



Crl.A.(MD).No.25 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 12.09.2023

PRONOUNCED ON : 20.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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Kannan S/o. Ramu @ Ramar

... Appellant

Vs.

The State represented by:-
The Inspector of Police
Andipatti Police Station,
Theni District.

[S.C.No.152/2013 in Crime No.391 of 2012]

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374 of Cr.P.C, praying to set aside the Judgment and conviction and the sentence imposed on the appellant in S.C. No.152 of 2013 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Court), Theni District dated 20.12.2016 and acquit the accused by allowing this Criminal Appeal.



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For Appellant : Mr. A.P. Muthu Pandian
For Respondent : Ms. M. Aasha, Government
Advocate (Criminal Side)

ORDER

This Criminal appeal in Crl. A(MD) No.25 of 2017 has been preferred by the accused as against the Judgment and conviction passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court), Theni District in S.C. No.152 of 2013 dated 20.12.2016.

2. In the trial Court, this sole accused / appellant was convicted for the offences u/s.498 and 365 of IPC. The accused was sentenced to undergo 2 years of Rigorous Imprisonment for the offence U/s.498 of IPC and sentenced to undergo 7 years of Rigorous Imprisonment and also to pay a fine amount of Rs.10,000/- and in default of payment of fine, to undergo one year Rigorous Imprisonment for the offence U/s.365 of IPC. As against the above Judgment and conviction, the present appeal has been filed by the sole accused / appellant.



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3. The prosecution case is that on 22.08.2012 at about 12 a.m., the accused had abducted the victim namely Jothi W/o. Manigandan along with her 9 years old minor girl from Tharmathupatti bus stand. Thereafter the defacto complainant / PW1 had given a complaint, Ex.P.1, before the respondent police. PW10 has registered F.I.R., Ex.P.4 and thereafter the case was investigated by PW11 and he examined the witnesses and recorded their statements and collected the documents. Thereafter, PW12 has further investigated the case and examined the witnesses and collected the materials and then filed final report as against the accused for the offences punishable U/s.498 and 365 of IPC. Thereafter, the documents relied on by the prosecution were furnished to the accused U/s.207 of Cr.P.C. and then the case was committed to the Principal District Judge, Theni and the learned Principal District Judge made over the case to the Mahalir Neethimandram, Fast Track Court in Sessions Case No.152 of 2013. Thereafter, the trial Court, after hearing both sides, has framed charges U/s.498 and 365 of IPC. The charges framed against the accused / appellant, were explained to him and he denied the charges. Thereby, the Trial Court examined the witnesses PW1 to PW12 and marked Ex.P.1 to Ex.P.6. No material objects were



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marked. On the side of defence, DW1 was examined and Ex.D.1 to Ex.D.5 were marked. After completion of prosecution side evidence, the accused was examined U/s.313(1)(b) of Cr.P.C. with regard to the incriminating evidence adduced against him and the same was also denied by the accused. After hearing both sides and considering oral and documentary evidence adduced on both sides, the Trial Court has found the accused guilty of offences punishable U/s.498 and 365 of IPC and convicted the accused.

4. Aggrieved upon the above said Judgment and conviction, the present appeal has been filed by the sole accused on the following grounds:-

4(i) The Trial Court has failed to see that PW1, who is the defacto complainant personally complained on 25.08.2012 but the FIR was registered only on 08.09.2012 in Cr. No.391 of 2012 for the offences punishable U/s.498 and 365 of IPC and the reason for delay was not properly explained. Further on the same day itself, charge sheet has been filed.



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4(ii) The Trial Court failed to see that PW1, in his evidence, has admitted that the date of occurrence was 22.08.2012 but the complaint was lodged after three days ie., 25.08.2012.

4(iii) The Trial Court, had also failed to consider that the victim, who is alleged to be abducted was not examined as witness and therefore the prosecution failed to prove the charges levelled against the accused.

4(iv) The Trial Court failed to consider that the victim Jothi, who was alleged to be abducted, was not willing to live with the defacto complainant and she has made her statement in H.C.P. proceedings that she was living at Thathakapatti, Salem along with her daughter Pandeeswari.

4(v) The Trial Court failed to consider that PW2 was minor and she was tutored by the defacto complainant and her evidence is not trustworthy. The conviction was solely on the basis of the evidence of PW12, which is not trustworthy and unbelievable.

5. The learned counsel appearing for the appellant would contend that the accused has been charged for the offences punishable U/s.498 and



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365 of IPC. In order to attract the provisions of Section 498 of IPC, there is no evidence that the accused had taken away or enticed the victim, who is the wife of the defacto complainant and detained her with criminal intent to have illicit relationship with her. Further there is no evidence that the accused kidnapped or abducted the wife of the defacto complainant along with her minor daughter. Further, the prosecution failed to examine the wife of the defacto complainant, who is said to be abducted by the accused.

5.1. The main witness is the wife of the defacto complainant, who was alleged to have been abducted by the accused and when charges were framed under Sections 498 and 365 of IPC, she was not examined as witness in this case. PW2 and PW3 are close relatives of PW1. PW2, during his cross examination, changed his version and he was treated as hostile and PW3 is hearsay witness. The minor victim girl, was examined as PW12 and her evidence is highly doubtful and she is aged about 8 years on the date of occurrence and she has deposed that "on 22.08.2012, she along with her mother, went to receive salary for the 100 days work of her mother and when they returned to bus stand, one Kannan was there and he caught hold the hands of herself and her mother and abducted them to



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Salem. There her mother was always crying and thereafter she was suffering from fever and Rs.1,000/- was spent for the fever and then her ear studs were pledged for the illness of her mother. They had stayed three months in Salem and thereafter the accused Kannan left them in Aandipatti Bus Stand and when they were standing in the Aandipatti bus stand, the Police had secured them". The above said evidence shows that she was tutored and as 8 years old girl, how could she say about the pledging of jewels and other things. Therefore the evidence of PW12 is highly doubtful and the Trial Court has given much importance to the evidence of PW12 and solely convicted the accused on the basis of the evidence of PW12. Therefore the Judgment and conviction of the trial Court are liable to be set aside and the accused is entitled for acquittal.

6. The learned Government Advocate (Criminal Side) would contend that the accused had kidnapped the wife of the defacto complainant along with her minor child from Tharmathupatti to Salem and thereafter the defacto complainant has given complaint and on the basis of the complaint, FIR has been registered and thereafter the investigating officer has investigated the case and filed final report. In the meantime, the defacto



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complainant had filed H.C.P.(MD) No.1209 of 2012. Thereafter, the victim, ie., the wife of the defacto complainant along with her child were produced before the High Court and the wife of the defacto complainant was not willing to go along with the defacto complainant and she was set at liberty by the High Court. Thereafter, the Trial Court had examined PW1 to PW12 and marked Ex.P.1 to Ex.P.6.

6.1. PW1 is the defacto complainant and the husband of the victim. PW2 is the eye witness. PW2 has witnessed about the incident by deposing that when he was standing in the Tharmathupatti bus stand, he saw that the accused had kidnapped the wife of the defacto complainant along with her daughter. PW3 has also categorically deposed about the incident. PW12 is the main witness in this case and she has also categorically deposed about the kidnapping and she has stated that the accused had taken the victim PW12 along with her mother from Thamathupatti bus stand to Salem through bus and there, they had stayed for three months. Therefore the prosecution has proved the case beyond reasonable doubts as against the accused and the Trial Court has convicted the accused for the offences punishable U/s.498 and 365 of IPC and therefore, the present appeal is



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liable to be dismissed.

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7. Heard both sides and perused the entire materials available on record, the Judgment passed by the Trial Court and the grounds of appeal.

8. Now the points for determination in this appeal are:

8(i) whether the prosecution has proved the charges levelled against the accused for the offences punishable U/s.498 and 365 of IPC beyond reasonable doubts and

8(ii) whether the judgment and conviction passed by the trial Court in S.C. No.152 of 2013 are sustainable in law and on facts.

9. **Points:-** The prosecution case is that on 22.08.2012 at about 11 a.m., the accused abducted the wife of the defacto complainant and his daughter, who is aged about 9 years from Tharmathupatti Bus Stand and had illicit relationship with the defacto complainant's wife. In order to prove the charges levelled against the accused, on the side of prosecution, PW1 to PW12 were examined and Ex.P.1 to Ex.P.6 were marked.



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10. In this case, the Trial Court has framed charges for the offences punishable U/s.498 and 365 of IPC. The charges do not disclose as to where the accused had taken away the wife of the defacto complainant and her daughter. The charge for the offence U/s.365 of IPC reveals that from Tharmathupatti Bus Stand, the accused had kidnapped the victims. But it did not reveal about the place to where, he had taken away or kidnapped the victims and in which place they were stayed. Further, the charge for the offence U/s.498 IPC, it is stated that the accused kidnapped with an intent to have illicit intercourse with the wife of the defacto complainant but there is no reference to where she was taken by the accused. Therefore the framing of charges itself is not in accordance with law.

11. The charge should be specific and it should disclose the particulars of offence. But in this case, the framing of charges has not disclosed the particulars of offences U/s.498 and 365 of IPC. Further, PW1 is the defacto complainant and he has deposed about the lodging of complaint and filing Habeas Corpus petition before this Court and as per the order passed in HC petition, his daughter was entrusted with him. The date

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of occurrence is on 22.08.2012 and the date of complaint is 25.08.2012 and there is no explanation for the delay for lodging the complaint. On perusal of complaint, it is seen that the complaint was given only on suspicious. The PW1, in his evidence has stated that PW2 and PW3 told him that the accused along with his wife and child went through bus and then he gave complaint and thereafter he filed writ petition before the Madurai Bench and his wife and child were produced before the Court and his wife refused to go with him and his daughter was entrusted with him. Further in the cross examination of PW1, he has stated that his wife was residing in Salem and do not know with whom she is residing. Therefore, from the evidence of PW1, it is revealed that the victim i.e., wife of the defacto complainant left from the matrimonial home of defacto complainant and there is no evidence to prove that the accused abducted the wife of PW1 to have illicit intercourse. PW2 is said to be eye witness to the occurrence. He has deposed that in or about one and half years ago, when he went for a garden work at about 10.30 a.m., the accused had taken the wife and the child of the defacto complainant through bus. PW2 is none other than the brother in law of the defacto complainant/PW1 and hence he immediately informed the same to his brother PW1. But the complaint was not given immediately



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after knowing about the incident and the complaint was given after the delay of 3 days, on suspicious.

1. PW3 is not an eye witness and he is only an hearsay witness. PW4 also deposed about the missing of victims but she is also not an eye witness. PW5 deposed about the attestation in Observation Mahazar and Rough Sketch. PW6 is also stated about the missing of victims and he is also an hearsay witness. PW7 has deposed about the formation of a Special team to trace the accused and the victims. PW8 has deposed about the receipt of complaint and issuance of receipt for the complaint. PW9 has turned as hostile. PW10 has deposed about the registration of FIR and sending the case records to the Inspector for further investigation. PW11 has deposed about the investigation. According to his evidence, he has taken over the case for investigation and he visited the place of occurrence and prepared Observation Mahazar and Rough Sketch and arrested the accused and produced the victims before the High Court in H.C.P. proceedings and thereafter he has filed final report.

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13. PW12 is the main witness and she deposed that "on 22.08.2012, she along with her mother went to Vattapparai to receive the 100 days work salary and thereafter when they came to bus stand, the accused had taken them to Theni and thereafter from Theni, he had taken them to Salem and there, her mother continuously crying and thereafter she was suffering from fever and then Rs.1000/- was expended and again they pledged their ear studs and took treatment for her mother. Thereafter as the Police searched them, the accused had taken them to Aandipatti Bus Stand and left there". But the same PW2, in her cross examination stated that "her school is very near to the bus stand and the office of 100 days work, is also near to the bus stand... at that time, they had not raised any alarm.... and her mother stated to the Conductor that she was abducted by the accused but the Conductor has not heard the same.. thereafter, the bus was stopped in Aandipatti and she was crying in the bus stand and her mother was also continuously crying by stating that the accused has abducted her and please help...nobody heard their voice. Again in Theni bus stand also, they were crying but none of the people heard their voice and helped them. Again they shouted in the bus and the Conductor asked the accused that why you are kidnapping them.



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But he did not help them". If the PW12 and her mother raised alarm as alleged by PW12, then the public, who were present in the bus stand, would have seen the same and would have taken action. But there is no such evidence that the said alarm and cry of the victim were heard by the public. The said evidence of the victim PW12 is unnatural and it creates severe doubt over the evidence of PW12 and it does not inspire the confidence of this Court. The mother of PW12 has not been examined by the prosecution and the same is also very fatal to the prosecution. The Trial Court has relied the evidence of PW12 but failed to consider the discrepancies and the contradictions of the prosecution evidence.

14. In order to attract the provisions U/s.498 of IPC, there is no evidence that the accused has taken away or enticed the wife of the defacto complainant with an intent that she may have illicit intercourse with any person or detained her with such intent. But the main witness to speak about the occurrence is the wife of the defacto complainant, but she was not examined as witness. Even according to the evidence of PW12, there is no evidence to attract the ingredients of Section 498 of IPC and there is no charge for the offence of abduction or kidnapping of the minor child.



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Common charge has been framed that the accused had kidnapped the wife of the defacto complainant along with her child. There is no separate charge for the abduction of the daughter of the defacto complainant and charge is with regard to the abduction of the mother of the victim girl. In order to attract the provisions U/s.498 of IPC, there is no piece of evidence adduced by the prosecution witness. when the offence is committed U/s.498 of IPC for having illicit intercourse with the wife of the defacto complainant, then the proper charge would be U/s.366 of IPC as against the abduction of the wife of the defacto complainant for having illicit intercourse. For the abduction of the daughter of the defacto complainant, there should be a separate charge. But in this case, no proper charges were framed. In order to attract the provisions U/s.365 of IPC, there should be an intent to cause that person to be secretly or wrongfully confined. But in this case, there is no any confinement or caused that person to be secretly and wrongfully confined. Therefore, the prosecution has failed to prove the charges levelled against the accused for the offences U/s.498 and 365 of IPC.

15. The available evidence are not sufficient to convict the accused and the prosecution has miserably failed to prove the charges levelled



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against the accused and the Trial Court has failed to see the above said aspects and wrongly came to the conclusion that the prosecution has proved the charges levelled against the accused U/s.498 and 365 of IPC. The Trial Court failed to consider that the main witness, the wife of the defacto complainant, was not examined before the trial Court, even though PW1 came to know about the occurrence through PW2 and PW3, immediately did not give complaint and there is a delay of 3 days in lodging the complaint and the wife of the defacto complainant refused to go with him when she was produced before the High Court in HCP proceedings and the evidence of PW12 is not cogent and highly doubtful. Therefore the Judgment and conviction passed by the Trial Court are unsustainable and hence the same are liable to be set aside.

16. In the result, this Criminal appeal is allowed and the Judgment and conviction passed by the Trial Court in S.C. No.152 of 2013 dated 20.12.2016 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court), Theni District are hereby set aside and the accused is acquitted from the charges U/s.498 and 365 of IPC and he be set at liberty subject to other cases, if any. The bail bonds executed by the



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accused shall stand cancelled. The fine amount, if any paid by the accused,
shall be refunded.

20.10.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/No
mjs

To

The Sessions Judge,
Mahalir Neethimandram (Fast Track Court),
Theni District .



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