

(2013) 12 KAR CK 0296
In the Karnataka High Court
Case No : Criminal Appeal No. 3566 of 2010

Gnyanesh @ Gyanagouda

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0296

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Shivanand V. Pattanshetti, for the Appellant; Sanjay A. Patil, Addl. SPP, for the Respondent

Final Decision : Partly Allowed

Judgement

Huluvadi G. Ramesh, J.—This appeal is by the accused No. 1 challenging the order of conviction and sentence passed by the I Addl. Sessions Judge, Bijapur in SC No. 5/2007 dated 11.03.2010 convicting the accused for the offence u/s 363 of IPC and sentencing him to undergo R.I. for seven years and to pay a fine of Rs. 5,000/- and default sentence of two months. Though the charge is framed for the offence u/s 364A, ultimately the accused is convicted and sentenced u/s 363 of IPC. The learned Sessions Judge acquitted the accused No. 2-Shankar. This appellant is accused No. 1. It is alleged that on 15.07.2006 around 1.30 p.m. when Basavaraj Sasanur, a minor boy was near Shanti circle of Muddebihal, accused No. 1 kidnapped him for ransom. It is also alleged that the victim was kept in wrongful confinement in a garden land of accused No. 2 who is from Tikkota village by tying his legs and hands and demanded a ransom of Rs. 5,00,000/- from the parents of the victim. Police after registering the FIR, investigated into the matter and filed charge sheet.

2. As per Section 209 of Cr.P.C., there is a committal order. The Sessions Judge having framed the charge for the offences under Sections 363, 342, 364 and 364(A) R/W Section 34 of IPC, after trial, held the accused No. 1 guilty of offence u/s 363 of IPC and sentenced him. The learned Sessions Judge has acquitted the

accused No. 2 of the alleged charge.

3. P.W. 3-Kasturibai, mother of victim though has stated about kidnapping of her son and filing of complaint by her husband, but she never revealed the accused have kidnapped her son.

4. Another witness P.W. 4 Shivaputrappa Sajjan who is also a teacher has stated that victim had attended the school on 15.07.2006. But, he turned hostile to the version of the prosecution regarding kidnapping by the accused.

5. P.W. 5-Malakajappa Mali who is the son of accused No. 2, has not supported the version of the prosecution that accused No. 2 has harboured this Basavaraj. He has turned hostile to said version. One more witness PW. 6-Ambanna Shankar Mali who is also son of accused No. 2 has turned hostile. PWs. 8, 9 and 10 who are the neighbours of accused No. 2 are examined to speak about kidnapping and confinement of the child. But, they have not supported the version of prosecution.

6. P.W. 13 one Bhimashya is examined to speak about kidnapping the child by accused No. 2 and confining him in the garden land of P.W. 13. He has not supported the said version. P.W. 16-Indirabai, telephone booth owner has stated that accused have not telephoned to the parents of the Basanagouda to demand ransom. P.W. 20-Ninganagouda who is a panch witness also has not supported. P.W. 21-Shivanand who is also panch witness, has not supported the seizure of auto-rickshaw. P.W. 22-Ghanamatesh Guraddi, a panch witness to the scene of occurrence panchanama from where the victim was abducted in a Tum Tum vehicle, has not supported the said version. Even P.W. 23 Hanamanthraya Biradar, P.W. 24- Mahantagouda Dorigol who is pancha to the seizure of auto-rickshaw, P.W. 25 Prabhavati Sasanur, elder sister of the victim, have not supported the version of the prosecution regarding kidnapping of the victim.

7. P.W. 26 one Gouramma, a circumstantial witness has partly supported the version of the prosecution to the effect that Basanagouda not returning home after he went to attend the school. P.W. 28 one Sachin Kuntoji has half-heartedly supported the version of the prosecution to the effect that Basanagouda - the victim was his friend and they were studying in Sharada Competition School. For the remaining aspect he turned hostile. P.W. 1-Sanganagouda Patil, the grandfather of the victim is a circumstantial witness and has spoken about his grand son Basanagouda who had been to school at 9.00 a.m. in the morning, but not returned. He has half-heartedly supported the version of prosecution.

8. P.W. 2 Basanagouda @ Basavaraj Sasanur, the victim himself has stated about accused kidnapping him and also identified the accused as Gnanesh and also identified this accused as Drawing Teacher. It is stated by him that when he was going along with other students/friends near APMC gate, the accused No. 1 Gnyanesh came, picked him up stating that he would leave him at the Bus Stand. Accused No. 1 took him in a bicycle saying that he was going to Vanahalli and later he was taken to Tikota to the house of one Shankar Mali and also has

spoken about accused demanding a ransom of Rs. 5,00,000/- and later the accused having tied his legs and hands, disclosed before accused No. 2 that he is going to finalize the deal for Rs. 20,000/-.

9. P.W. 11 one Pavankumar Pattar, friend of the victim also supported the version of the prosecution. He is also a pancha to the panchanama where the victim was taken by the accused. He has also identified the accused No. 1 as Gnyanesh.

10. It appears although almost all the witnesses have turned hostile, evidence of the victim is further supported by the evidence of P.W. 11 who has supported the version of the prosecution regarding accused No. 1 kidnapping the victim. However, P.W. 11 has deposed that victim had come to the school after lapse of three days. What is being noticed is; this victim was taken by accused No. 1 for ransom and demanded Rs. 5,00,000/- and ultimately settled for Rs. 25,000/- and further, the same has been expressed by the victim. P.W. 11 one Pavankumar Pattar, friend of the victim has supported the version of the victim to the effect of kidnapping the victim. So the evidence of this victim is corroborated by the evidence of P.W. 11 which demonstrate that accused had kidnapped the victim for ransom. Though there is minor contradictions, but the evidence of the victim and his friend inspires confidence in the mind of the Court to hold accused No. 1 guilty of the offence u/s 363 of IPC. The evidence of the victim and his friend PW. 11 is sufficient to hold accused No. 1 guilty of the offence. Though the Sessions Court has convicted the accused and sentenced him to undergo seven years rigorous imprisonment and imposed a fine, having regard to the fact that victim was immediately released, the gravity of the sentence i.e., imprisonment for seven years appears to be little on the higher side. Negating the contention of the counsel for the accused that there is no corroborative evidence and most of the witnesses have turned hostile and holding that the evidence of the victim and his friend inspires confidence to hold that the accused is guilty, however, in the factual situation, since the victim is secured and immediately he attended the school, it appears extreme sentence would not attract as against accused No. 1. Holding the appellant-accused guilty of the offence u/s 363 of IPC, the substantive sentence ordered to undergo RI for seven years is reduced to three years rigorous imprisonment and a fine of Rs. 5,000/-. In default of payment of fine, the accused to undergo S.I. for two months. The accused is entitled for set-off u/s 428 of Cr.P.C. It is for the accused to serve the remaining part of the sentence.

Appeal is allowed in part.