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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2018

DELIVERED ON : 25.06.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.A.(MD)No.257 of 2017

Lakshmi
(Now confined as Convict
prisoner in Madurai Special
Prison for Woman)

.. Appellant/ Sole Accused

Versus

The Inspector of Police,
Vatthirayiruppu Police Station,
Virudhunagar District.
(In Crime No.35 of 2011)

.. Respondent/ Complainant

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the entire records connected with the Judgment in S.C.No.83 of 2013 on the file of the Fast Track Mahila Judge, Virudhunagar in Srivilliputhur dated 10.11.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

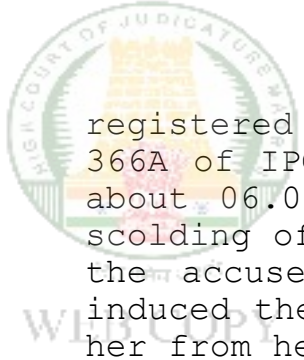
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl., side)

J U D G M E N T

Heard Mr.R.Alagumani, learned counsel appearing for the appellant, Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

2.This appeal has been filed to set aside the Judgment passed in S.C.No.83 of 2013 on the file of the Fast Track Mahila Judge, Virudhunagar at Srivilliputhur dated 10.11.2016. The appellant was convicted for the offence under Section 366(A) of IPC and was sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to undergo one year Rigorous Imprisonment.

3.On the side of the appellant, it is stated that FIR in crime No.35 of 2011 on the file of the respondent police was



registered as 'girl missing' and then it was altered into Section 366A of IPC. The case of the prosecution is that on 13.02.2011, at about 06.00 p.m., when the minor girl Muthumari aggrieved by the scolding of her mother was standing in the Nondiyamman Kovil Street, the accused with a motive to kidnap the girl for prostitution, induced the girl as if she will arrange a job for her and kidnapped her from her lawful parent.

4. On the side of the appellant, it is stated that P.Ws.1 and 2 are interested witness as they are the parents of the victim. P.W.3 is the victim and except P.Ws.1 to 3, no other witness deposed against the appellant.

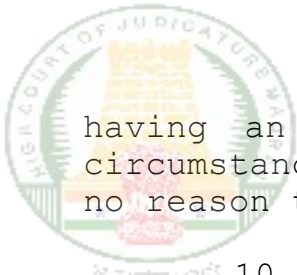
5. On the side of the appellant, it is stated that P.W.1 has stated that he lodged the complaint, Ex.P.1 only two days after the occurrence. P.W.3 has deposed that the accused took her to Thiruchendur and when P.W.3 came to know that the accused intent to sell her to some other person, she escaped from the accused and joined in an Ashram. She was taken by a priest of a church to the Ashram and she was there for two months until she was rescued by the Police. The evidence of P.W.4 co-relates the evidence of P.W.3, as regards, the fact that the victim was taken to the Ashram.

6. On the side of the appellant, it is stated that the evidence of P.W.6 reveals that P.W.3 did not tell him, that she was kidnaped by some one. P.Ws.6 and 7 deposed that P.W.3 told them she is an orphan. P.W.4 did not tell anything against the accused. It is stated that there is no eye witness to prove that the accused kidnapped P.W.3. Except the version of P.W.3, no other witness gave evidence against the accused. P.W.3 gave a different version to P.Ws.6 and 7 and the evidence of P.W.3 is unreliable and prayed that the order of the lower court is to be set aside.

7. On the side of the respondent, it is stated that P.Ws.1 to 3 gave evidence against the accused and P.W.4 is the neighbour of P.W.1 and he saw the accused with the victim and the victim herself has stated that she was kidnapped by the accused and that the evidence of P.Ws.6 and 7 supported the evidence of P.Ws.1 to 3 and the prosecution has proved the case beyond reasonable doubt and prayed that the appeal is to be dismissed.

8. On the side of the appellant, it is stated that already in similar case, the Calcutta High Court has modified the sentence imposed upon the appellant in C.R.M.No.10595 of 2014 dated 22.12.2015 by setting aside the order passed by the lower Court.

9. A perusal of the records reveals that P.W.3 was kidnapped by the accused, when P.W.3 was standing at the street after she was scolded by her mother. P.W.6 has deposed that he saw the victim with the accused on the occurrence date. The evidence of P.Ws.6 and 7 reveals that P.W.3 was found at Tiruchendur and was taken into the Ashram. The evidence of P.W.3 clearly stated that the accused was



having an intention to sell her to some other person. In the circumstances, the decision of lower Court is correct and there is no reason to interfere with the decision of the lower Court.

10. Considering the fact that the accused is a lady who has already undergone imprisonment for a period of 1665 days, and also considering the citation filed by the appellant, this Court deems it appropriate to modify the sentence imposed by the Sessions Court. As it is stated that the appellant was under imprisonment for a period of 1665 days already, the sentence is modified to the effect that the petitioner is sentenced to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo simple imprisonment for a further period of two weeks. The period already undergone by the appellant is to be set off from period of punishment. If any excess fine amount is paid by the appellant, it shall be refunded.

11. With the above observation, the criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Virudhunagar at Sriviliputhur.
2. The Fast Track Mahila Judge,
Virudhunagar, Srivilliputhur.
3. The Judicial Magistrate No.I,
Srivilliputhur.
4. The District Collector,
Virudhunagar.
5. The Director General of Police,
Mylapore, Chennai.
6. The Superintendent of Police,
Virudhunagar.
7. The Superintendent of Prison,
Madurai Special Prison for Woman,
Madurai.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



9.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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Judgment in
Crl.A. (MD) No.257 of 2017
25.06.2018

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RAM/VR/SAR 2/16.07.2018/4P/11C