



Crl.A.No.830 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2022

Pronounced on : 14.10.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

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1. Murali,
S/o.Baskar.

2. Raghu,
S/o.Baskar.

3. Murugan,
S/o.Jothi.

4. Kalimuthu,
S/o.Karuppasamy.

... Appellants/Accused 1 to 4

/versus/

Inspector of Police,
R6, Kumaran Nagar Police Station,
Chennai – 83.
Crime No.1239 of 2010

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleaded to allow the appeal and setting aside the conviction and sentence imposed on the appellants/accused by the Learned Additional Sessions Judge, Mahalir Neethi Mandram, Chennai in S.C.No.31/2012, dated 17.12.2013 and acquit the appellants/accused and pass order.



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For A1 to A3 : Mr.M.Muneeswaran,
For A4 : Mr.R.Sankarasubbu,
For Respondent : Mr.R.Kishore Kumar,
Government Advocate (Crl.Side)

J U D G M E N T

The appellants are the accused 1 to 4 in S.C.No.31 of 2012 on the file of Mahalir Neethimandram, Chennai. Aggrieved by the judgment passed in S.C.No.31 of 2012, dated 17.12.2013, convicting and sentencing the appellants as below. The present appeal is filed.

<i>Accused</i>	<i>Offence</i>	<i>Conviction and Sentence imposed by the trial Court</i>
A1	341 of I.P.C	To undergo 1 year R.I
	366-A of I.P.C	To undergo 7 years R.I and with fine of Rs.5,000/-, in default 6 months S.I.
A2 to A4	341 r/w 34 of I.P.C	To undergo 1 month R.I
	366-A of I.P.C	To undergo 7 years R.I and with fine of Rs.5,000/-, in default 6 months S.I.

2. Pending appeal, Murugan, who is the 3rd accused/appellant herein died on 15.11.2020 and same been recorded and the appeal by him has become abated.

3. The case of the prosecution is that, on 13.12.2010, at 15.15 hrs



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while P.W.6, the 16 years old minor girl studying 12th standard in the Government Girls Higher Secondary School, Ashok Nagar, Chennai, was coming out of the school, near the school gate, the 1st accused/Murali dragged her hands and the other accused pushed her inside a car and kidnapped her. On hearing the commotion, public nearby started chasing the car. The 4th accused/Kalimuthu wielded knife and threatened the public who tried to rescue the girl. Thereafter, P.W.2, a taxi car driver along with others started chasing the TATA Indica car in which P.W.6 was kidnapped. The TATA Indica car was intercepted by P.W.2 by parking his car across the other end of road and rescued P.W.6. He and other public by name Udhya Kumar (P.W.4), Munusamy (P.W.5) and three others caught all the four persons and handed them to the police. One among them Lourdpandiyar (P.W.1), had given the complaint and same has been registered in Crime No.1239 of 2010. The father of the victim girl was examined as P.W.4. The public, who accompanied P.W.2 in the rescue operation were examined as P.W.3, P.W.4 and P.W.5. The owner of the TATA indica car was examined as P.W.7 to prove that, the TATA Indica car was entrusted to 1st accused/Murali to drive it on the contract basis. The Headmistress of the School was examined as P.W.9, who had spoken about the



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incident occurred near the school gate. P.W.11, Inspector of Police, registered the complaint, recovered the car and arrested all the four accused who were produced by the public. Among the prosecution witnesses P.W.5, P.W.8 and P.W.10 turned hostile.

4. The trial Court, on appreciation of evidence both oral and documents, acquitted the accused persons from charges under Section 342, 506(ii) r/w 34 I.P.C and held A1 guilty of offence under Section 341 and 366-A of I.P.C. A2 to A4 found guilty of offence under Section 341 r/w 34 and 366-A of I.P.C and sentenced and convicted as stated above.

5. The present appeal is filed on the ground that the witnesses had not spoken about the age of the victim girl. No evidence to prove she was a minor on the date of alleged occurrence. There is no evidence to show that P.W.6 was kidnapped with intention to seduce her to have illicit relationship with other persons. Therefore, the ingredient of Section 366-A of I.P.C not made out against the accused persons. The trial Court erred in convicting the accused for offence under Section 366-A of I.P.C. Further, it is submitted that the defacto



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complainant P.W.1 (Lourdpandiyan) had belied the case of the prosecution and he has denied giving complaint (Ex.P.1) to the police. Except the signature found in Ex.P.1, he has not supported his own complaint which is basis for the F.I.R.

6. Submitting that, the evidence of P.W.4, the father of P.W.6 is only hearsay and the evidence of P.W.2 and P.W.3, who claim that they went to the school to collect their relatives child is highly improbable and not reliable. The Learned Counsels for the appellants submitted that the trial Court judgment has infirmities in appreciation of law and evidence.

7. Relying upon the testimony of P.W.6 (victim girl), the Learned Counsel appearing for the appellants submitted that, A1 & A2 are known to P.W.6 and they are relatives of P.W.6. She, in her cross examination had stated that she gave the complaint to the police but the said complaint has not seen the light of the day. According to the prosecution, one Lourdpandiyan is the complainant and he was examined as P.W.1. He had deposed that when there was a crowd near the police station, he went and enquire, at that time he was



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asked to sign the paper and he signed the paper. That signature is found in Ex.P.1. Except the signature, the prosecution has not proved anything about the content of the complaint through him as witness.

8. Further, the Learned Counsel for the appellants submitted that the accused 1 & 2, being close relatives to P.W.6, during young age, out of infatuation they moved closely to severe their relationship the complaint has been falsely lodged. Presently, A1 & A2 as well as P.W.6 leading their own way of life and living peacefully with their respective family. Taking note of the close relationship and the contradictions in the prosecution evidence, the judgment of conviction to be reversed.

9. The Learned Government Advocate (Crl.Side) appearing for the State submitted that it is a case occurred in a broad daylight in front of the Girls School gate. The general public who saw the incident intervened and rescued the girl as well as apprehended the accused. The prosecution through cogent evidence has proved that on the date of event while P.W.6 was come out of the school along with her friend Deepa was dragged into the waiting car by A1.



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Others who were occupying the car intimidated the general public from nearing them. P.W.2, the car driver who chased them intercepted the car and rescued the girl with the help of others. Though few witnesses have not supported the case of the prosecution and turned hostile, their evidence is not crucial to prove the prosecution case.

10. Particularly, P.W.6, the victim girl had deposed before the Court how she was kidnapped by the accused persons. She has identified A1 & A2 since they both are her relatives. All the four persons were caught red-handed by the public and P.W.6 was rescued from them and brought to the Police. Therefore, the plea of non-participation in the crime or failure to corroborate the P.W.6 version by few of witnesses are not significant in this case.

11. Heard the Learned Counsel for the appellants and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.

12. The appellants were charged for wrongful restraint (Section 341



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of I.P.C) and Procuration of minor girl (Section 366-A of I.P.C). It is primarily contended by the Learned Counsel for the appellants that the prosecution has failed to establish the age of P.W-6 to satisfy the ingredient for offence under Section 366-A, which reads as under:-

“366-A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

13. Neither in the complaint nor in the testimony of P.W.6, it is stated that, P.W.6 that she was a minor and was kidnapped with intention to force or seduced her to have illicit intercourse with another person. It is contended that the prosecution has failed to prove that the victim girl (P.W.6) was minor at the time of occurrence and she was forcibly taken away by the accused persons in the car to force her or induce her to have illicit intercourse. Further, the Learned Counsel also contended that according to the prosecution, incident occurred while P.W.6 was walking along with one Deepa. A1 & A2 pushed Deepa and



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dragged away P.W.6 into the car. However, the said Deepa was not examined.

14. Though, charges under Section 506(ii) r/w 34 of I.P.C., framed against the accused persons, the trial Court has rightly disbelieved the case of the prosecution that the 4th accused wielded knife at the public and threatened them.

15. Likewise, the prosecution has also miserably failed to establish why P.W.6 was taken away in the car. In the absence of reason for taking her into the car and the fact that P.W.6 is relatives of A1 & A2, and known to each other, the forcibly taken away in a car for illegal purpose is only an presumption and assumption but not based on proven evidence.

16. This Court finds force in the said submission. To bring on books a person for offence under Section 366-A of I.P.C, the fundamental facts to be proved is that the girl must be less than 16 years old. There must be inducement to the minor girl to do any act or to go from any place with intent that such girl may be, or knowing that it is likely to be forced or seduced to illicit intercourse



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with another person. What has been witnessed by P.W.2, P.W.8, P.W.9, P.W.11 to P.W.13 is that forcible removal of P.W.6 from the school gate into a car waiting near school. According to P.W.6, this act has been committed by A1 & A2. This will attract charge under Section 365 of I.P.C. Only if prosecution has proved that P.W.6 was a minor girl then only Section 366-A of I.P.C will get attracted. As far as this case none of the prosecution witness has spoken about the age of P.W.6. No documents relied by the prosecution to fix the age of P.W.6. Though the headmistress of the school been examined as P.W.9, even she has not stated anything about P.W.6 age from the school record to prove the age of the victim girl (P.W.6) was a minor at the time of occurrence. Only on presumption that P.W.6 was pursuing her 12th standard on the date of occurrence, the prosecution has proceeded to charge the accused under Section 366-A of I.P.C

17. In so far as A4 is concerned, his presence in the car along with other accused is proved but the charge of intimidating the public showing knife found not proved and held not guilty by the trial Court.

18. From the evidence adduced by the prosecution, the following



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facts are proved beyond doubt: i). All the four accused have come to school near Ashok Nagar, Chennai, in the TATA Indica car bearing Reg.No.TN-50-E-6699 on 13.12.2010, at about 3.30 p.m. ii). A1 & A2 has wrongfully restraint P.W.6 and forcibly taken her in the car. iii) A3 & A4 were present in the car to assist A1 and A2. iv). P.W.6 had been wrongfully confined and taken away in the car. v).The public who intercepted the said TATA Indica car had rescued the victim girl (P.W.6.) and handed over the A1 to A4 to the police for action.

19. It is contended by the Learned Government Advocate (Crl.Side) for the respondent, at the time of occurrence P.W.6 was pursuing 12th standard hence she must be a minor girl. Neither her school certificate nor her birth certificate produced to establish that she was minor at the time of occurrence. Therefore, charge under Section 366-A of I.P.C., is not proved. The evidence for prosecution is sufficient to prove the cognate offence under Section 365 of I.P.C.

20. Instead of convicting them under Section 366-A of I.P.C., A1 to



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A4 ought to be convicted for the cognate offence under Section 365 I.P.C., which is lesser in gravity. Accordingly, A1 and A2 are held guilty of offence under Section 341 of I.P.C. A1 to A4 are held guilty of offence under Section 365 of I.P.C. Since A3 died, the sentence is modified as below, taking into consideration the fact that the incident has taken place near the girls school gate and the offenders are related to the victim.

<i>Accused</i>	<i>Offence</i>	<i>Conviction and Sentence modified by this Court as below:-</i>
A1 & A2	341 of I.P.C	Sentenced to undergo three months R.I
A1, A2 & A4	365 of I.P.C	Sentenced to undergo six months R.I and to pay fine of Rs.1000/- each, in default 15 days S.I.

21. With the above modification, this *Criminal Appeal is partly allowed*. The period of sentence shall run concurrently. The period of imprisonment already undergo ordered to be set off under Section 428 of Cr.P.C.

14.10.2022

Index :Yes.
Internet :Yes.
bsm

To,
1. The Learned Additional Sessions Judge, Mahalir Neethi Mandram, Chennai.



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2. The Inspector of Police, R6, Kumaran Nagar Police Station, Chennai – 83.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.Jayachandran, J

bsm

Pre-Delivery judgment made in
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