

**Sekar Vs. State, Rep. by Sub-inspector of Police, Kanjanpur Police Station,
South Arcot District**

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South Arcot District**

SooperKanoon Citation : sooperkanoon.com/775461

Court : Chennai

Decided On : Jul-28-1997

Reported in : 1998(1)CTC134

Judge : R. Balasubramanian, J.

Acts : [Penal Code \(IPC\), 1860](#) -- Sections 351 to 361, 362,363 and 366

Appeal No. : Crl. R.C.No.105 of 1992

Appellant : Sekar

Respondent : State, Rep. by Sub-inspector of Police, Kanjanpur Police Station,
South Arcot District

Advocate for Def. : Mr. V. R. Balasubramaniam, Government Adv. (Crl. Side)

Advocate for Pet/Ap. : Mr. S. Ashok Kumar, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

1. The revision petitioner is the accused in S.C.No.117 of 1989 on the file of the Assistant Sessions Judge, Villupuram and the appellant in C.A.No.196 of 1990 on

the file of the Additional Sessions Judge, South Arcot at Cuddalore. He was charged and tried for offences under Section 363 and 366, I.P.C.; acquitted for the offence under Section 363, I.P.C., but found guilty for the offence under Section 366, I.P.C. Consequently, he was sentenced to undergo rigorous imprisonment for two years. The appeal filed by him was also dismissed by the appellate Court. Hence the present revision.

2. P.W. 2 is the victim in this case. P.W.1 is the mother of P.W.2. P.W.2 and accused are known to each other and that she had studied upto 9th standard. The accused used to talk to her in bus stand, school and other places. P.W.1 came to know about that and she reprimanded P.W.2 for her conduct. On 11.2.1989 when P.W.2 was returning from the school, the accused is said to have told her that she is leaving for Gingee on employment and he is prepared to take her and marry her. He also told her that on 13.2.1989, he will wait for her in the chicken-farm and he asked her to go over there. On the statement made by the accused as referred to above on 11.2.1989. P.W.2 met the accused in the place fixed on 13.2.1989 and thereafter they left for a place called Sangeethamangalam. From there, they proceeded to Ananthapuram. From Ananthapuram, they proceeded to Arasamangalam and stayed in the house of one Subramanian.

3. P.W.2 asked the accused as to when he will marry her, to which the accused replied that he had sent word to known people and that he would take her soon. But he did not tell to which place he is going to take her. On that night, the accused had intercourse with her. She allowed him to have intercourse with her because he promised to marry her. They stayed there for eight days. On 23.2.1989, they shifted their residence to another house in a different place which belonged to one Saroja. They had their lunch there. Since the said lady Saroja told the accused and P.W.2 that she would inform P.W.1, they left the place and went to Mundiampakkam. From there they went to Tindivanam and they proceeded to Madras. In Madras, they stayed at Choolaimedu in a house owned by a person who was known to the accused. Even there P.W.2 asked the accused to marry her. The accused stated to have told her that he would marry her soon and that he had already informed about it to some known people. On that pretext, he had intercourse with her again. Thereafter, they went to Anna Nagar in Madras and

ultimately when they reached Villupuram after the sojourn, they were arrested by the police in the bus stand. On this basis, a complaint was lodged as already stated before the police.

4. P.W.1 is the mother and P.W.2 is the victim herself. P.Ws.3 to 7 and P.W.10 turned hostile. P.W.8 is the Radiologist who examined P.W.2 and gave his opinion that she must be aged over 17 and below 18. Ex.P.2 is the certificate given by him and the x-ray photos pertaining to her is marked as Ex.P.4 series. P.W.9 is the doctor who examined the accused and certified that he was potent. P.W.11, another doctor, who examined P.W.2 in this case found that she was committed to intercourse. P.W.12 is the investigating officer who investigated the case earlier and then P.W.13 is the investigating officer who filed the final report. On the basis of the evidence let in before the Court, the trial Court found that the offence under Section 363 was not made out and convicted the accused only for the offence under Section 366, I.P.C.

5. I heard Mr.S. Ashok Kumar, learned counsel for the revision petitioner as well as Mr.V.R. Balasubramanian learned Government Advocate (Criminal Side). Learned counsel for the revision petitioner argued that even assuming for a moment that the entire evidence of the prosecution is true, yet the offence under Section 366 was not made out and therefore the Courts below have committed an error of law in convicting the accused. Learned counsel for petitioner further submitted that the evidence of P.W.2 clearly indicate that there was no force on her to leave the company of her mother P.W.1 and therefore, it may be said that she had voluntarily and on her own volition accompanied the accused. Looking from this angle, learned counsel for the accused argued that the offence under Section 366, I.P.C. has not been made out.

6. On the contrary, learned Government Advocate would submit that the evidence available in this case clinchingly establishes beyond all reasonable doubts and the conviction of guilt concurrently rendered by the Courts below is supported by legal acceptable evidence. According to him there is neither illegality nor infirmity in the judgment of the Courts below and therefore this Court will not be in a position to interfere with the findings of the guilt rendered by the courts below. I have carefully

applied my mind to the respective arguments advanced by both sides.

7. Kidnapping or abducting any woman with intentis an offence under Section 366, I.P.C. Sections 359 to 361 of I.P.C. speak about kidnapping. Section 362, I.P.C. defines abduction. According to this section whoever by force compels or by any deceitful means, induces any person to go from any place is said to abduct that person. The evidence of P.W.2 makes it very clear that she and the accused were acquainted with each other for some time and that the accused used to talk to her in the bus stand, school and other places. According to P.W.2 on 11.2.1989, the accused told her that he is going over to Gingee on employment and that he is prepared to take her and many. Saying so he even fixed a place where she must come and join him two days later. Accordingly on 13.2.1989, P.W.2 left the company of her mother and went and joined the accused. Even at this stage it is clear that but for the statement of the accused that he would take and marry P.W.2, she would not have left the company of her mother. Therefore, it is clear that the accused is guilty of inducing P.W.2 by deceitful means to go from her mother's place. 'Deceitful Means' in this case is his promise to marry her. But for the promise, P.W.2 would not have left the company of her mother. Though at that stage, no force of compulsion was used by the accused on P.W.2 to leave her mother's company, yet the mere fact that neither force nor compulsion was used would not take away the act of the accused from the purport of Section 366, I.P.C. Section 362, I.P.C. consists of two limbs. The first limb is, 'Whoever by force compels and the other limb is', by any deceitful means induces etc. While adopting deceitful means, there need not be any force or compulsion.

8. Section 366, I.P.C. contains several parts and it is enough if I refer to the necessary ingredients of Section 366, I.P.C. to bring the case on hand within that section. Section 366, I.P.C. read as follows:-

'Whoever kidnaps or abducts any woman.....in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse...'

The dictionary meaning of the word, 'seduce' is 'to tempt or entice into sexual activity'. The evidence of P.W.2 in this case makes it very clear that the accused

had the intention to seduce P.W.2 to have illicit intercourse with him or he can even be attributed with knowledge that he is likely to seduce her to illicit intercourse. Otherwise there was no need for him to tell P.W.2 that he will marry her if she comes with him to Gingee. The evidence further shows that the accused was not content with making only one promise of marriage on 11.2.1989. On the other hand, it discloses that atleast on two days when the accused was in the company of P.W.2, he promised her that he would marry her soon whenever P.W.2 asked him about that. In fact P.W.2 would state that during that sojourn when me accused promised her to marry, she readily agreed to have illicit intercourse with him. The guilt of the accused is made out very very clear in this case and it is proved beyond all reasonable doubt by the evidence of P.W.2, Under these circumstances, I am satisfied that the evidence available in this case brings home the guilt of the offence under Section 366, I.P.C. beyond all reasonable doubts. Therefore, I find that the concurrent judgments of the courts below holding the accused guilty for the offence under Section 366, I.P.C. is well supported by legal evidence and it is not liable to be interfered with by this Court. Accordingly, I find no merits in this revision and it is dismissed.

9. Learned counsel for the revision petitioner stated that if any of the Government Remission Orders that are now in force are available to the benefit of the accused, then they may be extended to him. In the context, I would observe that it is for the Jail authorities to consider whether any of the Government Remission Orders are applicable to the facts of this case and if so consider the same.