

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.308 of 2008

ORDER:

-

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/A2 is directed against the judgement dated 20.02.2008 passed in CrI.A.No.74 of 2006 by the learned I Additional Sessions Judge, Adilabad confirming the conviction recorded and sentence imposed on the petitioner for the offence punishable under Section 344 of the IPC.

1. **(a)** By the judgment dated 31.10.2006 passed in CC.No.499 of 2005 the learned Special Judicial Magistrate of First Class, Mobile (PCR), Adilabad found the accused 1 and 2 guilty of the offences punishable under Section 363 and 344 read with Section 34 of the Indian Penal Code ('the IPC' for short) and convicted them under Section 248(2) of the CrPC. Insofar as A2 is concerned for the offence punishable under Section 344 of the IPC, the trial Court had sentenced him to undergo rigorous imprisonment for six months and pay a fine of Rs.2,000/- and undergo simple imprisonment for six months in default of payment of the said fine amount. While partly allowing the above mentioned appeal of A1 and A2, the learned Additional Sessions Judge found A1 not guilty of any of the offences with which he was charged and further found A2 not guilty of the other offence punishable under Section 363 of the IPC, but, confirmed the conviction of A2 for the offence punishable under Section 344 of the IPC while maintaining the sentence imposed by the trial Court.

2. I have heard the submissions of the learned counsel for the petitioner/A2 and the learned Additional Public Prosecutor appearing for the respondent/State. I have perused the material record.

3. Now the points for determination are: -

1. Whether the prosecution was successful in bringing home the guilt of the petitioner/A2, beyond reasonable doubt, for the offence punishable under Section 344 of the IPC?
2. Whether the petitioner/A2 had made out valid and sufficient grounds for his acquittal of the said offence? And, if so, whether the judgment impugned is liable to be set aside?

4. **POINTS:**

4. (a) To begin with, it is necessary to note that the trial Court had framed two charges viz., one under Section 363 of the IPC and the other under Section 344 of the IPC against A1 and A2. There is no mention of Section 34 of the IPC in any one of the two charges. Section 34 of the IPC deals with acts done by several persons in furtherance of common intention of all and says that in such cases each of such persons is liable for such acts in the same manner as if it were done by him alone. It is pertinent to first note that the court below found A1 and A2 not guilty of the offence punishable under Section 363 of the IPC and further found A1 not guilty of the offence punishable under Section 344 of the IPC but found the A2 guilty of the said offence.

4. (b) The gravamen of the charge as could be seen from the charge framed by the trial Court is as follows: - 'On 17.11.2003 at Adilabad A1 and A2 having kidnapped Rathod Maheswari-LW3 wrongfully confined the said person for 23 days or more and thereby committed the offence punishable under Section 344 of the IPC.'

4. (c) The case of the prosecution as brought out by the evidence adduced on record is this:

PW1 is the father of LW3-Rathod Maheswari (since died). The said LW3-Maheswari (hereinafter referred to as 'the LW3' for brevity) died on 18.11.2005. PW1 knows A1 and A2. He is working as a

Government teacher in Girls High school, Narnoor. He is a resident of Bhimpur village of Narnoor Mandal at the time of his evidence. While he was working as a Teacher in Upper Primary School in Jheri village, LW2-Parvathi Bai, who is his wife used to reside at his native place Bhimpur. At that time, his son, one Rameshwari (his another daughter), Srikanth(PW2) and LW3 used to reside in one room at Shantingar, Adilabad for pursuing their education. At that time, LW3 was studying 8th class in Dayananda School, Adilabad, which is an English medium school. On 17.11.2003 at 08:00 PM while he was at Jheri high school, he had received a phone call from his daughter Rameswari and PW2-Srikanth stating that LW3 went to the house of the daughter of the elder brother of PW1 situate at Police Headquarters and did not return to the house. Therefore, PW1 came to Adilabad at 11:00 PM and had searched for LW3 at various places including the houses of the relatives. His search was in vain. He had continued the search on the next day at different places and villages. Finally on 26.11.2003 he had filed a complaint in the police station stating that his daughter is missing. On that the subject crime was registered as a case of 'girl missing'. While the search for the girl (LW3) was going on, on 09.12.2003 PW2 and others have seen LW3 with the accused and informed the said fact to PW1. In fact they have seen LW3 and the accused in a Jathara in the Adilabad town. Later, they all went and claimed his daughter from the accused but the accused did not hand her over her (LW3) to PW1. Hence, he had proceeded to the police station and brought one constable to the place of A2. On search they had found LW3-the daughter of PW1 in a toilet. On seeing PW1 and others, she could not speak or reveal anything to them. She did not open her mouth. Therefore, she was taken to the house of PW1. Three or four days thereafter, she had become normal and had informed as to what had happened. She had stated as follows: 'while she was coming from the house of the daughter of PW1's

brother in Adilabad, A1 had dragged her hand and had taken her away in an auto. When she had raised cries, he had closed her mouth. She was kept in the house of A1 under house arrest. A1 had harassed her. After two days, in the night, he had taken her to Nirmal by bus to his sister's house. On the next day, which is a Sunday, they made her to take head bath and had applied some black oil to her hair. A1 had held her fingers and asked her to see directly into his eyes. From then onwards there was a change in her behaviour. She was again taken to Adilabad and was kept in the house of A1 for three days. Later, she was shifted to the house of A2.' After search for 23 days LW3 was found. After LW3 was found, a complaint was lodged on 14.12.2003. Exhibit P1 is the first complaint given by PW1 stating that his daughter-LW3 was missing. Exhibit P2 is the second complaint dated 14.12.2003, which was lodged after LW3 was traced. From the time of the incident his daughter was not normal though she was treated in a hospital. Later she had consumed poison and had died.

4. (d) Since the other witnesses examined are a Doctor, who was said to have treated LW3 after the incident and police officers, the only other relevant evidence on record is that of PW2. According to PW1, after LW3 was missing, PW2 and others found her along with the accused in a Jathara at Adilabad town. Now that the case as brought out on record through the examination in chief of PW1 is adverted to supra, it is now necessary to refer to the evidence of PW2.

4. (e) PW2 testified to the following effect: 'He is a resident of Shantinagar, Adilabad since 15 years. He is a student. He is a native of Bhimpur. PW1 is his younger paternal uncle. LW2 is the wife of PW1. LW3 Maheswari is his cousin (sister). For the purpose of their education LW3, her sister and her brother Ramakrishna used to reside in a room in Shantinagar locality, Adilabad. On the morning of 17.11.2003 LW3 went to his elder sister's house i.e., Chandrakala's house situated

at AR head quarters and did not return. He and others were informed that she had left the house of Chandrakala at 01:00 PM. He and others had searched at many places which were known to LW3 but they did not find her even by 08:00 PM. Therefore, they had informed the said fact to PW1 on phone. In the night PW1 and LW2-the wife of PW1 came to Adilabad. In search of LW3, they all went to the school of LW3. They had also searched for her in the houses of the relatives for one week. On 26.11.2003, they had informed the police about the missing of LW3 and had continued the search for her. On 09.12.2003, he was informed by some relatives that they had seen LW3 along with three other girls. Immediately he had taken Rameswari (the sister of LW3) to Jathara; but, they did not find LW3. He had made enquiries with the three girls. They had stated that they do not know anything and that no other girl was with them. When the three other girls came out and took an auto in order to go away from that place, he had followed them having instructed Rameswari to go back to the house and inform PW1 about the facts. Having followed the said girls he had seen the house where the auto engaged by the three girls was stopped. He had returned back and went to the police station and informed the SI present there. Afterwards he was given police protection of two police constables. He along with two of his relatives and the said two police personnel had proceeded in an auto to the house of those girls. When the constable knocked on the door, A2 had come out and then three girls had also come out of the said house; and, later, his sister LW3 also came out and did not speak anything and did not recognise him. He had informed the police that she was his sister. When he had tried to speak, she could not identify him and did not speak anything. He had showed a photograph in his pocket to the police constable on his questioning about the identification of his sister-LW3. Along with LW3 and A2, he had returned to the police station. Having verified the photograph which was already kept with the police, LW3 was identified. Later he had informed to his relative Balram

who had come to the police station and talked to the SI. Later PW1 and LW2-the wife of PW1 came and PW1 had taken LW3 to their house. Later LW3 was taken to Bhimpur. After three days he had returned. There was no change in LW3. Police had examined him.'

4. (f) I have carefully examined the depositions of PWs1 and 2 including their respective versions in cross examinations. A plain reading of their examinations-in-chief would show that the versions of PWs1 and 2 are contradictory to each other and lay bare that the case of the prosecution as sought to be established is inherently improbable and that the totally discrepant versions of PWs1 and 2 which are conflicting bring to the fore any amount of doubt as to the veracity and credibility of the case of the prosecution. The reasons in support of the said observations and findings are summed up infra.

Firstly, it is important to note that the case of the prosecution as averred in the charge sheet is that while LW3 (since died) was returning from the house of one Chandrakala and that on the way when she had reached the Municipal quarters at Adilabad A1 had forcibly took her into an auto and that when she had raised cries he had gagged her mouth with cloth and took her to his house at Adilabad. On appreciation of the evidence brought on record and on merits, the Court below found A1 not guilty of the offence punishable under Section 363 of the IPC which deals with kidnapping and further found him not guilty of the offence under Section 344 of the IPC which deals with wrongful confinement of a person. Therefore, the first part of the prosecution case that A1 had kidnapped LW3 is held not established. No appeal was preferred by the State. It is not the case of the prosecution that A2 was along with A1 when LW3 was allegedly kidnapped by him. When the very first part of the prosecution case that A1 had kidnapped PW1 was held not established, the question of either A1 or A2 wrongfully confining LW3 in the house of A2 does not arise for consideration.

Secondly, what is to be noted is that PWs1 and 2 did not speak of the relationship between A1 and A2 as father-in-law and son-in-law in their respective examinations-in-chief, though such relationship between them is mentioned in the charge sheet. Be that as it may, even according to the case of the prosecution, A1 had taken LW3 to his house at Adilabad. However, the further case of the prosecution is that LW3 was wrongfully confined in the house of A2 for some period after her alleged kidnap and till she was traced by PW2 and others. Though in the charge sheet it was alleged that A1 had brought LW3 to the house of A2, no evidence was adduced in that regard and it remains unexplained as to who brought LW3 to the house in which she was found and from which she was taken back by either PW1 or PW2. There is no evidence brought on record to show that A1 who had allegedly kidnapped LW3 or any other person had brought her to the house of A2. In the absence of any evidence on this important aspect as to how LW3 was brought to the house of A2, the said circumstance which remains unexplained remains a missing link in the chain of circumstances relied upon by the prosecution to show the complicity of A2 for the offence punishable under Section 344 of the IPC.

Thirdly, according to PW1, while a search was being made for his missing daughter-LW3, he was informed on phone by PW2 and others that they had found LW3 and the accused in a Jathara at Adilabad town and that on coming to know of the said information he went to the accused and had claimed his daughter-LW3 but the accused did not handover his said daughter and that, therefore, he went to the police station and on that he was given the assistance of a police constable and therefore, he had again went to the house of A2 to bring his daughter-LW3 back and that on search they had found LW3-his daughter in latrine room of that house. Before adverting to the evidence of PW2 on this very aspect, it is necessary to note that in the cross examination of PW1

the following material omissions were brought out on record: 'He did not state before the police that he was informed by PW2 that they had found his daughter-LW3 when she was at a jathara. He did not state before the police that he went to the house of A2 and that A2 did not handover his daughter and that as such he had requested for police protection. He did not state before the police that he found his daughter in a latrine room in the house of A2.' All these important and material omissions on the vital aspects of the matter would show that the evidence of PW1 is a total improvement from his previous statement. PW1 did not state in his evidence that PW2 and others who had spotted LW3 with the accused at that jathara had accompanied him to the house of A2. His evidence is silent as to how he could proceed to the house of A2 when PW2 and others have not accompanied him. Added to this, PW2 did not support the case of PW1 on this significant aspect in his evidence. On the contrary, PW2 had deposed that he was informed by some relative that they had seen LW3 along with three girls. That relative was not examined. According to his further evidence, on coming to know of the said information, he along with Rameswari, who is the daughter of PW1, went to the Jathara but they did not find LW3 and that when he had enquired with the three girls they had stated that no other girl was with them. In his cross examination it was brought out that there were hundreds of people in the jathara. It remains unexplained as to how PW2 had identified the said three girls in that jathara when the relative who had given the information had not accompanied him. According to him, when the three girls were leaving the jathara, he had followed them and had noticed that their auto was stopped at a particular house and on that he had returned back and went to the police station and that at his request police protection was given and that he along with two of his relatives and two police constables went to the house of those girls and that when the police constable knocked on the door, A2 had come out having opened the door and that the said three girls were also present in

that house and that later his sister-LW3 also came out of that house. He did not speak of the presence of PW1 with him at that time. PW1 did not speak of the presence of PW2 when he and others allegedly went to the house of A2 in search of LW3. Therefore, the evidence of PW1 that when he went to the house of A2 with police protection A2 did not handover his daughter and that he found his daughter in the toilet of that house of A2 appears to be far from truth. The evidence of PW1 shows that he went to the house of A2 for taking LW3 back from the house of A2. Per contra, the evidence of PW2 shows that he went to the house of A2 to bring back LW3 from his house. Thus, the testimonies of PWs1 and 2 are self contradictory and one version makes the other version highly improbable and suspicious.

Fourthly, what is to be noted is that no evidence was collected to show that A2 is either the owner or the lawful possessor of the house in which the missing girl was allegedly found. The other three girls who were allegedly found in the jathara and later in the house of A2 were not examined during the course of investigation and were not listed as witnesses. Further, PW5 the investigating officer had also deposed that while the investigation was in progress PW1 came to the police station and informed that his missing daughter was taken by A2 who is the father-in-law of A1 and that he had immediately rushed to the house of A2 and had handed over the missing girl-LW3 to PW1. PW1 did not state in his evidence that a Sub Inspector of police accompanied him to the house of A2. He had only stated that he went to the police station and that he was given protection of one constable and that he went along with him to the house of A2. In his cross examination PW5 stated that he does not remember whether he had gone to bring the victim girl from the house of A2. After perusing the record, he had again stated in his evidence that he did not go to the house of A2 but had sent an escort. There is nothing on record to show that any such escort was provided to

PW1 to go to the house of A2 to bring back his daughter. Any person from that escort party was not examined during course of investigation and was not listed as a witness. No such witness was examined during the course of trial before the trial court. PW4, the constable, who was alone examined, had stated in his cross examination that he did not visit the house of the victim girl and also did not visit the house of A2 along with PW1.

Lastly, the evidence on the record on a harmonious consideration would show that there is no basis to find that the victim girl-LW3 was wrongfully confined in the house of A2 and was brought back by either PW1 or PW2 from his house.

To sum up, the evidence of PWs1 and 2 coupled with the evidence of PW5 and PW4, the two police personnel, makes it manifest that the evidence brought on record which is highly discrepant and inherently improbable does not inspire confidence. As a sequel, it must be held that there is absolutely no evidence showing the complicity of the A2 in the matter and to conclude that he had wrongfully confined LW3-Maheswari in his house.

5. I have gone through the concurrent findings recorded in the judgments of the courts below. In the facts and circumstances peculiar to the case and in the light of the evidence discussed supra, this Court finds that the Courts below have not properly appreciated the evidence on record and had failed to take note of the fact that the evidence of PWs 1 and 2 is highly discrepant and is inconsistent besides being highly improbable and is unbelievable and that from the evidence brought on record, it is not certain that the incident as alleged in the prosecution case has happened. The indubitable legal position is that ordinarily it is not open for this Court to interfere with the concurrent findings of the Courts below specially by re-appreciating the evidence and that while

exercising revisional jurisdiction this Court has to satisfy itself as to the correctness, legality or propriety of any finding recorded by the inferior Court and that this Court has to exercise the revisional power and supervisory jurisdiction so as to prevent the miscarriage of justice and to correct any irregularity. For the reasons assigned, this Court finds that in this instant case there are compelling and substantial reasons for interfering with the concurrent findings of the Courts below which are clearly unreasonable and that this is a fit case to exercise the revisional power and supervisory jurisdiction to prevent miscarriage of justice. The points are accordingly answered in favour of the petitioner/A2 and against the prosecution.

6. In the result, the Criminal Revision Case is allowed and the judgments of the Courts below are set aside and the petitioner/A2 is accordingly acquitted of the offence punishable under Section 344 of the IPC. The bail bonds of the petitioner/A2 shall stand cancelled and the fine amount, if any, paid shall be refunded to him after the further appeal or revision time is over.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

M.SEETHARAMA MURTI, J

06th February 2015
Vjl