



*Crl.A.(MD)No.10 of 2017*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 25.07.2023

Delivered On : 05.09.2023

CORAM

**THE HONOURABLE MR. JUSTICE P. DHANABAL**

Crl. A.(MD)No.10 of 2017

Nagaraj

.. Appellant

Vs.

State rep. by  
The Inspector of Police,  
Aravakurichi Police Station,  
Aravakurichi,  
Karur District.  
In Crime No.290 of 2016.

.. Respondent

**Prayer :** This Criminal Appeal is filed under Sections 374 of Cr.P.C., to set aside the judgment made in S.C.No.74 of 2016 on the file of the Mahila Court, Karur dated 15.12.2016 and allow this Criminal Appeal.

|                |                                 |
|----------------|---------------------------------|
| For Appellant  | : Mr.S.Gokul Raj                |
| For Respondent | : Mrs.M.Aasha                   |
|                | Government Advocate (Crl. Side) |

### **JUDGMENT**

This appeal has been filed by the appellant to set aside the judgment and conviction passed in S.C.No.74 of 2016 dated 15.12.2016, on the file of the Mahila Court, Karur wherein the accused was arrayed as A1 and the trial Court convicted



*Crl.A.(MD)No.10 of 2017*

the appellant for the offence under Section 366 of IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment and acquitted the appellant from the charges under Section 343 of IPC and A2 to A6 were acquitted from the charges under Section 343 and 366 of IPC. Aggrieved by the said judgment, the first accused/appellant preferred this present Criminal Appeal.

2.The prosecution case is that on 26.05.2016, at about 12.30 a.m., when the victim along with her mother were sleeping in the house situated at Malligapuram, Periyamanjuveli village, the appellant along with others have abducted the victim, P.W.1 through omni van. At that time, P.W.1 raised alarm and went to the house of P.W.3 and P.W.4 and narrated about the occurrence and thereafter, she made phone call to her brother P.W.2, who was in Trichy and after arrival of P.W.2 from Trichy, they went to the house of A1 and the same was locked and thereafter, they made search of victim girl and could not trace out. On next day at about 10.00 a.m., they went to Aravakurichi Police Station and gave a complaint Ex.P1 and P.W.1 had given complaint Ex.P1 to the Sub Inspector of Police, P.W.9. After receipt of Ex.P1, P.W.9 without registering FIR, issued CSR, Ex.D1 and thereafter, as per direction of P.W.10, Inspector of Police on 29.05.2016 at about 06.30 p.m., Ex.P7 FIR was registered by P.W.9 and thereafter, P.W.10 had taken investigation of the case on



*Crl.A.(MD)No.10 of 2017*

30.05.2016 and thereafter, went to the place of occurrence and prepared observation mahazer Ex.P8 and examined the witnesses and thereafter, he altered Sections from 366 to 342 and 363 of IPC through Ex.P10 alteration report and then filed final report. After filing the final report, the copies of records relied on by the prosecution were furnished to the accused under Section 207 of Cr.P.C. The case was committed to the Sessions Court by the Judicial Magistrate No.II, Karur. Originally six persons were arrayed as accused in the trial Court and all the accused appeared before the trial Court and the trial Court framed charges for the offences under 343 and 366 of IPC. After framing charges, the charges were read over and explained to the accused but the accused denied the charges.

3.The prosecution had examined P.W.1 to P.W.10 and marked Exs.P.1 to P.10 and marked M.O.1. On the side of the accused, no one was examined and one document was marked as Ex.D1. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., and he denied the evidences.

4.Upon perusing the oral and documentary evidences, the trial Court found the appellant guilty for the offence punishable under Section 366 of IPC. The appellant was acquitted from the charges under Section 343 of IPC. The appellant



*Crl.A.(MD)No.10 of 2017*

was convicted under Section 366 of IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment, by a judgment, dated 14.06.2017 and other accused were acquitted from all the charges framed against them.

5. Aggrieved by the said judgment and conviction, the appellant has preferred this present appeal on the following grounds:-

The trial Court failed to see the date of occurrence is 26.05.2016 and the FIR was registered only on 29.05.2016. The delay has not been properly explained by the prosecution. There is a delay in sending FIR to Court and the same was not explained by the prosecution. The evidence of P.W.1 is highly doubtful and there are major contradictions and the same was not considered by the trial Court. The trial Court failed to note that as per evidence of P.W.1 and P.W.2, two complaints were given but only one complaint was produced before the Court and thereby, it creates serious doubt over the prosecution case and the same was not considered by the trial Court. The prosecution case is filled with doubts but the same has not been considered by the trial Court. The lower Court acquitted the other accused by giving benefit of doubt and the same benefit of doubt has to be extended to the appellant also.



*Crl.A.(MD)No.10 of 2017*

6.The learned counsel appearing for the appellant contended that the trial Court has convicted the appellant for the offence under Section 366 of IPC and imposed sentence him to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment. The trial Court failed to consider the discrepancies of the prosecution case and there is delay in registering the FIR and sending FIR to Court and the same was not properly explained. Further according to P.W.1, the complaint was given by her. According to the complaint, A1 by holding the hand of the victim had taken her in the omni car. During the examination before the trial Court, P.W.1 stated that the appellant abducted the victim by closing her mouth. This discrepancy has not been considered by the trial Court. As per prosecution witnesses, two complaints were given and only one complaint was produced before the Court and earlier complaint was suppressed and according to P.W.1, the complaint was prepared by P.W.9 but the P.W.9 denied the same. Therefore, there are contradictions between the prosecution witnesses with regard to manner of occurrence and lodging of complaint and the registration of FIR itself creates serious doubt. Further the victim had never raised alarm when she was dragged by the accused from the house to omnivan and she did not resist, thereby the conduct of the victim creates serious doubt over the prosecution case. The trial Court has given benefit of doubt to the other accused and the same benefit of doubt is also to be extended to the appellant but the trial Court failed to consider the above said



*Crl.A.(MD)No.10 of 2017*

aspects and erroneously convicted the accused for the offence under Section 366 of

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7.The learned Government Advocate appearing for the respondent has contended that P.W.1 is the defacto complainant and mother of the victim and she deposed about the abduction of the victim P.W.6 and categorically deposed about the lodging of complaint. The evidence of P.W.2 corroborated the evidence of P.W.1 with regard to lodging of complaint and other evidence of P.W.3 and P.W.4 who are neighbors of the victim have also corroborated the evidence of P.W.1 and they deposed that after hearing about the occurrence, P.W.1 went to the house of P.W.3 and P.W.4 at the time, the appellant abducted the victim. P.W.6 victim also categorically deposed about the abduction made by the accused and thereafter she was taken to Kadavur and she was confined for five days and P.W.9 who registered the FIR and P.W.10 who investigated the case have deposed about the registration of FIR, investigation, arrest of accused and recovery of M.O.1. The trial Court also elaborately discussed about the evidences and thereby, rightly convicted the appellant. Therefore, the appeal is liable to be dismissed.

8.Upon hearing both sides and perusing the records, judgment and grounds, the points for determination in this appeal is whether the prosecution has



*Crl.A.(MD)No.10 of 2017*

proved the charges against the appellant under Section 366 of IPC beyond reasonable doubt and the judgment and conviction passed by the trial Court are sustainable or not.

Point:-

9.As per prosecution case, on 26.05.2016, at about 12.30 a.m., the appellant along with others went to the house of victim and abducted the victim P.W. 6 through omni van bearing registration No.TN-69-AA-6399 and thereafter, she was taken to Kadavur where she was detained for five days and thereafter, the police arrested the appellant on 01.06.2016 near Esanatham, Ammapatti Division Road and thereafter, recovered the vehicle. In this case, P.W.1 is the defacto complainant and she gave a complaint before the police station. According to P.W.1, after the occurrence, the next morning at about 10.00 a.m., they went to the police station and had given a complaint and the complaint was marked as Ex.P1. Based on the complaint the P.W.9 had given CSR dated 26.05.2016 then on 29.05.2016, FIR was registered and the same was marked as Ex.P7.

10.On perusal of Ex.P7, it is seen that it was registered on 29.05.2016 at about 18.30 hours. The complaint was received on 26.05.2016. On perusal of FIR, it reveals that on 26.05.2016 at about 00.30 hours, when the defacto complainant along



*Crl.A.(MD)No.10 of 2017*

with victim were sleeping in the house, heard noise about the presence of somebody and thereafter, when she saw in the light, A1 along with some others pulled the hands of the victim and then taken to car and they fled away. After hearing noise, the neighbors came there. Therefore, according to the FIR and complaint, the appellant on the date of occurrence pulled the hands of the victim and taken in the car. But P.W.1 in her chief examination stated that on 26.05.2016 at about 12.30 a.m., when she along with her daughter were sleeping at that time, A1 along with 4 to 5 persons taken her daughter by closing her mouth. Therefore P.W.1 who is the author of the complaint, in the complaint stated that the accused pulled the hands of the victim, but in the evidence of P.W.1, it is stated that the accused closed her mouth and taken to the car. Therefore, there is a major contradiction between the evidence of P.W.1 and the Ex.P1 complaint with regard to the manner of occurrence. Further according to the complaint, the mother of victim raised alarm and thereafter, P.W.3 and P.W.4 came to the place of occurrence and then she made phone call to her brother and on the next day, on the arrival of her brother, she gave a complaint but there is no reference in the evidence of P.W.1 about the alleged alarm made by P.W.1 and arrival of the neighbors P.W.3 and P.W.4.

11.Per contra the P.W.3 in her evidence stated that after the occurrence, the P.W.1 came to the house of P.W.3 by raising alarm and then she along with her



*Crl.A.(MD)No.10 of 2017*

daughter P.W.4 went to the house of P.W.1. The P.W.4 who is daughter of PW.3 in her evidence stated that after hearing alarm of P.W.1, she along with P.W.3 went to the house of P.W.1. Therefore according to complaint, the complainant P.W.1 raised alarm and thereafter, hearing the alarm of P.W.1, the neighbors P.W.3 and P.W.4 rushed to the house of P.W.1, according to evidence of P.W.3 after occurrence the P.W.1 by raising alarm came to the house of P.W.3 and then the P.W.3 along with P.W.4 went to the house of P.W.1, but the P.W.1 during examination before the Court did not state anything about the same. Therefore, there are so many contradictions between the evidence of P.W.1 and the previous complaint given by her with regard to the manner of the occurrence. Further P.W.1 in her cross examination, stated that the particulars of the complaint was stated by her brother in the police station. Further stated that “காவல்நிலைத்தில் புகார் பற்றி என் தம்பி தான் விவரம் சொன்னார்..... போலிசார் தான் புகாரை காவல்நிலையத்தில் எழுதினார்கள். Therefore, from the evidence of P.W.1, it reveals that the contents of the complaint was narrated by the brother of P.W.1 and the police only had written the complaint. But P.W.2 who is the brother of P.W.1 in his examination stated that P.W.1 had given complaint before the police station and the contents were narrated by P.W.1. Therefore, the reasonable doubt would arise about the complaint and the evidence of P.W.1.



*Crl.A.(MD)No.10 of 2017*

12.In this context, P.W.9 who received the complaint and registered the FIR, has stated that P.W.1 has given written complaint on 26.05.2016 and he issued CSR, Ex.D1. Further P.W.2 in his cross examination stated that ”முதல்முறை புகார் கொடுத்தபோது 1,2 எதிரிகளின் பெயர்களை சேர்த்துத்தான் கொடுத்தோம். மறுபடியும் கொடுத்தபுகாரில் தான் மற்ற எதிரிகளின் பெயர்களை சேர்த்துக்கொடுத்தோம்“. Therefore, from the evidence of P.W.2, it reveals that in the complaint given for first time, they included only A1 and A2 and again they gave a complaint by including other accused. From the evidence of P.W.2, it reveals that two complaints were given before the police. In the first complaint, they added only A1 and A2 and in the second complaint, they added all other accused. The present complaint is against A1 and others, but the complaint against A1 and A2 and all the accused have not been brought to the trial Court. Therefore, lodging of complaint itself creates doubt out over the prosecution case.

13.According to the evidence of P.W.1, complaint was written by the police and the contents was narrated by P.W.2. According to the evidence of P.W.2, the complaint was given by P.W.1 and the contents was narrated by P.W.1. According to the evidence of Sub Inspector of Police, P.W.9, the P.W.1 gave a written complaint and further P.W.2 admitted that two complaints were given. These all creates serious doubts over the genuinity of the complaint and genuineness of the prosecution case.



*Crl.A.(MD)No.10 of 2017*

14.Further P.W.6 victim in her evidence deposed that on 26.05.2016 at about 00.30 hours, A1 and A2 came in Omni van and taken her in Omni van and thereafter, she was taken to Kadavur and locked into house of Thangavel for more than five days. At that time, A1 compelled her to marry him. But she refused for the marriage. Even according to the evidence of P.W.6, A1 and A2 alone taken her. In the chief examination, she has not stated anything about the closing of mouth but at the time of cross examination only, she stated that at the time of abducting her, A1 and A2 have closed her mouth. Further in the cross examination, P.W.6 has stated that at the time of occurrence she did not resist them (1, 2 எதிரிகள் தூக்கிசென்றபோது நான் முரண்டு பிடித்தேனா என்றால் இல்லை). Further from the evidence of P.W.2, it reveals that she has not raised any alarm and she has not resisted at the time of taking her into the car. This conduct of the victim creates serious doubt over the alleged abduction of the accused. Even according to the evidence of P.W.6, she was wrongfully confined in the house of Thangavel and she did not have food for the past five days. This version of P.W.6 also unbelievable and the evidence of P.W.6 is unnatural and not cogent. Had the victim was abducted as alleged by her she would have raised alarm and she was taken through omni van and she could raise alarm while travelling and when she was alleged to have confined for 5 days but she never raised alarm and particularly she stated in her evidence that she has not resisted the alleged abducting. Therefore, the evidence of P.W.6 does not



*Crl.A.(MD)No.10 of 2017*

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15. According to the evidence of P.W.8, who recorded the statement of victim under Section 164(5) of Cr.P.C., she did not state anything about the name of person, in whose house she was stayed. Further P.W.9 who registered the FIR, also deposed before the Court that P.W.1 came to the police station along with P.W.2 and she gave a complaint and based on the complaint, he gave a CSR in Petition No.197 of 2006. The said CSR was marked as Ex.D1. But on perusal of Ex.D1, it reveals that on 26.05.2016, in the early morning, the victim was abducted by unknown person and there is suspicion over one Nagaraj, son of Appavu, Venkatesapuram, Vendasandur Taluk, Dindigul District. Further in the column of nature of petition have written as 'love affair'. Therefore, from Ex.D1, it reveals that the complaint was given on 26.05.2016 on suspicious. But the present complaint, Ex.P1 is named one. On perusal of evidence of P.W.1 and P.W.2 with regard to lodging the complaint and Ex.P1 and FIR, Ex.P7, they creates serious doubt over the prosecution case. Further P.W.9 in his evidence stated that on the instigation of P.W.10 only, he registered the FIR and he narrated about the complaint. In the cross examination, he stated that 'ஒரு சிலர் கோபித்துகொண்டு தானாக தனது உறவினர் வீட்டிற்கு சென்றுவிடுவார்கள். அதுபோல தான் என் விசாரணையில் தெரியவந்தது. அதனால் தான் மனு ரசீது போட்டேன். அந்த விவரத்தை ஆய்வாளரிடம் சொன்னேன். ஆனால் ஆய்வாளர்



*Crl.A.(MD)No.10 of 2017*

என்னை முதல் தகவல் அறிக்கை பதிவு செய்யுங்கள் என்று 29.05.2016 அன்று

சுற்றிவிட்டார். ஆய்வாளர் கேட்டுக்கொண்டதற்கு இணங்க நான் முதல் தகவல்

அறிக்கை பதிவுசெய்தேன் என்றால் சரிதான்.'. From the evidence of P.W.9, it reveals that on the direction of the Inspector of Police only, he registered the FIR.

16.Further P.W.10 who is the Investigating Officer in this case also, in his evidence stated that in the complaint, there is no reference about the closing of mouth. Further he stated that on the date of complaint itself, the Sub Inspector of Police enquired the matter and further he admitted that P.W.3 and P.W.4 have not stated about the seen of car. But P.W.4 and P.W.5 in their evidence stated that they saw the car at the time of moving. Further P.W.10 admitted that the victim sent a letter dated 03.05.2016 stating that no body abducted her but the said letter has not been produced before the Court. This also creates serious doubt over the fair investigation of the Investigating Officer and prosecution case. Further P.W.10 in his evidence stated that '31.05.2016 அன்று சாட்சி சரண்யா தன்னை யாரும் கடத்தவில்லை என காவல்நிலையத்திற்கு பதிவு தபால் மூலம் கடிதம் அனுப்பியிருந்தார் என்றால் சரிதான்'. The Investigation Officer P.W.10 admitted that after the arrest of accused, he did not go to the place where the victim alleged to have been confined. These are all the major discrepancies and affect the core of the prosecution but the trial Court failed to consider the same. The trial Court also in the



*Crl.A.(MD)No.10 of 2017*

judgment discussed about the doubt over the prosecution case with regard to the other accused and benefit of doubt was given to the other accused but the same benefit of doubt was not extended to A1. Therefore, the available evidences are not sufficient to prove the guilt of the accused. The prosecution evidences are filled with doubts and it is unsafe to convict the accused with the available evidence.

17.As far as the offence under Section 366 of IPC is concerned, 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 ten years, and shall also be liable to fine.

18.In this case, the available evidence is not sufficient to attract the said provision under Section 366 of IPC. Even after the alleged abduction, there is no marriage was solemnized between the victim and A1 and if the intention of the accused is to abduct the victim for marriage then he could married the victim. As per prosecution for the past five days, the victim was with the custody of the accused, but no marriage was solemnized between them. This version also creates doubt over



*Crl.A.(MD)No.10 of 2017*

the prosecution case and no case is made out as against the appellant.

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19. The trial Court acquitted the other accused and the vehicle also not involved in the occurrence, then how the accused abducted the victim has to be explained. Once the co-accused and the vehicle have not involved in the occurrence, the entire prosecution fails. The specific charge as against the accused is that all the accused abducted the victim through omni van and taken to the house of the one Thangavel A4 in this case, but once the prosecution failed to prove that where the victim was stayed during the days of alleged abduction and by whom she was abducted the conviction of A1 alone is not sustainable when other accused were acquitted by the trial Court.

20. Therefore, as discussed above, this Court is of the opinion that the prosecution has failed to prove the charge under Section 366 of IPC as against the appellant beyond reasonable doubt and the trial Court judgment and conviction passed by the Mahila Court, Karur in S.C.No.74 of 2016 dated 15.12.2016, are not sustainable and liable to be set aside. Accordingly, this appeal is allowed and the judgment and conviction passed in S.C.No.74 of 2016 dated 15.12.2016, on the file of the Mahila Court, Karur is hereby set aside. The appellant is acquitted from the charge under Section 366 of IPC and he be set at liberty subject to other cases if any.



WEB COPY



*Crl.A.(MD)No.10 of 2017*

**P.DHANABAL, J.**

Mrn

The bail bond if any executed by the appellant shall stand cancelled. The fine amount already paid by the appellant shall be refunded forthwith.

**05.09.2023**

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

Mrn

To

1.The Judge, Mahila Court ,Karur.

2.The Inspector of Police,  
Aravakurichi Police Station,  
Aravakurichi,  
Karur District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Crl.A.(MD)No.10 of 2017

05.09.2023