

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30<sup>TH</sup> DAY OF MAY, 2011

BEFORE:

THE HON'BLE MR. JUSTICE A.S. PACHHAPURE

CRIMINAL APPEAL No.2741 OF 2009

BETWEEN:

State of Karnataka,  
Through Gangavathi Rural  
Police Station. ... APPELLANT/S

[By Sri. Anand K.Navalgimat, HCGP.]

AND:

1. Mutyal Shivakumar,  
S/o. Mutyal Ramrao,  
Aged about 32, Kamma,  
R/o. Googibandi Camp,  
Gangavathi Taluk,  
Koppal District.
2. Mutyal Ramrao,  
S/o. M.Suryarao,  
Age 50 years, Kamma,  
Occ: Agri,  
R/o. Googibandi Camp,  
Gangavathi Taluk,  
Koppal District.
3. Mutyal Vijayakumar,  
S/o. M.Ramrao,  
Age: 28 years, Kamma,  
Occ: Agri.,  
R/o. Googibandi Camp,  
Gangavathi Taluk,  
Koppal District.

4. Yadlapalli Shivakumar,  
S/o. Satyanarayan,  
Age: 22 years, Kamma,  
Occ: Agri.,  
R/o. Salunchimara,  
Gangavathi Taluk,  
Koppal District.
  5. Mutyal Srinivasa,  
S/o. M.Ramrao,  
Age: 26 years, Kamma,  
Occ: Agri.,  
R/o. Googibandi Camp,  
Gangavathi Taluk.
  6. Mutyal Laxmi,  
W/o. M.Ramrao,  
Age: 43 years, Kamma,  
Occ: Household,  
R/o. Googibandi Camp,  
Gangavathi Taluk,  
Koppal District.
  7. Chilakuri Krishnaveni,  
W/o. Satyanarayana Kamma,  
Age: 50 years,  
R/o. Salunchimara,  
Gangavathi Taluk,  
Koppal District.
- ... RESPONDENT/S

[By Sri., Ravi N.Chikkaradder, Adv.  
for R.1 to 6. R7 is reported to be dead and  
the appeal against him is abated vide court  
order dated 30.05.2011]

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This Crl.A. is filed u/Sections 378(1) & (3) Cr.P.C. praying to grant leave to appeal against the Judgment and Order of acquittal, dated 09.06.2009 passed by the Sessions Judge, Koppal in S.C. No.67/2002 for the offences p/u/Ss. 147 and 366-A r/w. 149 IPC., set aside the aforesaid Judgment and Order of acquittal by allowing the appeal, and convict and sentence the accused/respondents of the offences with which they have been charge-sheeted in accordance with law.

This Crl.A. coming on for Admission, this day the Court delivered the following:

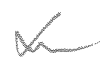
JUDGMENT

Though the matter is posted for admission, with the consent of both side, it is taken up for final disposal.

2. The appellant/State has challenged the acquittal of the respondents for the charge punishable under Sections 147 and 366-A r/w. 149 IPC., on a trial held by the Sessions Judge, Koppal

3. Sans unnecessary details, the prosecution version unfolded during the trial is as under:


The prosecution claims that on 01.08.2001 in the midnight hours, the respondents/accused Nos.1 to 7 having formed an unlawful assembly with the common objective to kidnap P.W.4-the prosecutrix and to grab her property said to have kidnapped P.W.4-prosecutrix, a minor, aged about 16 years, by taking her on the motorcycle with an intention to have illicit sexual intercourse and thereby having committed the offence referred to supra.



To prove these charges, the prosecution examined 8 witnesses as P.Ws.1 to 8 and in their evidence got marked the documents Exs.P1 to 12. The statements of the accused were recorded under Section 313 Cr.P.C. and they have taken the defence of total denial. They got examined D.Ws.1 and 2 and in their evidence got marked the documents Exs.D1 to 26. The trial Court after hearing and on appreciation of the material on record, acquitted the respondents for the charge punishable under Sections 147 and 366-A r/w. 149 IPC. Aggrieved by the acquittal, the present appeal has been filed.

4. I have heard the learned Government Pleader for the appellant and also the learned counsel for the respondents.

5. It is the defence of the respondents/accused that P.W.4-prosecutrix, had attained the age of majority and she stayed with him (accused No.1) after the marriage. Therefore, it is the defence that there is no such act committed by the respondents for the charges framed.



6. So far as the proof of age of P.W.4-prosecutrix is concerned, the prosecution relies upon the character and study certificate-Ex.P2, issued by the headmaster of the education institution, in which P.W.4 was studying. The date of birth is mentioned as 06.05.1985. To mean, as on the date when the incident took place, she was aged about 16 years. Exs.P4 and 5 are the transfer certificates and even in Ex.P5, the same date of birth has been mentioned. Ex.P7 is the certificate issued by the Tabhsildar, Gangavathi, wherein the date of birth of P.W.4 is mentioned as 01.06.1982. This certificate Ex.P7 is issued on the basis of the register maintained by the Registrar of Births and deaths and the name of P.W.4 has been mentioned in Ex.P7. The date of birth was registered on 30.06.1982. The Tahsildar is the competent authority under the provisions of the Births and Deaths Act, is bound to maintain the register regarding the births and deaths and therefore, this document is admissible in evidence to prove the date of birth. The certificate issued by the school authority is dependent upon the information given by the parents and therefore, the date of birth



mentioned in their records cannot be accepted in toto. Furthermore, in the cross-examination of P.W.4, Ex.D4 has been produced and this document is issued by the Tahsildar, Gangavathi and the date of birth of P.W.4 is mentioned therein as 01.06.1982. It bears the seal and signature of the Tahsildar and was brought to the notice of P.W.4 in the cross-examination. Apart from this, the prosecution produced the age estimation certificate-Ex.D3 issued by the VIMS Hospital, Bellary, wherein at the time of the examination of P.W.4, she states her age as 19 years and after examination, Ex.D3 certificate was issued stating that she was aged in between 16 and 18 years. So, from the material placed on record, it reveals that P.W.4-Prosecutrix had attained the age of majority on the date of the incident.

7. Now, to scrutinize the evidence of P.W.4, in the context of the defence that has been raised by the respondents, she admits in the chief-examination itself that she was with the accused from the midnight of 01.08.2001 till 12.10.2001. So, she was with accused No.1, more than 2 months.



During the course of the cross-examination of P.W.4, numerous photographs have been got marked as Exs.D5(1)(a) to 5(13)(a). So, there are more than about 30 photographs and in the cross-examination, P.W.4 admits that they are photographs of accused No.1 and herself. So, the perusal of these photographs reveal having been taken the photographs together willingly and in different styles/poses, just like a pair or lovers. So also, the accused has got produced Exs.D6 to 10, the letters said to have addressed by P.W.4 to accused No.1. The translated version of Telugu letters have been produced and they reveal that they are the love letters, written to accused No.1 by P.W.4-prosecutrix. Furthermore, it is the defence of the accused that P.W.4 married accused No.1 and Exs.D11(a) to 11(11) are the photographs regarding marriage ceremony. Ex.D14 is the certificate of registration of the marriage, issued by the Registrar of Marriages, Sindhanur, wherein it has been certified that P.W.4 is said to have married accused No.1 on 02.10.2001 and it was registered on 23.10.2001. So, if the defence of the accused is taken into consideration in the context of the



letters and the photographs, it reveals a love affair between P.W.4 and accused No.1

8. Furthermore, on the date when she is said to have been kidnapped from her house, she was sleeping with her sister and her parents were sleeping in the adjoining room. If, there was any compulsion, she could have raised her voice or resisted the act of accused No.1. Furthermore, she voluntarily accompanied accused No.1 and stayed with him for not less than 2 months. Within this period of 2 months she has wandered with accused No.1 at different places and this itself proves the consent of P.W.4 having eloped with accused No.1 and later married.

9. The provisions of Section 366-A IPC applies only to a minor girl. As P.W.2 had attained the age of majority as on the date of the incident and she voluntarily accompanied accused No.1 and stayed with him for the months together, on her own free will, by any stretch of imagination, it cannot be said that it is an act of kidnap for illicit sexual intercourse etc. So, the trial Court has taken into consideration all these materials placed





on record and on appreciation of the same, has granted an Order of acquittal.

10. It is well established principle of law that in an appeal against acquittal, the appellate Court will be slow in interfering with the Order and even if a second view is possible, the one accepted by the trial Court cannot be disturbed. Considering the principle and re-appreciation of the material placed on record, clearly goes to establish the innocence of the respondents/accused. In that view of the matter, I am of the opinion that the appellant/State has not made out any such grounds to warrant interference.

In the result, the appeal is dismissed.

Ksm\*

Sd/-  
JUDGE