

Jaganatham Vs. State of A.P., Rep. by Its P.P.,high Cou

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Court : Andhra Pradesh

Decided On : Apr-22-2014

Judge : The Hon'Ble Sri Justice L. Narasimha Reddy and the Hon'Ble S

Appellant : Jaganatham

Respondent : State of A.P., Rep. by Its P.P.,high Cou

Advocate for Def. : Sri. T.Pradyumna Kumar Reddy Counsel

Advocate for Pet/Ap. : Sri. T. Pradyumna Kumar Reddy

Judgement :

THE HONBLE SRI JUSTICE L. NARASIMHA REDDY and THE HONBLE SRI JUSTICE M.S.K.JAISWAL CrI.Appeal No.1485 of 2011 22-04-2014 Jaganatham ravi Appellant-Accused State of A.P., rep. by its P.P.,High Court of A.P., Hyderabad ...Respondent Counsel for the Appellant: Sri T.Pradyumna Kumar Reddy Counsel for respondent: Public Prosecutor HEAD NOTE: ?. CASES REFERRED : . HON'BLE SRI JUSTICE L. NARASIMHA REDDY AND HON'BLE SRI JUSTICE M.S.K.JAISWAL Criminal Appeal No.1485 of 2011

JUDGMENT

: (Per Honble Sri Justice L. Narasimha Reddy) A.1 to A.9 in S.C.No.396 of 2010 were sought to be tried before the Court of IX Additional Sessions Judge at Kamareddy for the offences punishable under Sec.364A, 344, 348 and 120B of the Indian Penal Code. However, the trial against A.3, A.5 and A.6 could not be

taken up, on account of the fact that they were not apprehended.

2. The allegation against the accused was that they have kidnapped PW.6, by name Pothaipally Yellaiah of Lingampet village of Nizamabad district on 24.01.2007, with a demand of Rs.20.00 lakhs. A complaint in this behalf was submitted by PW.1, wife of PW.6, on 25.01.2007. Crime No.11 of 2007 was registered by Lingampet Police Station. Further investigation was taken up and the Investigating Officer-PW.13 proceeded to Secunderabad, where the kidnapped person was alleged to have been taken; and after proceeding to various places, as pointed out by various accused, he ultimately rescued PW.6 from a house at Mallapur, sub-urban of Hyderabad. A detailed charge-sheet was filed narrating the various events and developments, commencing from kidnapping of PW.6 to his being rescued, and recovery of various objects.

3. The trial Court framed necessary charges and on denial of the same by A.1, A.2, A.4 and A.7 to A.9, the trial was conducted. PWs.1 to 13 were examined, Ex.P.1 to Ex.P.30 were filed and M.Os.1 to 7 were taken on record. Through its judgment dt. 15.12.2011, the trial Court convicted A.1 of committing offence punishable under Sections 364A and 348 IPC, and imposed punishment of imprisonment for life and fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months. It also imposed punishment of rigorous imprisonment for three years and fine of Rs.5,000/-, in default, to undergo simple imprisonment for two months, for the offence punishable under Sec.348 I.P.C. Rest of the accused were acquitted. Hence, this appeal is preferred by A.1.

4. Sri T. Pradyumna Kumar Reddy, learned counsel for the appellant submits that there is any amount of inconsistency between the version presented in Ex.P.1 by PW.1 and the evidence of PW.6. He submits that PW.1 categorically admitted that Ex.P.1 was prepared by police and she has simply signed upon the same. Learned counsel further submits that while according to PW.6, he was confined for 8 days at an unknown place, PW.13, the Investigating Officer stated that PW.6 was rescued on 10.02.2007, indicating thereby the alleged confinement was for about two weeks. He submits that PW.4, the son of PWs.1 and 6 has cheated many people in the context of arranging Visas for Gulf countries and since A.1 was

one of the victims, proceedings were initiated only to prevent any demand for the amount misappropriated by PW.4. He contends that the evidence of PW.3 is at variance with the sequence of events that are mentioned by other witnesses.

5. Learned Additional Public Prosecutor, on the other hand, submits that A.1 had a definite grievance and motive against PWs.4 and 6, and to extract money from them by pleading that he sustained loss in gulf countries, he arranged for kidnapping of PW.6. She contends that none of the accused have disputed the factum of PW.6 having been rescued by PW.13, from a place at Hyderabad.

6. The complaint in relation to the kidnapping of PW.6 was submitted by his wife-PW.1 on 25.01.2007. She stated that when PW.6 was in his fields, some unknown persons came in a Tata-Sumo vehicle and took him away, and though herself and her children searched for PW.6, it was in vain. She stated that initially, the cell-phone of PW.6 was found to be switched off, and on the next day, i.e. on 25.01.2007, when repeated efforts were made there was a response from PW.6 and when the phone was given to the kidnappers, they demanded a sum of Rs.20.00 lakhs and with these particulars, she submitted the complaint. The callers are said to have identified themselves as Ravi of Tamilnadu-A.1 and Prasad of Jagtial.

7. On receiving the complaint, Crime No.11 of 2007 was registered by the police. PWs.1 and 4 did not play any role after the complaint was submitted. It is only PW.13, who has narrated as to what happened thereof. According to this witness, he received the C.D. file from the Station House Officer on 09.02.2007 and thereafter took up the investigation. On 10.02.2007, PW.13 and other officials are said to have proceeded to Secunderabad, on the basis of the geographic location indicated in the cell-phone of A.6 bearing No.9441316371. A.6 and A.7 are said to have been traced at the main portico of Railway Station and that he apprehended both of them. On interrogation, A.6 and A.7 are said to have confessed the commission of offence and that they have led him to a house of one Ramulu at Subash Nagar of Mallapur village, Nacharam Mandal, and there they have found PW.6, and rescued him. In the course of further investigation, the two vehicles used in the process were seized and the other persons connected to the offence

are said to have been arrested.

8. The trial Court did not believe the version of the prosecution that PW.13 has effected the seizure of the two vehicles. That itself would reveal a serious lapse to the case of the prosecution. Though PW.4 initially denied a suggestion that criminal cases were registered against him alleging the offences of cheating the people in the context of obtaining Visas and transacting with fake currency, he admitted them at a later point of time. The evidence of other witnesses is hardly of any help. The trial Court was also not convinced that any case was made out against the other accused.

9. The only basis for finding A.1 as guilty of the offences is that A.1 had acquaintance with PW.4 and had a motive to cause harm to PWs.4 and 6, since, according to him, the Visa arranged by PW.4 for him was found to be a fake one and that he has been sent back to India.

10. There is a serious discrepancy as to the period for which PW.6 is said to have been confined. While according to him, it was eight days, PW.13 stated that it was for about two weeks. PW.6 stated that he was kept without food whatever for the entire period of his wrongful confinement.

11. Assuming that the detention was eight days, one cannot expect a person to be alive or in a mobile condition if he did not take food for such a long time. PW.13 did not state anywhere that the condition of PW.6, when alleged to have been rescued, was serious or otherwise precarious. Assuming that PW.6 was confined, that too at the instance of A.1, the evidence on record does not disclose that any attempt to kill PW.6 was made at all. In the absence of such a threat or allegation, Sec.364A IPC does not attract at all. At the most, it may be a case of mere kidnap of PW.6 by A.1 with an effort to procure some amount, representing the loss said to have been incurred by him. Section 348 IPC would get attracted to such case.

12. Notwithstanding the fact that the evidence is not that much perfect on several aspects, to find that A.1 had a motive to kidnap PW.6, to extract money from PW.4 and PW.6 was kept under detention, though not for the period and in the manner, as stated by the prosecution. Hence, we confirm the conviction of A.1, under

Section 348 I.P.C., but reduce the sentence of rigorous imprisonment for two years, even confirming the component of fine.

13. In the result, the Criminal Appeal is partly allowed. The conviction and sentence ordered in S.C.No.396 of 2010 on the file of IX-Additional Sessions Judge, Kamareddy, dt.15-12-2011, against the appellantA1 for the offence punishable under Sec.364-A IPC., are set aside. However, the conviction of Appellant-A1 for the offence under Sec.348 IPC. is confirmed, but the sentence of imprisonment is reduced from three years to two years rigorous imprisonment. The sentence as to fine for the said offence is confirmed. The appellantA1 shall be set at liberty forthwith, if the period of two years is completed, and unless his detention is needed in any other case. The material objects, if any, shall be destroyed after the appeal time is over. _____ L.Narasimha Reddy, J.

_____ M.S.K. Jaiswal, J.

Date:

22. 04.2014

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