

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1328 OF 2010****ORDER:**

The appeal is arising out of the judgment dated 17.03.2010 in S.C No.272 of 2009 on the file of Additional Metropolitan Sessions Judge-Cum-III Additional Sessions Judge (FTC), L.B Nagar, Ranga Reddy. The appellant is questioning the correctness of his conviction under section 363 of I.P.C.

2. The case of the prosecution is that on 26.03.2008 at 9:30 A.M, one girl by name Ms.Jagadeeshwari, aged 6 years was allegedly kidnapped by the appellant, when she was playing in front of her house and while she was being taken towards bushes near by, the labourers caught hold of the appellant and beat him.

3. On the basis of the said complaint, police filed Charge Sheet against appellant for the offence punishable under section 366-A of I.P.C.

4. At the place of incident, the girl Ms.Jagadeeshwari was dragged by the appellant while playing in front of her house as was stated by P.W.Nos.1,2,3,4 and 5. On the basis of the said evidence, the learned Sessions Judge found that no offence under Section 366-A of I.P.C. is made out as the offence would be attracted only in the event of inducing minor girl, to go from any place with the intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse.

5. For the reason of absence of any such evidence, the learned Sessions Judge found that the appellant is liable to be convicted under Section 363-A of I.P.C. and accordingly sentenced for three years.

6. Learned counsel for the appellant submits that, the petitioner has already undergone a sentence of one year and four months.

7. Further, none of the witnesses stated that the appellant was trying to take daughter of P.W.4 forcibly. To

attract offence under section 363-A of I.P.C. it has to be proved by the prosecution that a minor has been kidnapped under Section 361, from lawful guardianship.

“Section-361 Kidnapping from lawful guardianship.—Whoever takes or entices any minor under 2 [sixteen] years of age if a male, or under 3 [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

8. As seen from the evidence of the witnesses P.W.Nos.1 to 4, the appellant while catching hold of the girl Ms.Jagadeeshwari and which being dragged immediately the father who is P.W.No.4 caught hold of the appellant and handed over to the police.

9. Even admitting that the incident has occurred in the very same way in which the father and other witnesses have narrated, the case would be one of assault or assault using criminal force.

“Section 350 Criminal force.— Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Section 351 Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.”

For the said reasons of the acts amounting to use of criminal force by the appellant, the offence under Section 366 of I.P.C. is not attracted. Accordingly, the conviction under Section 363 of I.P.C is set aside. However, the act of the appellant is an offence punishable under Section 352 of I.P.C. Since, appellant has already undergone imprisonment of one year and four months, no further orders are required since the maximum punishment under 352 is three months.

10. Accordingly, the Criminal Appeal is disposed off.

Miscellaneous Petitions, pending if any, shall stand closed.

Date: 15.11.2022
LK

K.SURENDER, J