

NON-REPORTABLE

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

**CRIMINAL APPEAL NO.336 OF 2021
(Arising out of S.L.P.(CrI.)No.610 of 2021)**

K.Prakash & Anr. ...Appellants

VS.

The State of Karnataka ...Respondent

J U D G M E N T

R.Subhash Reddy, J.

1. Leave granted.
2. This appeal has been preferred, aggrieved by the judgment and order dated 06.06.2019 passed by the High Court of Karnataka, Dharwad Bench in Criminal Appeal No.100201 of 2016. By the aforesaid order, the High Court has confirmed conviction/sentence of the appellants herein for offences under Sections 344 and 366, IPC.
3. The appellants herein, along with other accused, were charge-sheeted in Crime No.115/2014 on the file of Sub-Urban PS, Dharwad, for offences punishable under Sections 143, 147, 120-B, 366, 344, 376, 506 read with Section 149, IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short

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'POCSO' Act). The Sessions Court has convicted accused no.1 for offences punishable under Sections 344, 366, IPC and Section 6 of POCSO Act. So far as the appellants are concerned, they were convicted for the offences punishable under Sections 344, 366 read with Section 34, IPC and were sentenced to undergo Simple Imprisonment for one year for offence under Section 344, IPC and a fine of Rs.2000/- and S.I. for two years for the offence under Section 366, IPC and a fine of Rs.5000/-. Aggrieved by the conviction recorded and sentence imposed, they preferred appeal to High Court of Karnataka, Dharwad Bench. Same is dismissed by the impugned judgment dated 06.06.2019. Hence, this appeal by accused nos.4 and 5.

4. PW-2 is the daughter of complainant PW-1, who lodged a complaint on 08.05.2014 before the Police. In the complaint, it is alleged that her daughter had gone to bring chips and milk from a nearby shop but she did not return home for about half an hour. Thereafter the complainant searched for her and had come to know that her daughter went in an Auto Rickshaw. According to the complainant/PW-1, prior to the said incident, accused No.1, who was residing near the house of the complainant, was having love affair with PW-2- victim girl and he was insisting to perform her marriage with

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him. The complainant explained to him that she is not of marriageable age and his request will be considered after the victim attains the marriageable age. Therefore, the complainant/PW-1, suspected the role of accused No.1 and complaint was lodged before the police.

5. Pursuant to registration of crime, the investigation was taken up. After investigation, it was revealed that accused No.1, with the help of other accused Nos. 2, 4, 5, 8 and 9, conspired together and kidnapped the minor girl PW-2, in a car provided by the appellants/accused Nos. 4 and 5. All of them were prosecuted for offences, referred above.

6. To prove the offence alleged against the accused, prosecution has examined, in all, 16 witnesses. The mother of the victim girl is the complainant and she is examined as PW-1; PW-2 is victim girl; PW-3 and PW-4 are Medical Officers; PW-5 is the owner of house at Vishwanathhalli, where victim girl and accused No.1 have stayed for sometime; PW-6 is the driver of the car; PW-7 to PW-13 are panch witnesses for different panchanamas; PW-14 and 15 are Investigation Officers.

7. So far as the appellants are concerned, after completion of trial, the Trial Court has come to a conclusion that prosecution has proved the guilt of accused nos. 4 and 5 only for offences punishable under

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Sections 344 and 366 read with Section 34 of the IPC. Accused No. 1 was, in addition, found guilty of offence punishable under Section 6 of POCSO Act. All the accused were convicted accordingly. The conviction recorded and Sentence imposed on the above accused, is confirmed by the High Court, by dismissing the criminal appeal filed by them, by impugned judgment dated 06.06.2019.

8. As this Court has issued notice limited to the quantum of Sentence only, it is not necessary to delve in detail on the merits of the matter, so far as conviction is concerned.

9. We have heard Sri Anand Sanjay M.Nuli, learned counsel appearing for the appellants and Sri Shubhranshu Padhi, learned counsel appearing for the respondent-State of Karnataka.

10. It is contended by learned counsel appearing for the appellants that the High Court has committed error in confirming the judgment of conviction and Order of Sentence, though the prosecution has miserably failed to prove its case beyond reasonable doubt. It is submitted that the appellants/accused Nos.4 and 5 are the tenants of accused Nos. 6 and 7 and are no way connected with the crime but have been falsely implicated at the instance of PW-1 and PW-2. It is submitted that the only allegation as against the appellants/accused Nos. 4 and

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5 is that, they have helped accused No.1 in taking the victim-PW-2 from the petrol pump near Nuggikeri to Vishwanathhalli in a car, driven by PW-6. It is submitted that there are various inconsistencies and contradictions in the prosecution evidence and in spite of the same, the Trial Court has erroneously convicted the appellants and the same is confirmed by the High Court. It is submitted that in any event, the Trial Court has committed error in sentencing the appellants/accused Nos. 4 and 5, to undergo S.I. for one year for offence punishable under Section 344 of IPC and S.I. for two years for offence punishable under Section 366 of IPC. Further, having regard to allegations made against the appellants, the sentence imposed is excessive and illegal. Further it is submitted that, as they are having minor child and aged parents, there is no one to take care of them. With the aforesaid pleas, learned counsel has made a request to modify the sentence.

11. On the other hand, learned counsel appearing for the State of Karnataka, has submitted that the appellants are convicted for offence punishable under Sections 344, 366 read with Section 34 of IPC and that PW-2-minor girl was kidnapped at the instance of accused No.1, as such there is no illegality in the conviction

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recorded and Sentence imposed on the appellants. It is submitted that, there are no grounds to interfere with the impugned judgment.

12. Having heard the learned counsels on both sides, we have perused the impugned judgment and other material placed on record.

13. Though learned counsel for the appellants has argued, questioning the conviction itself but we are satisfied with the reasoning assigned by the High Court for confirming the conviction recorded, as such we need not elaborate further. Further, this Court has issued notice, limited to the quantum of sentence only. Learned counsel for the appellants made a request to modify the sentence.

14. Many factors which may not be relevant to determine the guilt, must be seen with a human approach, at the stage of sentencing. While imposing the sentence, all relevant factors are to be considered, keeping in mind the facts and circumstances of each case. In the present case, the main accusation was against accused no.1, who is convicted for offences punishable under Sections 344, 366, IPC and Section 6 of POCSO Act and sentenced to undergo imprisonment for a period of 10 years. Even in the complaint, it was mentioned that accused no.1 was in love with the victim girl PW-2. It is also the case of

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the appellants that PW-1 was not a direct witness to the incident and PW-2 has been tutored by PW-1. The alleged incident is of the year 2014 and we are informed that appellants have already served sentence of about three months and paid fine amount. They specifically pleaded that there is no one to take care of their minor son and old age parents.

15. In view of the peculiar facts and circumstances of the case, while confirming the conviction recorded and fine imposed, we modify the sentence on the appellants for the period already undergone. The appellants be released forthwith unless otherwise their custody is required in connection with any other case. This appeal is partly allowed to the extent, indicated above.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

New Delhi,
March 19, 2021.