

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM

THE HON'BLE DR.JUSTICE S.TAMILVANAN  
and  
THE HON'BLE MR.JUSTICE C.T.SELVAM

Criminal Appeal Nos.542 & 556 of 2014  
and  
M.P.Nos.1 and 1 of 2015

1. K.George Kingsley @ George  
S/o.Kanagaraj
  2. S.Mika Prakash @ Prakash  
S/o.Sundaraj
- ... Appellants/A2 and A6 in  
Crl.A.No.542 of 2014
- Karthik @ Karthikeyan  
S/o.Rajagopal
- ... Appellant/A5 in  
Crl.A.No.556 of 2014

-vs-

State by  
Inspector of Police,  
B4 Race Course Police Station,  
Coimbatore District.  
Crime No.1532 of 2008

... Respondent/Complainant in  
both appeals

Criminal Appeals filed under Section 374(2) of Criminal Procedure Code against the judgment of learned Sessions Judge, Mahila Court, Coimbatore, passed in S.C.No.214 of 2009 on 23.09.2014.

For Appellants : Mr.R.C.Paul Kanagaraj, [Crl.A.No.542 of 2014]  
Mr.V.Sairam [Crl.A.No.556 of 2014]

For Respondent : Mr.V.M.R.Rajentren  
Additional Public Prosecutor

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## COMMON JUDGMENT

(Judgment of the Court was prepared by C.T.SELVAM, J.)

These appeals arise against judgment of learned Sessions Judge, Mahila Court, Coimbatore, passed in S.C.No.214 of 2009 on 23.09.2014.

2. Appellants/A2, A5 and A6 along with three others stood trial for offences u/s.147, 148, 366, 342, 392 r/w 397, 354, 506 (ii), 376 r/w 120-B IPC. The prosecution case is that PWs.1 and 2 were accosted by a stranger while they were seated in a Car before Coffee Day shop at Race Course Road, Coimbatore, on 21.11.2008 at about 08.30 p.m. He informed of being a police man, entered the Car, abused and beat both PWs.1 and 2. Accused 1 to 3 approached, asked the stranger to get out of the Car, informed that the stranger was a bad element and that they were do gooders. They asked PWs.1 and 2 not to worry. Thereafter, with A1 at the wheel, they drove away with PWs.1 and 2 and despite their protests and pleadings, took them to an isolated house at Kadambadi. On receiving a call, A1 spoke to one of the accused, A4 to A6, who were following in an another Car. PWs.1 and 2 were held in different rooms. On the instructions of A1, PW-2 called her father and informed that she was at her friend's house. She then called her friend and requested her to inform her father likewise. After some time, PW-1 was taken to the room of PW-2. The accused forced them to disrobe and took photographs. The accused took the watch of PW-1 and jewels of PW-2. Accused have also demanded a ransom of Rs.5,00,000/- from PW-1. On the instructions of A1, accused 2, 3, 5 and 6 left PW-2 with him and proceeded in a Car towards the house of PW-1 towards collecting ransom. PW-1, instead of leading them to his house, led them to that of a friend. Upon realising the same, accused 2, 3, 5 and 6 made a get away. Being left alone with PW-2, A1 repeatedly raped her. On being informed by PW-1, PW-7, Inspector of Police, along with other police officials rushed to the scene, secured PW-2 and held A1. PW-1 preferred Ex.P1, complaint, on 22.11.2008 at about 06.30 a.m. PW-17, Sub-Inspector of Police, B4 Race Course Police Station, registered a case in Crime No.1532 of 2008 for offences under Sections 170, 147, 148, 366, 342, 392 r/w 397, 354, 506(ii), 379 r/w 102(b) IPC. PW-17 forwarded the First Information Report [Ex.P22] to Court and higher officials. PW-21, Inspector of Police, took up investigation. He arrested A1 on 22.11.2008 at 08.30 a.m. at the police station and recorded his confession in the presence of PW-3 and another. The admissible portion of A1's confession is Ex.P3. He examined PWs.1 and 2 at the police station. At the scene of crime [Coffee Day], PW-21, Investigating Officer, prepared Ex.P4, observation mahazar and Ex.P29, rough sketch, in the presence of PW-3 and another. PW-21 examined two persons

engaged in business near the Coffee Day shop, Race Course Road and recorded their statements. PW-21 took A1 and PW-1 to Kadambadi, prepared Ex.P5, observation mahazar and Ex.P30, rough sketch, in the presence of PW-3 and another. PW-21 examined PW-15 and five others and recorded their statements. He forwarded A1 and PW-2 to CMC Government Hospital, Coimbatore, for medical examination. He collected the clothes of A1 and PW-2 under Form-95 and forwarded the same and other incriminating materials to Court towards forwarding the same for chemical analysis. Upon identification by PW-1, PW-21 arrested A4 and A5 near Pothanur Railway Gate on 23.11.2008 at about 11.30 a.m. He recorded the confessions of A4 and A5 in the presence of PW-3 and another. The admissible portions of their confessions are Ex.P7 and Ex.P9 respectively. He arrested A3 near Gandhipuram at 04.00 p.m. and recorded his confession in the presence of PW-19 and another. He produced the accused as also the case properties before Court. Upon identification by PW-1, PW-21 arrested A2 and A6 near Pollachi Main Road, Trichy Kulatheri Amman Temple, on 24.11.2008 at about 08.00 a.m. He recorded the confessions of A2 and A6 in the presence of PW-20 and another. He produced the accused as also the case properties before Court. On 25.11.2008, he examined PWs.11, 14 and another and recorded their statements. He sent a requisition to the Judicial Magistrate seeking permission to record statements of PWs.1 and 2 u/s.164 Cr.P.C. He examined PWs.17, 18 and another and recorded their statements.

3. PW-21, Investigation Officer, has deposed to the recoveries of the jewels belonging to PW-2 and watch of PW-1 as also other material objects. Insofar as these accused are concerned, PW-21 has spoken to recovery of M.Os.1, 11 and 12, a knife and two cell phones from A2 under Ex.P27, M.O.9 - ¼ sovereign gold ring from A3, M.O.8 - 1½ sovereigns gold chain from A4 under Ex.P11, a watch from A5 under Ex.P10 and M.Os.2, 10, 13 and 14, knife, gold ring, petro card and ATM card from A6 under Ex.P28. PW-14, Finger Print Expert, lifted finger prints from the White Omni Car bearing registration No.TN-07-Z-8836. An identification parade was conducted in the presence of PW-13, Judicial Magistrate, Salem. Therein, PWs.1 and 2 duly identified the accused. On transfer of PW-21, PW-22 Inspector of Police, took up investigation. He examined PWs.5, 6, 10/Doctors and two others and recorded their statements. Thereafter, he examined the Chemical Analyst and recorded his statement. The Chemical Analysis Reports are Exs.P12 and P13. The Serology Reports are Exs.P14 and P15. Upon completion of investigation, PW-22 filed a charge sheet informing commission of offences u/s.170, 323, 147, 148, 366, 343, 322 IPC r/w 397, 354, 506(ii), 376 r/w 120 (b) IPC. However, the accused were tried for offences u/s.147, 148, 366, 342, 392 r/w 397, 354, 506(ii), 376 r/w 120-B IPC.

4. To substantiate its case, the prosecution examined PWs.1 to 22, marked Exs.P1 to P30 and M.Os.1 to 18. None were examined on behalf of the accused. On questioning under Section 313 Cr.P.C., the accused denied the charges.

5. Learned trial Judge, on consideration of the evidence adduced by the prosecution, has found the accused guilty, convicted and sentenced them as follows:

| Sections of Law    | Accused   | Sentence                                                                  |
|--------------------|-----------|---------------------------------------------------------------------------|
| 148 IPC            | A1 to A6  | 1 year R.I. and fine of Rs.1,000/- each i/d 3 months S.I.                 |
| 366 IPC (2 counts) | A1 to A6  | 10 years R.I. for each count and fine of Rs.10,000/- each i/d.1 year S.I. |
| 342 IPC            | A1 and A2 | 1 year R.I. and fine of Rs.1,000/- each i/d. 3 months S.I.                |
| 397 IPC            | A1 to A6  | 7 years R.I. and fine of Rs.10,000/- i/d 1 year S.I.                      |
| 506(ii) IPC        | A1        | 1 year R.I. and fine of Rs.1,000/- i/d 3 months S.I.                      |
| 376(1) IPC         | A1        | Life imprisonment and compensation of Rs.1,00,000/- payable to PW-2.      |
| 120-B IPC          | A1 to A6  | 7 years R.I. and fine of Rs.10,000/- each i/d 1 year S.I.                 |

Hence, the present appeals by appellants/A2, A5 and A6.

6. Heard learned counsel for appellants and learned Additional Public Prosecutor as also perused the records.

7. Appellants/A2, A5 & A6 stand convicted for offences u/s.148, 366 (2 counts), 397 and 120-B IPC. A2 stands convicted also for offence u/s.342 IPC.

8. It first is to be determined whether the charge under section 120-B IPC stands established against these appellants. As oft stated, in many a case there would be no direct evidence there regards. The same, many a times, is to be gathered from the circumstances. From the circumstance that there was a phone conversation between A1, holding PWs.1 and 2 in the Car driven by him and one of the accused A4 to A6, in the Car following them and thereupon, on realisation that they had taken a wrong road, A1 changed course, it fairly can be assumed that all six

accused were party to preplanned kidnapping. It is the evidence of PW-2, victim, that when she was molested by A2, A3 informed A2 that their purpose was not the girl, but money and thereupon a quarrel ensued between A2 and A3. Therefore, to inform the case to be one of kidnapping for ransom, would be a fair assumption. However, kidnapping for ransom is an offence under section 364-A IPC, a charge not levied against the accused. In the circumstances of the case, this Court does not consider it proper to require appellants/A2, A5 and A6 to now answer such a charge. As regards these appellants/A2, A5 and A6, we would hold that the charge of criminal conspiracy punishable u/s.120-B IPC would stop with the offence of kidnapping and matters related thereto. We may also inform that though PW-2 had spoken to having been molested by A2, no charge u/s.354 IPC had been levelled against him.

9. From the evidence of PW-2 it is clear that the offence of rape stands committed against her by A1 when she was left alone with him. The evidence of PW-1 is that he was divested of his watch by the accused. He has not specified which of the accused so divested him. It is the evidence of PW-2 that A4 at the instance of A1 held a knife to her neck and forced her to remove and hand over jewels. All the accused stand convicted for offence u/s.397 IPC. In *Dilawar Singh v. State of Delhi* [AIR 2007 SC 3234] it has been explained that Section 397 IPC is attracted only against the particular accused who uses a deadly weapon or does any of the acts mentioned in the section and the other accused are not vicariously liable for the acts of such co-accused. Therefore, the conviction for offence u/s.397 IPC is misplaced. The charge u/s.366 IPC on two counts is most ill-founded. Section 366 IPC covers offence of kidnapping, abducting or inducing a woman to compel her marriage, a charge whereof totally is unsubstantiated in the circumstances of the case. Similar is the charge under section 148 IPC - offence of rioting. What follows from the above discussion is that the accused have shared the common intention of kidnapping PWs.1 and 2. Towards that end, they have also shared the common intention of wrongfully restraining them. While offences u/s.148 and 366 IPC would not be made out against any of the accused, that under 376 IPC can be attributed only to A1, that under 397 IPC, if such offence be made out, can be attributed only to A4. The trial Court has convicted only A1 for offence u/s.506(ii) IPC. We would hold the appellants guilty of offences u/s.120-B, 342 r/w 34 IPC and 363 IPC, the offence u/s.120-B IPC having been committed towards commission of the other offences.

10. Though A3 has not preferred an appeal against his conviction, we find that he stands on the same footing as A5 and A6. The benefit of this judgment would flow also to A3. Accordingly, this Court holds thus:

(i) The conviction of A2 for offence u/s.342 IPC and sentence of 1 year R.I. and fine of Rs.1,000/- i/d 3 months S.I. shall stand affirmed. A3, A5 and A6 are found guilty of offence u/s.342 r/w 34 IPC and sentenced to 1 year R.I. and fine of Rs.1,000/- i/d 3 months S.I.

(ii) A2, A3, A5 and A6 are convicted for offence u/s.363 IPC and sentenced to 2 years R.I. and fine of Rs.50,000/- each i/d 1 year S.I.

(iii) A2, A3, A5 and A6 are convicted for offence u/s.120-B IPC and sentenced to 2 years R.I.  
Sentences to run concurrently.

These Criminal Appeals are ordered on the above terms. Consequently, connected miscellaneous petitions are closed.

gm

-s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Sessions Judge,  
Mahila Court,  
Coimbatore.
2. The Inspector of Police,  
B4 Race Course Police Station,  
Coimbatore District.
3. The Public Prosecutor,  
High Court, Madras.
4. The Superintendent,  
Central Prison, Coimbatore.
5. The Judicial Magistrate III,  
Coimbatore.
6. Thro" the Chief Judicial Magistrate,  
Coimbatore.
7. The District Collector,  
Coimbatore.
8. The Superintendent of Police,  
Coimbatore.

9. The Director General of Police,  
Mylapore, Chennai 4.

+ 1 cc to M/s.Paul Kanagaraj, Advocate SR 58249

+ 1 cc to Mr.V.V.Sairam, Advocate SR 58248

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