



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 176 OF 2014

VENKATESHA & ORS.

APPELLANT(S)

VERSUS

STATE OF KARNATAKA

RESPONDENT(S)

J U D G M E N T

B.R. GAVAL, J.

1. This appeal challenges the judgment and order dated 14th December, 2011 passed by the High court of Karnataka at Bangalore, vide which the learned Single Judge of the High Court has partly allowed the appeal filed by the appellants herein and set aside the judgment and order of the P.O. and Addl. Sessions Judge, Fast Track Court-IV, at Kolar, by which the learned Additional Sessions Judge convicted the appellants under Section 366 of the Indian Penal Code, 1860 (“IPC” for short) and sentenced them to undergo rigorous imprisonment for five years. Thereafter, the High Court convicted them for the offence punishable under Section 363 of the IPC and

sentenced them to undergo rigorous imprisonment for one year.

FACTS:

2. The facts, *in brief*, giving rise to the present appeal are as follows:

2.1 According to the prosecution on 21st February, 1997 at about 08:00 a.m., PW2-Bharathi-victim, the daughter of PW1 was going along with PW7-Kalavathi and PW-9-Sharada to the College at Srinivasapur from Kallur village. They boarded the bus from Kallur village to Srinivasapur. When they got down at Srinivasapur bus stand at about 08:00 a.m., they saw a car parked. The original accused No.1-Reddappa, who is known to PW2 and who was also from the same village, came out from the said car, allegedly gagged her mouth and forcibly took PW2 in the car to a place called Navadi Village in Hosur Taluk, Tamil Nadu. She was kept in the house of accused Nos. 6 and 7. It is the prosecution's case that the PW7 and PW9, who had seen the incident, went to the house of PW1 (Smt. Chowdamma), the mother of the victim, and informed her that accused No.1 and others have kidnapped the PW2. PW1 went to Srinivasapur Police Station wherein the statement of PW1 was recorded at 10:15 a.m. and Crime No. 42 of 1997 came to be registered for the offence punishable under Section 363 of the IPC. In a search operation, the police party went to the house of accused Nos. 6 and 7. They found victim-PW2 and accused Nos. 1 to 3 in the said house. The police arrested accused

Nos. 1 to 3 and brought the victim to the police station and produced them before the PW-15, G.N. Narayanappa, the Investigating Officer (I.O.). Accused Nos. 4 to 7 were not arrested.

2.2 Since the original accused No.1 was absconding, the trial was conducted against the six other accused.

2.3 Upon the conclusion of the trial, the learned trial Judge convicted the appellants for the offence punishable under Section 366 IPC and sentenced them to undergo rigorous imprisonment for five years.

2.4 Being aggrieved thereby, the appellants preferred an appeal before the High Court.

2.5 Learned single Judge of the High Court found that the Trial Court had erred in convicting the appellants under Section 366 of the IPC, inasmuch as there was no demand for ransom.

2.6 However, the High Court has set aside the conviction of the appellants for the offence punishable under Section 366 IPC and convicted the appellants punishable for an offence under Section 363 IPC and sentenced them to suffer Rigorous Imprisonment for one year with fine of Rs. 5000/- each. In default to pay fine, they have to undergo simple imprisonment for 3 months each. It was also directed that out of the fine amount of Rs. 20,000/-, Rs. 15,000/- to be paid to

the PW2 and Rs.5,000/- fine in the State account.

3. We have heard Mr. Mr. Shekhar G. Devasa, learned senior counsel appearing for the appellants as well as Mr. Avishkar Singhvi, learned Additional Advocate General appearing for the respondent-State of Karnataka.

4. Mr. Devasa submits that learned Trial Court has grossly erred in convicting the appellants. He submits that an offence under Section 366 IPC was not made out, inasmuch as the victim herself has admitted in her evidence that she was 19 years old at time of incident. He, therefore, submits that the impugned judgment and order is liable to be quashed and set aside.

5. Mr. Singhvi, on the contrary, submits that the High Court has already taken a liberal view and has reduced the sentence from 5 years to 1 year and as such, no interference is warranted.

6. In the present appeal, accused Nos. 6 and 7 in whose house the victim was allegedly taken, have been acquitted by the Trial Court. Insofar as the main accused Reddappa is concerned, he, in a subsequent separate trial, has also been acquitted.

7. The case basically rests on the evidence of PW-1, mother of the victim, PW-2 victim and PW-15, the I.O., inasmuch as the other two witnesses, who were alleged to have accompanied the victim, have

turned hostile.

8. It will be relevant to refer to Sections 361 and 363 IPC, which are reproduced as under:

“361. Kidnapping from lawful guardianship;- Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.— The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception:- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

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.”

9. It can thus be seen that an offence punishable under Section 361 IPC would be made out only when a person takes or entices any minor under the age of 16 years, if he is a male or under 18 years, if female. Section 361 IPC, defines kidnapping from lawful guardianship and Section 363 IPC provides a sentence for the offence of kidnapping a person from lawful guardianship.

10. The evidence of the prosecution itself would reveal that she was

aged 19 years at the time of her alleged abduction.

11. If the victim was above 18 years at the time of the alleged offence, the provision of Sections 361 and 363 IPC could not have been invoked.

12. This Court in the case of ***Sannaia Subba Rao and Ors. v. State of Andhra Pradesh***¹ has observed thus:

“50. The ingredients of Section 363 IPC involve an act of kidnapping of any person from the lawful guardianship. Kidnapping from the lawful guardianship is defined under Section 361 IPC, where it is stated that whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, a case of kidnapping is made out.”

13. As such, on this short ground alone, the appeal deserves to be allowed.

14. However, another aspect that the trial court and the High Court have failed to consider is that the incident is alleged to have occurred on 21st February, 1997, while the trial took place in the year 2005, approximately eight years after the date of incident. From the deposition of the prosecutrix/PW2, it is revealed that she only knew Reddappa, who was from her village. She also admitted that she did not know the other co-accused persons.

15. Furthermore, no identification parade has been conducted in the present matter. While identification by a witness in a given case for the first time in witness box would be permissible, the substantial gap of approximately eight years raises serious concern regarding identification. If no identification parade of the unknown accused persons took place, their identification in the Trial Court, for the first time, would cast a serious doubt on the veracity of the prosecution's case.

16. In that view of the matter, the appeal is allowed. The impugned judgment and order dated 14th December, 2011 passed by the High court of Karnataka at Bangalore is quashed and set aside.

17. Since the appellants are already on bail, the bail bonds of the appellants stand discharged, if not required in any other case.

18. Pending application(s), if any, shall stand disposed of.

.....**J.**
[B.R. GAVAI]

.....**J.**
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
09 JANUARY, 2025

ITEM NO.106

COURT NO.2

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 176/2014

VENKATESHA & ORS.

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

Date : 09-01-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s)

Mr. Shekhar G. Devasa, Sr. Adv.

Mr. Manish Tiwari, Adv.

Mr. Thashmishtha Mothanna, Adv.

Mrs. Sudha Gupta, AOR

For Respondent(s)

Mr. Avishkar Singhvi, A.A.G.

Mr. V. N. Raghupathy, AOR

Mr. Vivek Kumar Singh, Adv.

Mr. Naved Ahmed, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is allowed in terms of the signed non-reportable judgment.

2. Pending application(s), if any, stand(s) disposed of.

(DEEPAK SINGH)

ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)

COURT MASTER (NSH)

[Signed non-reportable judgment is placed on the file]