

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

CRL.A.No. 1014 of 2006 ()

**AGAINST THE JUDGMENT IN SC 173/2001 OF ADDITIONAL SESSIONS JUDGE,
FAST TRACK III, THIRUVANANTHAPURAM DATED 29.4.2006**

**AGAINST THE JUDGMENT IN CP 114/2000 OF JUDICIAL FIRST CLASS MAGISTRATE -III
NEYYATTINKARA IN CRIME NO.108/00 OF BALARAMAPURAM POLICE STATION**

APPELLANT/ACCUSED::

**MOHANAN, S/O. RAJAPPAN,
AMMU NIVAS, HOUSE NO.9/100, KUDAPPANAKUNNU
R.V. PURAM COLONY, VAZHAYILA DESOM
KUDAPPANAKUNNU VILLAGE, THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SUDHEER

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 23-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.1014 of 2006

Dated this the 23rd day of February, 2015

J U D G M E N T

The appellant was the sole accused in Sessions Case No.173/2001 on the file of the Additional Sessions Judge, Fast Track III, Thiruvananthapuram. Two school going girls alighted from a bus at Balaramapuram. They were going to a tutorial college. The allegation is that the appellant attempted to kidnap one of the girls and thus he committed the offence under Section 511 r/w. Section 366 A IPC. The learned Sessions Judge found him guilty of the said offence and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- with a default clause.

2. The prosecution sought to prove its case mainly by the evidence of PW2 and PW9. PW9 is the victim. She was aged nine years at the time of occurrence. PW2 also was of the same age. They deposed that at about 7.30 in the morning on 17.4.2000 they boarded a bus at

Mudavumpara and alighted at Balaramapuram. They were going to a tutorial college at Balaramapuram. The appellant who was on the bus also got down at Balaramapuram. When the victim girl (PW9) got down, the appellant asked her to get down slowly. Thereafter, he put his hands on her shoulder and walked along with her. PW9 deposed that she asked the appellant to take off her hands. The appellant then said that he was her uncle and he offered to buy her toffees and chain. The girl silently walked towards the college, which was nearby. Even when they reached the college, he did not let her go. So PW2, realising danger, started crying. Accidentally, PW1, an uncle of the victim girl, happened to come there driving an auto rickshaw. He asked PW2 why she was crying. She told him that her friend was being taken away by a stranger. Then only he noticed that the victim was his niece. He went to the appellant and asked him to let the victim go. The appellant took to his heels. While running he looked back and fell down and in the process he sustained injuries. This

is the sum and substance of evidence of PW1, PW2 and PW9.

3. The police registered a case on the basis of information given by PW1 at 8.30. in the morning on the date of occurrence.

4. The appellant was admitted to a nearby hospital at about 9.30 a.m. as seen from Ext.P7 wound certificate issued by PW4 Doctor Nisha. The appellant had sustained the following injuries: (1) bleeding from mouth (2) injury to lips (3) myalgia. He complained of pain in the chest.

5. The doctor deposed that she was told that the appellant sustained injuries at 7.30 a.m. when he fell down and the local people assaulted him at Balaramapuram when he attempted to kidnap a child. But this is irrelevant because the doctor could not say who gave her the information.

6. On getting information that the appellant was admitted to hospital the police got him discharged at about 6.30 in the evening. Ext.P6 is the discharge certificate

issued by PW8 doctor Lawrence.

7. The defence version is this: The appellant was a surety for an accused. The accused absconded. The court ordered him to pay the bond amount as penalty. When proceedings were initiated to realise the amount from him, he went to Fort Police Station. Head Constable Sukumaran made a demand for bribe. The appellant gave information to the vigilance department. The vigilance police laid a trap and Sukumaran was caught and tried for the offence of taking bribery. He was convicted. The appeal filed by Sukumaran was pending. The appellant went to Balaramapuram in search of the accused for whom he stood as surety. Then the police took him to the police station and Sub Inspector assaulted him causing him injuries and a false case was registered against him. The police got him admitted to hospital. This defence version was put to the Investigating Officer who was examined as PW7. He denied it.

8. In the evidence of PW2 and PW9, the victim and

the occurrence witness, there is neither any inconsistency nor any discrepancy. Their evidence go together and is corroborated by the evidence of PW1, uncle of PW9 who reached the place of occurrence when she was being taken away by the appellant. The learned counsel for the appellant submits that it is not believable that the victim did not even cry when she was being taken away by the appellant. PW9 deposed that as she was scared, she could not utter a word or even cry. She was aged only 9 years. The explanation given by her appears to be reasonable. Different people respond to the same situation differently.

9. The fact that the appellant was admitted to hospital at about 9.30 in the morning on the date of occurrence is relevant. The explanation given by him for sustaining injuries is not acceptable. This also lends assurance to the conclusion that the evidence of PW1, PW2 and PW9 is true. The appellant's attempt to kidnap PW9 stands proved.

10. The learned Sessions Judge found that the

appellant committed the offence under Section 511 r/w. Section 366A I.P.C. This does not appear to be correct. There is no evidence to show the purpose of kidnapping of PW9. So only Section 363 is attracted.

11. The offence under Section 363 IPC is punishable with imprisonment for seven years and with fine. The offence under Section 366A is punishable with imprisonment which may extend to 10 years and with fine.

12. The learned counsel for the appellant submits that the incident happened about 15 years ago and some leniency may be shown in the matter of sentence. Having regard to the facts and circumstances of the case, I think imprisonment for a period of one year is sufficient. The appellant is liable to pay the fine imposed on him by the Sessions Court.

In the result, this appeal is allowed in part. Conviction of the appellant under Section 366A I.P.C. is altered to conviction under Section 363 I.P.C. He is sentenced to undergo rigorous imprisonment for one year and to pay a

fine of Rs.5,000/- (Rupees five thousand only) and in default of payment of fine to undergo rigorous imprisonment for a further period of three months. He is entitled to set off the period during which he was in custody before his conviction.

Sd/-

**K. ABRAHAM MATHEW
JUDGE**

//True copy//

P.A. TO JUDGE

shg/