

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

CRL.A.No. 1051 of 2014 (A)

**AGAINST JUDGMENT DATED 12-02-2014 IN SC 58/2013 OF SESSIONS COURT,
KALPETTA , WAYANAD**

CRIME NO. 459/2012 OF MANANTHAVADY POLICE STATION , WAYANAD
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APPELLANT(S):

**RAZIYA, W/O.HAMZA, 42 YEARS,
FEMALE CONVICT NO.110,
WOMEN'S PRISON, KANNUR.**

BY ADV. FARIDIN A.S. (STATE BRIEF)

RESPONDENT(S):

THE STATE OF KERALA

BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22-01-2015, ALONG WITH CRA. 1052/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

B.KEMAL PASHA, J.

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CRL.A.Nos.1051 & 1052 of 2014

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Dated this the 22nd day of January, 2015

J U D G M E N T

A1 and A2 in Sessions Case No.58 of 2013 of the Sessions Court, Kalpetta, who stand convicted under Section 363A IPC and Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2000, and sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of ₹5,000/- (Rupees five thousand only) each, in default to undergo rigorous imprisonment for three months each under Section 363A IPC and the 1st accused stands sentenced to undergo simple imprisonment for one year and to pay a fine of ₹1,000/- (Rupees one thousand only) in default to undergo simple imprisonment for one month under Section 24 of the Juvenile Justice (Care and

Protection of Children) Act, 2000, have come up in appeal through Crl. Appeal No.1052 of 2014 and Crl. Appeal No.1051 of 2014 respectively. Presently, the appellants are undergoing sentence.

2. The prosecution case is that on 25.5.2012 at 8.a.m, the appellants not being the lawful guardians of PW3, victim girl, aged 11, kidnapped PW3 from lawful guardianship in order to employ her for the purpose of begging. They took her to the Mananthavady Bus Stand and after placing A1 blind man and the victim girl in a bus bound for Kannur, A2 left the place. A1 took the victim girl to Kannur, from where, she was taken to several places in Tamil Nadu by train for the purpose of begging. He employed her for begging, and thereafter he took her to Wagamon. By the time, a crime for man missing was registered at the Mananthavady Police Station. The matter was informed to the Police Outpost at Wagamon also. While A1 along with the victim girl were engaged in begging, the local people at Wagamon reported

the matter to the Police Outpost and thereby the Police took them into custody. The Police from Mananthavady reached Wagamon and took away the victim girl and A1. The matter was investigated by PW11 and PW10, who were the Sub Inspector of Police and Circle Inspector of Police, respectively, of the Mananthavady Police Station and final report was filed alleging offences punishable under Sections 363A IPC and Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2000

3. On the side of the prosecution, PWs 1 to 11 were examined and Exts.P1 to P9 were marked. The appellants were examined under Section 313 Cr.P.C. The appellants denied the incriminating circumstances appeared in the evidence against them and contended that they are innocent. The prosecution and the accused were heard. As no grounds were made out to acquit the accused under Section 232 Cr.P.C., they were called upon to enter on their defence. No defence evidence has been adduced. Again

the arguments were heard. The court below found the appellants guilty of the offences as aforesaid, convicted and sentenced them as aforesaid.

4. Both these appeals were filed from the jail where the appellants are undergoing imprisonment. Adv.Sri.Faridin.A.S. is appointed as Legal Aid Counsel for arguing the appeals for and on behalf of these appellants.

5. Heard the learned counsel for the appellants and the learned Public Prosecutor.

6. The main argument put forwarded by the learned counsel for the appellants is that the victim girl was not kidnapped by the appellants from lawful guardianship as alleged; whereas, the girl was not being looked after and maintained by her parents and thereby, the girl willingly went along with A1. It is also argued that the girl was not employed for the purpose of begging. The further argument is that the 2nd accused had no role in the alleged incident. Per contra, the learned Public Prosecutor has argued that

the girl was kidnapped by both the appellants from the lawful guardianship for the purpose of employing her for begging. According to the learned Public Prosecutor, A2 had accompanied the victim girl and A1, to the Mananthavady bus stand and it was A2, who placed A1 and the victim girl in a bus bound for Kannur and, thereafter, A2 returned. According to the learned Public Prosecutor, there is absolutely nothing to interfere with the conviction and sentence passed by the court below in the matter.

7. PW2 is the mother of the victim. She identified both the appellants. A1 is totally blind. According to PW2, A1 is engaged in begging. The victim girl was found missing from 9.a.m. on 25.5.2012. Earlier also on some occasions, the girl used to go to the neighbouring houses and therefore she thought that the girl would come back. Further, according to her, on some occasions, the girl used to return to the house during late night. The girl was studying in the 4th standard at the Govt.U.P.School Mananthavady. She

went to the Police Station and furnished Ext.P2 First Information Statement before PW9, the Senior Civil Police Officer of the Mananthavady Police Station on 29.5.2012. On the basis of Ext.P2, PW9 registered the crime through Exhibit P4 First Information Report.

8. According to PW2, the girl was traced out by the Police from Wagamon after 11 days. In cross-examination, she has deposed that on some occasions, the victim girl used to go and sleep at the veranda of the shop situated at the other side of the river. One week back, the girl had gone to some North Indians who were engaged in selling flowers.

9. PW3 is the victim girl. According to her, A1 is engaged in begging. On the date on which she was taken by A1 and A2, A1 told her that she could play as her like and she would not be beaten up by her parents, if she was prepared to go along with him. He invited her and thereby, she went along with A1 and A2 to the Mananthavady Bus

Stand. From Mananthavady Bus Stand, they went to Kannur by bus, from where, they went to Tamil Nadu by train. She has clearly stated that A1 had employed her for begging at several places. Thereafter, she was taken to Wagamon. According to her, she was beaten up by A1 on several occasions with his stick.

10. PW4 is the conductor of KBT bus which passes through Mananthavady. The bus starts from Pulpally and it is bound for Kannur via Mananthavady. He clearly identified both the appellants. According to him, during the month of May, 2012, both the appellants entered his bus at the Mananthavady Bus Stand with a small girl. After that A2 got out from the bus and went away. A1 and the girl proceeded to Kannur.

11. PW5 is the Headmaster of the Govt.U.P.School, Mananthavady. He produced and proved Ext.P3 extract of the School Admission Register of the victim girl which shows her date of birth as 18.10.2001.

12. PW6 is a resident of Wagamon and he was working as Peon at the Govt. High School, Wagamon. He identified A1. According to him, A1 was engaged in begging. During the 1st week of June, 2012, while he was standing at a shop at Wagamon, he could see a small girl along with A1. He informed the matter to the Mananthavady Police. According to him, he was standing at the shop of PW7. There is a Police Outpost at Peerumedu, from where Police came over there and took away A1 and the girl.

13. PW7 is conducting a grossery shop at Wagamon. According to him, he saw the victim girl along with A1. A1 is engaged in begging. There was an information from Wayanad Police regarding the missing of the girl. According to him, he saw A1 engaged in begging with the child.

14. PW8 is the Assistant Sub Inspector of Police, Peerumedu who was working at the Wagamon Outpost. According to him, he was informed from the Peerumedu Police Station to give information regarding a blind man with

a child, if he could find them. On the basis of information given by PW6, he along with CW10, C.P.O. went to the spot and took A1 and the girl to the Outpost. On the next evening, the Sub Inspector of Police and party from Mananthavady Police Station came over there and took them away. He identified A1.

15. PW11 was the Sub Inspector of Police, Mananthavady. He took over the investigation on 29.5.2012. He gave information to the Wagamon Police Outpost and Peerumade Police Station on 5.6.2012 regarding the case. He was informed from Peerumadu Police Station on 6.6.2012 that the victim girl and A1 were present at the Wagamon Police Outpost. They reached Wagamon on 7.6.2012. They took into custody PW3 and A1 and reached Mananthavady on 8.6.2012. PW3 was sent to Samaritan Bhavan and she is being kept and maintained there. On 9.6.2012, the parents of the victim girl came and identified her. He placed A1 under arrest on 9.6.2012 on the basis of

the statement furnished by PW3. The girl was subjected to medical examination. Subsequently, the investigation was taken over by PW10, Circle Inspector of Police, Mananthavady. He placed A2 under arrest and completed the investigation and laid the final report.

16. From the evidence discussed above, much discussion is not required to conclude that the guilt of both the accused under Section 363A IPC is established. It clearly stands proved that both A1 and A2 were hand in gloves each other for kidnapping the girl from lawful guardianship. A2 was aware of the fact that A1 was engaged in begging. A1 is totally blind. A2 is none other than his wife. From the evidence of PW4, as well as the evidence of PW3, it has come out that A2 had also accompanied A1 and the victim girl to the Mananthavady Bus Stand and it was after placing A1 and the victim girl in the bus bound for Kannur, A2 got out and returned. It has clearly come out that the girl was kidnapped by A1 and A2 for the purpose of employing

her for begging. Matters being so, there is absolutely nothing to interfere with the conviction passed by the court below as against both these appellants for the offence under Section 363A IPC . Regarding the offence under Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it has come out that A1 had employed the victim girl for begging. While both of them were engaged in begging, they were caught by the Police as per the information furnished by PW6. PW6 and PW7 have given evidence to the effect that A1 is a person engaged in begging. According to PW7, he saw the girl along with A1 engaged in begging. Matters being so, there is absolutely nothing to interfere with the conviction passed by the court below on the 1st appellant in respect of the offence under Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

17. Regarding the sentence, the learned counsel for the appellants has pointed out that the sentence is highly

exorbitant. When considering the acts committed by the 1st accused, I am of the view that he is not entitled to any leniency in the question of sentence. An 11 year old girl was kidnapped and she was employed for begging. In fact, the 1st accused has committed an offence punishable under Section 363A (2) IPC, which invites the sentence of imprisonment for life. The sentences imposed by the court below as against the 1st accused for both the offences do not call for any interference at all. Regarding A2, I am of the view that the sentence imposed by the court below on her, for the offence under Section 363A IPC, is harsh. Considering the facts and circumstances of the case, I am of the view that a sentence of rigorous imprisonment for 5 years on A2 will meet the ends of justice in this case.

In the result, Crl.A.No.1052 of 2014 stands dismissed by maintaining the conviction and sentence on A1. Crl.A.No.1051 of 2014 is allowed in part by maintaining the conviction and by modifying the sentence on A2 to sentence

of rigorous imprisonment for 5 years for the offence under Section 363A IPC. It is made clear that the appellants are entitled to set off, of the period undergone by them, in custody, in connection with the investigation, enquiry and trial of this case. Both the sentences imposed on A1 shall run concurrently.

I place on record the strenuous efforts taken by Sri.Faridin A.S., Advocate, engaged as Legal Aid Counsel in defending the accused properly.

**B. KEMAL PASHA
JUDGE**

DSV/23/1/15

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