

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.410 of 2007

JUDGMENT:

This Criminal Appeal, under Section 378(3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 25.08.2004, in S.C.No.81 of 2003, on the file of the IV Additional District & Sessions Judge, Visakhapatnam, whereunder and whereby, respondent Nos.1 & 2/A-1 & A-2 were found not guilty for the offences punishable under Sections 363, 372 & 120-B IPC and acquitted for the said offences under Section 235(1) Cr.P.C.

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

On 05.02.2003, the son of P.W.1, aged 4 years, was found missing from his house and was not traced out in spite of search made by P.W.1, and that he lodged a report with the II Town Police Station on 23.02.2003 and P.W.9 and ASI of II Town Police Station registered the said report as a case in Crime No.34 of 2003 as boy missing case and on 27.02.2003 the son of P.W.2 was also found missing and was not traced out, in spite of the search made by P.W.2 and that he lodged report with P.W.8, who is also ASI of II Town Police Station on 03.03.2003 and he registered the said report as a case in Crime No.44 of 2003 as a boy missing case and investigated into the case and thereafter on 08.07.2003, P.W.10 – Inspector of Police took up investigation and on information received by him that he along with SI of Pendurthi Police Station and the mediators P.Ws.6 & 7 went to Dwarakanagar Bus Stand of RTC Complex and the SI of

Pendurthi Police Station identified A-1 at the bus stand and that P.W.10 immediately took him into his custody and on interrogation that A-1 confessed about the commission of offence and that his confession statement was recorded in the presence of P.Ws.6 & 7 mediators and that A-1 gave disclosure statement that he would show the persons to whom he sold the said two boys, if police accompany him and that thereafter P.W.10 picked up P.Ws.1 and 2, who are the fathers of the missing two boys at Allipuram and A-1 led them to Gavarapalli Village to the house of P.W.4 and he has shown P.W.4 to the police and informed that he has sold one boy to him and that P.W.4 also produced the said boy before the police and stated that A-1 and A-2 sold the said boy to him for Rs.8,000/- and that the police recovered the said two boys in the presence of mediators under the cover of mediators report and handed over the said boy to his father and that from there, A-1 led the police to Narava Village to the house of P.W.3 and has shown P.W.3 to the police and informed that he has sold one boy to him and that P.W.3 also stated before the police that A-1 and A-2 sold the said boy for Rs.10,000/- to him and that the police recovered the said boy from him under the cover of mediators report in the presence of mediators and handed over the boy to his father and thereafter arrested A-1 and sent him for remand in judicial custody and as A-2 was already in the judicial custody in connection with another crime, that P.W.10 recorded a formal arrest of A-2 and that thereafter, he has filed a memo before the V Metropolitan Magistrate at Visakhapatnam seeking police custody of A-1 and A-2 and that accordingly, police

custody was given and in the temporary absence of P.W.10, another Inspector of Police took the police custody of A-1 and A-2 and interrogated them and both A-1 and A-2 confessed about the offence and that the police filed a memo after recovery of the said two missing boys to alter the section of law and added Section 372 read with 120-B of IPC under Exs.P-15 & P-16 Memos and after completion of the investigation, the Inspector of Police filed charge sheet against the accused.

3. The case was taken on file by the V Metropolitan Magistrate, Visakhapatnam City, in P.R.C.No.6 of 2003 and after due compliance with the procedure prescribed under law, as the offence under Section 372 IPC is exclusively triable by the Court of Sessions, the learned Magistrate committed the said case for trial to the Court of Sessions Division, Visakhapatnam. Thereafter, the case was numbered as S.C.No.81 of 2003 and the same was made over to the IV Additional District & Sessions Judge, Visakhapatnam, for disposal in accordance with law.

4. To substantiate the case of the prosecution, P.Ws.1 to 10 were examined and Exs.P-1 to P-16 were marked.

5. After closure of the evidence on the prosecution side, the accused were examined under Section 313 Cr.P.C., they denied the incriminating evidence and on behalf of the accused, no oral or documentary evidence was adduced.

6. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found A-1 & A-2 not guilty for the offences under Sections 363, 372 & 120-B IPC and accordingly, acquitted them. Challenging the same, the State filed the present appeal.

7. Heard and perused the material available on record.

8. The learned trial Judge acquitted the accused by observing as follows:

“Even otherwise as can be seen from the facts of the case, section 372 of I.P.C. is not applicable to the facts of the case. As can be seen from the plain reading of sec.372 of I.P.C. selling, letting and hiring of any person under the age of 18 years must be with an intention that such person at any age shall be employed or used for the purpose of prostitution, illicit intercourse or for any unlawful and immoral purpose or knowing that such person may at any age be employed or used for any such purpose. Therefore, the predominant requirement which is essential to attract the section is the intention to sell, let or hire the said boys to employ or use them for prostitution or illicit intercourse or for any unlawful purpose or for immoral purpose. Then only the section attracts. As can be seen from the facts of the case, it is not the case of the prosecution that the said two boys were sold with an intention to use them for the purpose of prostitution or illicit intercourse or for any unlawful purpose or for immoral purpose. Such evidence is absolutely lacking in this case. Even P.Ws.3 and 4 deposed that as they are not having children that they were sold to them. So, even accepting the said version, it is clear that just for fostering purpose, the children were sold to them and not for using them for any unlawful and immoral purpose or for prostitution, or illicit intercourse. So, the present facts of the case are not coming within the realm of Sec.372 of I.P.C.

Regarding Sec. 120 B of I.P.C. also there is no authenticated evidence in this case. The only evidence of P.W.5 to that effect is also not proving the basic requirements of Sec. 120 B of I.P.C. There is no proof to show that A1 and A2 hatched up any such conspiracy by entering into any agreement for commission of illegal act by illegal means. Mere introduction of A2 to A1 as deposed by P.W.5 by itself will not establish the criminal

conspiracy in between A1 and A2 as required U/s.120 B, which defines criminal conspiracy.

Regarding the offence punishable U/s.363 I.P.C. in view of my foregoing discussion, it is not found in this case that A1 and A2 have infact kidnapped the said two boys, or that they sold them to P.Ws.3 and 4. So, the offence punishable under section 363 of I.P.C. is not proved with any legal evidence.”

9. The said observations are based on the evidence adduced by the prosecution and the learned trial Judge was of the view that there were discrepancies in the evidence and even admitting the evidence adduced also, the offence is not made out.

10. After perusing the judgment of the trial Court and also the material available on record, this Court is of the view that the learned trial Judge has appreciated the evidence in the proper perspective and that the findings of the learned trial Judge are in accordance with law and the judgment of the trial Court does not suffer with any perversity or illegality, necessitating interference by this Court.

11. Further, in a case of acquittal, if the trial Court considered the two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. In the present case, the learned trial Judge has considered all aspects and acquitted the accused. Hence, this Court is not

inclined to interfere with the judgment of acquittal of the trial Court and the appeal fails and is liable to be dismissed.

12. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 25.08.2004, in S.C.No.81 of 2003, on the file of the IV Additional District & Sessions Judge, Visakhapatnam. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

RAJA ELANGO, J

Date: 13th October, 2016

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