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AT YELBURGA

Sri. ISHWAR MUSALMARI B.A. L.L.B (spl)

Present: Civil Judge & JMFC., Yelburga.

120113
C.D.P.O
Yelburga

Dated this 29th day of December-2018

C.C.No.44/2013

State through Bevoor Police Station.

...COMPLAINANT

(By the A.P.P., Yelburga)

-Versus-

1. Shivappa S/o Hanumappa Kokkeppanavar, Age: 45 years, Occ: Agriculturist, R/o B.Hosalli village, Tq:Dist: Koppal.
2. Hanumappa S/o Balappa Uppar, Age: 60 years, Occ: Agriculturist, R/o Kudarimothi village, Tq: Yelburga.(Died)
3. Huligemma w/o Hanumappa Uppar, Age: 52 years, Occ: House and agriculture work, R/o Kudarimothi village, Tq: Yelburga.
4. Veeresh S/o Hanumappa Uppar, Age: 22 years, Occ: Agriculturist, R/o Kudarimothi, Tq: Yelburga.

...ACCUSED

(Accused No.1, 3 and 4 by Sri.I.R.K., Advocate, Accused No.2 died)

* * * * *

1	Date of commission offence	**	4-1-2013
2	Date of report of offence	**	5-1-2013
3	Date of arrest of accused	**	---
4	Name of informant	**	Doriswamy.
5	Date of recording evidence	**	17-11-2015
6	Date of closing evidence	**	20-7-2018
7	Offence complained of	**	Sec.9, 10 and 11 of Prohibition of Child Marriage Act-2006.



8	Opinion of the judge	**	As per final order
9	Complainant represented by	**	Learned APP
10	Accused defended by	**	Sri. I.R.K., Advocate

J U D G M E N T

Accused have faced trial for the offences punishable U/s 9, 10 and 11 of Prohibition of Child Marriage Act-2006 upon the charge sheet of A.S.I., Bevoor Police Station.

2. **The case of the prosecution in brief are that:-**

It is alleged by the prosecution that on 4-1-2013 at about 12-10 p.m., at Kudrimoti village, the accused No.4 had contracted with the marriage of C.W.8 Parvathi @ Annapurna who is minor and aged about 17 years, 7 months and 4 days at the time of marriage. The accused No.1, 2 and 4 have instigated the said child marriage. Hence, the accused No.1 to 4 thereby committed the offences punishable U/sec. 9, 10 and 11 of Prohibition of Child Marriage Act-2006.

3. After completion of the investigation, the Investigating Officer has submitted the charge sheet against the accused persons to the court. Thereafter,

recognition for the said offences were taken and issued summons to the accused. The accused have appeared through their counsel and got enlarged them on bail.

4. Prosecution papers were furnished to all the accused in compliance of Section 207 of Code of Criminal Procedure.

5. Substance of the accusation were recorded, read over and explained to the accused persons, who pleaded not guilty and claimed to be tried. They stated that they have a defense to make. Hence, the case is posted for Prosecution evidence.

6. During the course of trial, the accused No.2 reported to be dead. Hence, trial was conducted against accused No.1, 3 and 4.

7. In order to establish the charges leveled against the accused persons, Prosecution has examined 10 witnesses as PW-1 to 10 and got marked Ex.P-1 to 5 and closed its side.

8. Accused No.1, 3 and 4 were examined Under Section 313(1)(b) of Criminal Procedure Code, 1973.

Incriminating materials appearing in the prosecution evidence have been brought to the notice of the accused persons, who denied the same. They have not chosen to lead any defense evidence.

9. Heard learned APP and Learned Counsel for the accused at length.

10. Upon hearing arguments and on perusal of material placed on records, following points arises for considerations are:-

1. Whether the prosecution proves beyond all reasonable doubts that on 4-1-2013 at about 12-10 p.m., in front of house of accused No.2, 3 and 4 at Kudrimoti village the accused No.4 being a adult male contracted child marriage with C.W.8 who is minor and below the age of 18 years and thereby committed an offence punishable U/Sec.9 of the prohibition of Child Marriage Act 2006?
2. Whether the prosecution further proves beyond all reasonable doubts that on the above said date, time and place, the accused No.1 and 3 have performed and conducted the child marriage of the accused No.1 with C.W.8 and thereby they have committed an offence punishable under Se.10 of the Prohibition of Child Marriage Act 2006?
3. Whether the prosecution further proves beyond all reasonable doubts that on the

above said date, time and place, the accused No.1 being father of C.W.8 having charge over her promoted, permitted, negligently failed to prevent her child marriage with accused No.4 and participated in child marriage of C.W.8 with accused No.4 and thereby committed an offence punishable under Se.11 of the Prohibition of Child Marriage Act 2006?

4. What order ?

11. My findings to the above points are as under

Point No.1: In the **Affirmative**

Point No.2: In the **Affirmative**

Point No.3: In the **Affirmative**

Point No.4: As per final order, for the following:-

REASONS

12. **Point No.1 to 3** :- These points inter related to each other. Hence, these points taken for consideration to avoid repetition in discussions.

It is the case of the prosecution that on 4-1-2013 at about 12-10 p.m., at Kudrimoti village, the accused No.4 had contacted with the marriage of C.W.8 Parvathi @ Annapurna who is minor aged 17 years. 7 months and 4 days at the time of marriage. The accused No.1, 2 and 4 have instigated the said child marriage. Hence, the accused No.1 to 4 thereby committed the offences

punishable U/sec. 9, 10 and 11 of Prohibition of Child Marriage Act-2006.

13. In order to establish its case, prosecution has examined the complainant Dhoreswamy as P.W.1. P.W.1 has deposed in his evidence that on 4-1-2013 at about 12-30 p.m., on receiving credible information about child marriage, himself, C.W.4 to 7 were went to one village and found that marriage of Parvathi @ Annapurna was already performed with one Veeresh. After verification of school records, it is found that age of Parvathi is 17 years, 7 months and 4 days at the time of marriage. Thereafter, he lodged a complaint before Bevoor Police Station as per Ex.P.1.

14. P.W.2 Hariesh, P.W.3 Shivaram, P.W.4 Usman Ulla Khan and P.W.5 Basappa have deposed in their evidence that on 4-1-2013 at about 10-30 p.m., on receiving credible information about child marriage, themselves and C.W.1 went to Kudrimoti village and found that marriage of Parvathi @ Annapurna was already performed with one Veeresh. Thereafter, on the next day at about 5-00 P.M., C.W.1 has lodged a

complaint about child marriage. Police have recorded their statements in respect of the said child marriage.

15. P.W.6 Pakeerappa and P.W.7 Hanamappa are the witnesses to the spot mahazar Ex.P.2. P.W.6 has deposed in his evidence that he has put his signature on the Ex.P.2 and his signature is identified as Ex.P.2(a). He has put his signature in front Kudrimoti Panchaayth. The police have taken his signature but he does not know for what purpose they have taken his signature. P.W.7 has deposed in his evidence that about 5 years back he put his signature to Ex.P.2 near Hanumantha Temple and his signature is identified as Ex.P.2(b). As per say of police, he put his signature to Ex.P.2 but he does not know for what purpose the police have taken his signature. Since the PW-6 and 7 have totally turned hostile to the prosecution version, they were cross-examined by the APP at length. In their cross-examination also they have totally denied the suggestions put forth by the learned APP.

16. P.W.8 Annapurna who is the victim has deposed in her evidence that she does not know anything about

this case. Accused No.4 is her father-in-law, accused No.1 is her father and accused No.3 is her mother. The police have not obtained her statement. P.W.8 has totally turned hostile to the prosecution version. Therefore, she was cross-examined by the learned APP at length. In her cross-examination also, she has totally denied the suggestions put forth by the learned APP and statement said to be have been given by her to the police as per the Ex.P.3.

17. P.W.9 Kalakappa has deposed about issuing of certificate as per Ex.P.4.

18. P.W.10 Lingappa has deposed about conducting of his investigation and about filing of the chare sheet against the accused persons after completion of investigation.

19. In this case, it is the case of the prosecution that on 4-1-2013 the accused No.4 had married the C.W.8 Parvathi @ Annapurna who is a minor at the time of the marriage. The copy of the marriage card shows that the marriage of accused No.4 was solemnized with C.W.8

Parvathi @ Annapurna on 4-1-2013. Further, P.W.9 who is the retired head master has deposed that he has issued certificate regarding the age of C.W.8 as per Ex.P.8 and also deposed that date of birth of C.W.8 is 31-5-1995. A perusal of Ex.P.4 which is the Certificate issued by the Head Master of Government Higher Primary School, B.Hosalli shows that the date of birth of Annapurna is 31-5-1995. Hence, it is clear that on the date of marriage i.e., on 4-1-2013, the age of C.W.8 was 17 years, 7 months and 3 days. Further, the prosecution has examined the complaint as P.W.1. The prosecution has also examined other official witnesses as P.W.2 to 5. A careful perusal of evidence of P.W.1 to 5 shows that when they have visited to Kudrimoti village at that time, the marriage of accused No.4 was solemnized with the C.W.8 Parvathi @ Annapurna. Though counsel for the accused has cross-examined P.W.1 to 5 at length but nothing has been elicited from the mouth of P.W.1 to 5 to discard their evidence. Further, evidence of P.W.1 to 5 are corroborating with each other. The evidence of P.W.1 to 5 is also supported with the evidence of Investigating Officer

P.W.10. Though panch witnesses and victim have turned hostile but it is not fatal to the case of the prosecution as evidence of P.W.1 is corroborating with the evidence of P.W.2 to 5 and 10 and material document Ex.P.4. Hence, on perusal of the oral and documentary evidence available on record, this court is of the opinion that the prosecution has proved beyond all reasonable doubts that the accused No.1, 3 and 4 have committed the offences punishable under Sec.9, 10 and 11 of Prohibition of Child Marriage Act-2006.

20. In this case, it is submitted during the course of arguments that the accused No.1 is aged about 50 years, accused No.3 is a lady aged about 57 years and all the accused are agriculturists. Hence, considering the age and avocation of the accused No.1, 3 and 4, this court is of the opinion that if they are given maximum imprisonment, they may be put to hardship. However, in spite of creating legal aver-ness by the legal aid authority and through legal literacy camps, these accused are committed such type of heinous offences.

Hence, in view of the above discussions, I answer point No.1 to 3 in the **Affirmative**.

21. **Point No.4:-** For the foregoing reasons, I proceed to pass the following:-

ORDER

The accused No. 1, 3 and 4 are found guilty for the offences punishable under sections 9, 10, and 11 of Prohibition of Child Marriage Act-2006.

Acting under Section 255(2) of Criminal Procedure Code, accused No.4 convicted for the offences punishable Under Sections 9 of Prohibition of Child Marriage Act-2006. The accused No.4 is hereby sentenced to undergo rigorous imprisonment for six (6) months and to pay a fine of Rs. 5,000/-. In default to pay the fine, he shall undergo simple imprisonment for 30 days.

Acting under Section 255(2) of Criminal Procedure Code, accused No.1 and 3 are hereby convicted for the offences punishable Under Sections 10 of

Prohibition of Child Marriage Act-2006.
The accused No. 1 and 3 are hereby sentenced to undergo rigorous imprisonment for six (6) months and to pay a fine of Rs.5,000/- each. In default to pay the fine, they shall undergo simple imprisonment for 30 days.

Acting under Section 255(2) of Criminal Procedure Code, accused No. 1 is hereby convicted for the offence punishable Under Sections 11, of Prohibition of Child Marriage Act-2006. The accused No.1 is hereby sentenced to undergo rigorous imprisonment for six (6) months and to pay a fine of Rs.5,000/-. In default to pay the fine, he shall undergo simple imprisonment for 30 days.

All the sentences shall run concurrently.

The bail bonds of the accused and their surety bonds stands cancelled.

The fine amount of Rs.20,000/- shall go to the state towards fine head.

Copy of this judgment shall be furnished to the accused persons forthwith on free of cost.

(Dictated to the Stenographer directly on computer, then corrected by me, print out taken, signed and then pronounced by me in the open court on this the 29th day of December -2018)

(ISHWAR.S.MUSALMARI)
Civil Judge & JMFC., Yelburga.

ANNEXURE

List of witnesses Examined for Prosecution :

PW.1	:	Doriswamy S/o Beerappa
PW.2	:	Hariesh S/o Ganapathi Jogi
PW.3	:	Shivaraj S/o Annanayak
PW.4	:	Usman Alla Khan S/o Bhasheer Khan
PW.5	:	Basappa S/o Earappa Hadimani
PW.6	:	Pakeerappa S/o Siddappa Kulakar
PW.7	:	Hanamappa S/o Kanakappa Talavar
PW.8	:	Annapurna D/o Shivappa
PW.9	:	Kalakappa S/o Mudiappa Saravi
PW.10	:	Lingappa S/o Adivappa

List of documents marked for prosecution :

Exp.1	:	Complaint
Ex.P.1(a),(b)	:	Signatures
Ex.P.2	:	Spot Panchanama
Ex.P2(a)-(c)	:	Signatures
Ex.P.3	:	Statement of Annapurna
Ex.P.4	:	Certificate
Ex.P.4(a)	:	Signature
Ex.P.5	:	F.I.R.,
Ex.P.5(a)	:	Signature

List of material objects marked for Prosecution:

Nil

List of witnesses examined for defense:

Nil

List of documents marked for accused:

Nil



Civil Judge & JMFC.,
Yelburga.

27.2.2019
 28.2.2019
 27.2.19
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