



Crl.A. No.197 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A. No.197 of 2022 and
Crl. M.P. No.2488 of 2022

A.Umapathy

.. Petitioner

Vs

State by
The Inspector of Police
Mayiladuthurai Police Station
Mayiladuthurai
Crime No.533 of 2013

.. Respondent

* * *

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment passed against the appellant on 31.12.2021 in S.C. No.35 of 2014 on the file of the Sessions Judge (Fast Track Mahila Court), Nagapattinam and acquit the appellant herein from all the charges.

* * *

For Petitioner : Mr.S.Ilamparithi

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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ORDER

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The respondent police registered a case against the appellant and yet another person in Crime No.533 of 2013 for the offence under Section 364-A and 506(ii) IPC. After completing the investigation, they laid a charge sheet before the learned Judicial Magistrate I, Mayiladuthurai and the same was taken on file in P.R.C. No.41 of 2013. After completing the formalities, the learned Judicial Magistrate committed the case to the Sessions Judge, since the offences are triable by the Court of Session. The case was taken on file in S.C. No.35 of 2014 on the file of the Principal District and Sessions Judge, Mayiladuthurai and after completing the formalities, charges were framed against the first accused for the offence punishable under Section 364-A and Section 506(ii) IPC and against the appellant/2nd accused, for an offence under Section 364-A and also charges were framed against both the accused for the offence under Section 325 IPC.

2. In order to substantiate the case of the prosecution, during trial, as many as 16 witnesses were examined as PWs.1 to 16, twelve documents were marked as Exs.P1 to P12. Besides, two material objects were exhibited as MOs.1 and 2.



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3. On completion of examination of the prosecution witnesses, when incriminating circumstances were culled out from the evidence of the prosecution witnesses and put before the accused under Section 313 Cr.P.C., they denied the same as false. The denial of the accused are the total denial. On the side of the defence, neither oral nor documentary evidence was produced.

4. On completion of trial, after hearing the arguments advanced on either side and considering the materials and evidence, the trial court found guilt of the appellant for the offence under Section 364-A and also Section 325 IPC. The appellant was convicted and sentenced to undergo five years rigorous imprisonment and pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 364-A and also he was convicted and sentenced to undergo three years rigorous imprisonment and pay a fine of Rs.1,000/- and in default to undergo one month simple imprisonment for the offence under Section 325 IPC. Challenging the said judgment of conviction and sentence as against the appellant, he has filed the present appeal before this court.



4a. The specific case of the prosecution is that on 11.07.2013 at 9.00 a.m the appellant and A1, kidnapped the victim boy (PW1) in a car driven by the appellant from his school and when the car was proceeding through Mayiladuthurai to Thiruvarur Main Road, the victim jumped from the car by opening the right side door of the car and thereby, the victim had sustained injuries. Hence the appellant and the first accused were found guilty for the offences as stated supra.

5. The learned counsel appearing for the appellant would submit that the conviction and sentence passed against the appellant is against law, without any materials. The final report against the first accused and the appellant herein before the learned Judicial Magistrate I, Mayiladuthurai was, only for the offence under Section 364-A for kidnapping a minor boy, to grab a sum of Rs.5,00,000/- from the father of the victim and also both the accused, caused grievous injuries, whereas the prosecution witnesses have not substantiated the said charges.

6. The victim was examined as PW1, who had deposed that he was kidnapped by the first accused in a car driven by this appellant on 11.07.2013 at 9.00 a.m from his school and when the car was



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proceeding through Mayiladuthurai to Thiruvavarur main road, the victim jumped from the car by opening the right side door of the car and thereby, the victim had sustained injuries. Hence the appellant and the first accused were found guilty for the offences under Section 325 IPC. Even from the allegation of victim, the said injuries were caused because of jumping from the running car and not by the appellant herein. As per the evidence of the victim, the appellant was driving the car. As such, the appellant did not voluntarily caused the said injury to the victim. Therefore, the ingredients of Section 325 are not attracted and none of the ingredients has been made out to attract any of the charges framed against the appellant.

7. The car, which was involved in the offence, belonged to one Ramesh and later, the accused returned the said vehicle to Ramesh at his request. However, the said Ramesh was not examined as a witness, which is fatal to the case of the prosecution. Further, he would submit that the victim was said to have been initially taken to Government Periyar Hospital, Mayiladuthurai on 11.07.2013. On the same day, he was referred to a private hospital, namely Vairam Multispecialty Hospital, at the request of the father of the victim and he was discharged on 13.07.2013. The doctor, who gave treatment



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in the private hospital, gave a wound certificate. As per the wound certificate, he is of the opinion that injury No.3 stated in the certificate is a grievous injury. Based on that certificate, PW-15, Assistant Surgeon, who was working in the Government Periyar Hospital, gave an opinion on 17.07.2013. Even in order to prove that the injuries sustained by the victim was grievous in nature, no X-Ray was taken at Government Hospital and no X-Ray was marked as an exhibit or a material object, therefore, the prosecution has miserably failed to positively prove that the injuries sustained by the victim is grievous in nature. There is no age proof certificate produced before the court to prove that the victim was a minor under the age of 16 years. Therefore, in the absence of the same, registering a case under Section 364-A of IPC itself is not correct and therefore, the conviction recorded under Section 364-A of IPC is liable to be set aside.

8. PWs.6 and 7 are the chance witnesses and they deposed that they saw the victim boy fell down from the car and thereafter, his uncle came to the spot and the victim was taken to hospital by Ambulance and then they left the spot. They were examined on 13.07.2013 and there is no materials to connect that PWs.6 and 7 were there at the time of occurrence at the occurrence place, which



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itself created a reasonable doubt and therefore, the prosecution case fails.

9. The evidence of the victim boy is not cogent and corroborative with that of the other prosecution witnesses. The contradictions found in the evidence of the prosecution witnesses are material in nature, which would cause a reasonable doubt in favour of the appellant. Further he would submit that identification parade was not conducted. According to the prosecution, the accused are not familiar to the victim and therefore, without conducting an identification parade, fixing the appellant as accused is against the principles of law. Though the prosecution has stated that the victim identified the first accused on 20.07.2013 to his father and he in turn, called the police and the first accused was arrested at the same place. Based on the confession statement given by the first accused, this appellant was arrested on 25.07.2013 at 8.30 a.m. The victim identified the appellant only during the trial. Therefore, it is settled law that first time when the victim identifying the accused during trial is not permissible. The prosecution has miserably failed to prove positively that the appellant had committed the offence of kidnapping for ransom and voluntarily caused grievous injury. Therefore, the trial court has,



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erroneously convicted the appellant herein for the offence under Section 364-A and 325 IPC and the same is liable to be set aside.

There is a delay in filing the complaint and the delay in sending all the material documents to the court is fatal to the case and the prosecution and there is a possibility of deliberation. Therefore, at any angle, the prosecution has not proved beyond reasonable doubt that only the appellant had kidnapped the victim due to previous motive and enmity with the father of the victim, the de-facto complainant has foisted the false case against the appellant and the trial court, failed to appreciate the evidence and wrongly convicted the appellant, which warrants interference of this court.

10. Even the prosecution has not proved that the victim was studying in the school and the victim was a minor. No document was produced that the victim was a student and he is a minor boy. The prosecution has not proved the case of the prosecution.

11. The learned Additional Public Prosecutor, appearing for the respondent police submit that the victim is a minor while studying in the school. The appellant and the first accused informed to the boy that his relative was not feeling well and therefore, his father asked them to bring the victim. Therefore, the victim went



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along with the appellant and the first accused, they took the victim by a car bearing Registration No.TN-51 K-1129. When the route was deviated, at that point of time, the victim questioned about the same, they threatened the victim and immediately the victim broke open the right side of the car door and fell down due to that he sustained injuries. Later on, the parents of the victim was informed and the uncle of the victim took the victim to the hospital for treatment. Later they gave the complaint. Subsequently, the respondent police investigated the matter and laid a charge sheet and during the trial, they examined as many as 16 witnesses. Out of which, PW1 is the victim boy and who has clearly deposed about the incident and the cashier of the petrol bunk was examined as PW12 and the doctor, who gave the treatment at Government Hospital was examined and wound certificate was marked as Ex.P7. Therefore, the prosecution has proved its case that the victim (PW1) was kidnapped by the appellant and the first accused. The first accused was convicted for the offence under Sections 364-A, 506(ii) and 325 of IPC against which he has not filed any appeal and only the appellant alone has filed the appeal. The prosecution has proved its case with cogent evidence. There is no reason to discard the evidence of the victim. The victim has clearly stated that he identified the first accused before his father and thereafter, his



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father informed to the police. The first accused was arrested. Later, based on his confession statement, this appellant was also arrested. Therefore, once the victim identified one of the accused and arrested, based on the confession given by the co-accused, this appellant was arrested and subsequently, the victim identified the present appellant before the court. The appellant, who drove the car bearing Registration No.TN-51 K-1129, therefore, the mere non conducting of identification parade may not be a reason to discard the evidence of the victim. Since the victim has clearly identified one of the accused, from that accused, the appellant was identified and subsequently during trial, the victim identified both the accused. Therefore, the evidence of the victim, medical evidence and other circumstantial evidence, would clearly shows that the appellant has committed the charge for an offence punishable under Section 364-A and also 325 IPC and therefore, there is no merit in the appeal and is liable to be dismissed.

12. Heard both sides and perused the materials available on record.

13. The specific case of the prosecution is that that on 11.07.2013 at 9.00 a.m the appellant and A1, kidnapped the victim



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boy (PW1) in a car driven by the appellant from his school and when the car was proceeding through Mayiladuthurai to Thiruvavur Main Road, the victim jumped from the car by opening the right side door of the car and thereby, the victim had sustained injuries. Hence the appellant and the first accused were found guilty for the offences as stated supra.

14. Though in this case totally two accused, both of them have been convicted, one of the accused has not filed any appeal. However, the present appeal has been filed by the appellant, who was arraigned as A2 in the said case. In order to substantiate the case, the main witness is the victim, who has clearly deposed that under what circumstances, the victim went to the appellant and how he sustained the injuries and how he identified the accused and therefore, since the evidence of the injured is cogent and convincing, it is settled proposition of law, the quantum of witnesses is not the material and only the quality of the witnesses. Therefore, the victim is a directly affected person. He knows the appellant that the appellant drove the vehicle. Though the appellant is an unknown person, the victim boy knows that during the occurrence, the appellant is the one who drove the vehicle, which is involved in this case, was said to have kidnapped by the accused in the said car,



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which was driven by the appellant. Therefore, the evidence of the victim is cogent and natural and there is no reason to discard the evidence of the victim. The mere non production of the X-Ray or non-examination of the doctor, who gave treatment in the private hospital and the non-examination of the care taker in the school where the victim was studying and non production of the school certificate are not fatal to the case of the prosecution. The victim has clearly stated that the appellant and the other accused kidnapped the victim through the car bearing Registration No.TN-51 K-1129 and further, the evidence of the doctor and the wound certificate clearly show that the victim sustained injuries while escaping from the appellant from the car. Even the evidence of PW6 clearly shows that on 11.07.2013 when he came to main road, one boy fell down from a car and he rushed there and removed the cloth from his eyes and also based on his information, he informed to the relative of the victim and thereafter, when they came to the spot, he left the spot.

15. Though the confession statements recorded by the Police Officer are not admissible in evidence, however, the evidence of the victim, clearly shows that the appellant and another accused, have kidnapped him and he only identified A1 to his father. So based on



the information given by the victim, his father informed the police.

Subsequently, police arrested him. Therefore, the appellant was arrested based on the confession given by the co-accused; that however, the victim identified the appellant during trial. Therefore, mere non-conducting of an identification parade, would not fatal to the case of the prosecution.

16. Ten days after the occurrence, one day, the victim was with his father in a shop, at that time A1 as a loadman, while unloading the load, the victim showed and identified him to his father, that has not been disproved by the defence that was proved by the prosecution. Subsequently, based on the confession statement given by A1, the appellant was arrested, but, however he was identified by the accused during trial. Further, since the victim is a minor boy and school going child, therefore, the delay in filing the complaint or delay in filing the FIR is not fatal to the case of the prosecution. Even though there is a contradiction between the witnesses and according to this court, the contradictions pointed by the learned counsel for the appellant, which are not material contradictions, which would go to the route of the prosecution. The contradictions pointed out by the learned counsel for the appellant are not material contradictions and the evidence of the victim is a



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cogent and natural, there is no reason to discard the evidence of the victim, who is the occurrence witness as well as the injured witness. Therefore, the mere delay in sending the documents to the court, may not be a sole ground to discard the evidence unless the defence established that there was a deliberation and out of the deliberation the original complaint or the original case was changed or improved. Therefore, the mere defect in investigation or failure on the part of the prosecution, may not be the sole ground to reject the prosecution case totally.

17. In this case, the victim boy is the prime witness, whose evidence is cogent and natural and this court, does not find any reason to discard or disbelieve the evidence of the victim. Therefore, once the prosecution has proved that the custody of the minor child was removed from the natural guardian without their consent forcibly, Section 464-A of IPC would attract. Though the learned counsel for the appellant stated that the appellant has not voluntarily caused injuries to the victim, it is very clear that, in order to escape from the appellant, the victim jumped from the car and due to that he sustained injuries. Therefore, the appellant is the cause for the injuries sustained by the victim. Therefore, the injuries sustained by the victim are grievous in nature as per the medical



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evidence. Therefore, from the evidence of victim, it is proved that the appellant, who drove the car and the said car was utilised for kidnapping the victim, in order to escape from appellant, he broke opened the glass and jumped from the car and sustained injuries therefore, the appellant is responsible for the injuries sustained by the victim. Therefore, he is found guilty for the offence under Section 325 also. As the appellate court as a fact finding court, this court, re-appreciated the entire evidence, in order to come to an independent conclusion. This court, while re-appreciating the evidence, found the guilt of the accused for an offence under Section 464-A and Section 325 IPC and this court also arrived at a conclusion that the prosecution has proved its case with cogent evidence and there is no reason to discard the evidence of the prosecution, especially PW1, the victim, whose evidence has inspired the confidence of this court. Therefore, this court, does not find any merit in the appeal and the appeal is liable to be dismissed. Accordingly, this criminal appeal is dismissed.

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Index : Yes/No
Internet : Yes
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To
The Sessions Judge (Fast Track Mahila Court), Nagapattinam



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P.VELMURUGAN, J.

Asr

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