

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.452 & 533 of 2015

J.Suresh .. Appellant in Crl.A.No.452 / 2015 - A-1
William Stephen .. Appellant in Crl.A.No.533 / 2015 -
A-2

vs

The State, Represented by,
The Inspector of Police,
P-6 Kodungaiyur Police Station,
Chennai - 600 118
(Crime No.706 of 2010) .. Respondent in both Appeals/

Complainant

Criminal Appeal filed under Section 374 (2) of the
Criminal Procedure Code, against the judgement of the learned
XV Additional Sessions Judge, Chennai, in S.C.No.73 of 2011,
dated 06.07.2015.

For Appellant in both Appeals : Mr. N.Manokaran

For Respondent in both Appeals : Mr. M.Maharaja,
A.P.P.,

J U D G M E N T

(Judgement of the Court was delivered by S.Nagamuthu. J.,)

The appellants are the accused 1 and 2 in Sessions Case
No.73 of 2011 on the file of the learned XV Additional
Sessions Judge, Chennai. They stood charged for the offence
under Sections 364 (A) read with 34 IPC. By judgement, dated
06.07.2015, the trial court convicted both the accused under
Sections 364-A IPC read with Section 34 IPC and sentenced them
to undergo imprisonment for life and to pay a fine of
Rs.1,000/-, each, in default, to undergo simple imprisonment
for three months. Challenging the said conviction and
sentence, the appellants are before this Court with these
Criminal Appeals.

Madhavaram, Chennai. He was working as a clerk in a Private Company. P.W.3 is his wife. They have a male child, by name, Krish Anand (P.W.2). Krish Anand was studying in third standard, in SBOA School, at Anna Nagar, Chennai. Usually, the child, Krish Anand, used to return from the school, by 04.15 pm and then, around 05.15 pm, he would go to the house of P.W.5, for attending a tuition class. P.W.5 was running tuition classes for the children, at her house at Second Street, Arun Nagar, Madhavaram. After the tuition class was over, it was the usual practice of P.W.2 to return home around 07.30 pm.

3. On 20.10.2010, as usual, P.W.2 went for the tuition class around 05.15 pm. The tuition class was over by 07.00 pm. While he was returning to his house, on walk, a Maruti Suzuki Car bearing Registration No.TN05-V-7290, came on the road and near him it was stopped. Two persons were there in the car (later on, identified as accused 1 and 2). They told P.W.2 that his father was going to purchase a car and therefore, they wanted him to come in the said car. Innocently, the child (P.W.2) got into the car. Thus, they kidnapped the child in the said car from Madhavaram.

4. P.Ws.1 and 3, having noticed that P.W.2 had not returned after tuition class, contacted P.W.5 over phone. P.W.5 told that after the tuition class was over around 07.00 pm, P.W.2 left the tuition class for his house. P.Ws.1 and 3 went in search of their child. They could not find the child anywhere. While so, at 08.00 pm on 20.10.2010, from a mobile No.7299451489, there was a telephone call to the Cell Phone of P.W.3. From the other end, there was a male voice. The male voice told that he had kidnapped P.W.2 and to release him, he demanded Rs.5,00,000/-. He further warned that P.W.3 should not go to Police and lodge any complaint. He also further warned that in the event the money was not paid, they would kill the child. By this threatening call, P.Ws.1 and 3 got frightened and became restless.

5. P.W.1 immediately rushed to Kondungaiyur Police Station and made a complaint at 10.00 pm on 20.10.2010, complaining that his child was missing. When P.Ws.1 and 3 were in search of their child, P.W.14, who was running a shop in that locality, told them that a child was taken in a Maruti Swift Grey Colour car. Therefore, in the complaint, P.W.1 mentioned that the child had been kidnapped in a Maruti Swift Grey Colour Car. Ex.P-1 is the complaint and Ex.P-10 is the First Information Report.

6. P.W.19, the then Inspector of Police, registered a case in Crime No.706 of 2010 under Section 364 (A) IPC. He forwarded the complaint-Ex.P-1 and the First Information Report-Ex.P-10 to the Court, which were received by the

learned Magistrate.

7. P.W.19 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, as identified by P.W.14, in the presence of P.W.15. P.W.19 used the best investigation skill. On some information, he went to Pallikonda Toll-gate, Vellore District, on 21.10.2010 and he was hiding near a bridge with his fellow police officials. Around 12.00 noon, the car in question bearing Registration No.TN05-V-7290 came towards the toll-gate. It was intercepted. In the car, the accused 1 and 2 were there and P.W.2 child was also found. He arrested both the accused and rescued the child. On such arrest, in the presence of P.W.18 and another witness, they gave voluntary confessions, one after the another. From the car, they produced two knives, which were recovered by P.W.19. They also produced two cell phones with Sim cards. He arrested both the accused. Then, he seized the car under a mahazar. After returning to the Police Station, he forwarded the accused to the Court and handed over the material objects also to the Court.

8. P.W.19 examined P.W.2. P.W.2 has stated, how he was taken by the car by these two accused persons from Madhavaram and how he had brought to the place of occurrence. P.W.19 examined many more witnesses and then handed over the Case Diary to his successor-P.W.20, for further investigation. P.W.20 continued the investigation and laid a charge sheet against both the accused under Section 364(A) read with Section 34 IPC.

9. Based on the above materials, the trial court framed charges under Section 364 (A) read with Section 34 IPC against both the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 20 witnesses were examined, 13 documents and 6 material objects were marked. M.O.1 is the car in question.

10. Out of the said witnesses, P.Ws.1 and 3 are the father and mother, respectively, of the child - the victim. They have vividly spoken that the child was missing from 07.00 pm on 20.10.2010. P.W.3 has stated that on 08.00 pm, she received a phone call to her cell Phone number, from Cell Phone No.7299451489, demanding a ransom of Rs.5,00,000/- for the release of the child. P.W.1 has spoken about the complaint made by him to the Police at 10.00 pm. P.Ws.1 and 3 have further stated that the child was rescued by P.W.19, at Pallikondan Toll-gate, in Vellore District, on 21.10.2010.

11. P.W.2, the child, (victim) has stated that when he was returning from the tuition class, a Maruti Car (M.O.1) came and the same was stopped, by his side. These two accused

were there in the car. They told him that his father was going to purchase a car. So saying, by deception, they took him in the car. He has further stated that, after sometime, he slept in the car. The next day, when he woke up, he found that he was in the car at a Toll-gate and the police rescued him. He has identified these two accused as Kidnappers.

12. P.W.4 is the owner of the M.O.1-car. He used to give the car for hire. According to him, these two accused came to him and wanted to engage the said car for hire. They gave a sum of Rs.5,300/-, as advance. As per the business practice, P.W.4 received a copy of the driving licence from A-2 and a copy of the ration card from A-1 and gave car to them. At the time when they took the car, they told him that they would return the car in two days. But the car was not returned even after four days. Later, P.W.4 came to know that the car was misused by these two accused for kidnapping the child. According to him, he took custody of the car, based on the orders of the Court.

13. P.W.6 was the then Sub-Inspector of Police at Kondungaiyur Police Station. He accompanied P.W.19 and assisted him in investigation. He has stated that he accompanied P.W.19 on 21.10.2010 and at 12.00 noon, the car-in-question came to the toll gate at Pallikonda, in Vellore District. According to him, the car was intercepted and these two accused were found in the car. The accused were arrested by P.W.19 and the child was rescued. P.W.7 has also stated that he accompanied P.W.19 and he was present, when the car was intercepted and the accused were taken into custody and the child was rescued by P.W.19.

14. P.W.8 was the Head Constable attached to Pallikonda Police Station. He has stated that P.W.19 and other policemen came from Chennai at 11.45 am and sought assistance of the Sub-Inspector of Police, in the matter of investigation of this case. Accordingly, P.W.8 and the Sub-Inspector of Police, attached to Pallikonda Police Station, accompanied P.W.19 to the toll-gate, where the car in question was intercepted, the accused were arrested and the child was rescued from the car. P.W.9 was the then Cashier in Pallikonda toll-gate, Vellore District. According to him, he witnessed the car in question being intercepted and he witnessed the arrest of these two accused and the fact that the child was rescued by P.W.19.

15. P.W.10 is an important witness for the prosecution. According to him, he was running a shop at 7th Avenue, Venkatesa Colony, Madhavaram, Chennai. According to him, on 20.10.2010, at 07.15 pm, P.W.2 was taken in a Maruti Swift Car by two persons. He informed the same to P.W.3.

16. P.W.11 is a Nodal Officer of Airtel Limited. He has stated that the Cell Phone No.9840258273 was registered with Airtel Limited. It stood in the name of one S.Sasikala, thereby meaning P.W.3. He has further stated that he gave the call details of the said cell phone, for the relevant period, vide Ex.P-5. P.W.12 is a Nodal Officer of yet another mobile phone company, by name, S.R.South Limited. He has stated that the cell phone No.9884049011 was registered with them. He has further stated that he gave the call details of the said cell phone number, for the period between 20.10.2010 and 21.10.2010, vide Ex.P-6.

17. P.W.13 was an Executive in Airtel Limited. He has stated that he issued Ex.P-7, which is the incoming call details of Cell Phone No.7299451489. P.W.14 has stated that he was running a Garments showroom at 6th Street, Venkateswara Colony, Madhavaram, Chennai. According to him, on 20.10.2010 around 07.00 pm, when a child was walking in front of his showroom, a Maruti Swift car of grey colour came there, in which, the child was taken. Later, P.W.3 came in search of the child to whom he gave information about the above occurrence. P.W.15 has spoken about the preparation of the Observation Mahazar and the Rough sketch, at the place of occurrence. P.W.16 has spoken about the arrest of the accused 1 and 2, confession statements given by them and the consequential recovery made out of the same. P.W.17 has turned hostile and he has not supported the case of the prosecution, in any manner. P.W.18 has also been treated as hostile and he has also not supported the case of the prosecution in any manner. P.Ws.19 and 20 have spoken about the investigation done and the final report filed.

18. When the above incriminating materials were put to the accused 1 and 2 under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses on their side nor any documents. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused 1 and 2 under Sections 364 (A) IPC read with Section 34 IPC. Challenging the same, the appellants are before this Court with these Criminal Appeals.

19. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

20. In the case on hand, from the evidences of P.Ws.1, 2, 3 and 5, it has been clearly established that, on 20.10.2010 around 05.15 pm, P.W.2 has gone to the house of P.W.5 and attended the tuition class. It is also clear from the evidences of P.Ws.2 and 5 that the tuition class was over by 07.00 pm and thereafter, P.W.2 was returning to his house. It

was only thereafter he was found missing.

21. It was the evidence of P.W.2 that when he was walking, a grey colour Maruti Swift Car came and it was stopped by his side. These two accused were in the car. They told him that his father was going to purchase a car and they wanted to come in the said car. Then the car went ahead. He slept in the car and thus, he did not know as to what was happened thereafter.

22. The learned counsel for the appellant, in both these appeals, would submit that since the accused were not previously known to P.W.2, the identification made on these accused, for the first time, in the Court, cannot be given any weightage of.

23. We find no force in the said argument at all. It is not as though, P.W.2 had seen the face of these two accused, for a while, but, it is the case of the prosecution that the accused 1 and 2 took P.W.2 in the car and kept him in their custody, until he was rescued on the next day around 12.00 noon. Thus, there was enough time for P.W.2 to have noticed the face of these accused and the same could have certainly gone into his memory. Thus, in our considered view, the identification of these two accused made by P.W.2 in the Court could be given full weightage, though there was no Test Identification Parade conducted.

24. According to P.Ws.1 and 3, when they went in search of the child (P.W.2), P.W.5 informed that P.W.2 had left the tuition class by 07.00 pm itself. P.W.14 has stated that when a child was walking near his shop, a Maruti Swift Car grey in colour came, in which the child was taken. P.W.14 is an independent witness. He has not identified these accused. But the evidence of P.W.14 duly corroborates the evidence of P.W.2.

25. P.W.1 had gone to Kodungaiyur Police Station and made a complaint at 10.00 pm on 20.10.2010. In the complaint itself, P.W.1 has stated that P.W.2 had been taken by some unidentified persons, in a Maruti Swift Car. This information was from P.W.14. Thus, the fact that P.W.14 saw the child being taken in the Maruti Swift Car came to light, even when the complaint was made to the Police at the earliest point of time at 10.00 pm on 20.10.2010.

26. Thereafter, the Police and P.Ws.1 and 3 were in search of the child. On some information, P.W.19, with the assistance of some Policemen, including the Policemen drawn from Pallikonda Police Station, were hiding near a Bridge in the toll-gate at Pallikonda, in Vellore District. By 12.00 noon, the car-in-question came. It was intercepted in which

these two accused were found and the child was also found in the car. That is how, these two accused were arrested by the Police and the child was rescued. Thus, we do not find any reason to reject the evidences of the police witnesses. They have no axe to grind against the accused. We fully believe this part of the case of the prosecution that the accused were arrested at 12.00 noon on 21.10.2010 and at that time, the child was in their custody. There is no other evidence to disprove this fact. The accused 1 and 2 have got no explanation as to how they came to keep the custody of the child at that time and also how they came to possess the car. This is a very strong incriminating circumstance, coupled with the evidence of P.W.2, which by itself would be sufficient to safely conclude, that these two accused were the purporters of the crime.

27. Then comes the evidence of P.W.4. P.W.4 is the owner of the car concerned. He has stated that the car was taken by these two accused for hire. Though some Service Providers were examined and some disclosure statements were made by the accused, they are not much helpful for the prosecution. De hors the same, from the other evidences, which we have discussed elaborately herein-before, we hold that the prosecution has proved the case, beyond all reasonable doubts that it was these two accused, who had kidnapped the child.

28. P.W.3 has stated in her evidence that the kidnappers had contacted and demanded a sum of Rs.5,00,000/- as ransom. Though the call details of the cell phone numbers of the accused and P.W.3 have been collected, we could not attach any importance to the same, for want of certificate, as required under Section 65-B of the Indian Evidence Act. On this question, the Hon 'ble Supreme Court has held in the case of Anvar P.V. v. P.K.Basheer and Others (Civil Appeal No.4266 of 2012), MANU/SC/0834/2014) AIR 2015 SC 180, that in the absence of necessary certificate under Section 65-B of the Indian Evidence Act, the electronic evidences cannot be considered as primary evidence. Therefore, in the instant case, we reject the evidences of the Nodal Officers of the Mobile Service Providers. But that would not be a ground to reject the case of the prosecution in toto. As we have already concluded, these two accused had kidnapped P.W.2 and demanded ransom. Thus, the prosecution has proved beyond all reasonable doubts that it was these two accused, who have committed the said offences punishable under Section 364 (A) read with Section 34 IPC.

29. Now turning to the quantum of punishment, the offence committed by the accused 1 and 2 would have caused enormous amount of mental agony to P.Ws.1 and 3, until the child was rescued by the police. The said harm would have caused immeasurable depression in the mind of the child. These facts

would indicate the gravity of the heinous crime committed by the accused. These accused had, in a merciless manner, kidnapped the child for money. Therefore, we are not prepared to show any leniency in the matter of punishment. We are of the view that the imprisonment for life and fine of Rs.1,000/- each, imposed on the appellants, by the trial court, are proportionate to the gravity of the offence and the mitigating circumstances available on record. Thus, we do not find any merit in these appeals.

30. In the result, these Criminal Appeals fail and the same are dismissed. The conviction and sentence imposed on the appellants / accused 1 and 2 by the learned XV Additional Sessions Judge, Chennai, in S.C.No.73 of 2011, by the judgment, dated 06.07.2015, are hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

To

1. XV Additional Sessions Judge, Chennai
2. The X Metropolitan Magistrate, Egmore, Chennai.
3. Do Thro The Chief Metropolitan Magistrate, Egmore, Chennai.
4. The Inspector of Police, P6, Kodungaiyur Police Station, Chennai.
5. The Superintendent, Central Prison, Puzhal.
6. The Public Prosecutor, Madras.

2 ccs to Mr.N.Manokaran, Advocate, sr.42641 & 42642

Cr1.A.Nos.452 & 533 of 2015

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