

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.300 of 2009

ORDER:

This appeal is preferred, by the appellant, who is the accused, aggrieved by the Judgment, dated 18.03.2009, passed in S.C.No.394 of 2008 by the Court of II Additional Metropolitan Sessions Judge, Hyderabad, by virtue of which the trial court convicted the accused for the offence punishable under Section 366 IPC and sentenced to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.3,000/-, in default to undergo Simple Imprisonment for a period of one month.

2. The facts of the case, briefly, as per the complaint filed by the complainant, are as follows:

The complainant used to visit her maternal grand parents house at Brahmanapally in Ananthapur District, where the accused tried to befriend her and the complainant has discouraged his attempts. The accused some how came to know the telephone number of their house and started to make calls to the complainant but when she objected for the same, the accused asked her to send one of her photographs and then he stated that he would not call her in future. As such, she gave a photograph and in next meeting, the accused showed a photograph in which she and the accused were together and he started blackmailing her. He came to Hyderabad on 30.07.2007 and made a call to her in the morning and threatened her that he will come to her house and show the photographs and letters to her parents. The complainant, fearing the consequences from

the threat of accused, has gone to Afzalgunj Bus Stop and the accused has made her to travel to Kurnool and from there to Ananthapur and she was made to move from her house in Nallakunta by the accused, on account of his blackmailing tactics and the complainant has obliged the accused under the fear of the consequences that may arise on account of the conduct of the accused. The accused made a call from his mobile phone to some people, asking them to come to Ananthapur Bus stop with a car. On reaching Ananthapur the complainant made her to sit in the car in which the accused and some more people also accompanied and the complainant was taken to Ralapally village and on the next day, in the early hours, they reached Ralapally village, she was taken to a house which she came to know as the house of the relatives of the accused. Ultimately, she was made to sign on some papers and thereafter the accused told him that the papers on which she signed are the marriage papers. She managed to use the cell phone of the accused to call her parents, by giving SMS message to her father, stating that she was at Ralapally and thereafter she erased the said message, so that the accused will not know the same. It is further submitted that her parents have come to Putaparthi Police Station and from there they have come to Ralapally and traced her at Ralapally and rescued her from there. Though the said facts were narrated to Nallakunta Police, they did not register the case and they did not alter section of law from girl missing to Section 366 IPC.

3. The said complaint was referred to the police, based on which the case was registered as a case in Crime No.228 of 2007. After due investigation, charge sheet was laid against the accused before the court of IV Additional Chief Metropolitan Magistrate, Hyderabad. The learned Magistrate, after complying with all the required legal formalities, committed the case to the Sessions Division by virtue of the order in PRC No.27 of 2008. The Metropolitan Sessions Judge, Hyderabad, who registered the PRC as S.C.No.394 of 2008, made over the same to the court of II Additional Metropolitan Sessions Judge, Hyderabad (trial court). The trial court, on appearance of the accused, framed charge for the offence under Section 366 IPC and read over the same to the accused. The accused pleaded not guilty and claimed to be tried.

4. During the course of trial, on behalf of the prosecution, PWs.1 to 4 were examined and Exs.P1 and P2 were marked. The incriminating circumstances in the evidence of the prosecution witnesses were put to the accused, when he was examined under Section 313 Cr.P.C., and he denied the truth of the evidence and reported no evidence.

5. The lower court, after evaluating the evidence and the material on record, passed the impugned judgment, against which this appeal is preferred on the following grounds:

The trial court ought to have seen that the ingredients to constitute an offence under Section 366 IPC are not made out and proved by the prosecution. It ought to have seen that PW1,

being major, has voluntarily, with consent, accompanied the accused and both of them married as they hail from the same village and have acquaintance. It grossly erred in saying that the age is not relevant for the accused, though the date of birth certificate is filed. It ought to have seen that PW1 did not disclose in her 161 statement that since her grand parents do not have a television, she used to go to adjoining houses to view TV. It ought to have considered that PW1 left Hyderabad from Afzalgunj using a public transport i.e., RTC Bus and travelled with him on her free will. It erred in relying on the uncorroborated testimony of PW1 said to have been corroborated by PW2 and Ex.P1 in which there was no need or any necessity to file a private complaint and it creates a reasonable suspicion that the accused has been falsely implicated.

6. Heard the counsel for the appellant and the Public Prosecutor appearing for the State.

7. The counsel for the appellant submits that the prosecution absolutely failed to prove its case. No supporting evidence was secured by the prosecution for the evidence of PW1. There is no proof of age of PW1 and the message which he allegedly sent to her father is not proved by the prosecution and no one was examined to prove the said fact. It is only the interested testimony of PWs.1 and 2 that speaks about the message sent to PW2 by PW1.

8. Based on the above argument, the points that arise for consideration are:

- 1) Whether the accused has forcibly taken PW1 and married her.
- 2) Whether the judgment of the trial court is sustainable.
- 3) To what result.

POINT Nos.1 and 2:

9. The age of the victim is, however, not relevant as Section 366 IPC does not prescribe any punishment with regard to the age of the victim. But in order to bring home the guilt of the accused for the offence under Section 366 IPC, the prosecution has to prove that the victim was kidnapped by the accused against her will.

10. A reading of the evidence of the complainant, who was examined as PW1, would be beneficial in understanding whether any force was exercised by the accused. PW1, in her chief examination, deposed that during vacations when she used to go to the village of her grand parents, she used to go to her neighbouring houses as there was no TV in her grand parent's house. The accused also used to come to the said house. In the year 2006, she went to her grand parents' house for summer vacations in the month of May, 2006 and she returned to Hyderabad one week thereafter. She used to get telephone calls from the accused to their land line number at Hyderabad for which she objected and asked him not to make any calls further. The accused promised her that he would not make calls if she

furnishes one of her positive photograph. In order to get rid of the accused, she sent her photograph by post. In the month of July, 2006, she went to Brahmanapally to her grandparents' village to attend the funeral of their close relative. Then the accused showed her a photograph, as if she was with him and started extending threats that he will spoil her life by showing the said photos to the public. In view of the said threats, she was forced to post greeting cards to his address and write letters on his dictation. After returning from Hyderabad on 30.07.2007, she made a telephone call and asked her to come to Afzalgunj area, or else he will come to her house and show all the photographs to her parents. She immediately went to Afzalgunj bus stop. The accused took her to Kurnool, from there to Ananthapur, in an RTC Bus. On the way he called some people to come to bus stop, Ananthapur, who came in a car. The accused, in the said car, along with some other unknown persons, took her to Pallapalli village. They reached the said village by early hours of 31.07.2007. Some unknown persons took her signatures on printed papers, containing Urdu and Arabic language, which she does not know. After some time the accused came and informed that the papers on which her signatures were obtained are the papers of proof of her marriage with him. She managed to get the cell phone of accused and send SMS to her father about her whereabouts and after erasing the message, she handed over the phone to the accused. Her father, along with her uncle, came to Puttaparthi Police Station and from there to Rallapally village and rescued her, with the

help of police. Her father gave the complaint to the police about her missing and after her return, they filed private complaint before the concerned court.

11. A reading of the above evidence of the victim in her chief-examination would reveal the un-naturality. She did not have courage to inform about any of the events that have taken place between herself and the accused and as to why she just sent an SMS to her father after keeping silent for all those days on which the accused having been making so many threats to her. PW2, who is the father of the victim, though speaks about the SMS does not make any effort to prove the said SMS before the court. If the version of PW1 is believed to be true, in all probability, PW2 would save the message and would get it as an evidence to draw support to their case. He already gave a report to the police. Hence, he would have known about the importance of showing the message and retaining it, in order to have a support to their case. The failure of PW2 to prove that message, would belie the evidence of himself and also the evidence of PW1. There is absolutely no effort that seems to have been made by PW1 all through her travel with the accused and she did not even make any effort to draw the attention of the outsiders, even before the unknown persons. She doesn't say that she offered any resistance and made any complaint against the accused. PW3 is the uncle of PW1, who went along with PW2 to Rallapally village and rescued PW1. But the evidence does not come of any avail to the prosecution, when the crux of the case stands not proved. The evidence of PW1 and the manner in

which the incident took place would suggest that there is consent on the part of PW1 to go along with the accused.

12. Hence, in view of the above, this court opines that the prosecution could not succeed in proving the guilt of the accused and hence, the appellant is entitled for acquittal.

Accordingly, points 1 and 2 are answered.

POINT No.3: -

13. In the result, the Criminal Appeal is allowed and the conviction and sentence recorded against the appellant for the offence under Section 366 IPC by the Court of II Additional Metropolitan Sessions Judge, Hyderabad, by judgment, dated 18.03.2009, passed in S.C.No.394 of 2008, are hereby set aside and consequently the appellant is acquitted of the charges leveled against him. The appellant/accused shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellant/accused shall be refunded to him.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

T. RAJANI, J

September 27, 2018
LMV