

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

CRL.A.No. 953 of 2006 ()

**AGAINST THE ORDER/JUDGMENT IN SC 725/2003 OF ADDITIONAL DISTRICT &
SESSIONS COURT (AD HOC) FAST TRACK COURT II, PATHANAMTHITTA
DATED 19-04-2006**

APPELLANTS/ACCUSED:

- 1. BIJU @ BALAN, S/O. PODIYAN,
PARAKADAVIL VEEDU, MUTHUPEZHUNKAL
ARUVAPULAM MURI & VILLAGE, KOZHENCHERRY TALUK
PATHANAMTHITTA DISTRICT.**
- 2. RAJEEVAN, S/O. DAMODARAN,
KARUMALA PUTHEN VEEDU, KARUMALA MURUPPEL
ARUVAPULAM MURI AND VILLAGE, KOZHENCHERRY TALUK
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.No.953 of 2006

Dated this the 13th day of March, 2015

J U D G M E N T

The appellants were charged with having committed the offence under Section 366 r/w. Section 34 I.P.C. The allegation is that on 22.4.2000 the first appellant with the help of the second appellant kidnapped a girl aged 15 years so that the former could marry her. The learned Sessions Judge accepted the prosecution case and convicted both appellants and sentenced them to undergo simple imprisonment for one year and to pay a fine of Rs.3,000/- each with a default clause. This is challenged in this appeal.

2. The appellants and the victim girl resided in the same locality. The victim girl was a 10th year student. Every Saturday she used to go to a temple 2 ½ k.m. away from her house. As usual at 6 in the morning on 22.04.2000 she left her house for the temple. She did not come back to the

house even by noon. So her father PW1 informed the police that she was missing. Ext.P1 is his F.I. Statement and Ext.P6 is the F.I.R. prepared by the police.

3. The prosecution relied on the evidence of the victim, who was examined as PW2. She testified that on the date of occurrence she was going to temple, when on the way she saw the first appellant standing near an autorickshaw; he offered to take her to the temple; the second appellant also was in the auto rickshaw. They proceeded to the temple. But the autorickshaw did not stop near the temple. It went to the K.S.R.T.C. bus stand. From there she was taken to a house at Angamoozhi. There were two or three women in the house. In the cross-examination nothing could be brought out to show that this evidence of PW2 is false.

4. It is true that the victim deposed that she was taken away by force. This does not appear to be true. The evidence indicates that she was a willing party. She left her home and went with the first appellant voluntarily.

5. It came out in the evidence of the victim girl (PW2) and her mother, who was examined as PW4, that the police arrested the first appellant from the house to which he took the victim girl. PW4 and her brother and the brother of the second appellant also were with the police. They found the victim also in that house. There is also the testimony of PW10 S.I. of Police that the first appellant was arrested at that house. So the presence of the victim girl and the appellant in that house stands proved.

6. There cannot be any doubt that the taking away of the victim girl by the first appellant amounted to kidnapping as she was below 18 years. The learned counsel submits that there is no evidence to prove that the first appellant had the intention to marry her. But the circumstances indicate that he was in love with the victim girl. So the only object of his taking her away was to marry her. The learned Sessions Judge rightly held that he has committed the offence under Section 366 I.P.C.

7. Learned counsel for the appellants submits that

there is no evidence to prove that the second appellant also committed the offence. He was present in the autorickshaw in which the victim girl was taken away. But there is no evidence to show that he had any intention to kidnap the victim girl. So I think he is entitled to benefit of doubt. He will be acquitted of the offence.

8. Learned counsel submits that leniency may be shown in the matter of sentence as the first appellant was aged only 19 years when the incident took place. He was in love with the victim girl. The girl voluntarily went with him. I think the first appellant deserves leniency. He had been in custody from 22.04.2000 till 26.05.2000. Imprisonment for the period during which he has been in custody is sufficient to meet the ends of justice.

In the result, this appeal is allowed in part. Conviction of the second appellant and the sentence imposed on him are set aside and he is acquitted of the offence. Conviction of the first appellant is confirmed. His sentence of imprisonment is reduced to the period during which he has

been in custody during the investigation. He will pay the fine imposed by the trial court and in case he does not pay it, he shall undergo simple imprisonment for three months as ordered by the trial court.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/