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Crl.A.No.132 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.09.2024
Pronounced on	05.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.132 of 2019

Ganeshan

... Appellant/Accused No. 1

Vs.

State by Inspector of Police,
Thiruppur Rural Police Station,
Tiruppur District
(Crime No. 240 of 2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to set aside the judgement of the learned II Additional District and Sessions Judge, Tiruppur, Tiruppur District made in S.C.No.147 of 2015 dated 10.01.2019 and acquit the appellant herein from the said charge.

For Appellant : Mr. S.Parameswaran

For Respondent : Mr. A.Gokulakrishnan,
Additional Public Prosecutor



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J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal arises against the judgment of the learned II Additional District and Sessions Judge, Thiruppur in S.C. No. 147 of 2015, dated 10.01.2019, wherein the first accused was convicted under Section 364(A) of IPC.

2. Originally, there were two accused, viz., the appellant herein, and his wife. Though both of them were charged under Section 364(A) of IPC, the trial Court acquitted the wife of the appellant. Resultantly, the instant criminal appeal has been filed by the first accused/appellant.

3. The brief facts which give rise to the instant Criminal Appeal are that, the Minor Mohammed Imran (PW2) is the son of one Mr.Mohammed Rabdeen (PW1) and Mrs.Salman Paris (PW3). According to the prosecution, PW2 (Mohammed Imran) along with his brother and two other friends went for a bath on 21.03.2015 at about 10:00 a.m., to Andipalayam canal. While they were proceeding, at about 11:45 a.m., the



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accused intercepted and enticed them to accompany him to have a bath in another canal, which he claimed to be more enthralling. Believing his words, PW2 victim and his friend, viz., one Ijaz Ahmed, went along with him in his bike bearing Registration No. T.N.39BW 4221. While they were proceeding, near Koolipalayam Railway Bridge, the accused kicked down Ijaz Ahmed, and took PW2 alone to a secluded place.

4. After that, the accused asked PW2, to give his father's cell number, and thereafter, he was also asked for his mother's cell number. Then, he called PW2's mother qua PW3, and intimidated her to bring the required money, last he would kill her son (PW2). The accused also intimidated the victim to speak with his mother. He also hurted PW2 [victim], and tied him to a tree. However, after some time, the accused released PW2, as his demand was met. After securing the minor PW2, his father [PW1] gave a complaint to PW10 (Selvaraj) Head Constable, at about 9:00.p.m on 21.03.2015.

5. On receipt of the complaint, PW10 registered an FIR in Crime No. 240 of 2015 under Section 364(A) of IPC. Immediately, on registration of



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the First Information Report, PW10 forwarded the same to the concerned jurisdictional Magistrate, as well as to the Investigating Officer, M. Sundarapandiyan (PW13). On receipt of the copy of the First Information Report, the Investigating Officer made arrangements for treating the minor victim (PW2). At about 22:00 hours, he visited the scene of occurrence and prepared an observation mahazar, and rough sketch. He also recorded the statements of the victim minor, his parents, and his friends.

6. While so, on 24.03.2015, the Investigating Officer arrested the accused with his two-wheeler bearing Registration No. T.N.39BW 4221. Thereafter, the accused voluntarily gave a confession. In pursuance of his confession, a discovery of fact was effected, by recovery of his vehicle and a sum of Rs. 1,500/-. He then arrested, the first accused's wife, as she had abetted the commission of the offence. The Investigating Officer also recorded the statement of the Doctor, who treated the minor victim (PW2). Eventually, on completion of the investigation, the Investigating Officer laid a final report.



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7. Before the Trial Court, the prosecution examined as many as 13 witnesses as PW1 to PW13, marked 17 documents as Exs.P1 to P17, and 2 Material Objects. On behalf of the accused, neither documents, nor material objects were marked, and no witnesses were examined.

8. The Trial Court, after having considered the oral and documentary evidence, ultimately convicted the first accused/appellant and acquitted the second accused from all charges.

9. Assailing the above order of conviction, the learned counsel appearing for the appellant/first accused, would vehemently contend that the delay in registering the First Information Report, would be fatal to the prosecution's case, and that there are numerous doubts in the identification of the accused. It is his further contention that the appellant was implicated merely on the basis of surmises and conjectures, and that there are no proof to show the alleged threat to cause death, or demand for ransom. It is in this backdrop, he would contend that, the charge under Section 364(A) of IPC is not made out. And hence prayed to interfere with the order of conviction.



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10. Per contra, the learned Additional Public Prosecutor, would vehemently contend that Ex.P1, complaint establishes the threat to cause death to the victim, and PW1 to PW3 evidence unequivocally demonstrate the threat of death. It is his further submission that, through proper test identification parade, the identity of the accused was further fortified. He would also contend that, all the witnesses testified about the demand for money as ransom from the victim's (PW2) parents, and that PW.2's evidence was corroborated by the doctor/PW12, which would clinchingly prove the hurt sustained by the PW2/victim. It is in this view of the matter, the Additional Public Prosecutor vehemently contended that the charge under Section 364(A) of IPC has been proved beyond reasonable doubt and hence, there are no grounds to interfere with the well-considered findings of the Trial Court and therefore prayed to dismiss the instant Criminal Appeal.

11. We have given our anxious consideration to the submissions made on either side.



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12. After the acquittal of the appellant's wife, we are now concerned with the first accused qua the appellant herein. Before we delve into the factual aspect, it is pertinent to extract Section 364(A) of IPC for ready reference:-

“364A. Kidnapping for ransom, etc.— Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

13. As per the above Section, in order to make out the charge under Section 364(A) of the IPC, the following three ingredients has to be tested:-

“(A) There should be either kidnapping or abduction of a person or a person is to be kept in detention after kidnapping or abduction;

(B) The accused must either directly threaten a person to cause death or hurt or creat an apprehension that he may be put to death or hurt.

(C) Or cause death or hurt to such a person in order to compel the Government or any foreign State or inter-Governmental organisation or any other person to



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do or abstain from doing any act or to pay a ransom.”



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14. The primary requirement to prove a charge under Section 364(A) of IPC is the kidnapping or abduction of a person. In the present case, PW2 was minor then and was aged about 10 years at the time of occurrence. He has categorically spoken about the enticement made by the accused, and his act of having taking him away, without the consent of his parents. It is pertinent to mention here that PW2 was in the accused's custody on 21.03.2015 between 1:25 p.m. to 7:00 p.m. Therefore, the identity of the accused was not an enigma to the PW2, as he was under his custody for nearly 6 hours. It is equally pertinent to mention here that PW2's friend, Ijaz Ahmed, had also supported the evidence of PW2. As such, there cannot be any dispute regarding the accused's identity, and his overt act of having taken the minor, without the consent of his parents.

15. Furthermore, the learned Judicial Magistrate, Attur, (PW9) testified before the Court, and spoke about the conduct of a test identification parade for the accused. Through his evidence, we find that, PW1 to PW3 had identified the accused during the test identification parade. In the light of the above fact, there are abundant evidence for the identification of the accused qua, firstly through PW2's evidence, secondly, from the test identification report. As a matter of fact, this Court finds no



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infirmity in the procedure adopted by the learned Judicial Magistrate in conducting the test identification parade. Accordingly, we find no difficulty to accept the finding of the Trial Court, as to the identity of the accused. Thus, we are of the firm view that the prosecution has established the identity of the accused, his enticement, and his act of having taken away of PW2 minor, without his parent's consent. As such, the first limb of Section 364(A), qua the offence of kidnapping, is established beyond reasonable doubt.

16. However, the mere act of kidnapping is not sufficient to invoke Section 364(A) of IPC, and the prosecution must prove the other ingredients, qua the threat to cause death or hurt or cause hurt.

17. Though the complaint (Ex.P1) indicates about such threat, it is their specific case that the threat was made through a cell phone call. While ruminating this aspect, the mother of PW2 had spoken about the threat made to her through a cell phone call. As rightly contended by the learned counsel for the appellant, it was not a threat in person, but only through a cell phone call. But, the prosecution miserably failed to establish the



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connection between the alleged threat, and the accused. All that is proved is that she received a threatening phone call from someone demanding ransom. However, the call details were not produced. In the light of this fact, we could safely arrive at a conclusion that there was absolutely no proof for the demand of ransom, and the threat to cause death of PW2.

18. The learned Additional Public Prosecutor, by relying upon the other ingredient of Section 364(A), qua hurt to the person, contended that PW2 victim had categorically spoken about his injuries. It is pertinent to mention herein that PW2's evidence categorically explains about the injuries caused to him by the accused, which explanation is also corroborated through the evidence of the Doctor (PW12).

19. As already stated, in order to make out a case under Section 364(A) of IPC, apart from kidnapping or abduction, at least one of the other two ingredients, namely demand of ransom (or) causing hurt or to compel the person to do or abstain from doing any act, should be established, failing which the offence under Section 364(A) of IPC will not be made out.



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20. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court of India in the case of ***Shaik Ahmed vs. State of Telangana*** reported in **(2021) 9 SCC 59**, which reads as follows:-

“33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the abovenoted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.

[Emphasise supplied by this Court]

In the case in hand, though there are no materials to prove the demand of ransom from PW1 and PW3, there are abundant evidence through PW2 [victim's] statement that the accused caused injuries to him, while he was in his custody. According to the prosecution, this falls within the provision



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of Section 364(A) of IPC. In order to appreciate this argument, it is useful to extract the evidence of PW2 (victim):-

“பின் நான் கட்டியிருந்த பெல்ட்டை வாங்கி என் முதுகிலும் கை தோள்பட்டையிலும் அடித்தார். பக்கிலால் அடித்ததில் எனது வலது பக்கம் கண்ணாக்கு கீழ் அடித்தார். பின் மீண்டும் கொஞ்ச தூரம் வண்டியில் அழைத்துச் சென்று என்னை கயிற்றால் கட்டி ஒரு மரத்தில் கட்டினார்.”

The aforesaid extract is self-explanatory and as such, there cannot be any doubt in the proof of causing hurt to the minor PW2 by the accused.

21. Before we delve into the effect of the hurt caused to the victim [PW2], it is appropriate to deal with the judgment relied by the learned counsel for the appellant rendered by the Madhya Pradesh High Court in ***Ravindra Shukla Alias Mukesh vs. State of M.P*** reported in (***AIROnline 2019 MP 1065***), wherein, on account of absence of proof regarding a demand for ransom, it was held that the charge under Section 364(A) of IPC was not established.

22. But in the case in hand, though the demand of ransom was not proved, the prosecution was able to establish the injuries inflicted by the accused on the victim. It is in this background, it requires to be seen as to



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whether such proved wrongdoing, warrants a serious punishment of life imprisonment or death under Section 364A of IPC. As already stated, the demand of ransom by the accused has not been established. However, though there is evidence of infliction of injury upon the minor (PW2), this Court could not find any semblance of nexus between the injury and the demand of ransom.

23. If we harmoniously read Section 364(A) of IPC, the alleged hurt must be to compel, *inter alia*, any person to pay a ransom. However, in our case, there is no evidence from the victim [PW2] or any other witnesses that the hurt was caused only to compel the victim's parents to pay the ransom. The mere intimidation or small hurt upon the child witness [PW2] for the purpose of silencing them or intimidating them not to raise an alarm, as long as such act was not made to compel the person to do or not to do certain act, such hurt will in no way be a ground to invoke Section 364(A) of IPC, which carries a maximum punishment of death and a minimum sentence of life.



24. The above reasoning is supported by the judgement of the Hon'ble Supreme Court of India in ***Ravi Dhingra vs. State of Haryana*** reported in **(2023) 6 SCC 76**. The relevant paragraph is paragraph 28, which reads as follows:-

*“28. We have perused the statement of PW 21 made to the police on 18-2-2000 i.e. two days after he had returned home from the captivity of the appellants herein. The statements record that he was threatened at night by the appellants with a “revolver,” which was claimed to be possessed by them. The exact statement was, “One handkerchief and one black cloth were tied on the eyes and said to me they have revolver and they will kill him if [he] raises any voice.” However, the statement before the trial court dated 15-4-2002, nearly two years after the initial statement, includes a substantial detail that was omitted in the previous statement. After mentioning that PW 21 was forcibly put inside the car and gagged, the statement reads, “The occupants threatened me with a knife and pistol and threatened me to kill.” Thus, three crucial changes may be noticed : first, a change in the exact timing of the threat; second, the specificity of the delivery of the threat to kill; and third, omission of the intent behind the threat i.e. to prevent PW 21 from crying out. These details are crucial to proving the second ingredient of the charge under Section 364-A and essential to bring home the guilt under this section, namely, threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt. It is clear that this ingredient has not been proved beyond reasonable doubt. The courts below did not thoroughly address this doubt before convicting the appellants. **For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent, cannot be enough. If the sentence***



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carrying a maximum sentence of death and a minimum sentence of life sentence has such a low evidentiary threshold, the difference between punishments for kidnapping under Sections 363, 364 and 364-A shall become meaningless.

[Emphasise supplied by this Court]

25. In the light of the above detailed discussions, it is explicit that except the charge of kidnapping simplicitor, no other charge was proved by the prosecution beyond reasonable doubt. But in contrast, the Trial Court without proper appreciation of evidence and law, had arrived into a wrong conclusion of punishing the appellant under Section 364(A) of IPC, when the charge under Section 363 of IPC alone was made out. It is a well-settled principle of law that the Appellate Court will be well within its power to alter the charge under Section 216 of Cr.PC, without causing any prejudice to the accused.

26. In view of what has been stated hereinabove, the conviction and sentence imposed by the Trial Court against the accused is ordered to be modified to one under Section 363 of IPC, by imposing a punishment of 7 years rigorous imprisonment and a fine of Rs. 1,000/-, in default to undergo one year rigorous imprisonment.



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27. In the result, this Criminal Appeal is partly allowed and the judgment dated 10.01.2019 passed by the II Additional District and Sessions Judge, Tiruppur in S.C.No.3417 of 2015 is modified, by convicting the accused under Section 363 of IPC and sentencing him to a rigorous imprisonment for 7 years and a fine of Rs. 1,000/-, in default to undergo one year rigorous imprisonment. In view of the above, the trial Court shall secure the accused and commit him to prison to undergo remaining period of sentence. The bail bond executed, if any, shall stand cancelled.

[M.S.R., J.] [C.K., J.]
05.12.2024

Index: Yes/No
Speaking order /Non Speaking Order
Neutral Citation: Yes/No
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To

1. The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur District.
2. The II Additional District and Sessions Judge,
Tiruppur, Tiruppur District.
3. The Public Prosecutor,
High Court of Madras.



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