

Rudresh Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Dec-14-2021

Judge : K.Somashekar

Appeal No. : CRL.A 696/2011

Appellant : Rudresh

Respondent : The State Of Karnataka

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF DECEMBER, 2021 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL APPEAL No.696 OF 2011 BETWEEN: Rudresh S/o Jayappa Age 25 years Auto driver R/o Kaduru Village Holalkere Taluk Chitradurga District. ...Appellant (By Sri. S.B. Pavin - Advocate) AND:

1. The State of Karnataka By Chikkajajur Police Holalkere Circle Chitradurga District.

2. Kumari. Mamatha D/o. Veerappa Age:

16. years R/o Kaduru Village Holalkere Taluk Chitradurga District. ...Respondents (By Sri.Rahul Rai .K - HCGP) 2 This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the conviction and sentence dated 30.06.2011 in S.C.No.23/2011 passed by the

Addl. Sessions Judge (Fast Track Court), Chitradurga and acquit him of all the charges. This criminal appeal coming on for dictating judgment this day, the court delivered the following:

JUDGMENT

This appeal is directed against the judgment of conviction and order of sentence rendered by the Court of the Addl. Sessions Judge (Fast Track Court), Chitradurga in S.C.No.23/2011 dated 30.06.2011, convicting the accused for offences punishable under Sections 366A and 376 of the IPC, 1860 and sentencing him to undergo simple imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment of another six months in respect of each of the offences punishable under Sections 366-A and 376 IPC, with a further direction that both sentences shall run concurrently. This appeal is filed seeking for consideration of the 3 grounds urged in this appeal and consequently to set aside the judgment of conviction and order of sentence rendered by the Trial Court and consequently to acquit the accused for offences punishable under Sections 366A and 376 of the IPC, 1860.

2. Heard the learned counsel Shri S.B. Pavin for the appellant and the learned HCGP for the State who are present before court physically. Perused the judgment of conviction and order of sentence rendered by the Trial Court in S.C.No.23/2011 dated 30.06.2011 and perused the evidence of PW-1 to PW-20 and so also several documents at Exhibits P1 to P11 and MO-1 to MO-4.

3. Factual matrix of this appeal is as under: It transpires from the case of the prosecution that on 19.02.2010 at around 9.00 a.m., the accused is said to have induced the complainant / victim who used to come to Shri Siddarameshwara High School situated at 4 Chikkajajuru in the limits of Chitradurga District. He is said to have induced the victim in front of the auto stand situated at Chikkajajuru and forcibly he had taken the victim girl to Bangalore by assuring her that he would look after her well. Saying so, he had taken her to Bengaluru by intercity train. Subsequent to reaching Bangalore, they had stayed in Krishna Reddy Building situated at Thirupalya, Bangalore in Room No.20 belonging to his friend, in between 19.02.2010 to 26.02.2010. It is further alleged that during the stay in the

room of his friend, that he had committed sexual intercourse on the victim girl. In pursuance of the act of the accused, on filing of a complaint by the complainant, criminal law was set into motion by registering the case by recording an FIR as per Exhibit P5 for offences reflected in the First Information Report and the report has been recorded based upon the complaint filed by PW-4 who is the victim. 5

4. Subsequent to registration of the crime, the I.O. has taken up the case for investigation and investigated the case thoroughly and during investigation, the I.O. has recorded the statements of witnesses and so also drew the spot mahazar at Exhibit P3 which bears the signatures of PW-5, PW-6 and PW-20 and also drew the seizure mahazar at Exhibit P7 which bears the signatures of PW-12 and PW-14. Another spot mahazar at Exhibit P8 has been drawn by the I.O. which bears the signature of PW-13 at Exhibit P8(a). In addition to these mahazars, the statements of witnesses were recorded by the I.O. inclusive of securing the Medical Certificate at Exhibit P10 issued by PW-18 and so also the medical report of the accused issued by PW-11 as per Exhibit P6, and thereafter the I.O. laid the charge- sheet against the accused before the court having jurisdiction. Subsequent to laying of charge-sheet by the I.O. against the accused, the case was committed by the Committal Court by passing an order as under 6 Section 209 of the Cr.P.C. whereby the accused was to face trial before the Sessions Court in S.C.No.23/2011.

5. Charges were framed against the accused, whereby the accused declined the charges but claimed to be tried for the offences. Accordingly, it was recorded. Subsequent to framing of the charges against the accused, the prosecution let in evidence by subjecting to examination PW-1 to PW-20 and got marked several documents at Exhibits P1 to P11 and so also got marked MO-1 to MO-4. Subsequent to closure of the evidence of the prosecution, the accused was subjected to examination as required under Section 313 Cr.P.C. to enable the incriminating statements appearing against him. But accused denied the truth of the prosecution evidence adduced so far. Subsequently, the accused was called upon to adduce defence evidence if any, as contemplated under Section 233 Cr.P.C. But he did not let in any defence evidence. Subsequent to 7 closure of the evidence on the part of the prosecution, the Trial court had heard the arguments

advanced by the prosecution and so also the defence counsel. Upon hearing the arguments and being convinced with the evidence, the Sessions Court convicted the accused for offences under Sections 366-A and 376 of the IPC, 1860 and sentenced him to undergo imprisonment as aforesaid. It is this judgment which is under challenge in this appeal by urging various grounds.

6. Learned counsel for the appellant has taken me through the evidence of PW-1 in respect of Exhibit P1 of the Birth Certificate relating to PW-4 / victim girl. PW-20 / Nataraj had subscribed his signature at Exhibit P1 Birth Certificate issued relating to the victim girl. But PW-1 who is the Headmaster, has not produced the original School Admission Register so as to prove that Exhibit P1 / Birth Certificate of the victim girl PW-4 is the correct one. But based upon certain 8 materials maintained in the school where the victim was studying and upon that information, PW-1 had issued the Birth Certificate at Exhibit P1. Non-production of school admission register maintained by the school authorities creates some serious doubt of the theory put forth by the prosecution relating to the correctness of the contents of Exhibit P1 of the Birth Certificate, which was obtained after registration of the case and the criminal law was set into motion based upon the complaint at Exhibit P2. But it is at the instance of the Chikkajajur Police that Exhibit P1 of the Birth Certificate relating to the victim girl had been issued by the Headmaster / PW-1, which creates serious doubt relating to the date of birth of the victim. This serious doubt about the contents of Exhibit P1 of the Birth Certificate of PW-4 / victim girl was not properly appreciated by the Trial Court but had arrived at a conclusion that the prosecution has proved the guilt of the accused merely by giving more credentiality to the 9 contents of Exhibit P1 of the Birth Certificate of the victim girl. Therefore, in this appeal, it requires for intervention and it requires for re-appreciation of the evidence of PW-4 who is the victim girl as narrated in her complaint at Exhibit P2.

7. It is further contended that the victim girl was well acquainted with the accused and she is the fourth daughter of her parents. Her parents were running a hotel and more so, the accused was by avocation an autorickshaw driver and apart from the said avocation, was also an agriculturist. That PW-4 / victim girl used to proceed in an autorickshaw to her school situated in the limits of Chikkajajur,

namely Sri Siddarameshwara High School. By procuring the minor girl by inducing her, the accused is alleged to have committed offences as narrated in her complaint, which creates some doubt. 10

8. The second limb of arguments advanced by the learned counsel for the appellant is that on going through the evidence of PW-1 who is the author in respect of Exhibit P1 of the birth certificate but he did not specifically state in his evidence and there is no material to that effect and even there is no particulars regarding issuance of birth certificate at Exhibit P1 relating to the victim girl who was a minor as on the date of the incident narrated in her complaint at Exhibit P2. This is a glaring contradiction on the part of the prosecution in spite of the contents at Exhibit P1 of the School Certificate in respect of the Date of Birth of the victim as per Section 35 of the Indian Evidence Act, which is relevant for determination of the age of the complainant that she was a minor as on the date of the incident. But this aspect has not been established by the prosecution to prove the guilt of the accused even though it is alleged that he had abducted the victim girl who was a minor as on the date of the incident. 11 Therefore, it requires for reconsideration of the evidence of PW-4 / complainant who filed the complaint as per Exhibit P2.

9. The incident narrated in her complaint saying that she was a minor who was a school-going student studying SSLC at Sri Siddarameshwara High School situated at Chikkajajur, Chitradurga District and accused had seduced her to have an illicit intercourse by abducting the victim girl and taking her to Bangalore by intercity train which runs between Chikkajajur and Bangalore, is not natural and not a believable incident even though it has been narrated by her by filing a complaint at Exhibit P2. But the Trial Court has given more credence to the evidence of PW-4 and so also the evidence of PW-1 in respect of Exhibit P1 / Birth Certificate.

10. The last limb of arguments advanced to attract the ingredients of Sections 366A & 376 of the IPC, 1860, 12 which are graver offences of IPC but the prosecution has not facilitated clinching evidence to establish that the accused had enticed the victim girl and taken her along with him to Bangalore and committed sexual intercourse on the victim girl who is alleged to be a minor. But it is a mere theory set up by filing a complaint at Exhibit P2 and a further theory set up by the

prosecution in order to implicate the accused in the alleged incident and there is no reliable evidence to convict the accused on the ground that the accused had induced the victim girl and had sexual intercourse with her, as narrated in her complaint at Exhibit P2. But the entire approach made by the Trial Court to arrive at a conviction of the accused for offences under Sections 366A and 376 of the IPC, is wholly an erroneous conclusion, which amounts to miscarriage of justice. More so, the accused has a family consisting of his parents and wife and children. But the Trial Court did not appreciate the evidence on record in a proper perspective and more so, the prosecution did not establish the guilt against the accused relating to inducement and force and threatening made by accused to PW-4 / victim girl. Though the entire evidence facilitated by the prosecution is to be accepted for the sake of argument, the circumstance that PW-4 / victim girl had voluntarily accompanied the accused to Bangalore, cannot be ruled out. But entire theory has been set up by her father who instigated the complaint to be filed by PW-4 / victim and lugged the accused in the alleged offences. Therefore, this appeal challenging the judgment of conviction and order of sentence requires consideration by re-appreciation of evidence and consequently the judgment of conviction and order of sentence rendered by the Trial Court in S.C.No.23/2011 dated 30.06.2011 requires to be set aside and consequent upon setting aside the judgment of conviction and order of sentence, the appellant / 14 accused ought to be acquitted of the offences under Sections 366A and 376 of the IPC, 1860.

11. Learned HCGP for State who has countered to the arguments advanced by learned counsel for the appellant by referring the evidence of PW.1 who issued the birth certificate at Ex.P1 and so also, the evidence of PW.4 relating to Ex.P2 - complaint and narration of the incident and so also, the fulcrum of Ex.P3 - spot mahazar and another spot mahazar at Ex.P8 inclusive of seizure mahazar at Ex.P7 and so also, medical certificate of accused at Ex.P6 and Ex.P10 of PW.4/victim, the medical certificate given by PW.18. But the prosecution has proved the guilt of the accused beyond all reasonable doubt by adducing worthwhile evidence. But PW.4 - victim girl who has given the complaint at Ex.P2 and based upon her complaint criminal law was set into motion by recording FIR at Ex.P5 and subsequently, the aforesaid mahazar has been drawn by PW.20 - Nataraj who is the investigating officer and so also, secured the FSL report at

Ex.P11 and also having seized MOs.1 to 4. But PW.8 - Veerappa who is no other than the father of victim PW.4 have been subjected to examine as his daughter did not returned from school on the aforesaid date of incident narrated in the complaint at Ex.P2 and also stated in FIR at Ex.P5. Then he had filed a complaint before the Chikkajajur police station and based upon the complaint criminal law was set into motion. He has stated in his evidence that the accused by avocation as an autodriver was present in the auto stand at Chikkajajuru which was intimated by PW.5 and then he has filed complaint in respect of abduction of his daughter by the accused. PW.9 - Rudramma who was also subjected to examination on the part of prosecution is none other than the mother of the victim and she has also stated in her evidence relating to making some enquiry with the friends of her daughter PW.4 as she 16 did not returned to the house from Siddarameshwara High School at Chikkajajuru. She has also made some enquiry about her daughter with her aunt. But her uncle informed him in respect of not returning of victim PW.4. Therefore, her husband PW.8 -Veerappa had filed a complaint before the Chikkajajuru Police Station. She has stated in her evidence that accused has informed to one Tippeshi who is none other than the sisters husband who was residing at Hebbagodu in Bangalore and she made some enquiry with her daughter and learnt about the accused taking her daughter who is the victim as well as residing together in Bangalore for about five days. The accused alleged to have abducted their daughter PW.4. Therefore, the evidence of PWs.4, 8 and 9 being the victim and her parents on the part of the prosecution have stated unequivocally and their evidence has been given credentiality on the part of the prosecution wherein PW.4 being the minor girl was abducted by the accused 17 who induced her to go from one place to another place and also made the victim girl to stay in the room of his friend in Krishna Reddy Building. These are all the evidence which finds place on the part of the prosecution. Even taking into consideration the evidence tendered by the Doctor even after examination of PW.4 who is a victim, the Doctor had given opinion stating that recently there might not be sexual intercourse with the complainant but on clinical examination her hymen found ruptured, but it can be caused due to sports activities and so also, by other circumstances and also in natural intercourse also. But this suggestion made even during the course of evidence relating to the Doctor who issued the medical

certificate at Ex.P10 and so also medical certificate of accused at Ex.P6 which bears the signatures of PW.11 and 18 respectively. But the suggestion made to this aspect to the Doctor is not a material and not relevant also. This medical evidence has been considered by the trial Court 18 in addition to the evidence of PWs.4, 8 and 9. But their evidence are more important on the part of the prosecution and more importantly the evidence of one witness namely Shivakumar who is examined as PW.15 who is the friend of accused and he has identified the accused. But he has not identified victim - PW.4 but he has turned hostile. He has turned hostile since he is the friend of accused and mere because turned as hostile it cannot come in the way of consideration of other witnesses on the part of the prosecution as where the accused who abducted the victim girl and more so, the fulcrum of Ex.P8 of the spot mahazar and also fulcrum of Ex.P3 of another spot mahazar inclusive of seizure mahazar at Ex.P7 and so also during the investigation the investigating officer collected MOs.1 to 4 of the material objects of victim - PW.4. But Ex.P8 has been drawn by the investigating officer during the course of investigation. But PW.20 who is an investigating officer has stated in his evidence that the Assistant Sub- 19 Inspector of Police in Chikkajajuru police station has drawn the panchanama at Bangalore in the presence of panch witnesses. Mere non-citing the said person as a witness it does not come in the way of prosecution to prove the fulcrum of spot mahazar which drawn by the ASI who had been to Bangalore and also drawn the spot mahazar in the presence of panch witnesses namely PW.13 - Hanumanthappa which marked at Ex.P8. Therefore, taking into consideration the evidence of PW.4 - victim and the circumstances in respect of some sort of illicit intercourse with her by the accused though there is no direct evidence on the part of prosecution and moreover, the defence taken by the accused is that the parents of victim i.e. PWs.8 and 9 used to take loan from the accused and returning the same that there was some sort of difference arose in between the parents of victim girl and accused. This aspect is admitted by PW.4 in her evidence. But taking advantage that the parents of the victim PWs.8 and 9 used to take loan from the 20 accused, but it cannot come in the way to prove the guilt of the accused as where the accused had illicit intercourse with the minor girl - PW.4 who had been subjected to physical contact with the accused even after tying mangala sutra at Shaneshwara Temple situated

in Electronic City, Bangalore. However, the trial Court had given more credentiality and also appreciated the evidence of PWs.4, 8 and 9 and they have stated in their evidence in respect of the contents at Ex.P2 and also produced cogent evidence in order to prove the guilt of the accused. Therefore, the trial Court had rightly come to the conclusion that the prosecution has proved the guilt of the accused. Therefore, under this appeal it cannot arise for intervention of this Court as there are no circumstances warranting for intervention by consideration of the grounds as urged in this appeal. Consequently, seeking for dismissal of this appeal being devoid of merits. 21

12. It is in this context of the contention as taken by learned counsel for the appellant and so also, counter made by learned HCGP for State even for giving more credentiality to PWs.8 and 9 who are the parents of victim - PW.4 who is a minor. But Ex.P1 is the birth certificate of victim PW.4 made by the parents that PW.1 - Shanmukhaiah who was working as Head master in Siddrameshwara High school at Chikkajajuru had issued birth certificate at Ex.P1 based upon the materials relating to her admission No.121/2007-08 that Mamatha.E being the daughter of Veerappa and her date of birth is 01.02.1995. This birth certificate of the victim at Ex.P1 is issued by PW.1. But during his evidence he did not produce the birth register maintained by the school and also in respect of particulars given by the father of PW.1 during her admission. 22

13. PW.2 - Swaroopa being the woman police constable on a direction issued by the PSI, Chikkajajur Police Station on 27.02.2010 had took the victim girl to the Government Hospital at Chitradurga for having subjected to examination and accordingly, the victim had undergone medical test and collected the cloths and other articles from the Doctor which are marked at M.Os.1 to 4 and the same has been produced before the PSI of Chikkajajur Police Station. Subsequently, she has given the statement before the investigating officer. But in her statement she has not specifically stated that M.O.1 to 4 have been produced before the PSI. She took the victim girl to the District Hospital, Chitradurga at around 12.00 p.m. and she reached to the said hospital at around 1.30 or 2.00 p.m.

14. PW.3 - Jayaprakash is the police constable who was deputed for searching of missing girl. According to the information secured by him on 23 27.02.2010 at around 8.30 a.m. in KSRTC bus stand, Chitraduraga he saw the missing victim girl along with one boy and on enquiry he told his name as Rudresha, S/o Jayappa. He brought them to Chikkajajur Police station and produced them before the PSI. This witness was also subjected to cross-examination on the part of the defence side. This police constable who secured the victim girl along with the person who is arraigned as accused that he alleged to have abducted the victim girl and made them to produce before the PSI of Chikkajajur police station.

15. PW.4 - Mamatha, D/o Veerappa being a student wherein she has stated in her evidence that for about 1 year back, the auto belonging to the accused had been boarded from Kadur to Chikkajajur at around 8.00 a.m. and reached Chikkajajur at around 8.30 a.m. Both the victim and accused boarded the intercity train and reached Bangalore at around 2.30. p.m. and they 24 had been to the house of Kumara who is the friend of accused and they were staying there since 19.2.2010 to 26.02.2010. Herself and accused were staying there and accused had some physical contact. But on 26.02.2010 during night hours accused said to go to Chitradurga and accordingly, they came to Chitradurga from Bangalore in a Bus. In the bus stand police personnel of Chikkajajur Police Station were there and made some enquiry to ascertain their particulars. But while when she was with the accused in Bangalore in the house of one Kumara who is the friend of accused and accused took her to Shaneshwara Temple situated at Electronic City and tied mangala sutra to her and after that returned to the house of his friend. But while she was present in Government Hospital at Chitradurga that her parents had come there and took her to their house. But she did not give any complaint about the incident to the police. But she got marked complaint at Ex.P2 and also subscribed her signature at Ex.P2(a). 25 She has been subjected to incisive cross-examination by the defence, but she has specifically stated in her evidence during the course of cross-examination though the accused took her to Bangalore but her parents did not even perturbed that the victim had accompanied accused to Bangalore. Even the parents and also sisters were having mobile phone but she did not telephoned or messaged through the mobile phone relating to the incident even she has narrated in her complaint. This witness has been thoroughly

subjected to cross- examination by the defence counsel, but she did not given any sort of information to the trustee members of Shaneshwara Temple even prior to tying mangala sutra by the accused as alleged and she had not given any sort of information to the public who were present in the Shaneshwara Temple and to the priests also. But her grand mother namely Shivarudramma had removed that mangala sutra which was found in her neck. During the course of removing that mangala sutra 26 police were present outside police station and the same has not been given to the Chikkajajuru police, but she has given complaint as per Ex.P2 which was got marked. Based upon her complaint criminal law was set into motion but she do not know the contents made in her complaint at Ex.P2 and even she has not stated where she has subscribed her signature at Ex.P2. Whereas M.Os.1 and 2 i.e. chudidhar bottom and top were collected by the police and thereafter she did not know what had happened to M.Os.1 and 2 and also that her inner garments were not collected by the doctor.

16. PW.6 - Virupakshappa was secured by the investigating agency to conduct the mahazar and in his presence Ex.P3- spot mahazar was conducted. He do not know the contents which were got written in the spot mahazar. He did not accompany the police to any place and also to conduct the mahazar at Ex.P3. This witness was treated as hostile and thereafter, he was 27 subjected to cross-examination, but nothing worthwhile has been elicited to prove the contents of Ex.P3 - spot mahazar.

17. PW.7 - Sowmya being a student was a classmate of PW.4 and she was studying with her in Siddarameshwar High School during the incident as narrated. But she also proceeded in Auto Rickshaw along with her friend PW.4 to Chikkajajur. But on the date of incident she has come to Chikkajajur in another Autorickshaw. But she do not know in which Autorickshaw PW.4 had come to Chikkajajuru. She do not know where her friend being victim proceeded and she do not know where the accused took the victim and she has not given any statement before the police about the incident. This witness has been treated as hostile and thereafter, had been subjected to cross-examine by the prosecution, but nothing worthwhile has been 28 elicited even that she has given statement as per Ex.P4 before the investigating agency.

18. PW.8 - Veerappa and PW.9 - Rudramma who are the parents of victim - PW.4 and they had given their evidence on the part of prosecution. But PW.8 in his evidence has stated that he do not know his daughter PW.4 whether she had given complaint to the police relating to the incident.

19. PW.9 - Rudramma has stated in her evidence that she made some enquiry with her daughter PW.4 and she has stated that they were staying in a room at Bengaluru for five days and she did not make some enquiry specifically to her daughter relating to what had happened in five days in the room where she was residing with the accused in Bangalore. She do not know for what reason the accused had took her daughter to Bangalore. PWs.8 and 9 had given the 29 evidence on the part of the prosecution and they are material witnesses and so also, parents of PW.4 victim and whereby their daughter was missing and due to missing of their daughter on 27.02.2010 criminal law was set into motion by recording the FIR and thereafter, PW.20 being the investigating officer took up the case for investigation and investigation has been done thoroughly and charge sheet came to be laid against the accused.

20. PWs.11 and 18 have been subjected to examination and they had issued the medical certificates as per Ex.P6 and P10. PW.18 - Ravikumar being the Doctor who subjected to examine the victim girl on 27.02.2010 brought by woman police constable No.1312 and the victim was produced before him at around 3.00 p.m. and no injuries were found on her person and accordingly, subjected to examine the victim girl and issued the medical certificate as per Ex.P10 and 30 also have collected MOs.1 to 4 and gave the same to police for further chemical analysis.

21. PW.20 being the investigating officer who has done investigation thoroughly and laid the charge sheet against the accused. But on 28.02.2010, he visited the scene of crime and the same was shown by PW.4 - complainant and in her presence and also in the presence of panch witnesses, he drew the spot mahazar as per Ex.P3. Subsequently, he had deputed ASI and one PC1254 and also victim had been accompanied with her parents to Bangalore with them and accordingly, drew the mahazar. But on 01.03.2010 he recorded the statement of PW.7 - Sowmya as per Ex.P4. The ASI drew the mahazar on 3.3.2010 in the presence of

victim - PW.4 and also in the presence of panch witnesses. On 29.04.2010 he secured the RFSL report from Davanagere as per Ex.P11 and even secured final report from the Doctor and laid the charge sheet against 31 the accused before the committal court. But during the course of investigation even though he is acquainted with the contents of Ex.P2 and this complaint was made by victim and even made some investigation where the accused alleged to have tied mangala sutra to her neck, but he did not make any investigation to that effect specifically. But he made some enquiry and also verified school records relating to the victim in between 19.02.2010 and 26.02.2010 as wherein she was not attending the school but he could not secure any documents from the school relating to the victim. He completed investigation and laid the charge sheet against the accused to suit the purpose even though there was some differences in between the parents of the victim and the accused as wherein her parents did not return certain amount which was secured and there was some difference arose in between them and some ill-will developed. For that reason only the accused has been roped in the alleged incident as contended by the 32 appellant counsel. These are all the evidence let in by the prosecution to prove the guilt of accused. But PW.7 - Sowmya who is no other than the classmate of victim PW.4 and she did not withstood her statement at Ex.P4 given by her before PW.20 and she do not know specifically as to what had happened to her friend - PW4/victim girl and also in between the victim and the accused. Though this PW.7 has been subjected to cross-examination thoroughly but nothing worthwhile has been elicited. Though this witness even though has been subjected to examine as relating to the acquaintance of the victim girl who is her classmate and also both were students at the same school but PW.4 who is the victim, she has given a complaint as per Ex.P2 and she had accompanied with the accused to Bangalore due to some sort of acquaintance with him and she did not inform to either of her parents or any other person of her native place or even her friends also to the police officials even she had accompanied to the 33 accused to Bangalore. But for the words of the accused she had accompanied the accused to Bangalore. Therefore, it reveals that the accused and victim girl were well acquainted to each other as she was studying in SSLC in Siddarameshwar High School at Chikkajajuru. But the allegation made in her complaint at Ex.P2 that accused made some inducement to have illicit

intercourse and abducted her and taken to Bangalore forcibly, which can not be accepted. PW.8 - Veerappa is the father and PW.9 - Rudramma is the mother of victim girl and they have been subjected to examine relating to missing of their daughter as she did not return from the school as on the date of the incident. They also made some enquiry relating to missing of their daughter and then approached the Chikkajajur Police Station by filing the complaint. But PW.5 - K.C.Veerabhadrapa had intimated that the accused was present in the auto stand at Chikkajajur and because of that information given by PW.5, even 34 PW.8 - Veerappa who filed the complaint in respect of abduction of daughter by the accused as there are some inconsistency and contradiction in their evidence i.e., PW.4, PW.8 and PW.9. But PWs.8 and 9 have not made any enquiry of their daughter about 5 days where their daughter PW.4 was residing with accused at Bangalore and even her parents were reluctant to make some enquiry as well as reporting to the concerned police in respect of commission of offence as alleged in her complaint at Ex.P2. But PWs.8 and 9 have made some efforts to search their missing daughter but she was not found. Therefore, they approached the Chikkajajur police by filing a complaint. It is only a theory put forth by them to initiate the criminal prosecution against the accused.

22. But inducement means to lead into it converts a leading of the woman in some direction in which, she would not otherwise have gone. Though consent of 35 minor girl is immaterial in recent given by the accused to move from place to another is sufficient to constitute inducement. But in the instant case, PW.4 who is the victim girl she had accompanied with the accused to Bangalore and it constitutes the ingredients relating to inducement for the offence under Section 366-A of IPC. After tracing of the accused and victim by the Chikkajajur police who were deputed for searching of missing girl and on ascertaining the particulars of them, then only to take them to police Station and therein PW.4 had given complaint as per Ex.P2 and based upon her complaint, criminal law was set into motion by recording FIR. Though PW.4 - victim who is a minor and regarding her age PW.1 had been subjected to examination and whereby got marked Ex.P1 - birth certificate. But the prosecution requires to establish the guilt against the accused that he had some illicit intercourse with the victim girl as alleged in her complaint at Ex.P2. But she was residing with the 36 accused in between

19.02.2010 and 26.02.2010 at Bangalore in the house of one Kumar. But on 19.02.2010 at around 2.30 p.m. both the accused and victim girl had reached to Bangalore and they had been to the room at Krishna Reddy building and in that room the accused had made some physical contact with the victim who is a minor in terms of illicit intercourse. But PW.4 victim is very much conscious about some sort of physical contact and also accused tying of mangala sutra to her neck in the premises of Shaneshwara Temple situated at Electronic City at Bangalore. But her parents had given evidence that they had four daughters and the victim is the fourth daughter and school going student in Siddrameshwar High School, Chikkajajuru. But the Doctor who subjected to examine victim girl and issued medical report at Ex.P10 which bears signature of PW.18 and even the Doctor who had subjected to examine the victim and he has specifically stated in the opinion that there might not be sexual 37 intercourse with the complainant, but there is a rupture of hymen can be caused due to sports and in other circumstances and also in a natural intercourse also. But this suggestion was not made to complainant in respect of rupture of hymen stating that it was ruptured due to sports or in some other circumstances. Accordingly, the trial Court has observed that the suggestion made to this aspect to the doctor is not material and not relevant also. However, the evidence of PW.4, PW.8 and PW.9 coupled with PW.20 are found to be camouflage and clouds of doubt.

23. The victim was residing in Bangalore from 19.02.2010 to 26.02.2010 it is according to her evidence. But one Hanumanthappa who was residing just abutting to the room of Kumar and he was also residing in Krishna Reddy building and he has identified his signature at Ex.P8 - spot mahazar in respect of mahazar drawn in the room of PW.15 - Shivakumar as 38 the complainant and accused were residing there. According to the evidence of PW.15 he do not know who was residing in the room where the panchanama was drawn by the investigating agency but Ex.P8 - spot mahazar drawn by the ASI but he has not been cited as a witness in the charge sheet laid by the investigating officer. But PW.20 is the investigating officer who laid the charge sheet against the accused. Whereas the ASI who drew the spot mahazar as per Ex.P8 at Bangalore in the presence of panch witnesses. But ASI did not cited in the charge sheet as a witness. However, Ex.P8 is the spot mahazar which drawn by that ASI in the presence of panch

witnesses as where the victim PW.4 and accused were staying in Krishna Reddy building at Bangalore just abutting the room of one PW.15 - Shivakumar and another person namely Hanumanthappa. But in that place only had some sort of physical contact between the complainant and the accused. Therefore, it is a vital material on the part of 39 the prosecution it requires to be established by the prosecution without giving any room of doubt relating to consider the evidence of PW.4 in respect of some sort of illicit intercourse. Though there shall be no direct evidence on the part of the prosecution but at a cursory glance of evidence of PW.4 - victim and her parents PWs.8 and 9 and even on close scrutiny of their evidence and also even taken defence have been subjected to incisive cross-examination that the parents of PW.4 used to take some sort of loan from the accused. This aspect has been admitted by PW.4 in her evidence. Even for that loan transaction between the accused and parents of the victim, there was some exchange of words took in between them. But PW.4 - Victim even though she was a minor as on the date of the incident as according to Ex.P1 - birth certificate issued by PW.1, but the ingredients relating to Section 366-A for inducement and abduction of victim girl for the purpose of having marriage with her who is a minor 40 and even having some illicit intercourse, but at a cursory glance of evidence of PW.4 who filed the complaint at Ex.P2 and even the spot mahazar at Ex.P3 drawn in the presence of panch witness, but PW.7 - Sowmya who had turned around her statement as per Ex.P4 who is the classmate of PW.4. Similarly, seizure mahazar at Ex.P7 drawn in the presence of PWs.12 and 14 who have subscribed their signature and PW.13 - Hanumanthappa who subscribed signature at Ex.P8 - spot mahazar. But PW.15 - Shivakumar who had given a goby to the version of his statement at Ex.P9. All this material evidence is required to be appreciated by the trial Court in a proper perspective manner. But the trial Court has given more credentiality to the evidence of PW.4 and so also, the evidence of PWs.8 and 9. But the fulcrum of Ex.P3 - Spot mahazar and another spot mahazar at Ex.P8 and inclusive of seizure mahazar - Ex.P7 is required to be proved by the prosecution with independent evidence of PW.7 - Sowmya who is the 41 classmate of PW.4 and PW.15 - Shivakumar and that PWs.7 and 15 have been given a goby to the version of statements at Exs.P4 and P9 and their evidence which runs contrary to the evidence of PW.4 and her parents PWs.8 and 9 and further contrary to the

evidence of PW.11 insofar as medical report at Ex.P6 of the accused and the medical certificate of victim PW.4 issued by PW.18 at Ex.P10 and further contradictory to the evidence of PW.20 who laid the charge sheet by completion of investigation done thoroughly by him.

24. Section 134 of the Indian Evidence Act, 1872 the domain is vested with trial Court to appreciate the evidence. It is well-known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. Therefore, the domain is vested with the prosecution to prove the guilt of the accused by 42 facilitating worthwhile evidence, which should not give any room for doubt in the theory put forth by the prosecution for convicting the accused. It is the quality of evidence and not the quantity of evidence which is required to be judged by the court to place credence on the statements of witnesses and material evidence facilitated, in order to prove the guilt of the accused. But the plurality of witnesses in the matter of appreciation of evidence of witnesses is the domain vested with the Trial Court alone. It is not the number of witnesses but the quality of their evidence which is an important, as there is no requirement in law of evidence that any particular number of witnesses are to be examined to prove / disprove a fact. The evidence must be weighed and not counted. Further, the test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. Whereas the legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of 43 witnesses. It is the quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Indian Evidence Act, 1872.

25. But in the instant case several witnesses have been subjected to examine such as PWs.1 to 20 and even drew the spot mahazar by the investigating officer in the presence of victim PW.4. But the domain vested with the prosecution to prove the guilt of the accused by providing worthwhile evidence such as the evidence must be positive, corroborative and cogent so as to probabalise that the accused is alleged to have committed offence as per the theory put forth by the prosecution to prove the guilt of the accused. But in the instant case, the

prosecution did not facilitated worthwhile evidence to secure conviction but the trial Court misdirected and misinterpreted the evidence. Therefore, under this appeal it requires for re- 44 appreciation of evidence, if not, the accused who is a gravamen of accusation would be the sufferer and so also there shall be some miscarriage of justice. Therefore, in terms of the aforesaid reasons it is opined that the prosecution did not establish the guilt of the accused with beyond all reasonable doubt and when the doubt arises, the benefit of doubt shall always be accrued on the part of the accused alone. In the instant case, the prosecution did not prove the guilt of the accused even the ingredients of Section 366-A and Section 376 of IPC. even though the theory set up by the prosecution that the accused abducted the victim girl who is examined as PW.4. Therefore, it requires for intervention, if not, the accused who is the gravamen of accusation would be the sufferer. The accused cannot be convicted solely on the evidence of PW.4 who is the victim and so also, the evidence of her parents PWs.8 and 9. The accused deserves for acquittal by consideration of the grounds urged in this appeal by 45 setting aside the judgment of conviction and order of sentence rendered by the trial Court. Accordingly, I proceed to pass the following:

ORDER

The appeal preferred by the appellant under Section 374 (2) of Cr.P.C. is hereby allowed. Consequently, the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.23/2011 dated 30.06.2011 is hereby set-aside. Consequent upon setting aside the judgment of conviction and order of sentence, the accused is hereby acquitted of the offence punishable under Sections 366- A and 376 of IPC, 1860 which are leveled against him. Bail bond, if any, executed by the accused shall stand cancelled. Sd/- JUDGE KS/DKB

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