

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.1006 OF 2011

K.H. BALAKRISHNA ... APPELLANT

VERSUS

THE STATE OF KARNATAKA ... RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. The appellant K.H. Balakrishna is the accused who has been convicted under Sections 366, 342 and 506 IPC and sentenced to rigorous imprisonment for a period of 3 years, 3 months and 2 years respectively in all the above offences separately and all the sentences have been directed to run concurrently and with fines of Rs.2500/-, Rs.500/- and Rs.2000/- respectively and in default to pay the above amounts with a further simple imprisonment for six months,

fifteen days and three months respectively for all the three offences.

2. The appellant was charge sheeted after investigation pursuant to the First Information Report dated 29.10.1996 lodged by one B.Y. Chinnanna. The Presiding Officer, Fast Track Court-VI Bangalore, vide judgment and order dated 26.02.2005 held him guilty for the above offences and sentenced him as aforesaid. The appeal preferred by the appellant to the High Court has been dismissed vide judgment and order dated 20.07.2010.
3. The appellant has thus preferred this appeal challenging the above two judgments and his conviction.
4. The story as unfolded in the FIR is that Lakshmi, the daughter of the complainant's brother at around 10.30 a.m. on 25.10.1996 was going to Kamala Nursing Home, when the appellant along with his followers came from behind and put some liquid on her nose, made her unconscious and kidnapped her.

5. The aforesaid Lakshmi PW2 in her statement categorically stated that her marriage was arranged with one Sundar and the engagement ceremony was performed on 10.06.1996. The marriage was fixed for 6/7th November, 1996 but before the date of the marriage, she was kidnapped on 24.10.1996 while she was entering the first block of the Kamala Nursing Home, Bangalore where her mother was admitted. The appellant came in a white ambassador which stopped near her. He pulled her inside the car and put a handkerchief with chloroform on her nose. In the car, besides the driver, there was one another person. She did not know the names of the driver and the said person. They locked the car from inside and took her to a farm house on the outskirts of Bellary where they stayed for three days. Then they went to Sholapur where she insisted that she should be permitted to talk to her mother. She was allowed to telephone her. She gave the telephone number of her uncle, that is of the complainant. She was

allowed to talk to him whereupon she narrated the entire incident. She told her uncle that she has been forcibly taken away by the appellant and that the appellant wants to marry her but she has refused as her marriage is already settled. The appellant threatened to kidnap her sister also if she refused to marry him. At Sholapur, the appellant took her to the house of her sister Mala and brother-in-law Shivashankar Godake, where his mother was also present. Her marriage was performed with appellant at Venkateshwara temple Sholapur forcibly in the presence of all. After marriage she spent two days in the said house and then went to Pune where they stayed for 3/4 days in a lodge. On her request that she wants to meet her mother, the appellant brought her back to Bangalore on the condition that she will tell everyone that she had married him with her own free will and consent. On reaching Bangalore by overnight train, they stayed in a lodge and while going to Mahalakshmi Layout in the auto, she saw her

brother Raju nearby Anjanaya temple and shouted his name whereupon her brother took her home.

6. In cross-examination she accepted that she knew the appellant since 1993. The appellant had visited her house in connection with the proposal of marriage but her uncle had not accepted the proposal as he was not in a government job. The appellant used to visit her house frequently but there was no inclination of any marriage between the two. He never used to write letters or telephone her. The appellant never beat her or troubled her in any way while they were together. He never even touched her or forced himself upon her even after the marriage was performed at Venkateshwara temple. He did not trouble her in any manner. She has not married him of her own free will and had not gone with him by choice. She was later married on 5th December, 1996 with Sundar as arranged.
7. The above statement of the PW2, the victim reveals that the incident of her kidnapping as alleged

happened on 24.10.1996 while she was going to the Nursing Home to attend to her mother. She had remained with the appellant accused for about 20/23 days and in this period, they had remained at Bellary for three days, for 4/5 days at Sholapur, where their marriage was performed in a temple in the presence of the sister and mother of the appellant. Thereafter, they have stayed in a lodge for 3/4 days in Pune before returning to Bangalore and during all this period she was not at all maltreated by the appellant rather he behaved with her in a most decent manner. He never touched her, beat her or troubled her in any manner.

8. The fact that the appellant had known the PW2 since 1993 when he first visited her house in context with a marriage proposal leaves no doubt that both of them were known to each other and used to meet despite the fact that their marriage proposal was turned down. The appellant had been visiting her house though he never used to telephone her or write

letters to her. In short, they were not only known to each other, but they had some kind of friendship or liking for each other to which there was apparently no objection from the other family members.

9. It may be worth noting that there is no evidence on record to prove that the mother of the PW2 was in fact hospitalised in the Nursing Home. The absence of such evidence casts a doubt on the story that PW2 was kidnapped while going to the Nursing Home. Her statement compels the court to draw a legitimate inference that as she had known appellant, she herself may have managed to elope with him and it is for this reason that the appellant never misbehaved with her or took advantage of her company, rather helped her in getting her connected with her family members. The conduct of the appellant and that PW2 was known to appellant gives an impression that possibly she had managed to elope with the appellant

just before her marriage for reasons best known to her.

10. Secondly, she was kidnapped on 25.10.1996 and the FIR was lodged on 28.10.1996 only after she had informed of the incident to her uncle on telephone in the presence of the appellant. None in the family thought it proper to lodge a report with police even though she had not reached the Nursing Home or had not returned home after attending her mother. They waited for her phone call and only on her narration of the incident that her uncle lodged the FIR.
11. PW2 had been frequently moving with the appellant from one place to another either in car or train but there is no evidence that she ever tried to escape or go back home. There is no evidence either to prove that she resisted the marriage or was not happy in the company of the appellant. On the other hand, the appellant kept her well and honoured all her request. He allowed her to call her mother and even permitted her to talk to her uncle. The appellant

himself talked to her uncle. All this clearly proves that the appellant never forced himself upon her in any manner.

12. The defence evidence specially that of DW2, the mother of the appellant fortifies the fact that there was a marriage proposal of the appellant with PW2 and that the appellant had gone to her house to see her in that connection. The family of the appellant had expressed interest to take PW2 in marriage and every one had expressed their willingness for the said marriage but the proposal was dropped as the appellant was not having a government job. The appellant had come with PW2 to Sholapur and their marriage was performed in the temple in the presence of many people and that pictures were taken and the marriage function was videographed. Significantly, the videography of marriage at Sholapur reveals that PW2 was wearing a special dress for the marriage and wore a smile. The smiling photographs of the PW2 cannot be under any compulsion as she was not smiling

in one or two pictures but in most of them and as such the pictures appear to be natural.

13. The entire evidence on record in no way reflects that the appellant had any intention to kidnap PW2 for the purpose of marriage. They appear to have gone together to various places and may have married.
14. The impugned judgment and orders of the courts have completely failed to take into consideration the above aspects of the matter in holding the appellant to be guilty of the offences solely on the basis of the statement of PW2, which as described above is not sufficient to prove the appellant guilty.
15. It is important to note that PW2 is happily married since 1996 with Sundar as arranged by her family. The appellant has also been married elsewhere, as informed by the counsel. He has already suffered the ordeal of the pendency of the criminal prosecution since 1996 and as such, we are not in favour of extending his agony any further.

16. In the aforesaid facts and circumstances, we are of the opinion that conviction and the sentence as awarded by the trial court and confirmed by the High Court cannot be sustained in law. Accordingly, the judgment and order of the trial court dated 26.02.2005 and that of the High Court dated 20.07.2010 are set aside and the appellant is acquitted. The appeal is allowed and the bail bonds are discharged.

.....J.
[V. Ramasubramanian]

.....J.
[Pankaj Mithal]

New Delhi;
March 21, 2023.