2025 INSC 185

Non-reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 294/2015

AKULA RAGHURAM **…Appellant**

VERSUS

THE STATE OF ANDHRA PRADESH **…Respondent**

J U D G M E N T

K. VINOD CHANDRAN, J.

The appeal arises from the order of the Revisional Court which confirmed the conviction and sentence of the accused/appellant under Section 366-A of the Indian Penal Code, 1860[1] as handed over by the Trial Court and confirmed by the Appellate Court.

1 "IPC"

2. Mr. Abhijit Basu, learned Senior Counsel appearing for the appellant pointed out that the conviction under Section 366-A is totally misconceived since none of the ingredients under the provision are attracted in the above case. The allegation is one that the appellant having taken away the victim with an intention of marrying her. There is absolutely no allegation of any sexual advance having been made against the victim by the accused or any third party. The fact remains that victim who was a major, had roamed around for about two months and returned home to raise the allegation against the appellant. There are gross inconsistencies in the evidence of the victim and her parents as to the cause leading to the alleged abduction; which makes the story completely unbelievable. Neither has the appellant induced the victim nor was there any likelihood of she being forced or seduced to illicit intercourse with any other person. The victim was not proved to be a minor girl and the courts below have erred aggregately in convicting the appellant. Ms. Prerna Singh, learned standing counsel appearing for the respondent-State, vigorously, opposed the contention raised by the learned counsel for the

appellant. The expert evidence proved beyond doubt that the girl was a minor and there is no question of consent arises. The fact that the accused had taken her from the lawful custody of her parents was proved beyond doubt. The desire of a marriage with the victim, as entertained by the accused brings in a likelihood of sexual intercourse which in the context of the age of the victim attracts the offence. The Courts below have convicted the accused on valid evidence.

3. We have given anxious consideration to the evidence recorded, especially since it has been found to be proved beyond reasonable doubt that the accused has committed the offence charged. We have to immediately notice that there is absolutely no allegation of any sexual act having been committed against the victim nor even a sexual advance made. The victim also does not speak of any apprehension of a likelihood of an illicit intercourse being thrust upon her by either the appellant or any other person.

4. In the trial, eleven witnesses were examined as PWs 1 to 11 and the nine exhibits marked included the portions of the statements made under Sections 161 and 164 of

the Code of Criminal Procedure, 1973[2]. The material object, namely; the white coloured tracks jeep was also produced before the Court.

5. On the allegations, suffice it to notice that the appellant is said to have forced the victim into a jeep on 03.05.2001, after having developed a friendly relationship with the family of the victim and taken her to three different locations inside the State. The abduction was alleged to be since that appellant had a desire to marry the victim. At the last location, the victim escaped and came back to her father after which the First Information Report[3] was registered on information given by the victim to the police; when the father took her to the police station.

6. PWs 1 and 2 are the parents and PW 7 is the victim, the alleged minor child. PWs 1, 2 and 7 spoke of a close relationship with the appellant; whose marriage they had attended and PW 8 deposed that she along with her brother had visited the accused and his family and stayed at their residence with the consent of her parents. Strangely, the

2"Cr.P.C."
3 "F.I.R."

allegation levelled was there before the marriage of the appellant, he had sought the hand of PW 7; which was denied by her family. We cannot but notice that as per the evidence, the friendly relationship between the families continued even after the marriage and the allegation is that despite the appellant being married, he took away the victim, PW 7, with a desire to get married with her. The story spoken out by the witnesses smacks of disbelief.

7. PW 3 is an eye-witness who is said to have seen the abduction or rather, the victim being taken away in the jeep. PW 3 is an acquaintance of the family of the victim and he is a resident of a place which the victim is allowed to have been kidnapped. This version is that on 03.05.2001 when he was sitting in front of his house, he saw the victim passing-by with a basket of bananas. Fifteen minutes later, he saw passed a white coloured trax jeep moving in the direction in which the victim had gone and one and a half an hour later saw her going in the opposite direction, sitting inside the jeep. He also deposed that apart from the victim, the jeep only had the driver inside it. PW 3 did not identify the appellant and

strangely enough, he was not asked even to identify the jeep which was seized and produced before the Court as M.O.1. In this context, it has to be stated that PW 3 did not speak of the registration number of the jeep nor was the registration certificate of the jeep produced or even the seizure mahazar proved before the Court.

8. PW 6 and 8 turned hostile. Of these, PW 8 was a tractor mechanic and he deposed that he had a shop at Mandanapalle town. Previously, he was examined to prove the seizure of the vehicle but even after he was declared hostile. No question was specifically put to him as to the seizure Mahazar and he denied since only exhibit P-6 portion of his 161 Cr.P.C. statement was confirmed by him. Exhibit P-6 statement made by PW 8 was confirmed by the Investigating Officer[4] however, the seizure was carried out under exhibit P-9 as spoken out by the I.O. was never confirmed to PW 8. The jeep was said to be produced before the Court by the owner; whose identify is not proved and hence, there is absolutely no way to connect the appellant/accused with the jeep and the identify of

4 “I.O.”

the driver of the jeep having not been established who is said to have abducted the victim.

9. PW 7 has been examined whose evidence is crucial insofar as the victims testimony having established specially status in law, especially when it has a ring of truth. PW 7 after speaking of the earlier relationship of the two families, deposed that she went to Ramanaiahgaripalle to sell bananas and after selling the same, she was returning at about 11:00 A.M. the accused came there in a jeep and asked her to board it. The accused coaxed her and then pulled her into the jeep forcibly and when the victim questioned him, he threatened her with death. She was taken to Madanapalle in the jeep where she left on the road while parking the jeep in a mechanic shed . Here, we pause to observe that neither was the location of the abduction visited and the details used in the seizure mahazar prepared of the shed from which the vehicle was seized. We say this specifically since the abduction presumably took place from a public road and the victim herself claims that she was left on the road, while the accused parked the jeep; when she did not attempt to run away.

10. Be that as it may, PW 7 continues to say that she was taken to RTC bus stand by the appellant from where they boarded in a bus to Bangalore. It was at this point that again she questioned the appellant of his intentions when he disclosed his desire to marry her. Strangely enough, even as per PW 7, she only resisted the proposal by reason of her desire to continue her studies. Obviously, from the earlier part of PW 7's deposition, she was aware that the appellant was married, and she did not object to the proposal of that count which seriously puts to peril her version especially the factum of the appellant having forced her to proceed with him. PW 7 concludes by saying that she escaped from the clutches of the appellant at Vijayawada and returned to her home on 09.07.2001 where her father first took her to the police station who later sent her to the doctor for examination and the Magistrate who recorded exhibit P-5 statement under Section 162of the Cr.P.C. She reiterated that the accused threatened to kill her, kept her from communicating with any other person, confined her in his presence and projected intention was also a marriage with the victim.

11. Strangely, in the cross-examination, PW 7 turned turtle and stated that earlier to the alleged incident, she did not talk to the accused and she did not had any previous acquaintance with the accused. On a specific question asked with regard to her stay in the house of the accused, her answer was also that she does not remember the exact date. She admitted that when she was travelling with the accused, she did not at any time created a hue and cry so as to escape from the accused. She also did not specify the places where she was confined at Bangalore, Vizag and Vijayawada. Her version about her escape was also that she came in a train, the details which she was unaware of, by taking to the Ticket Collector without taking a ticket and reached her home on 09.07.2001. She does not speak about the station at which she had de-boarded the train but claimed that she travelled her village from Tirupati in a bus. In exhibit P-5 statement before the Magistrate, the victim had clearly stated that she was not examined by the police before which statement under Section 162 of the Cr.P.C. was marked as exhibit 5. We cannot find that the testimony of the witness does not have a ring of truth, and we find clear consent

when she travelled with the accused. The police have also not done anything to establish the exact date of marriage of the accused and though, his wife was examined as PW 6. Her statement was only that she married the accused about one and half years back. She specifically denied having visited the house of the victim and that she knew nothing about the case. She denied her statements in exhibit P-4.

12. We cannot ignore that fact that even if there is a consent, the accused cannot be absolved of a criminal liability if the child is a minor. No certificate to prove the date of birth of the victim is produced before the Court nor has the parents, who were examined as PWs 1 and 2 asked any question about the age of the child. PW 7 deposed before the Court that her date of birth is 04.03.1984 and that she was studying in intermediate in 2000-2001 which makes her age to be 17 years as on the date of the alleged abduction *i.e.* 03.05.2001; while a specific provision under Section, 366A makes penal the inducement of a minor girl under the age of 18 years.

13. In this context, we have to examine Annexure A-9- evidence of the Medical Officer who claimed that the age of the victim was between 16 to 17 years. The doctor specifically said that he referred PW 7 to a Radiologist and based on the report, he issued certificate at exhibit P-7 certifying her age to be between 16 to 17 years. Even in the case of ossification test, it was trite that there could be a difference of two years, either way and in that circumstance, the age determination by the doctor as between 16 to 17 years does not conclusively establish that the victim was a minor child at the time of the alleged abduction. We cannot also but notice that the Radiologist was neither examined nor was the his report marked in evidence. This seriously puts to peril the prosecution case that the victim was a minor.

14. In the totality of the circumstances, we find absolutely no reason to affirm the conviction of the appellant and we acquit him of the charges. Bail bonds, if any executed, shall stand cancelled.

15. Accordingly, the Appeal stands allowed as above. Parties to bear their own costs.

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

....., J.
[B.R. GAVAI]

.....,J.
[K. VINOD CHANDRAN]

NEW DELHI;
FEBRUARY 11, 2025.