

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 820-821 OF 2009

P. Rajagopal & Ors. Etc.

.....Appellants

Versus

The State of Tamil Nadu

.....Respondent

WITH

Criminal Appeal No. 896 of 2009

AND

Criminal Appeal Nos. 554-555 of 2019

(arising out of SLP (Crl.) Nos. 9261-9262 of 2015)

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted in SLP (Crl.) Nos. 9261-9262 of 2015.

2. The judgment dated 19.03.2009 passed by the High Court of Judicature at Madras in Criminal Appeal Nos. 668-669 of 2004 is in question in these appeals. The appellants herein have been convicted and sentenced for the offences punishable under

Sections 365 and 352 of the Indian Penal Code (hereinafter “the IPC”).

3. The brief facts leading to these appeals are as under:

Accused No. 1, the proprietor of a chain of hotels (Saravana Bhavan) allegedly had the illegal intention of taking PW1 Jeevajothi, (aged about 21 years at the time of commission of the offence) as his third wife, even though his second wife was still alive and Jeevajothi was married. The family of PW1 had been acquainted with Accused No. 1 since 1994, and he had even given a managerial job to the father of PW1 in one of his hotels. PW2 is the mother of PW1. Their family hailed from Thethakudi village near Vedaranyam, and had come to Chennai and settled there after selling all their properties at Thethakudi and clearing all debts. They had come to Chennai with about Rs.4.5 Lakhs, which they deposited with Accused No. 1, who gave them an interest of Rs.6,000-7,000/- per month on the same. PW1 (Jeevajothi), a Hindu, fell in love and married Prince Santhakumar, who was a Christian, much to the disapprobation of the family of PW1. Even after the marriage of PW1 with Santhakumar, Accused No. 1 displayed a munificent attitude

towards PW1 and her parents, liberally presenting expensive birthday gifts to PW1, paying her hospital bills, etc. He also helped them monetarily and logistically in setting up their travel agency in Chennai. He even used to interfere in the personal affairs of PW1 and used to tell her false stories about her husband Santhakumar, and advised her to abstain from sexual relations with Santhakumar. However, PW1 did not pay any heed to Accused No. 1 and continued to live happily with her husband. Moreover, she did not have any love or affection towards Accused No. 1. On 28.09.2001, Accused No. 1 came to the house of PW1 and Santhakumar along with PW1's parents and started shouting at PW1 for not listening to him. Accused No. 1 gave an ultimatum of two days to Santhakumar to sever all his relationships with PW1. However, the relationship between PW1 and her husband remained unaffected. Even so, being agitated by the attitude of Accused No. 1, PW1 and her husband decided to move to a place unknown to Accused No.1.

4. However, they did not get an opportunity to do so. On 01.10.2001, the other accused, i.e., Accused Nos. 2 to 11, who were the aides of Accused No. 1, surrounded the house of PW1.

A few of the accused broke open the lock of their house and thereafter, by grabbing the arm of PW1, who was present outside the house along with her husband, dragged her into an Ambassador car, marked M.O. 2, bearing Registration No. TN 22 5202. The accused also forced her husband to enter the same car and got her family members into the car as well, saying that they had instructions from Accused No. 1 to bring all of them before him. Having brought another Ambassador car, M.O. 1, bearing Registration No. TN 09 T 3224, and a two-wheeler, they followed the car in which PW1 and her family members were sitting, who were taken to the house of Accused No.14 Chandrasekaran, situated at Ashok Nagar, which was used as a godown for the hotel of Accused No. 1. Accused No. 1, who was present there, assaulted Santhakumar and caused Accused Nos. 2 to 9 to assault him too. PW1 pleaded for mercy at the feet of Accused No. 1, which Santhakumar tried to stop by lifting her from the ground. Angered by the act of Santhakumar trying to touch PW1, Accused No. 1 further assaulted Santhakumar, and ordered his henchmen to confine him in another room and to beat him up. In the meantime, PW1 was pressurized by Accused Nos. 1 and 14 to abandon Santhakumar and to marry Accused No. 1.

Later that day, both PW1 and her husband along with their family were released at the orders of Accused No. 1, who gave one week's time to Santhakumar to leave PW1 and reside elsewhere. Although the unlawful detention of PW1 and her husband thus came to an end, they remained under the constant surveillance of Accused No. 1 and his men. However, on the pretext of attending a felicitation function arranged for Accused No. 1, PW1 accompanied by her husband went to the office of the City Police Commissioner, Chennai and lodged a complaint (first information) Ext. P-1, on 12.10.2001 and the matter was referred to the Deputy Commissioner of Police on 13.10.2001 with a direction to conduct a proper enquiry and take necessary action in accordance with law. Ultimately, the said complaint went to the jurisdictional Police Station on 09.11.2001, on which day the first information was registered. However, it reached the jurisdictional Magistrate only on 15.11.2001.

5. Charges were framed against the 14 accused in the following manner: against Accused No. 1 for the offences punishable under Section 109 read with Section 366, Section 109 read with Section 323 and Section 323 of the IPC; against

Accused Nos. 2 to 13 for the offences punishable under Sections 364, 366 and 323 of the IPC; and against Accused No. 14 for the offences punishable under Sections 109 read with Section 506 of the IPC.

On evaluation of the material on record, the Trial Court convicted Accused Nos. 1 to 9 and acquitted Accused Nos. 10 to 14. Accused No. 1 was convicted for the offences under Section 109 read with Section 364, Section 109 read with Section 366, Section 352, and Section 109 read with Section 352 of the IPC. Accused Nos. 2 to 9 were convicted under Sections 364, 366 and 352 of the IPC.

6. On appeal by the convicted accused, the High Court affirmed the finding of guilt by the Trial Court but modified the conviction of Accused No.1 from Section 109 read with Section 364 to Section 109 read with Section 365, and the conviction of Accused Nos. 2 to 9 from Section 366 to Section 365. The High Court maintained the conviction of Accused No. 1 under Section 109 read with Section 352 and that of Accused Nos. 2 to 9 under Section 352, and acquitted them for the other offences. Accused No. 1 was sentenced to undergo rigorous imprisonment for three

years and Accused Nos. 2 to 9 were sentenced to undergo rigorous imprisonment for two years. Hence, these appeals by the convicted accused.

7. Shri Sushil Kumar, learned senior counsel for the appellants submitted that the drivers of the two vehicles involved in the incident of abduction (i.e. M.O. Nos. 1 and 2) were acquitted by the Trial Court, as was Accused No. 14 Chandrasekaran, in whose house PW1 and her husband Santhakumar were kept confined after abduction, and hence the High Court was not justified in affirming the conviction of the other accused. In fact, he asserted that these acquittals would cause the entire case of abduction to collapse. He further argued that there was an enormous delay in the lodging of the F.I.R. by PW1, inasmuch as the alleged incident had taken place on 01.10.2001 and the complaint came to be lodged only on 12.10.2001, and that the F.I.R. was only registered on 09.11.2001, which delay was not explained by the prosecution either. He also argued that the incident of abduction had not occurred and that the averments made in the complaint were false and concocted. Further, he stated that the explanation

regarding the delay in filing the FIR that PW1's house was being watched by Accused Nos. 2 to 9 may not be accepted in view of the fact that she or her husband could have called the police using a phone, which was admittedly in their possession.

Per contra, the learned counsel for the State argued in support of the judgments of the Courts below.

8. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See **Apren Joseph v. State of Kerala**, (1973) 3 SCC 114; **Mukesh v. State (NCT of Delhi)**, (2017) 6 SCC 1].

In the matter on hand, the entire family of PW1 was at the mercy of Accused No. 1, who was very rich and influential.

Accused No.1 acted as a benefactor to the family and had helped them financially and otherwise on multiple occasions. Under such circumstances, PW1 might have been reluctant to lodge a complaint immediately after the occurrence of the said incident, especially when Accused No. 1 had employed his henchmen to keep the house and movements of PW1 and her family under surveillance. Moreover, no material has been brought to our notice by the defence to prove that the delay in filing the F.I.R. was with the intention of false implication. Thus, the explanation given by PW1 for the delay remains untainted.

In our considered opinion, looking at the totality of the facts and circumstances, the Trial Court and the High Court were justified in condoning the delay and in concluding that the said delay was not vital to the case of the prosecution.

9. In order to prove its case, the prosecution mainly relied upon the evidence of PW1 and PW2. By the time the evidence could be recorded for the matter on hand, Santhakumar, the husband of PW1, was murdered. Therefore, the prosecution did not have the opportunity to adduce his evidence and consequently we do not have the benefit of the same. However,

ample material has been brought on record to prove that the first accused used to unduly favour PW1 and her family, and showed unwanted personal attention to PW1. Accused No. 1 tried to taint Santhakumar's image in the eyes of PW1, and also used to threaten Santhakumar with dire consequences if he did not keep away from PW1. The evidence of PW5, who is the brother of the second wife of Accused No. 1, reveals that Accused No.1 had taken one Kruthiga (sister of PW5) as his second wife using the same measures and tactics that he was using against PW1. The courts have mainly relied on the evidence of PW1 and PW2 to conclude that Accused Nos. 2 to 9 had abducted Santhakumar and PW1 upon the instructions of Accused No. 1. Though the Trial Court and the High Court have taken pains to assess the material on record meticulously, in order to satisfy our conscience, we have re-evaluated the evidence of these two important witnesses in entirety.

10. To prove the crime, as mentioned supra, the most important testimony would be that of PW1, as she was also abducted along with Santhakumar and was confined in the house of Accused No. 14 by the accused. At the risk of repetition, we would like to

reiterate a few important circumstances as deposed by PW1. PW1 has deposed in detail about how Accused No. 1 hoped to marry her and unduly favoured her and her family. For instance, she deposed that when she was admitted in a hospital due to some illness, Accused No. 1 forcibly made her shift to another hospital under the pretext of better treatment, and even gave her a mobile phone to contact him in case she needed anything.

It is amply clear from the deposition of PW1 that Accused No. 1 even tried to convince PW1 that her husband Santhakumar was infected with HIV and had other health issues, in a bid to discourage her from having sexual relations with her husband. He also came to the house of PW1 and proposed to her to live with him as his third wife, and used to coerce Santhakumar to desert PW1 and reside elsewhere, so that he could marry PW1. On 28.09.2001, Accused No. 1 gave an ultimatum of two days to Santhakumar to give his reply, and when such reply was not made, Accused No. 1 instigated the other accused to abduct Santhakumar. PW1 specifically deposed that Accused No. 3 had forced her into a white Ambassador car bearing No. 5202 (being M.O. 2) by grabbing her hand, along with Shanthakumar. PW1's

parents and younger brother were also made to get into the car. Thereafter, PW1 and her husband were taken to a hotel godown owned by Accused No. 14, where Accused No. 1 was also present. She further deposed in detail about how Santhakumar was confined and assaulted by Accused No. 1 and the other accused, and also about the threats by Accused No. 1 that he would kill Santhakumar in case he did not leave PW1. She also explained the delay in lodging the complaint by stating that since she and her husband were being continuously watched by Accused No.1's henchmen, they could not lodge the complaint on time and ultimately, under the pretext of attending a felicitation function, they managed to go to the office of the City Commissioner of Police, Chennai, and lodged the said complaint. Though PW1 was cross-examined at length by the defence, the same did not yield any positive result in favour of the defence in respect of the incident of abduction in question.

On going through the evidence of PW1 in its entirety, we concur with the opinion rendered by the courts below that her evidence appears to be natural, consistent, probable and reliable. Her evidence remains unimpeached on material particulars. PW1

has given the details of the incident in question and we do not find any major contradiction in her evidence so as to disbelieve her testimony.

11. The deposition of PW2, the mother of PW1, is also in consonance with the evidence of PW1. She deposed as to how Accused No. 1 had the intention to marry PW1 and how he was suspiciously benevolent to her and her family. She has deposed meticulously and in detail about the favours shown by Accused No. 1. She has also deposed that PW1 was upset about such behaviour, and about the interference of Accused No. 1 in her personal matters. Subsequently, she also came to know about the evil designs of Accused No. 1, inasmuch as Accused No. 1 went on to threaten PW1 with the murder of her husband. She deposed about how on the date of the offence, PW1, her husband and the parents of PW1 (i.e. PW2 herself and her husband) were called to the house of PW1 and how, thereafter, her daughter and son-in-law were forced to get into a car, in which she along with her husband and son also sat, on being asked to do so by Accused No. 6. She also stated that they were taken away to the house of Accused No. 14, where Accused No. 1 and the other

accused assaulted Santhakumar. In the cross-examination, PW2 admitted that she had taken financial help from Accused No. 1 and told her daughter that Accused No. 1 was doing favours for the family just for her sake. Although PW2 was cross-examined at length, her evidence also could not be discredited in respect of material particulars by the defence. Minor variations in the evidence of PW1 and PW2, if any, are not directly connected to the crime of abduction itself, and are hence inconsequential.

12. On the whole, we find the evidence of PW1 and PW2 consistent, cogent and reliable, and do not find any artificiality in the evidence, as rightly concluded by both the Courts below. In our considered opinion, the Trial Court and the High Court were justified in relying on the evidence of PW1 and PW2. Though the prosecution has let in the evidence of certain other witnesses, the same may not be of much relevance to decide this appeal. However, it has to be noted that the other witnesses arrayed by the prosecution appear to have contributed their share in upholding and corroborating the stand of the prosecution in their respective areas. Moreover, the Trial Court and the High Court have evaluated the entire evidence on record, including that of

PW1 and PW2, while coming to their conclusion. We do not find any illegality in the reasons assigned by the Trial Court and the High Court, inasmuch as the reasons are based on a just appreciation of the evidence on record.

13. We are also of the opinion that the mere acquittal of the drivers and Accused No. 14 would not erode the ample evidence against Accused Nos. 1 to 9, who actively participated in the crime of abduction by forcibly taking PW1 and Santhakumar to the house of Accused No. 14. The offence of abduction commenced from the time they were forced to board the car, and continued till the time they were released from captivity later that day.

The Trial Court and the High Court may have acquitted the drivers and Accused No. 14 by giving them the benefit of doubt, but this cannot be made the sole basis to doubt the case of the prosecution in all other respects. We find that the entire evidence has been considered in its proper perspective to rightly conclude that the appellants had in fact abducted PW1 and Santhakumar. In light of the aforementioned discussion and perusal of the material on record, we do not deem it a fit case for setting aside

the judgments of the Courts below. The conviction and sentence as granted is hereby confirmed, and the appeals are thus dismissed.

.....**J.**
(N.V. Ramana)

.....**J.**
(Mohan M. Shantanagoudar)

.....**J.**
(Indira Banerjee)

New Delhi;
March 29, 2019.