

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.Nos.595 and 622 of 2007

Pradeep

... Appellant/A7
(in Crl.A.No.595 of 2007)

Meena

... Appellant/A5
(in Crl.A.No.622 of 2007)

vs.

State, rep. by
The Inspector of Police,
J-5,Sasthri Nagar Police Station,
Chennai.

... Respondent

Criminal appeals preferred under Section 374(2) Cr.P.C.,
against the judgement dated 21.06.2007 passed by the learned
Additional District and Sessions Judge, (Fast Track Court No.V),
Chennai, in S.C.No.99 of 2007.

For Appellants : Mr.Soundar Vijay Arulram
Legal Air Counsel
(Crl.A.No.595 of 2007)

Mr.Dr.G.Krishnamurthty for
Mr.JB.Solamon Peter Kamaladoss
(Crl.A.No.622 of 2007)

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

COMMON JUDGMENT

The accused 5 and 7, in Sessions Case No.99 of 2007, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.V), Chennai are appellants herein. There are eight accused in this case. They stood charged for an offence under Sections 363, 364, 365 and 120-B IPC. The trial Court, after trial, by Judgment dated 21.06.2007, convicted the appellants for the offence under Sections 363 and 365 IPC., and sentenced them to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- each in default, to undergo rigorous imprisonment for six months and acquitted them for the offence under Sections 364 and 120-B IPC, and acquitted the accused 1 to 4 and 8 under Sections 363, 364, 365 and 102-B IPC. Challenging the above said conviction and sentence, the 7th accused filed Crl.A.No.595 of 2007 and 5th accused filed Crl.A.No.622 of 2007.

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

P.W.4, who is the victim in this case is son of P.W.1.

P.W.4 was studying 6th standard in St. John School at Chennai. On 22.09.2006 at about 8.50 a.m., P.W.4 was found missing. The same was informed to P.W.1 by P.W.5/the father in law of P.W.1.

Then, P.W.1 has given complaint before the respondent police.

(ii) P.W.13, the Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.2026 of 2006 for the offence under Section 363 IPC and prepared first information report[Ex.P8]. Then, he proceeded to the scene of occurrence, prepared observation mahazar [Ex.P9] and rough sketch[Ex.P10]. He examined the witnesses and recorded their statements. He examined P.W.2 and she had stated that while she was standing in the balcony of her house, at that time, some unknown person came in a Mahendra van and pushed P.W.1 from his bicycle and forcibly kidnapped him. Subsequently, on 23.09.2006, P.W.4 returned home and based on the information given by P.W.4, P.W.13 seized the Mahendra Van bearing Registration No.TN.51.Y.9294, from a workshop and also examined the owner of the workshop and recorded his statement. Thereafter, he arrested 5th accused, who is the owner of van and based on the confession statement of A-5, he arrested the accused 4, 6 and 7 and based on the disclosure statement of the accused, P.W.13 recovered M.O.1 knife. Then, P.W.13 arrested the other accused and remanded them to judicial custody, and he examined the witnesses and recorded their statements and after completion of investigation he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 16 documents were exhibited, and 12 material objects were marked.

4. Out of the said witnesses examined, P.W.1, is the father of victim P.W.4. According to him, on 22.09.2006 at about 7.30 a.m., he dropped his son/P.W.4 in the school and at about 9.00 a.m., he received a phone call from his father-in-law that his son was found missing, then he has given a complaint before the respondent police. On the next day his son returned home. P.W.2 a person, who residing near the school where P.W.4 was studying. According to her, on the date of occurrence, while she was standing in the balcony of her house, at that time, some body came in a Mahendra van, and pushed P.W.4 from his bicycle and forcibly kidnapped him and she was not able to identify any persons. P.W.3 is also residing near the School, he identified the van. P.W.4 is the victim in this case. According to him, on the date of occurrence, he was going to school in his bicycle, at that time, one Mahindra van came in a opposite direction and persons sitting inside the van asked him to come to the van, but he refused, then they threatened

with knife and kidnapped him in the van. Thereafter, on the next day, three persons came in a motor cycle and took him near Anna University and dropped him there. He identified the Accused 6 and 7, who were sitting in the van and dropped him near Anna University. Subsequently, he identified the van, in which, he was kidnapped. P.W.5 is the father-in-law of P.W.4. He turned hostile. P.W.6 is a person, who is residing near the school, and his evidence no substance. P.Ws.7 to 9 turned hostile. P.W.10 is the witness to the observation mahazar and arrest of the first accused and recovery of cell phone. P.W.11 turned hostile. P.W.12 is the Sub Inspector of Police working in the respondent police station. He has accompanied the Inspector of Police for investigation and he seized the van involved in the occurrence. P.W.13 is the Inspector of Police working in the respondent police station. According to him, on receipt of the complaint, he registered a case, proceeded to the scene of occurrence, arrested the accused and remanded them to the judicial custody, recovered the material objects, examined the witnesses and recorded the statement of witnesses and after completion of investigation, he laid charge sheet.

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. The accused did not examine any

witness and no document was marked on their side.

6. Having considered all the above, the Trial Court acquitted the accused 1 to 4 and 8 for the offences under Sections 363, 364, 365 and 120-B IPC and acquitted the accused 5 to 7 for the offence under Section 364 and 120-B IPC and convicted the accused 5 to 7 for the offences under Sections 363 and 365 IPC. Challenging the above said conviction and sentence, the accused 5 and 7 are before this Court with these appeal.

7. I have heard Mr.Soundar Vijay Arulram, the learned Legal Aid Counsel appearing for the appellant in CrI.A.No.595 of 2007 and Mr.JB. Soloman Peter Kamaladoss, the learned counsel appearing for the appellant in CrI.A.No.622 of 2007 and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the materials available on record.

8. Totally, there are eight accused in this case. The case of the prosecution is that A-1, in this case is co-brother of P.W.1, and son in law of P.W.5. P.W.1 married the third daughter of P.W.5, and A-1 married the second daughter of P.W.5. Since the first accused suffered loss in his business and he requested P.W.5 to give a sum of Rs.60 lakh, but he refused. Hence, for that purpose

A-1 along with other accused kidnapped P.W.4, used the van belongs to A-5 and A2 to A7 kidnapped P.W.4 and kept him in his house, where, A-6 was also present. Subsequently, on the next day, A-7 took him in a motor cycle and dropped him in Anna University. Now, the trial Court acquitted the accused 1 to 4 and 8 for the offences under Sections 363, 364, 365 and 120-B IPC. But, whereas the trial Court convicted the accused 5 to 7 for the offences under Sections 363 and 365 of IPC. On perusal of the evidence, absolutely there is no evidence for kidnapping P.W.4 by A-5 to A7. Only evidence available against A-5 is that he is the owner of van said to have involved in the crime. P.W.4 only identified the van. But, the van was recovered from a work shop and the prosecution has failed to prove the arrest and confession of A-1 and also recovery of M.O.1 knife. Apart from that there is no evidence available against A-5 involved in the crime. So far as A-7 is concerned, the only evidence available against him is that of P.W.4. According to P.W.4, after kidnapping him, he was kept in a house where two old peoples are residing and on the next day morning A-7 only took him in his motorcycle and send him in a bus near Anna University, apart from that there is no evidence available against him. Now, the trial Court acquitted the accused from the charge under Section 120-B and other accused were also acquitted from all the charges. P.W.4 identified A-7, but according to him A-7 only

dropped him. In the above circumstances, I am of the considered view that the prosecution has failed to prove the case against the appellants beyond any reasonable doubt. Hence, the appellants are entitled for acquittal.

9. In the result, the Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/accused 5 and 7 for the offence under under Sections 363 and 365 IPC is stand set aside and the appellants 5 and 7 are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith.

24.01.2017

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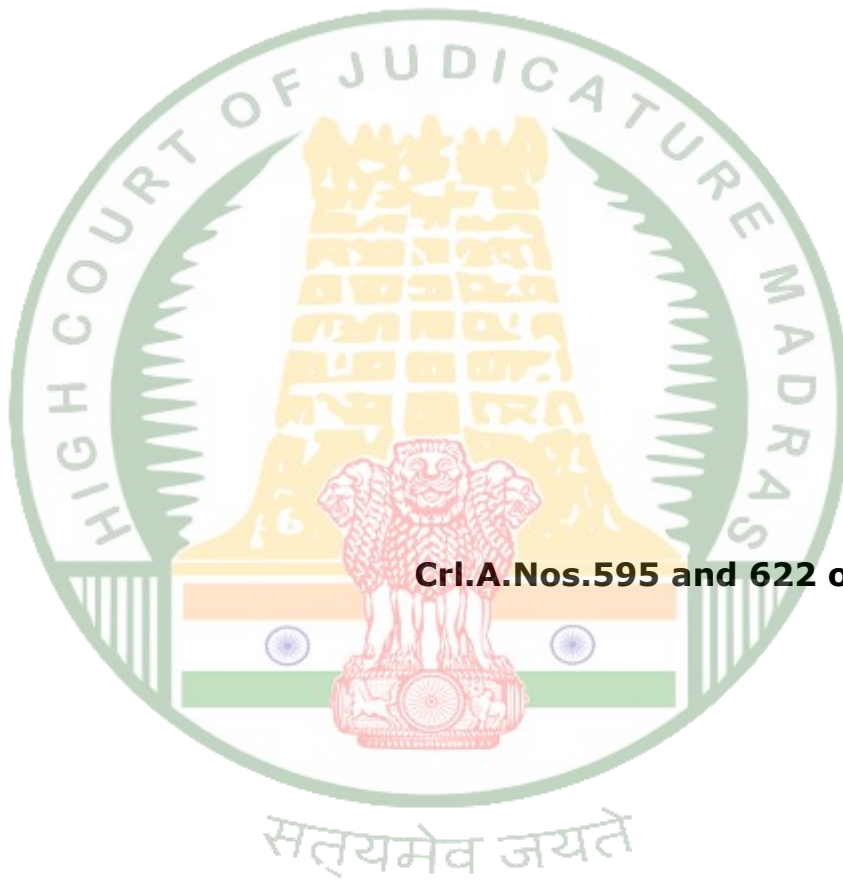
1.The Additional District and Sessions Judge,
(Fast Track Court No.V),
Chennai,

2.The Inspector of Police,
J-5,Sasthri Nagar Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN.J.,

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