

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2018

DELIVERED ON : 18.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Crl. A.No. 84 of 2007

1. Selvaraj .. Accused 1 / Appellant 1
2. Veerappan .. Accused 3 / Appellant 3

Vs.

State Rep by
The Inspector of Police,
Andimadam Police Station.
Perambalur District
Cr.No. 254/99 .. Complainant/Respondent

Prayer : This appeal is filed under Section 374 of Criminal Procedure Code, to call for the entire records relating to the Judgment, conviction and sentence made in S.C.No. 28 of 2006 dated 22.12.2006 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Appellants : Mr. N.U Pressanna
for M/s. Sai Bharath & Ilan

For Respondent : Mr.B.Arul Mozhi Maran
Government Advocate (Crl.side)

JUDGMENT

The first and third accused Selvaraj and Veerappan in S.C.No. 28 of 2006, who faced trial under Section 364 IPC before Sessions Court, Mahila Court, Perambalur District and who were convicted under Section 363 IPC and sentenced to undergo rigorous imprisonment for 25 months each and to pay a fine of Rs.500/- each and in default to undergo 50 days of rigorous imprisonment are the appellants herein. The two appellants along with the second accused Vajik Batcha were charged with the commission of offence under Section 364 IPC. The second accused Vajik Batcha absconded and the case against him was split as

P.R.C.No. 4 of 2006. The learned Sessions Judge, Mahila Court, Perambalur, in the charge against the accused under Section 364 IPC, charged that, on 07.06.1999 in the afternoon at 12.30 p.m., the first and third accused herein, who are the appellants herein along with the absconding second accused had kidnapped Akalya, aged 5 years, daughter of Murugan and grand daughter of the complainant Kaliyaperumal in view of prior enmity with respect to payment of money and removed her from lawful custody of her guardian. It was also charged that the accused had kidnapped Akalya with intention to murder her. They were therefore charged with commission of offence under Section 364 IPC. As stated the second accused absconded and the first and third accused alone were sent up for trial. The first and third accused denied the charge. The prosecution was then called upon to prove the charges. To substantiate the charge during trial, the prosecution examined PW-1 to PW-9 witness and also marked Exs. P-1 to P-6. The accused were then questioned with respect to incriminating circumstances under Section 313 Cr.P.C. Their statements were also recorded. By Judgment dated 22.12.2006, the learned Sessions Judge, Mahila Court, Perambalur, found the present appellants / first and third accused guilty of offence punishable under Section 363 IPC and not under Section 364 IPC. They were sentenced to the imprisonments as stated above.

2. Challenging the said conviction and sentence, the appellants/ the first and third accused have filed the present Appeal.

3. Heard arguments advanced by Mr. N.U Pressanna, for M/s. Sai Bharath & Ilan, learned counsel for the appellants and Mr.B.Arul Mozhi Maran, learned Government Advocate (Crl.side), appearing for the respondent.

4. PW-4 Akalya, was aged 5 years and studying in first standard in Punitha Martinar School at Andimadam in the year 1999. Her mother was PW-3 Sakthi. Her father was PW-2 Murugan. Her grandfather was PW-1 Kaliyaperumal.

5. It is the case of the prosecution that the accused had, a few days prior to 07.06.1999 demanded return of money due from the brother of PW-3 Sakthi. She told them to settle the issues directly with her brother. They left stating that she would have to face consequences.

6. PW-1 Kaliyaperumal in his evidence before the Court stated that on 07.06.1999 his daughter-in-law PW-3 Sakthi informed him that Vajik Batcha and Veerappan had kidnapped Akalya. At that time, he did not know the reason for the kidnapping. They searched for her in the afternoon. They went to the school and enquired. The teacher told them that the

father of the child had taken her away. The next day, Babu informed Sakthi through phone that Akalya was in Chennai. PW-1 gave a complaint on 08.06.1999 at 9.30 a.m., to the Andimadam Police Station which was marked as Ex.P-1. This complaint was registered by PW-7 Ramalingam.

7. In his evidence, PW-7 stated that he registered the First Information Report, Ex.P-4, in Cr.No. 254 of 1999 under Section 364 IPC. He prepared observation mahazar Ex.P-2 in the school. He also prepared a rough sektch, Ex.P-5. He examined the complainant and then the parents of Akalya, namely, Murugan and Sakthi and also the school teacher Angel Mariya Racy and other witnesses. He examined the victim girl Akalya on 10.06.1999. He then arrested the third accused on 11.06.1999. He recorded his confession. PW-8 Rangarajan, Inspector of Police, Andimadam Police Station, then took up further investigation and filed final report in the Court.

8. In the Judgment under Appeal, the learned Sessions Judge, Mahila Court, first took up for consideration the fact whether any kidnapping of PW-4 happened on 07.06.1999. The learned Judge relied on Ex.P-1 complaint and observed that detailed particulars of the kidnapping and detailed particulars of the accused had been mentioned and believed and trusted Ex.P-1 in toto. However, it must be mentioned that the actual kidnapping was alleged to have taken place in the School and PW-1, complaint disclaimed personal knowledge of the occurrence in his evidence.

9. It was the specific case of the prosecution that Akalya was kidnapped when she was in School on 07.06.1999. In this connection, PW-7 Ramalingam had examined Angel Maria Racy, the School teacher. Unfortunately, she was not examined in Court. The prosecution has not given any explanation as to why she was not examined in Court. The learned Judge also did not call upon the prosecution to examine her in Court. She was the only person, who could have spoken about the actual incident of kidnapping.

10. During examination in Court, PW-1 Kaliyaperumal stated that he went to the School and enquired the school teacher. Even though heresay evidence is not admissible still the evidence of PW-1 alone is available as to what the school teacher said and in his own words in chief examination PW-1 stated " பள்ளிக்கு சென்று கேட்டபோது வாத்தியார் அம்மா ஒருவர் அவருடைய அப்பா அழைத்து சென்றுவிட்டதாக கூறினார்; .

11. It was also not established during investigation or in evidence how PW-3 Sakthi informed PW-1 the names of the Accused as the persons, who actually kidnapped Akalya.

12. Akalya was examined in Court as PW-4. She was examined in Court on 07.08.2006. The incident occurred on 09.06.1999. She was examined after seven years. She was aged 13 years when she was examined in Court. She was aged 5 years when the incident is said to have happened. In her chief examination, she pointed out the third accused and identified him by name. I hold that this is highly improbable. She stated that she was kept in a room for one day. She then stated "என் தாத்தா வந்து என்னை காடாம்ப,ளையூரிலிருந்து அழைத்து சென்றார்" and then she stated "அந்த தாத்தாவின் பெயர் எனக்கு தெரியாது". The witness does not know the name of her own grandfather, but was able to say the name of the third accused.

13. PW-2 Murugan in his chief examination stated that on 07.06.1999 he came home at 9 p.m., and his wife PW-3 Sakthi informed that the absconding second accused and the first accused Selvaraj had telephoned demanding Rs.3/- lakhs.

14. PW-3 Sakthi in her chief examination stated that when Akalya did not return from School even till 5 p.m., on 07.06.1999 she sent her mother-in-law Kannammal to the school.

15. The evidence of all the three material witnesses, PW-1, PW-2 and PW-3 are contradictory in nature. PW-1 stated that he went to School and enquired the school teacher, who stated that Akalya was taken by her father. PW-3 stated that she sent her mother-in-law Kannammal to the school. Akalya stated that the third accused Veerappan came to school and took her. PW-2 Sakthi stated that the first accused Selvaraj and the second accused, who is absconding, telephoned her and demanded money. The witnesses have been examined in the year 2006 after seven years of the incident. Even though there could be minor contradictions in view of the long time gap but still in view of the sensitivity of the incident, I hold there cannot be such glaring contradictions among the witness.

16. Even in the FIR, the name of the accused were already fixed. The investigation does not reveal whether they were actually involved or whether there were others involved, how and where and from whom Akalya was secured. The police have not spoken anything about that aspect. PWs- 7 & 8 are totally silent as to how they secured Akalya and from whom they secured her and when they secured her and from where they secured her. It is for the prosecution to prove the case beyond all reasonable doubt. They could have very well proved the case by examining Angel Mariya Racy, the school teacher from whose custody the Akalya was said to be taken away. It is not known

why the said witness was not examined. The Court had also committed a grave error in calling upon the prosecution to examine her, though she was shown as a witness. She would have been the only person to identify the individual, who actually took Akalya away from school.

17. It must also be kept in mind that the complaint was given only on 08.06.1999 and not on 07.06.1999. It was also not given in the evening on 07.06.1999 when allegedly PW-3 Sakthi received phone call demanding ransom amount. The telephone from which she received the phone call or atleast her own number had not been identified during investigation. The investigation had simply parroted the version of the witness.

18. The prosecution had not established the motive by examining the brother of PW-3. In her cross examination, PW-3 stated that to her knowledge, the third accused Veerappan did not work in her husband's house. PW-2 Murugan however stated in cross examination that the third accused Veerappan worked in his house for one month.

19. I hold that the entire evidence does not inspire confidence. No independent witness particularly the school teacher have been examined. The police have not established where the victim girl was kept during the period of confinement. They have not tendered any evidence on that ground. They have not given any evidence from where they secured her and from whom they secured her.

20. In view of all these contradictions, I have no doubt that the Judgment under Appeal requires interference and I hold that the prosecution has not proved the case beyond reasonable doubt.

21. This Criminal Appeal is therefore allowed and the conviction and sentence of the appellants, who are the first and third accused in S.C.No. 28 of 2006 on the file of the Sessions Judge, Mahila Court, Perambalur is set aside. The accused is acquitted of the charge framed against them. Bail bond and sureties executed by the accused, shall stand terminated. Fine amount, if any, paid by the accused, shall be refunded to them.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Perambalur.

2.The Sessions Judge,
Mahila Court, Perambalur.

3.The Judicial Magistrate,
Jayankondam.

4.The Chief Judicial Magistrate,
Perambalur District.

5.The Superintendent of Police,
Perambalur District.

6.The Superintendent of Prison,
Trichy.

7.The Inspector of Police,
Andimadam Police Station,
Perambalur District.

8.The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to M/S.Sai & Bharath, Advocate Sr.88172

सत्यमेव जयते

Cr1. A.No. 84 of 2007

ssi[co]
srg 23/01/2019

WEB COPY