಗಳಲ್ಲಿ ಹುಡುಕಾಡಿದರು ಸಿಗದೆ ಇದ್ದು, ಈ ದಿನ ತಡವಾಗಿ ದೂರು ನೀಡುತ್ತಿದ್ದು, ನನ್ನ ಮಗಳಾದ ಅಪ್ರಾಪ್ತ ವಯಸ್ಸಿನ ನಂದಿನಿಯನ್ನು ಅಪಹರಿಸಿಕೊಂಡು ಹೋದ ಕೇಶವಮೂರ್ತಿರವರ 13 ಕೇಶವಮೂರ್ತಿರವರ ಮೇಲೆ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರುತ್ತೇನೆ."

15. The complaint came to be filed on 23.04.2013 at 09:30 am. On the basis of the complaint, Bagepalli Police registered the case in Crime No.99/2013 against the accused for the offence under Section 366A of IPC and submitted FIR on 23.04.2013 at 03:40 pm. In the FIR, it is stated that, since the complainant was searching his daughter, he could not file a complaint on the date of incident. To substantiate the contents of complaint, the complainant-Narayanappa who is examined as PW1, has deposed as to the contents of Ex.P1 and further he has

deposed as to the spot panchanama conducted by the police as per Ex.P2.

16. PW2-the victim, has deposed that the accused, Murthy and another name not known, took her in a car and went to Kadiri Village and wrongfully confined her in the house of relative of the accused for 6 days. Then the father-in-law of the accused took her to the police station. Her parents were in the police station. Then she was sent to Ujwala Kendra.

17. PW3-Rangamma, mother of the victim has deposed that, on 21.04.2013 when she, her husband and their children were sleeping in their house during night at 02:00 am, her daughter went for a nature call, at that time, the accused and two others kidnapped her. That time there was no light. After one week, police summoned them to police station. They have seen her daughter in the police station. She has identified the photos Exs.P3 to P6.

18. PW4-Nagaraja and PW9-Sathyamma said to be the eye-witnesses, have not supported to the case of the prosecution. Both witnesses treated as hostile witnesses with the permission of the Court. During the cross-examination of these witnesses by the prosecution, they have categorically denied the statement said to have been recorded by the IO under Section 161 of Cr.P.C. which are marked as Exs.P7 and P9.

19. PW5-Adinarayana said to be the attester to the mahazar has not supported to the case of the prosecution.

20. PW6-Gangappa, PW7-Eshwara Prasad and PW8-Venkateshalu said to be the attesters to the seizure mahazar Ex.P8, have not supported to the case of the prosecution.

21. PW10-Venkataramanareddy, the Investigating Officer has partly supported to the case of the prosecution. This witness is treated as hostile witness with the

permission of the Court and however, the learned Public Prosecutor has not cross-examined this witness.

22. PW11-Raghunandan, the Medical Officer, has deposed as to the examination of the accused and issuance of certificate Ex.P13.

23. PW12-T. C. Shivakumar, PSI has deposed in his evidence that after completion of investigation, he has submitted the charge sheet against the accused.

24. During the course of cross-examination of PW1-Complainant, has deposed that CW2 is his daughter. He knows the accused. He has deposed that the elder sister of the accused is given in marriage to his village. Further, he has deposed that on 21.04.2013 he has lodged a complaint to the police. Further, he has admitted that only on the next day morning he came to know as to the kidnapping of his daughter. On the same day, he has lodged a complaint to the police.

25. PW2-victim has deposed that the accused is the driver and he was in cordial terms with her. PW2 has deposed that the accused has forcibly took her in a car. PW3-mother of the victim has deposed that on 21.04.2013, accused kidnapped her daughter and further deposed that the complaint filed by them is entirely different from the complaint produced by the prosecution.

26. On careful examination of the entire evidence on record, it is crystal clear that the contents of Ex.P1 is not in consonance with the evidence of the parents of victim i.e., PW1 and PW3. Both PWs.1 and 3 have deposed that on the date of incident, they have lodged a complaint to the police and the contents of the complaint are entirely different from the complaint filed by PWs.1 and 3. The victim has not deposed that the accused kidnapped her against her will and she has not deposed that the accused has forced to marry the victim against her will and further that there is no evidence before the Court that the victim

might or would be forced or seduced to illegal intercourse or by means of criminal intimidation or otherwise by inducing the woman to go from any place with an intent that she may be or knowing that she will be forced or seduced to illicit intercourse. Though there is no sufficient evidence to constitute the offence under Section 366 IPC, the trial Court has convicted the accused for the offence under Section 366 IPC which is not sustainable under law. Absolutely, there is no cogent, convincing clinching and trustworthy evidence before the Court to substantiate the case of the prosecution. The trial Court has failed to appreciate the evidence on record in accordance with law and facts which warrants interference by this Court. Hence, I answer Point No.1 in Affirmative.

Regarding Point No.2:

27. For the aforestated reasons and discussions, I proceed to pass the following:

CNR: KAHC010355352015

O R D E R

(i) Appeal is **allowed**;

(ii) The judgment of conviction and order on sentence dated 30.06.2015 passed in SC.No.120/2013 by the I Addl. District and Sessions Judge, Chikkaballapur, is **set aside**;

(iii) Accused/appellant is **acquitted** of the offence under Section 366 of IPC;

(iv) The bail bond of the appellant shall stand cancelled;

(v) The trial Court is directed to refund the fine amount to the appellant.

The Registry is directed to send the copy of this judgment along with trial court records, to the concerned Court.

Sd/-
(G BASAVARAJA)
JUDGE

KBM,**DHA**
List No.: 1 Sl No.: 52