

BAIL SLIP

That the Appellant herein/Accused Viz., Amjit Khan was directed to be released on bail as per the Order of this Court dated 20.07.2007 and made in Criminal M.P.No.1 of 2007 in CrI.A.No.614 of 2007 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.614 of 2007

Amjit Khan

.... Appellant/Accused

vs.

The State
Rep. By Inspector of Police
T-1, Ambathur Police Station
Ambathur, Chennai-53
Crime No.544 of 2006

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the order dated 23.05.2007 passed in SC.No.458 of 2006 by the Additional Sessions Judge, Fast Track Court-III at Poonamallee.

For appellant : Mr.K.V.Shanmuganathan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 23.05.2007 passed in Sessions Case No.458 of 2006 by the Additional District and Sessions Court (Fast Track Court-III), Poonamallee are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 21.03.2006, at about 18.30 hours, the accused has kidnapped a minor boy by name Sarik Alam

from the house bearing Door No.105/2, Pattaraivakkam Road, Varadharajapuram and subsequently, he demanded a sum of Rs.2,00,000/- from the grandfather of the said boy. After occurrence, the grandfather of the minor has given a complaint and the same has been registered in Crime No.544/2006. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.5 has conducted investigation and after completing the same, laid a final report on the file of Judicial Magistrate, Ambattur and the same has been taken on file in P.R.C.No.25/06.

4. The Judicial Magistrate, Ambattur, after considering the facts that the offences alleged to have been committed by the accused are triable by the sessions court, has committed the case to the court of sessions, Tiruvallur Division and the same has been taken on file in Sessions Case No.458/2006 and subsequently, made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents has framed the first charge against the accused under Section 361 read with Section 363 of the Indian Penal Code (hereinafter called as "IPC"); second charge against him under Section 365 of the IPC and third charge under Section 364(A) of the IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 5 have been examined and Exhibits P.1 to P.6 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 361 read with 363 of the IPC and sentenced him to undergo three year rigorous imprisonment. The trial court has acquitted the accused in respect of the charges framed under Section 364(A) and 365 of the IPC. Against the conviction and sentence passed by the trial court, the present criminal appeal has been preferred at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has contended that in the instant case, except the ipse dixit of P.W.2, no other corroborative evidence is available so as to prove the guilt of the accused punishable under Section 361 read with 363 of the IPC and therefore, the conviction and sentence passed by the trial court is liable to be interfered with.

10. The learned Additional Public Prosecutor has contended that P.W.2 is none other than the friend of the accused and no circumstance warrants to depose evidence against the accused and his specific evidence is that the accused has entrusted the minor boy to him and the trial court, after considering the trustworthy evidence given by P.W.2 has rightly invited the conviction and sentence against the accused under Section 361 read with 363 of the IPC and therefore, the conviction and sentence passed by the trial court do not warrant interference.

11. The specific evidence given by P.W.2 is that he is the friend of the accused and on 21.03.2006 at about 8.30 p.m., the accused has entrusted the minor by name Sarik Alam to him and his further evidence is that the accused has subsequently contacted him over phone.

12. In fact, this court has perused the entire evidence given by P.W.2 and no materials are available so as to come to a conclusion that P.W.2, due to animosity has given evidence against the accused. Therefore, it is very clear that the entire evidence given by P.W.2 can be admitted and under the said circumstances, the trial court has rightly found the accused guilty under Section 361 read with 363 of the IPC.

13. The learned counsel appearing for the appellant/accused has contended as his residual argument to the effect that the accused has already undergone one year and four months imprisonment and further he is the first offender and therefore, some leniency may be shown in awarding sentence.

14. Considering the nature of offence committed by the accused and also considering that he has already undergone sentence to an extent of one year and four months, this court is of the view that some leniency can be shown in awarding sentence and to that extent, this criminal appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part. The conviction passed against the appellant/accused under Section 361 read with 363 of the IPC by the trial court is confirmed. However, quantum of sentence imposed against him is modified as follows:-

"The appellant/accused is sentenced to undergo 18 months rigorous imprisonment under Sections 361 read with 363 of the IPC instead of 3 years."

The period already undergone by the appellant/accused is ordered to be deducted.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To :

- 1.The Inspector of Police,
T-1, Ambathur Police Station
Ambathur, Chennai-53
(Crime No.544 of 2006)
- 2.The Additional Sessions Judge,
Fast Track Court-III at Poonamallee.
- 3.-do- Through The Principal Sessions Judge,
Thiruvallur.
- 4.The Judicial Magistrate No.1,
Poonamallee.
- 5.-do- Through The Chief Judicial Magistrate,
Thiruvallur.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Sathyamoorthy, Advocate, S.R.No.52076

Cr1.A.No.614 of 2007

UG(CO)
CA(08/10/2015)