

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

CRIMINAL APPEAL No.1938 OF 2010

MOHAMMED YOUSUFF @ MOULA & ANR.

...APPELLANTS

Versus

THE STATE OF KARNATAKA

... RESPONDENT

JUDGMENT

N. V. RAMANA, J.

1. The instant appeal, by way of special leave, is directed against judgment and order dated 11.09.2008 passed by the High Court of Karnataka at Bangalore whereby the High Court dismissed the Criminal Appeal No. 128 of 2005 filed by the appellants herein (accused nos. 1 and 2) and affirmed the order passed by the trial court.
2. Brief facts of the case are as follows: The appellants-accused were tenants of PW-7 (complainant). Accused no. 1 is the brother of accused no. 2 and accused no. 3 is the wife of accused no. 2. When accused no.1 expressed his desire to marry PW-8 (victim- the daughter of the PW-7), they were evicted from the house. On 13.07.2002 at 8.00 P.M., while the victim had gone to the market to purchase a notebook,

the appellants forcibly took her to Punganur (Chittoor District) where allegedly accused no.1 married PW-8 in a mosque. The father (PW-7) got a telephone call from accused no.2 and accused no.3 that they have kidnapped his daughter and marriage ceremony has been conducted between PW-8 (victim) and accused no. 1. Pursuant to the same, PW-7 lodged a complaint before the police on the same day.

3. On 22.07.2002, accused no. 1 was apprehended while he was in the company of the victim and later on accused no.2 and accused no.3 were also apprehended. Accused no.4 and accused no.5 were the persons who had given shelter to accused no.1 and the victim. The accused were charged for committing offences punishable under Sections 366, 343, 323 and 506 read with Sections 114 and 34 of IPC.
4. The trial court convicted the appellants and sentenced them to undergo Rigorous Imprisonment for 3 years for offence punishable under Section 366 IPC, Rigorous Imprisonment for 3 months for offence punishable under Section 323 IPC, Rigorous Imprisonment for 6 months for offence punishable under Section 343 IPC and Rigorous Imprisonment for one year for offence punishable under Section 506 IPC. Aggrieved, the appellants preferred an appeal before the

High Court and the same was dismissed vide impugned judgment dated 11.09.2008. Hence, the present appeal.

5. Learned counsel for the appellants vehemently contended that the victim was of 18 years of age at the time of the incident, and she had willingly accompanied the accused persons. It was further submitted that the eye-witnesses have not stated that the victim was forced into the rickshaw.
6. On the other hand, learned counsel for the respondent-State supported the impugned judgment passed by the High Court and argued that the victim was a minor at the time of the said offence.
7. Having heard learned counsel for the parties at length it is pertinent for us to have a look at Section 366 which reads as follows:

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of

compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

8. Chapter XVI of IPC contains offences against the human body. Section 366, which is the pertinent provision, is contained within this Chapter. Kidnapping/abduction *simpliciter* is defined under Section 359 and maximum punishment for the same extends up to seven years and fine as provided under Section 363. However, if the kidnapping is done with an intent of begging, to murder, for ransom, to induce women to marry, to have illicit intercourse stricter punishments are provided from Section 363A to Section 369.
9. Section 366 clearly states that whoever kidnaps/abducts any woman with the intent that she may be compelled or knowing that she will be compelled, to either get her married or forced/seduced to have illicit intercourse they shall be punished with imprisonment of up to ten years and fine. The aforesaid Section requires the prosecution not only to lead evidence to prove kidnapping *simpliciter*, but also requires them to lead evidence to portray the abovementioned specific intention of the kidnapper. Therefore, in order to

constitute an offence under Section 366, besides proving the factum of the abduction, the prosecution has to prove that the said abduction was for one of the purposes mentioned in the section. In this case at hand the prosecution was also required to prove that there was compulsion on the part of the accused persons to get the victim married. [See **Kavita Chandrakant Lakhani v. State of Maharashtra**, (2018) 6 SCC 664].

10. After carefully perusing the material placed before us, we are of the considered view that the thrust of the submissions made by the appellants on the age of the victim. The father of the victim had specifically stated that, the victim was aged around 15 years at the time of the incident. It is pertinent to note that the investigating officer had collected the original marksheet, which was duly attested by the headmistress of the school where the victim was enrolled and thereafter, the same was annexed to the charge sheet. Even while deposing before the court, the investigating officer had produced the original certificates along with the office file. On the contrary, the accused appellants failed to produce any evidence rebutting the validity of the aforesaid contention.
11. The counsel on behalf of the appellants further relied upon the earlier decision of this Court in **S. Varadarajan v.**

State of Madras, (1965) 1 SCR 243 to argue that the victim voluntarily joined the accused. However, we are unable to agree with the aforesaid contention raised by the appellants as the facts of the present case are clearly distinguishable.

12. In the present case, the victim (PW-8) has clearly deposed that accused nos.1 to 3 took her forcibly, and wrongfully confined her in a house where the sister of accused nos.1 and 2 was residing. In the course of cross-examination, the defense has not brought out anything much less any contradictions to disbelieve or discard her evidence in this regard.
13. Furthermore, the appellants have argued that the actual performance of the marriage could not be proved as the nikah certificate was incomplete and did not contain the relevant information and the signatures. However, it ought to be noted that, the language of Section 366 does not require the factum of marriage to be proved, in order to constitute an offence under Section 366, the prosecution has to show that the kidnapping/abduction was done in furtherance of an intent to compel the victim to marry against her will.
14. The facts of the present case indicate that, PW-2 (Khazi) had recognized both the accused no.1 and victim (PW-8).

Moreover, the complainant (PW-7) has clearly stated that on 13.07.2002, when the victim did not return to the house after purchasing the notebook, he lodged a missing complaint the very next day after enquiring from all relatives. He deposed that three days after lodging of the missing complaint, on 17.07.2002, accused nos. 2 and 3 spoke to him over the telephone that they had performed the marriage of the victim with accused no.1. The complainant had further stated that, the accused person on prior occasion used to tease the victim and had expressed the desire to marry her. The appellants could not produce any material contradiction so as to render his statements unworthy. Lastly, statements of PW-7 find support from that of PW-8 (victim).

15. In the light of the admitted facts, it could be understood that appellants-accused had intentionally kidnapped PW-8 to perform the marriage. Lastly, considering the fact that, the victim was pushed by the accused persons and was made to forcibly board the autorickshaw. The victim also stated that she was forcibly confined in house of the sister of accused no.1, with legs tied, beyond three days. Moreover, during this entire ordeal, the victim was under constant threat of her physical safety. She has cited multiple instances where

she was physically harmed by the accused persons. Thus, it is evident that the ingredients of offences under Sections 343, 323 and 506 of I.P.C are also satisfied. In view of the above, we see no reason to interfere with the impugned order passed by the High Court affirming the order passed by the trial court, especially when the sentence awarded is already on a lenient side.

16. The appeal is, accordingly, dismissed.
17. Consequent upon dismissal of the appeal, the bail bonds of the appellants, who were granted bail by this Court vide order dated 05.10.2010, stand cancelled and they are directed to surrender before the concerned trial court within a period of two months from the date of communication of this order, to serve out the remaining period of sentence, failing which the concerned police authorities are directed to take them into custody for the said purpose.

.....J.
(N.V. RAMANA)

.....J.
(S. ABDUL NAZEER)

.....J.
(SURYA KANT)

**NEW DELHI;
JULY 22, 2020.**