

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.Nos.82 and 189 of 2016

Ramesh .. Appellant in Crl.A.No.82 of 2016/
Accused 1

Manikandan ..Appellant in Crl.A.No.182 of 2016/
2nd Accused

Vs.

State, rep. by Inspector of Police,
Kodumudi Police Station,
Erode District. (Crime No.63 of 2015) .. Respondent in both
the appeals/Complainant

Criminal Appeals filed under Section 374(2) Cr.P.C., against
the judgment dated 14.09.2015 in S.C.No.51 of 2015 on the file
of the Sessions Court (Mahila Court/Fast Track Court), Erode.

For appellants : Mr.J.Stalin for Mr.D.Lourthu Paul Belson
in Crl.A.No.82 of 2016
Mr.T.C.S.Raja Chockalingam in
Crl.A.No.189 of 2016

For respondent : Mr.P.Govindarajan,
Addl.P.P. in both the appeals

COMMON JUDGMENT

The appellant in Crl.A.No.82 of 2016 is A1 and the appellant
in Crl.A.No.189 of 2016 is A2. Since both these appeals arise
out of the same judgment, they are disposed of by this common
judgment. These Criminal Appeals are filed against the judgment
dated 14.09.2015 in S.C.No.51 of 2015 on the file of the
Sessions Court (Mahila Court/ Fast Track Court), Erode,
convicting each of the appellants/A1 and A2 for the offence
under Section 366 IPC and sentencing each of them to undergo
rigorous imprisonment for ten years and to pay fine of
Rs.10,000/- each, in default, each to undergo two years simple
imprisonment.

2. The gist of the prosecution case leading to the conviction of the appellants/A1 and A2 is that the A1-Ramesh was residing in Salaipudur Kallupattarai Lane and he was aged about 27 years. A2-Manikandan was residing near Salaipudur in Anna Nagar. Both of them are friends. P.W.2 Divya is a minor and native of Salaipudur. Her age at the relevant point of time was 15 years 10 months and 15 days and she was studying IX Standard. On 25.02.2015, when P.W.2 minor girl Divya came out of the house to attend nature's call, A1 came in a two-wheeler along with A2 and compelled her to sit in a motor-cycle belonging to A2 and A2 took both of them to Karur, where A2 dropped A1 and P.W.2-victim girl; thereafter, A1 took the victim/minor girl/Divya/P.W.2 to Poondi Vellayangiri Temple to marry her. Since she has not completed 18 years of age, A1 could not marry her, and thereafter, A1 and A2 stayed in Perur at Coimbatore. On 27.02.2015, A1 brought the minor girl P.W.2 to Erode Bus Stand. In the meanwhile, P.W.1, the father of P.W.2 minor girl, lodged Ex.P-1 complaint, dated 26.02.2015, before P.W.11 Inspector of Police, since her daughter P.W.2 was missing from her house. On receipt of such complaint, P.W.11 registered a case in Crime No.63 of 2015 for the offence under Section 366-A IPC. Thereafter, he forwarded the FIR and other case papers to P.W.13 Inspector of Police, who went to the place of occurrence. In the presence of P.W.5 Varadaraj and one Ganesan, P.W.13 drew Ex.P-9 rough sketch and prepared Ex.P-5 observation mahazar. Thereafter, he recorded the statement of the witnesses. Subsequently, P.W.13, along with Police party, went to Noyyal Check-Post and conducted search of the vehicles passing through. At the time of search, he saw one Hero Honda two-wheeler bearing Registration No.TN-33-BH-4543 which was coming from Salaipudur to Karur, and on seeing the Police party, the vehicle was driven back. Immediately, P.W.13, along with the aid of the Police party, stopped the said vehicle and enquired the rider of the two-wheeler. On such enquiry, the Police came to know that he is A2 and he was arrested and his statement was recorded before the Village Administrative Officer and Assistant. Thereafter, on information given by A2, P.W.13 arrested A1 on 27.02.2015 near Gowri Shankar Hotel in Erode Bus Stand. Subsequently, P.W.13 recorded the statement of the witnesses. After completing all formalities and on completion of the investigation, P.W.13 filed charge-sheet against the appellants/A1 and A2 before the trial Court. The case was taken on file by the trial Court in S.C.No.51 of 2015. During the course of trial, on the side of prosecution, P.Ws.1 to 13 were examined, Exs.P-1 to P-9 were marked and M.O.1 two-wheeler was produced. When the appellants/A1 and A2 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. On the side of defence, neither any witness was examined nor any document was filed. The trial Court, upon hearing both sides and on an

analysis of the oral and documentary evidence, convicted and sentenced the appellants/A1 and A2 as stated supra. Challenging the same, the appellants have preferred this appeal.

3. Learned counsel for the appellant/A1 submitted that the ingredients of Section 366 IPC had not been proved in this case. On a careful perusal of the prosecution version, it shows that there is absolutely no intention on the part of A1 in compelling P.W.2 minor girl to marry him against her will. In fact, P.W.13 investigating officer did not state in his evidence that the minor victim girl P.W.2 was kidnapped by A1 for the purpose of marrying her. In this regard, learned counsel appearing for A1 invited the attention of this Court to the evidence of P.W.2 minor girl and submitted that she has stated in her evidence that A1 was having only Rs.500/- in his hands while she was taken by A1. After two days, since he had no money, he was bringing her back to home and at that time, the Police arrested A1. Further, learned counsel for A1 submitted that it is not the first incident and in fact, P.W.6 who is the mother of P.W.2 minor girl, stated that three months prior to the date of occurrence, A1 took the victim minor girl to Coimbatore to his relative's house and her daughter was staying there for some time and she went and brought her back by pacifying her. This piece of evidence of P.W.6 mother itself would go to show that P.W.2 victim girl voluntarily eloped with A1. Therefore, learned counsel for A1 submitted that the offence under Section 366 IPC will not get attracted in this case. In support of his submissions, learned counsel for A1 relied upon a judgment of the Delhi High Court reported in 1988 (36) DLT 291 (Ramesh Singh Vs. State) and submitted that when there is no inducement, allurement or threat to the prosecutrix or that any such thing emanated from the accused which influenced the minor prosecutrix in her leaving her guardian's custody or keeping and in going to the accused and keeping his accompany, the accused could not be convicted for the offence under Section 366 IPC. Learned counsel for A1 also relied upon the judgment of the Madhya Pradesh High Court reported in 2004 CrI.LJ. 3962 (MP) = 2004 (4) MPLJ 423 (Lakhanlal Vs. State of M.P) and submitted that where the prosecutrix at the age of discretion leaves her parental home and the accused simply facilitate her in fulfilment of her desire, it cannot be said to be an act of kidnapping or abduction.

4. Further, learned counsel for A2, by relying upon the evidence of P.W.2's mother, i.e. P.W.6 and also the evidence of P.W.7 landlord of P.Ws.1 and 6, submitted that P.W.2 minor girl was in love with A1 and they eloped to Coimbatore and the parents of the minor girl tried their level best to convince her to come to their house at Salaipudur in Erode. Learned counsel

for A2 further submitted that P.W.13 Inspector of Police also stated that the minor girl, in her statement, admitted that she went to Coimbatore from her parents' home with A1 and stayed over there for few days, and this incident happened three months prior to the alleged kidnapping on 25.02.2015. It is further stated that P.W.2 prosecutrix Divya herself admitted that on 25.02.2015, she and A1 went to Coimbatore and stayed in P.W.4 Sekar's house and thereafter, she and A1 roamed in Poondi Temple and due to shortage of money, they returned to Erode. P.W.4 Sekar, who is the friend of A1, did not say that the minor girl was kidnapped by A1 against her will and without her consent. Both the learned counsels for A1 and A2 submitted that the Court below, without considering the evidence adduced on the side of defence, by erroneous findings, convicted the appellants/A1 and A2 and hence, learned counsels prayed for acquitting the appellants/A1 and A2 by allowing these appeals.

5. Countering the above submissions of the learned counsels for A1 and A2, the learned Additional Public Prosecutor appearing for the respondent-Police submitted that the prosecution has proved its case beyond reasonable doubt by convincing and cogent evidence. He further submitted that P.W.2 victim girl was less than 16 years of age at the time of alleged kidnapping, and therefore, it cannot be said that she is more than 16 years of age, which is established through the evidence of P.W.3 Headmistress of the School where P.W.2 Divya was studying, through whom, Ex.P-2 School Register Certificate was marked. Therefore, it cannot be said that the victim girl P.W.2 was at the age of discretion to leave her parental home and since she has not even completed 16 years of age, the trial Court has rightly convicted the appellants. Hence, learned Additional Public Prosecutor submitted that the trial Court by well-considered and valid reasons, convicted the appellants/A1 and A2, with which no interference is called for and prayed for dismissing these appeals.

6. Keeping in mind the above submissions made on either side, I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

7. As contended by the learned counsels for the appellants/A1 and A2, this is not the first incident where P.W.2 minor girl, went along with A1. Even earlier, she went along with A1 to Coimbatore and stayed in A1's relative's house. P.W.6 mother of victim also stated that her daughter P.W.2 went along with A1 to Coimbatore and thereafter, P.W.6 went to Coimbatore and pacified her and brought her back to house. Again, P.W.2 left her house along with A1 on the date of

alleged kidnapping. Therefore, the conduct of P.W.2 shows that she is in the habit of voluntarily leaving the house along with A1 very often. Further, as submitted by the learned counsels for the appellants/A1 and A2, there is no evidence to show that P.W.2 was compelled by A1 to marry him.

8. However, I find that at the time of the alleged kidnapping, P.W.2 was aged only below 16 years, which is evident from Ex.P-2 School Register Certificate, marked through P.W.3 Headmistress. Therefore, it cannot be said that P.W.2 left her parental home at the age of discretion.

9. In the above view taken by this Court, it is not necessary to delve into all the decisions relied on by the learned counsels for the appellants, and the said decisions including the ones stated in their submissions, are distinguishable on the facts and circumstances of the respective cases.

10. Therefore, considering all the above aspects of the matter and on a careful scrutiny of the oral and documentary evidence available on record, I am of the opinion that the sentence of rigorous imprisonment for ten years imposed on the appellants/A1 and A2 for the offence under Section 366 IPC, appears to be excessive in the facts and circumstances of the case. It is stated that the appellants/A1 and A2 are in prison for nearly one year, even pending these appeals. Hence, this Court, while confirming the conviction imposed on the appellants/A1 and A2, modifies the sentences of imprisonment to the one already undergone by them.

11. With the above observations and modification in the sentences of imprisonment, these appeals are partly allowed. The appellants/A1 and A2 shall be released forthwith, unless they are required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

CS

Copy to

1. The District Munsif-cum-Judicial Magistrate, Kodumudi, Erode District (CC.No.2 of 2015)
2. - do- through the Chief Judicial Magistrate, Erode District.
3. The Sessions Judge (Mahila Court / Fast Track Court), Erode.
4. -do- through the Principal Sessions Judge, Erode District.
5. The Inspector of Police, Kodumudi Police Station, Erode District. (Cr.No.63 of 2015)
6. The Superintendent, Central Prison, Coimbatore.
(In Duplicate for communication to the accused)
7. The District Collector, Erode District.
8. The Director General of Police, Mylapore, Chennai-4.
9. The Public Prosecutor, High Court, Madras.
10. The Record Keeper, Criminal Section, High Court, Madras.

1 cc to Mr.J.Stalin, Advocate, sr.47987

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kra 22.09.2016



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