



HC-KAR

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NC: 2026:KHC:7284-DB
CRL.A No. 525 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.525 OF 2018 (A)

BETWEEN:

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

...APPELLANT

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

AND:

1. PUNITHA
S/O. LATE HODDIGAPPA
AGED ABOUT 26 YEARS.
2. THIMMAKKA
C/O. KARIYAPPA
AGED ABOUT 55 YEARS.
3. KUMARANNA
S/O. YELLADHAKERI KARIYAPPA
AGED ABOUT 35 YEARS.
4. PAVAN
AGED ABOUT 20 YEARS.
5. HORAKERAPPA
S/O. LATE PURADIAH
AGED ABOUT 66 YEARS.
6. SUBBANNA
S/O. ESHWARAPPA
AGED ABOUT 24 YEARS.





RESPONDENT NOS.1 TO 6 ARE
RESIDING AT GAVIYAPPANAPALYA
DHASODI MAJURE HULIYAR HOBLI
CHIKKANAYAKANAHALLI TALUK
TUMKUR-572 218.

7. RANGAIAH
S/O. LATE MALLAPPA
AGED ABOUT 45 YEARS
RESIDING AT LINGARAJUPURA
SHIVAKATTE, HESARAGATTA HOBLI
BENGALURU.
8. LATHAMMA
S/O. HODDIGAPPA
AGED ABOUT 37 YEARS
RESIDING AT GAVIYAPPANAPALYA
DHASODI MAJURE HULIYAR HOBLI
CHIKKANAYAKANAHALLI TALUK
TUMKUR-572 218.
9. REVANNA SIDDAIAH
S/O. LATE BYRAPPA
AGED ABOUT 62 YEARS
RESIDENT OF DHASODI (GAVIYAPPANAPALYA)
C.N. HALLI, HULIYAR TALUK
TUMKUR DISTRICT-572 218.

...RESPONDENTS

(BY SRI VEERANNA G. TIGADI, ADVOCATE, FOR R-1 TO R-8;
SMT. SUDHA D., ADVOCATE, FOR R-9)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 17-10-2017 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMKUR, IN SPECIAL CASE NO.180 OF 2017, ACQUITTING ACCUSED NOS.1 TO 8/RESPONDENT NOS.1 TO 8 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366, 366A, 344 AND 506 READ WITH SECTION 149 OF IPC, UNDER SECTIONS 9 AND 10 OF THE PROHIBITION OF CHILD MARRIAGE ACT, 2006, AND UNDER 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 H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard the learned Additional State Public Prosecutor for the appellant-State, the learned counsel for respondent Nos.1 to 8-accused Nos.1 to 8, and the learned counsel for respondent No.9-*de facto* complainant.

2. The factual matrix of the case of the prosecution is that on 06.10.2016 at about 11.00 p.m., when PW12-victim went outside the house to attend nature call, the accused came from behind, abducted her and forcibly took her to Bengaluru and then to Kadiri Narasimha Swamy Temple in Andhra Pradesh, where accused No.1 forcibly married the victim without her consent. Thereafter, accused No.1 and the victim started living in Dhanachari Grama. Accused No.1 without her consent, subjected her for sexual assault and he also threatened her that he would kill her, if she informs the said fact to her parents.



3. Based on the complaint of PW1, father of the victim, Crime No.105 of 2016 was registered for the offence punishable under Section 363 of the Indian Penal Code, 1860 (for short, 'IPC'). After investigation, the Police filed the charge-sheet against accused Nos.1 to 8 for the offences punishable under Sections 366, 366A, 344 and 506 of IPC, under Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006, and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). The accused were secured, they did not plead guilty and claims trial. Hence, the prosecution examined PW1 to PW15 and got marked Exs.P1 to P16 and MOs.1 to 9. After closure of the evidence, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') but they did not lead any defence evidence. The trial Court, having considered both oral and documentary evidence, comes to the conclusion that the evidence available on record do not inspire confidence of the Court and accordingly, acquitted these accused. Being aggrieved by the order of acquittal, the State has preferred the present appeal.



4. Learned Additional State Public Prosecutor for the appellant-State would contend that the trial Court committed error in acquitting these accused. The material available on record clearly point out the role of all the accused and the same has not been properly appreciated by the trial Court. She would contend that the trial Court has not properly considered the evidence of the victim, who deposed about the accused kidnapping her, forcibly marrying her and subjecting her for sexual intercourse without her consent. The evidence of PW12-victim fully corroborates with the evidence of other witnesses and the prosecution has proved its case beyond reasonable doubt. She also contends that the trial Court has not properly appreciated the evidence of PW11-Headmaster of the School, where the victim was studying. PW11 categorically deposed that Ex.P10-Study Certificate issued by the School for having made the entry in the School records at the time of admission of the victim and hence, the trial Court ought not to have disbelieved the said document. It is settled principle that the School documents are admissible as the proof of the Date of Birth, but in spite of the same, the trial Court has not



considered the same and has come to the conclusion that the prosecution is not able to prove that the victim was minor. She also contend that the trial Court has failed to draw the statutory presumption under Section 29 of the POCSO Act in favour of the victim that she was subjected to sexual act, after forcibly marrying her and presumption also not rebutted though the victim in her statement recorded under Section 164 of the Cr.P.C. has categorically stated how the accused kidnapped her, forcibly married her and thereafter, subjected her for sexual intercourse without her consent. These aspects were not taken note by the trial Court. Hence, she prays for conviction against the accused.

5. Learned counsel for respondent No.9-*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 error in not appreciating the evidence available on record in proper perspective. Further, the evidence of PW12-victim points out that the role of the accused, but the same has not been



considered by the trial Court. Hence, she prays for allowing the appeal.

6. *Per contra*, the learned counsel for respondent Nos.1 to 8/accused Nos.1 to 8 would vehemently contend that the trial Court has in detail discussed in paragraph Nos.8 and 9 with regard to age of the victim. Though the prosecution relies on that it was kidnap, forcible marriage, subjected the victim for sexual intercourse without her consent and confining her in the house, however, the victim, at no point of time, has screamed or brought the said fact to the notice of anyone. Even, the evidence of PW12-victim is very clear that she was taken to Bengaluru and then to Andhra Pradesh in Bus. Marriage of the victim and accused No.1 was held in Andhra Pradesh, however, at no point of time, the victim has brought to the notice of any persons though she was travelled along with other accused in public transport and the same is discussed in detail in paragraph Nos.10 to 20 of the judgment of the trial Court. All these factors were taken note by the trial Court and it has come to the conclusion that the evidence



available on record do not inspire confidence of the Court and rightly acquitted these accused.

7. Having heard the learned counsel for the parties and considering the material available on record, the point that would arise for the consideration of this Court is:

"Whether the trial Court committed error in acquitting these accused for the offences invoked against them?"

8. Having heard the respective learned counsel for the parties and perusal of material available on record, the case of the prosecution is that on 06.10.2016 at about 11.00 p.m. when PW12-victim went outside the house to attend nature call, the accused came from behind, abducted her, and forcibly took her to Kadiri Narasimha Swamy Temple, Andhra Pradesh, and accused No.1 forcibly married her and subjected her for sexual intercourse without her consent. It is further case of the prosecution that other accused, i.e. accused Nos.2 to 8, helped accused No.1 to perform his marriage with the victim, though she was a minor.



9. No doubt, the prosecution relies on the evidence of PW1 to PW15 and the documentary evidence on record. The statement of the victim-PW12 as per Ex.P14 is that on 06.10.2016, after having dinner, she was sleeping in the house and at around 10 O'clock, when she came outside of her house to attend nature call, accused No.1 came suddenly, held her, forced her to marry and also threatened her that if she does not agree for marriage, he will commit suicide by consuming poison and alternatively, he stated that he is going to kidnap her. When the victim refused to go along with him, accused No.1 threatened her that if she screams, he is going to kill her and kidnapped her in a bus to Bengaluru and from there, he again took her to Andhra Pradesh and on 07.10.2016, at Kadiri Narasimha Swamy Temple, accused No.1 forcibly tied Mangalya Sutra and instructed her to lead life with him. He took her to Dhanachari Village, where he took a house for rent and confined her. It is also her statement that since she was not aware of the language of the particular place, she stayed in the house itself and accused No.1 used to go for coolie work and subjected her for sexual intercourse from the date of marriage



to 09.01.2017. On 09.01.2017, Huliya Police apprehended accused No.1 and the victim. Based on a complaint given by the father of the victim, the Police brought her back to her native. Hence, she requested to take action against accused No.1. Having considered this statement of the victim, at the first instance on 10.01.2017, all allegations are made against only accused No.1.

10. The victim gave her statement before the Magistrate on 24.01.2017 and the same is marked as Ex.P11. In this statement, she categorically says that her maternal aunt came home and forcibly took her. After travelling for half-a-kilometre, other accused persons came and covered her mouth and eyes with clothes and took her to Bengaluru. On the next date morning, they took her to Kadiri Narasimha Swamy Temple, where accused No.1 forcibly married her. Here, the version of the victim was changed while giving the statement before the Magistrate.

11. Further, the evidence of the victim is also contrary before the Court, wherein she says that the accused persons came near her house and called her, and when she was



opening the door, all of them closed her mouth and took her to Bengaluru. She further stated that accused No.1 used to go for work and he used to have sexual intercourse on her by giving sleeping tablets, she was confined in a room and other accused were visiting her once in a week.

12. PW12 was cross-examined. She categorically admits that when they sleep inside the house, they usually lock the door. The accused called her. Hence, she tried to wake up her mother and since her mother did not wake up, she opened the door.

13. Having considered Ex.P11-statement under Section 164 of Cr.P.C., Ex.P14-statement of the victim before the Police and the oral evidence of the victim do not inspire confidence of the Court since three different versions are stated by the victim.

14. The evidence of PWs.1 and 2 also do not inspire confidence of the Court. PW1 says that he is father of the victim, he gave the complaint in terms of Ex.P1 and mahazar was drawn in terms of Ex.P2. In the cross-examination with



regard to the date of birth is concerned, he says that the Doctor informed the date of birth of his daughter and he has noted the same in one of his documents, but he is not able to produce the said document before the Court. Further, he has admitted that he has given her daughter's date of birth to the Village Accountant to make entry in the records and the same will be available in the Office of the Tahsildar. He further admitted that he has not produced the said document before the Police, but he can produce the said document from the Hospital. However, he relies on Ex.P10-Study Certificate, issued by PW11-Head Master, which shows the admission entry found in the School. When the original date of birth is available with PW1, he ought to have produced the same before the Court. The trial Court has discussed in detail at paragraph Nos.8 and 9 of its judgment with regard to age of the victim.

15. The other witness is PW2, mother of the victim. In her evidence, she says that when she woke up around 12 O'clock midnight, she did not find her daughter. Hence, she informed the same to her husband and he lodged the complaint. In the cross-examination, she gives different



answers that she tried to get up her daughter at around 10.30 p.m. She also states that in the Village, people usually do not sleep before 10.30 p.m. and while her daughter was taken by the accused, PW8-Prakash and PW7-Shivashankara Reddy witnessed the same, however, they did not specify the same while lodging the complaint. It is also important to note that though incident was taken place on 06.10.2016, the complaint of missing was lodged by the father on 18.10.2016, i.e. after twelve days. Accused No.1 and the victim were secured after three and half-a-month. The trial Court, taking note of all these material available on record, came to the conclusion that the very story of kidnapping and also forcibly performing the marriage of the victim with PW1 was not accepted.

16. PW3 is a witness to seizure mahazar-Ex.P5. In the cross-examination, a suggestion was made to this witness that PW1 is his close friend and hence, he is deposing falsely before the Court, however, he denied this suggestion. He also categorically admits that accused Nos.2 to 8 were present in



the Village itself from the date of the victim missing and till she was brought back to the Village.

17. PWs.4, 5, 6, 7 and 8 have not supported the case of the prosecution.

18. PWs.9 and 10 are mahazar witnesses to Exs.P3 and P4.

19. PW11-Head Master, who issued Ex.P10-Study Certificate of the victim. He has stated that based on the entry in the School admission records, he has issued Ex.P10. He categorically admits that he did not verify the document what was produced while admitting the victim for the School. He also admits that the victim's father is a President of his School. However, he denied the suggestion that he has issued fake Certificate to help the victim's father.

20. PW13-Circle Inspector of Police, who conducted investigation and filed charge-sheet against these accused.

21. PW14-Sub-Inspector of Police, who recorded Ex.P14-statement of the victim.



22. PW15-Sub-Inspector of Police, who registered an F.I.R.

23. The evidence of PWs.1 and 2 are not consistent. Further, PW12-victim herself has given different versions, i.e. in Ex.P11-statement recorded before the Magistrate under Section 164 of Cr.P.C., Ex.P14-statement recorded before the Police and while recording her evidence before the Court as PW12. There are three versions given by the victim and when such being the case, the Court cannot inspire confidence in her evidence. The trial Court has in detail discussed with regard to the age of the victim at paragraph Nos.8 and 9, evidence of PW12-victim at paragraph Nos.10 to 20 and evidence of others witnesses, which are not consistent to prove the case of the prosecution. When the case of the prosecution is not consistent with regard to the very crime is concerned, we do not find any grounds to reverse the findings of the trial Court.

24. Further, this Court has noticed that, in the present case, the Special Public Prosecutor was absent before the trial Court and the Presiding Officer recorded the evidence of some



of the witnesses. The witnesses have not supported the case of the prosecution while giving the evidence. When the Special Public Prosecutor was absent while recording the evidence of the prosecution witnesses, the trial Court ought to have taken note of the same and posed question as required under Section 165 of the Indian Evidence Act, 1872. However, the same is also not done.

25. It is duty of the Special Public Prosecutors to act as an Officer of the Court, to ensure that all material facts and evidence are fairly and accurately brought on record to prevent miscarriage of justice, serving the collective interest of society rather than just securing a conviction. They must scrupulously examine witnesses, produce necessary documents, and assist in recording the statement of the accused. Further, it is the duty of the Presiding Officer not to sit as a spectator in the Court, but to consider the material and if no such material are available on record in order to elicit the truth from the witnesses, the concerned to act under Section 165 of the Indian Evidence Act, 1872, and must play active role in dispensing the



justice, evaluating material and participate actively while recording the evidence.

26. In the case on hand, this Court noticed that the Presiding Officer and the Special Public Prosecutor, who dealt with the matter, are not in service. This should not happen in future in any of the criminal cases, which amounts to miscarriage of justice. Hence, we felt that certain directions to be issued to the Presiding Officers and Prosecutors in order to set it right the miscarriage of justice. Hence, we pass the following

ORDER

- i. Criminal appeal is ***dismissed***.
- ii. The Registrar General is directed to issue Circular to the above effect to the Presiding Officers of all the criminal Courts of the State to play proactive role in conducting the trial as observed.



- iii. The Registry is directed to communicate this order to the Director of Prosecutions to issue directions to the Special Public Prosecutors/Public Prosecutors, who are working in the State, to act diligently and to be part of dispensation of justice as observed.

**Sd/-
(H.P.SANDESH)
JUDGE**

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

KVK
List No.: 1 Sl No.: 6