

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal Nos.440, 449, 469 and 495 of 2010

Murali @ Akkamurali
S/o.Selvaraj .. Appellant in C.A.No.440/2010

Sakthivel
S/o.Govindasamy .. Appellant in C.A.No.449/2010

Mani @ Manikandan
S/o.Ethiraj .. Appellant in C.A.No.469/2010

Lukas @ Ramesh
S/o.Pavadairaja .. Appellant in C.A.No.495/2010

State represented by
The Inspector of Police,
Tindivanam Police Station,
Tindivanam, Villupuram District.
Crime No.648 of 2009 .. Respondent in all appeals

Criminal Appeals preferred under Section 374 (2) of Cr.P.C against the judgment of learned Additional District and Sessions Judge, Fast Track Court I, Tindivanam, passed in S.C.No.384 of 2009 on 29.06.2010.

For Appellants

Crl.A.No.440 of 2010 : Mr.K.Selvakumaraswami
Crl.A.No.449 of 2010 : Mr.S.Vadivel Murugan
Crl.A.No.469 of 2010 : Mr.R.Vijaya
Crl.A.No.495 of 2010 : Mr.G.Bhagavath Singh

For Respondent : Mr.V.Arul, Additional Public Prosecutor
(in all appeals)

COMMON JUDGMENT

These appeals arise against the judgment of learned Additional District and Sessions Judge, Fast Track Court I, Tindivanam, passed in S.C.No.384 of 2009 on 29.06.2010.

2. Prosecution case is that on 19.06.2009 at about 01.00 a.m., first accused made a call over cellphone demanding that PW-6, alleged victim/wife of PW-1, join him towards their getting married, that out of fear, PW-6 acceded and come out of the house, that accused 2 to 4 took her to first accused by an auto, who in turn took her to Trichy in a Car and raped her against her wish. PW-1, husband of PW-6 preferred Ex.P1, complaint, to PW-12, Sub-Inspector of Police, Tindivanam. PW-12 registered a case in Crime No.648 of 2009 on the file of respondent for offences u/s.365 and 368 IPC. Printed First Information Report is Ex.P8. PW-12 visited the place of occurrence and examined witnesses, prepared Ex.P2 - Observation Mahazar and Ex.P9 - Rough Sketch. On 22.06.2009 at about 09.30 a.m., upon identification by PW-1, PW-12 arrested accused 2, 3, 4 and 5 near Gingee Tindivanam bus stand. PW-12 recorded the voluntary confession statement of second accused in the presence of PW-5 and another. On the basis of confession statement, PW-12 seized MO-1, auto. PW-12 sent the accused 2 to 5 to judicial custody. He handed over case papers to PW-13, Inspector of Police, Tindivanam, for further investigation. On 24.06.2009, PW-

13 visited the place of occurrence. On 25.06.2009, PW-13 went along with PW-1 to Villupuram new bus stand and at about 06.00 a.m., arrested first accused. PW-13 examined PW-6 and recorded her statement. PW-13 sent the accused to judicial custody. PW-13 submitted a requisition to Court towards sending first accused and PW-6 for medical examination. PW-13 sent a requisition to Court towards recording the 164 Cr.P.C. statement of PW-6. PW-13 obtained Exs.P4 and P5, medical certificates of PW-6 and first accused. PW-13 examined PWs.7 and 8, Doctors and recorded their statements. PW-13 examined other witnesses and recorded their statements. PW-13 altered the First Information Report to reflect offences u/s.366, 506(ii) and 326 IPC. The Alteration Report is Ex.P10. On completion of investigation, PW-13 filed a charge sheet before learned Judicial Magistrate I, Tindivanam and upon committal, the case was taken on file in S.C.No.384 of 2009 on the file of learned Additional District and Sessions Judge, Fast Track Court I, Tindivanam.

3. Before trial Court, prosecution examined 13 witnesses and marked 10 exhibits and 1 material object. None were examined on the side of defence nor were any exhibits marked. When questioned u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court under judgment dated 29.06.2010, convicted first accused for offences u/s.366, 376 and 506 (ii) IPC and accused 2 to 5 for offence u/s.366 IPC and sentenced them as follows:

Accused	Sections of law	Sentence
A1	506 (ii) IPC	2 years R.I.
	376 IPC	7 years R.I. and fine of Rs.1,000/- i/d 1 month R.I.
A1 to A5	366 IPC	7 years R.I. and fine of Rs.1,000/- i/d 1 month R.I.

Trial Court directed sentences to run concurrently. There against, present appeals have been filed.

4. Heard learned counsel for appellants and learned Additional Public Prosecutor for State. Perused the materials on record.

5. As against the charge of first accused having made a call over cellphone on 19.06.2009 at about 01.00 a.m. demanding that PW-6, alleged victim/wife of PW-1 join him towards their getting married, of her responding thereto in fear and coming out of her house, of accused 2 to 4 taking her to the place where first accused was waiting in a Car and thus the commission of kidnapping u/s.366 IPC, it is the evidence of PW-6 that she was accosted by first accused when stepping out of her house at 01.00 a.m. to answer nature's call and upon threats meted out by him, she had been kidnapped by him with the help of other accused. It is her admission that there was a toilet within the house. It is her further admission that both she and first accused were at Villupuram bus stand, when police apprehended them. In cross, PW-6, initially has spoken to not having been given food for six days whereas at a later point

of time, she would speak of having accompanied first accused by bus and having refused a meal which once was offered to her. PW-6 has deposed to her child being in the custody of PW-1, her husband and that neither her husband nor her parents met her when she was taken to police station. PW-6 has further deposed to now living with her parents. The above clearly indicates a case of PW-6 having gone away with first accused on her own volition. In the circumstances, no accusation u/s.366 IPC or for that matter 376 IPC as against first accused would hold water. Much less so regards other accused.

These Criminal Appeals shall stand allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court I, Tindivanam, passed in S.C.No.384 of 2009 on 29.06.2010, shall stand set aside. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

10.08.2017

Index : Yes/No
Internet : Yes
gm

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C.T.SELVAM, J

gm

To

- 1.The Additional District and Sessions Judge,
Fast Track Court I,
Tindivanam.
- 2.The Inspector of Police,
Tindivanam Police Station,
Tindivanam,
Villupuram District.
- 3.The Public Prosecutor,
High Court, Madras.



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