

Bail Slip

The Appellants 1 and 2/Accused namely (1) Thangam @ Thamilrasan, and (2) Ramachandran, was released on bail as per order of this Court dated 18.6.2015 made in Crl.MP.No.1 of 2015 in Crl.A.No.111 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.111 of 2015

1.Thangam @ Tamilarasan
2.Ramachandran

..Appellants/Accused 1 and 2

vs.

The State,by
The Inspector of Police,
Pallapatty Police Station,
Salem District.
(Crime No.1587 of 2010)

..Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 27.01.2015 passed by the learned II Additional Sessions Judge, Salem, in S.C.No.91 of 2011.

For Appellant : Mr.A.Praveen Kumar
Legal Aid Counsel

For Respondent : Mr.E.Raja,Addl.P.P.

JUDGMENT

(Judgment of the Court was delivered by V.Bharathidasan, J.)

The appellants in this appeal are accused 1 and 2 in Sessions Case No.91 of 2011, on the file of the learned II Additional Sessions Judge, Salem. In this case, totally there were three accused. They stood charged for offences punishable under Sections 364-A, 342 and 394 r/w 397 IPC. Pending trial, the 3rd accused died and therefore the charge against A3 abated. The Trial Court, after trial, by judgement dated 27.01.2015, convicted the appellants/accused under Section 364-A IPC and sentenced each of them to undergo life imprisonment and also to pay a fine of Rs.2,000/- each, in default, to undergo simple imprisonment for six months. The

trial Court acquitted the appellants/accused under Section 342 and 394 r/w 397 IPC. Challenging the above said conviction and sentence, the appellants/accused is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) P.W.1 is the victim in this case. He was working as Electrician and residing at Nerkunam Village in Perambalur District. On 12.10.2010, one Pandian from Coimbatore called P.W.1 to test a rice pulling machine in a rice mill at Salem. So, P.W.1 reached Salem bus stand and called the above said Pandian. Thereafter, the first accused approached P.W.1 and informed him that the said Pandian sent him and took P.W.1 to his house at Second Main Road, Aathukadu, Korimedu, where all the accused confined P.W.1 and tripped him fully, by tying his legs and hands. Then, the first accused called the father of P.W.1 in his mobile phone and demanded a sum of Rs.10 lakhs as ransom. Then, all the accused beat P.W.1, thoroughly and the first accused attacked him with a knife. On 13.10.2010, the father of P.W.1 came to the house, where P.W.1 was detained and paid a sum of Rs.20,000/- as ransom to the accused. But, the accused still demanded more amount of Rs.80,000/- and threatened the father of P.W.1 that if the amount was not paid, they would murder P.W.1. But, the father of P.W.1 went to the respondent police station and gave a complaint.

(ii) On receipt of the complaint from the father of P.W.1, P.W.8, Sub Inspector of Police attached to the respondent police, registered a case in Crime No.1587 of 2010 under Section 364-A, 343, 324, 387 and 506(ii) IPC and prepared first information report [Ex.P12] and sent the same to the Court and higher officials.

(iii) P.W.9, Inspector of Police attached to the respondent police, on receipt of the first information report, commenced the investigation, went to the bus stand, Salem and prepared an observation mahazar [Ex.P1], drew a rough sketch [Ex.P13] and then he reached the scene of occurrence, where P.W.1 was detained and rescued the victim/P.W.1. Then, P.W.9 took P.W.1 to the police station and from there sent him to Government Mohan Kumaramangalam Medical College & Hospital, Salem, for treatment.

(iv) P.W.4, Doctor, working in the Casualty Ward, Government Mohan Kumaramangalam Medical College & Hospital, Salem, admitted the victim and found the following injuries:-

- (i) A lacerated wound measuring 3 x 4 cm, 1 x 2 cm in the shoulder and in the back. (ii) An injury measuring 4 x 2 cm on the back, (iii) Multiple abrasion on the left and the right hands.

(v) P.W.9 continued the investigation, again proceeded to the scene of occurrence, where, P.W.1 was detained, prepared an observation mahazar [Ex.P2] and drew a rough sketch [Ex.P14]. Then, he examined some witnesses and recorded their statements. On 15.10.2010 at about 2.15 p.m., P.W.9 arrested A1 and A2 in the presence of P.W.6, Village Administrative Officer, and on such arrest A-1 voluntarily gave a confession and based on the disclosure statement [Ex.P5], P.W.9 seized a sum of Rs.5,000/- [M.O.2] which was received as ransom from the father of P.W.1. A-2 also voluntarily gave a confession and based on the disclosure statement [Ex.P8], P.W.9 seized another sum of Rs.5,000/- [M.O.3] which was received as ransom from the father of P.W.1. Then, P.W.9 recovered a Bajaj Discover Motor Cycle, bearing Registration No.TN-52-6499 [M.O.1], which was involved in the crime, in the presence of witnesses. On 15.10.2010 at about 4.00 p.m., P.W.9 arrested the 3rd accused in the presence of P.W.7, Village Administrative Officer, and on such arrest, A-3 voluntarily gave a confession and based on the disclosure statement [Ex.P9], P.W.9 seized a sum of Rs.2,000/- from the 3rd accused. He sent the accused for judicial custody. Then, he examined the Doctor, who gave treatment to P.W.1 and some witnesses and recorded their statements. After completion of investigation, P.W.9 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the appellants/accused denied the same as false. In order to prove the case of prosecution, as many as 9 witnesses were examined and 16 documents exhibited and 4 material object were marked.

4. Out of the said witnesses examined, P.W.1 is the victim in this case. According to him, he was an electrician, by profession and on 12.10.2010, one Pandian from Coimbatore asked him to test a rice pulling machine in a rice mill at Salem and hence, he reached Salem bus stand, where, the first accused approached him and informing that the said Pandian sent him, took him to the house at Second Main Road, Aathukadu, Korimedu, where the second and third accused were present and all the accused confined him and tripped him fully by tying his legs and hands and then, the first accused called his father in his mobile phone and demanded a sum of Rs.10 lakhs as ransom and threatened his father that if he did not give money, they would kill him and thereafter, all the accused beat him, thoroughly, and the first accused attacked him with a knife. He further stated that on 13.10.2010, his father came to the house, where he was detained and paid a sum of Rs.20,000/- as ransom to the accused, but, the accused still demanded more money of Rs.80,000/- and threatened his father that if the amount was not paid, they would murder him and immediately, his father lodged a complaint before the respondent police station and at about 10.00 p.m., the respondent police rescued him and thereafter, he identified the accused in the police station. P.W.2 is the witness to

the observation mahazar[Ex.P2]. P.W.4 is the Casualty Doctor, who admitted P.W.1 in Government Mohan Kumaramangalam Medical College and Hospital, Salem, and issued Accident Register [Ex.P3]. P.W.5 is the owner of house, where P.W.1 was detained by the accused. According to him, he let out the house to the first accused for a monthly rent of Rs.300/-. P.W.6 is the Village Administrative Officer. According to him, he witnessed the arrest of A1 and A2 and recovery of money from them. P.W.7 is another Village Administrative Officer of Annathanapatti Village. According to him, he witnessed the arrest of A-3 and recovery of money from him. P.W.8, Sub Inspector of Police attached to the respondent police, has stated that on receipt of the complaint from the father of P.W.1, he registered a case and sent the first information report to the higher officials. P.W.9, Inspector of Police attached to the respondent police, has stated that on receipt of the information report, he conducted investigation, rescued the victim/P.W.1, examined the witnesses and recorded their statements, arrested the accused, recovered material objects and after completion of investigation, laid charge sheet against the appellants.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, the accused did not examine any witness and no document was marked on their side. As already stated, since A-3 died pending trial, the trial Court has recorded that the charge against him abated.

6. Having considered all the above materials, the Trial Court convicted and sentenced the appellants/accused for the offence as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused/appellants are before this Court.

7. We have heard Mr.A.Praveenkumar, learned counsel appearing for the appellants and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellants would submit that the trial Court convicted the appellants/accused based on the sole testimony of P.W.1 without any independent witness corroborating his evidence. He further submitted that though as per the prosecution, the accused were arrested on 15.10.2010, as per the evidence of P.W.1 he has seen all the accused on 13.10.2010 in the police station and hence the arrest of the accused and recovery of money creates a doubt about the prosecution case. Apart from that according to the learned counsel for the appellant the first accused is said to have called the father of P.W.1 over telephone and demanded ransom, but the call details were not collected by the prosecution to establish the same and there

is no evidence for the alleged receipt of Rs.20,000/- as ransom from the father of P.W.1 and hence the prosecution has failed to prove the case beyond any reasonable doubt. Therefore, he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that P.W.1, being the victim, has clearly deposed that he was abducted by the accused and detained by them in a house and demanded ransom and also threatened to cause his death. He further contended that it is also established that from his evidence that the father of P.W.1, who died during trial, paid Rs.20,000/- as ransom, which was recovered from the accused based on their disclosure statements and hence the arrest and recovery also proved by the prosecution. Therefore, the prosecution has clearly established the guilt of the accused beyond any reasonable doubt, he sought for dismissal of this appeal.

10. We have heard the rival submissions.

11. P.W.1 is the victim in this case. He has categorically stated that it is the first who accused took him in a motor cycle and all the accused detained him in a house and demanded ransom of Rs.10 lakhs, whereas, his father has paid only a sum of Rs.20,000/- as ransom, but still the accused demanded Rs.80,000/- and they threatened them if the balance amount is not paid, he would be murdered. It is the further evidence of P.W.1 that on 12.10.2010 and 13.10.2010, the accused detained him in the house and attacked him, thoroughly and A1 attacked him with a knife and caused injuries and put him in danger of a murder.

12. So far as the payment of Rs.20,000/- towards ransom is concerned, absolutely there is no evidence for payment of ransom. Even though the accused 1 and 2 are said to have been arrested on 15.10.2010, as per the evidence of P.W.1 after he was rescued, the police took him to the Pallapatti Police Station and at that time, all the accused were in the custody of police in the police station. Hence, the arrest of the accused and recovery of money cannot be believed. Apart from that, the prosecution did not collect the call details in order to prove that the accused called the father of P.W.1 and demanded ransom. In order to establish the abduction for ransom and to bring home the offence under Section 364-A IPC the prosecution must prove that the abduction was for ransom. But, in the absence of any evidence for the same, the appellants cannot be convicted under Section 364-A IPC. But, where as the prosecution has clearly established that P.W.1 was abducted by the accused and put him in the danger or being murdered. Hence, the accused/appellants are liable to be convicted only under Section 364 IPC. Therefore, the conviction under Section 364-A is liable to be set aside and the accused/appellants are liable to be punished only under section 364 IPC.

13. So far as the quantum of punishment is concerned, taking into consideration the facts and circumstances of the case, we are of the view that sentencing the each of the accused/appellants to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- , in default, to undergo rigorous imprisonment for eight week would meet the ends of justice.

14. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellants in S.C.No.91 of 2011 dated 27.01.2015 on the file of the learned II Additional Sessions Judge, Salem, under Section 364-A IPC is set aside and instead, they are convicted under Section 364 IPC and sentenced each of them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2000/- in default, to undergo rigorous imprisonment for eight weeks. It is directed that the period of sentence already undergone by the appellants/accused shall be given set off, as required under Section 428 Cr.P.C. If the appellants/accused are not in custody, the trial Court is directed to take appropriate steps to secure them and commit them to prison to undergo remaining period of sentence.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional Sessions Judge,
Salem.
- 2.-do- Thro' Principal Sessions Judge, Salem.
3. The Chief Judicial Magistrate, Salem District
(for information)
4. The Judicial Magistrate, No.11, Salem.
5. The District Collector, Salem.
- 6.The Inspector of Police,
Pallapatti Police Station, Salem District.
7. The Superintendent, Central Prison, Salem.
- 8.The Public Prosecutor,
High Court, Madras.

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