

(2013) 02 KL CK 0089**High Court Of Kerala****Case No:** Criminal R.P. No. 679 of 2002

Pramod

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Feb. 15, 2013**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 306, 34, 366, 506

Citation: (2013) 2 ILR (Ker) 324 : (2013) 1 KLT 841 : (2014) 1 RCR(Criminal) 403**Hon'ble Judges:** B. Kemal Pasha, J**Bench:** Single Bench**Advocate:** V.G. Arun, for the Appellant; Viju Thomas Public Prosecutor, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

B. Kemal Pasha, J.

The accused in Sessions Case No. 5 of 1995 of the Assistant Sessions Court, Kozhikode, who stand convicted and sentenced under S. 366 I.P.C. read with S. 34 I.P.C., and whose appeal before the Sessions Court, Kozhikode stands dismissed through the impugned judgment, have come up in revision. The story narrated by the prosecution is stranger than fiction. This case unfurls the ordeals, which a 19 year old girl (hereinafter referred to as the "victim girl") had to face in the hands of the petitioners, who were none other than her neighbours. The prosecution case is that, on 8.7.1994, while the victim girl along with PW2, who is her younger sister aged around 16, were on their way back to their house from Vellayikode temple, they were wrongfully restrained on the lonely road by the petitioners by demand that the victim girl should go along with them. Even though the victim resisted, and she along with PW2 made a hue and cry with a view to getting away from the clutches of the petitioners, there was nobody to their rescue. The third petitioner vanished from the scene and swiftly returned with an autorickshaw. All the three

accused forcibly dragged the victim girl into the autorickshaw and they drove away. As she became totally frightened on account of the sudden untoward incident, which she least expected, the victim girl could not offer sufficient resistance. Same was the case with PW2 also, who stood shell-shocked, and she could not rescue the screaming victim, who was being" abducted, PW2, who was crying for her help, reached her house. Their mother, PW3, was not at the house as she was working as a Nursing Assistant at the Medical College Hospital, Kozhikode. The father of the girls, who was the husband of PW3, had deserted them and had gone away long back. When PW3 returned after her duty, during night after 8.30 p.m., the matter was reported to PW3. PW3, in turn, contacted PW1, who is the husband of the victim girl, and informed the matter. PW1 and the brothers of PW3 were frantically in search of the victim that night and the next day and night; but, they could not get any trace of the victim or the petitioners, and ultimately they decided to report the matter before the police.

2. On 10.7.1994, PW1 reported the matter before the Beypore police and furnished Ext. P1 First Information Statement, on the basis of which, crime No. 59/1994 was registered through Ext. P1(a) F.I.R. After about one week, A1, along with his relatives, brought back the victim to her house, dumped her there, and simply went away. As the crime was registered, she was produced at the police station, in turn, the police produced her before the Judicial First Class Magistrate's Court-V, Kozhikode. From there, she went along with PW1, her husband, and they lived together. By the time the matter reached trial, the victim gave birth to two children in her wedlock with PW1. and then she committed suicide.

3. The learned counsel for the petitioners has challenged the concurrent findings entered by both the courts below. The main defence set up by the accused is that the girl was in love with the first accused and that, she had willingly gone along with the accused, on her own volition. Further, it was attempted to bring out a case that she had to commit suicide on account of the ill treatment from the part of PW1. The learned counsel for the petitioners has further argued that the incident, even if admitted, could not bring out necessary ingredients to invite an offence under S. 366 I.P.C.

4. The only eye witness to the occurrence was PW2, and she has supported the prosecution. There were no other witnesses at all, who had occasion to see the incident. According to the learned counsel for the petitioners, the incident had allegedly occurred on a public pathway in broad day light, which is unbelievable. It was also pointed out that PWs 4 and 5, who were cited as witnesses by the prosecution, had turned hostile to the prosecution and did not support the prosecution case. It has to be noted that PW2 was a Plus Two student, who was around 16 years at the time of the incident. The learned counsel for the petitioners has led me through the entire deposition of PW2. The narration by PW2 regarding the incident clearly depicts the incident as such, just like a caricature. On a careful

scrutiny of the evidence of PW2 as a whole, I do not find anything to disbelieve her versions. She had clearly identified all the petitioners before the Trial Court. In fact, all these petitioners are her neighbours, who were known to her even from her childhood. From her evidence, it has come out that the victim had never objected to her marriage with PW1, which was an arranged marriage, and that she was never in love with the first petitioner or anybody else as alleged. According to PW2 and PW3, the life of the victim with PW1, even after the incident, was very cordial and in their wedlock two children were born.

5. There is absolutely nothing to show that the victim girl had any illicit intimacy towards any one of the petitioners. The defence case that she was in love with the first petitioner and she had willingly gone along with the petitioners can be taken only with a pinch of salt. It has to be noted that even the first petitioner had no such case during the cross-examination of PW3. During the cross-examination of PW1 and PW3, his specific case was that the victim who was dissatisfied with her marriage with PW1, had ran away from the house of PW1. The first petitioner had no case that the victim girl had eloped with him. When she was produced before the learned magistrate, she willingly went along with PW1 on her own request and volition. They continued to live together, and two children were born in the wedlock. The evidence on record clearly reveal that their life was very happy, cordial, and peaceful.

6. It is the clear case of PWs 1, 2, and 3 that when summonses were served on the deceased, PWs 1, 2, and 3 as witnesses in the case, the petitioners became alerted and they frequently used to exert serious threats to their life. PWs 1, 2, and 3 have even alleged threat to their life, from the part of the petitioners. The consistent versions of PWs 1, 2, and 3 are that, such threats have resulted in a mental trauma to the deceased, which ultimately led her to commit suicide. The victim, who could not withstand the insult to the injury, allegedly poured kerosene on her body and ignited herself. According to PW1, the victim committed suicide on the fifth day after she had received the summons. According to PW2, a complaint was filed before the police complaining the said cause behind the suicide; but the police did not take any action on it. This Court is not forming any opinion on the complaints raised by PWs 1, 2, and 3 regarding the intimidation and threat exerted by the petitioners as the sole reason behind the suicidal death, as it is not a matter in issue to be examined in this criminal revision.

7. The fact that PW2 had reported the matter to PW3 is admitted by PW3. The further fact that the matter was reported by PW3 to PW1 has come out from the evidence of PWs 1, 2, and 3. The main point argued by the learned counsel for the petitioners is that there was undue delay in reporting the matter to the police and the said delay in furnishing the First Information cuts the root of the prosecution case. With respect, this Court disagree with the said argument. The victim girl was then a recently married girl. She was on a visit to her house. She, along with PW2,

went to the temple for worship and was on their way back to their house. It is evident that PW1 and the other family members were not in a position to reveal the abduction of the girl by the petitioners, who" were young men, as they might have thought that it would result in inviting evil repute to the family. They were frantically in search of the victim as well as the petitioners. It has clearly come out that the girl was taken to the house of one of the relatives of the first accused. For about seven days, the deceased was virtually under confinement; of course, there is nobody to testify the ordeals to which she was subjected on all those seven days, as the girl is no more. As rightly found by the Trial Court, the victim was brought back by the first accused and his relatives, and was virtually dumped at her house, and they made an escape.

8. On a perusal of the evidence of PWs 1, 2, and 3, I do not find anything to disbelieve them. The meager delay of a day in lodging the F.I.R. is of no consequence at all in this matter as the transaction continued even after the registration of the crime. Even the said delay has been clearly explained. The petitioners, who had abducted the victim and kept her under confinement for almost seven days, have not stopped there. They intimidated and threatened the victim as well as PWs 1, 2, and 3 as and when summons was issued in the sessions case for their examination as witnesses, which according to the said witnesses, had ultimately led the victim to commit suicide. The threats exerted by the petitioners on PWs 1, 2, and 3 have been clearly revealed by them before the trial court during their examination.

9. Regarding the offence under S. 366 I.P.C., the learned counsel for the petitioners has pointed out that, the evidence, at the most could only constitute the offence of mere abduction, which does not bring out the ingredients of an offence under S. 366 IPC. Based on the totality of the circumstances proved by the prosecution, I wholly disagree with the said argument also. The first part of S. 366 L.P.G. reads as follows:-

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or 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, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

10. The girl was forcibly abducted and taken away by an autorickshaw. She was concealed and confined illegally for almost seven days. It is evident that she was abducted by the accused with the knowledge that it was likely that she would be compelled or forced to illicit intercourse. The conduct of the accused in demanding her to go along with them, and the immediate abduction on her refusal, also clearly points towards such an intention as well as knowledge on the part of the petitioners. It is true that the victim girl was not available at the time when evidence was

recorded before the trial court, to testify the treatment which she had received, and the ordeals and harassment to which she was subjected in confinement in the hands of the petitioners, as by then she had committed suicide. In order to bring out an offence under S. 366 IPC, it is not necessary that the woman who is abducted should be subjected to illicit intercourse; whereas, mere intention to do it or even the knowledge that it would be likely that she would be forced to illicit intercourse, would be sufficient. The perusal of the evidence in this case reveals that all the ingredients of the offence under S. 366 I.P.C. have been clearly made out.

11. The concurrent findings on facts entered by the courts below do not call for any interference at all. In fact, it has to be noted that the police was not vigilant at all. There was serious lapse on the part of the investigating officer in not incorporating other serious offences in the matter, which normally the police could have collected through a proper investigation. The cries of PWs 1, 2, and 3 before the trial court regarding the threats allegedly exerted on them by the petitioners, simply died down and remained as wild cries. It was also specifically alleged that the victim, who could not pull on, had to commit suicide by leaving her husband, PW1, and their two kids before the mercy of others.

12. From the evidence discussed above, it can safely be concluded that the concurrent findings entered by both the courts below do not suffer from any illegality, irregularity, or impropriety, and the conviction entered by the courts below does not call for any interference at all. Regarding the sentence also, on considering the evidence discussed above, and the gravity of the matter, this Court is of the view that the courts below had extended maximum leniency to the accused. The petitioners are not entitled to any further leniency. This revision petition is devoid of merits, and is only to be dismissed and I do so.

13. In the result, this Criminal Revision Petition is dismissed and the conviction and sentence passed in this case are confirmed. The petitioners are ordered to surrender before the Principal Assistant Sessions Court, Kozhikode to undergo the sentence.

14. Before parting with the matter, this Court has taken serious note of the shocking revelations consistently made by PWs 1, 2, and 3 that they and the victim were severely intimidated and threatened by the, petitioners with a view to making them mute for shutting out the evidence in this case, which has ultimately driven the victim to suicide. It seems that she might have decided to bury the miseries and ordeals to which she was subjected to in the hands of the petitioners, and also to avoid further miseries to her, and her dear and near, from the petitioners. The serious complaints raised by PWs 1, 2, and 3 against the petitioners when they had deposed before the trial court, if proved, may constitute offences punishable under Ss. 306, 506, etc. It is a pity that such complaints were not caused to be investigated upon. The Director General of Police, State of Kerala is hereby ordered to take immediate necessary steps to give necessary directions to the concerned Station

House Officer or such other competent police officer to get the matter investigated upon and to take further actions, if any, required to be taken in the matter. The Registrar General of this Court shall immediately forward a copy of this order and photocopies of the depositions of PWs 1, 2, and 3 in this case, to the Director General of Police, State of Kerala. The Director General of Police, State of Kerala shall file a report regarding the action taken in the matter and its progress, before the Registrar General of this Court, within a period of three months from the date of receipt of a copy of this order.