

IN THE COURT OF THE JUDICIAL MAGISTRATE MANAMADURAI

**Present : Thiru. R.Arun Pandian, B.A., B.L.,(Hons), M.L.,
Judicial Magistrate Manamadurai.**

**Wednesday the 23rd day of October 2024
CC 34/2022**

State Rep by Sub Inspector of Police,
Police Station, Manamadurai,
Crime No. 500/2006

...Complainant

/ Vs /

1. A1.Moorthy, Age.58/2024
S/o. Ramu,
71, Hindubazar
Abiramam.
2. A2.Thangamari (Deceased)
S/o. Mapilaichami,
Viradhakulam.
3. A3.Radhakrishnan(Deceased)
S/o. Subhaiya,
Vallakulam.
4. A4.Joseph (Deceased)
S/o. Ashirvatham,
Arunthathiyar Kudiyirupu
Abiramam.
5. A5.Aniyar, Age.50/2024
S/o. Irulandi,
Nallukuritchi
6. A6.Muthukumar(Deceased)
S/o. Thangaraj,
Paralai.
7. A7.Vellaichami (Deceased)
S/o. Pandi,
Vengalur

... Accused's

This case being taken on file in the year 2007 and previously numbered as CC.No.119 /2007 and this court converted in the year 2022 as Judicial Magistrate Court Manamadurai new number assigned as CC.No.34/2022 and the state being represented by Mr.A.Rajan, Assistant Public Prosecutor- Grade I and Mr.M.Ganesan., counsel for Accused's A1 and A5 and after perusing the documents filed, evidence adduced and upon hearing submission of both sides, this court passes the following

JUDGEMENT

This case is charge sheeted by the Inspector of Police of Manamadurai PS, against the Accused A1 to A7 in the Crime No. 500 of 2006, alleging the commission of offence Under Section 147, 365, 374 of Indian Penal Code.

2. The prosecution case in brief as follows: the de facto complainant Tamilselvi is a resident of Keelamelkudi village. The husband of the de facto complainant is David and as a result of their wed life they have a two year old child named Ramya. It is the assertion of the de facto complainant that her husband David was an employee in the brick manufacturing chamber named Suganya and was employed there for the past six years. It is asserted by the de facto complainant that she as well as her husband got an advance amount of Rs 14,000/- from the arrayed accused A1 Moorthy on account of executing the work in the brick work in the Suganya Chamber's. But the de facto complainant without executing the work in abidance to the advance obtained, moved to work in another brick manufacturing unit named Periyandavar Chamber's. The de facto complaint after having moved her residence to her mother's house in Periyandavar Chamber's, on 06.08.2006 while David having left the work place to attend some personal work, the arrayed accused A2 to A7 at instigation of A1 proceeded to Suganya Chamber's and having conveyed the info that de facto complainant was sought by accused A1 and forcibly moved Tamilselvi and her two year old daughter by a lorry, thought the said act was attempted resisted by parents of Tamilselvi and other workers in the Periyandavar Chamber's, the de facto complainant Tamilselvi was forcibly brought to Suganya Chamber's and was averred

to have been confined in a housing unit in the Suganya Chamber. For the imputed act of the accused A2 to A7, who were alleged acted at the instigation of A1, was lodged with complaint by David to the District Collector Sivagangai. As a result of complaint to the collector the de facto complainant Tamilselvi was accounted to be sent out of the Suganya chamber's. After which on 08.08.2006 Tamilselvi along with her husband David lodged a complaint to the Manamadurai PS.

3. The aggrieved the de facto complainant PW1 Tamilselvi preferred a complaint Ex P1 to the LW11 Vadivelmurugan Sub Inspector of Manamadurai PS and based on which the FIR was registered. PW 8 Mangaleswaran Inspector of police took the case for investigation and proceeded to the place of occurrence and prepared the Ex P4 Observation Mahazar and Ex P5 Rough sketch witnessed by PW6 Raja and PW7 Velankanni. PW8 the investigating officer accounted as to the steps carried in the process of investigation, and placed a report that no ingredients as to attract the penal clause in the Bonded Labour Act stood formed, the imputation under section 18 bonded labour Act was extricated by means of a section alteration report and the said report was marked as Ex P6.

4. On charge sheet being file, the case was taken on file against the accused A1 to A7 and summons was issued. The accused A2, A3, A4, A6 and A7 having been deceased the charge against A2, A3, A4, A6 and A7 was abated. On appearance of the accused A1 and A5, copies were furnished under section 207 Cr.P.C. The particulars of the offence of which they being accused was put to them, and accused A1 and A5 denied the same, as prima facie case existed, this court framed charge against the accused A1 U/s 365 r/w 109 (2counts), 374 IPC and A5 U/s 147,365(2 counts) IPC and accused were asked whether they plead guilty or has any defence to make. The accused A1 and A5 denied the charge and claimed to be tried.

5. The evidence on the side of prosecution consists of testimonies of PW1 to PW4 and Exhibits P1 to P5 were marked. After closure of prosecution side evidence, this court questioned the accused A1 to A3 U/s 313 of the criminal procedure code,

regarding incriminating material available against them in the prosecution evidence. The accused A1 to A3 denied the complicity of the offence. The defence side did not examine any witness nor did mark any document. Heard both sides.

6. The point for consideration in this case is

a) Whether the accused A5 at the abetment of A1, along with the other accused's abducted PW1 Tamilselvi with intent to confine her secretly and wrongfully and did so whether the intention so existed at time of the abduction?

b) Whether the accused A1 subjected PW1 Tamilselvi to unlawful compulsory labour?

c) Whether the accused A5 along with the deceased A2 to A7 constituted an assembly which is unlawful and with common object used force or violence in pursuance of the common object of the unlawful assembly?

7. Point (a) (b) and (c): as the matters to be discussed are associated, this court finds it just and proper considers the points together. In order to grapple the accused A1 with the offence of abetment as to the act of Abducting of the de facto complainant, the prosecution must place the aspect that the accused A5 and the deceased A2 to A7 acted intentionally and aided in the culmination of the alleged event. Law specifies that the act of abetment is constituted by a) by instigating a person to commit an offence, or b) engaging in conspiracy, or c) by intentionally aiding a person to commit it. Thus, the aspect above places the factor as condition precedent that, there must have been a meeting of minds as between the accused A1 and A2 to A7. In other words, the association and affinity subsisted as between the accused A1 and A2 to A7 ought to be placed by the prosecution. The association of A1 and A2 to A7 stands un-emphasized by the prosecution, though it is envisioned the accused A2 to A7 to be employees of A1, the said element which ought to have been traced by the prosecution to establish the affinity, was left discounted. The burden of proof in the criminal case rests on the prosecution and the presumption are scares. The

mode A1 and A2 to A7 got acquainted left to portray in the mind and being disregarded, adds to the benefit of doubt behest the defence.

8. Proceeding with the account of PW1, wherein she specified that twenty years before without any specification as to date, while she was at her mother's home provided in Periyandavar chamber's, five person came in a lorry and abducted her to Suganya chamber's along with her daughter and was confined there. Whereas the prosecution investigation stands pointed that six accused person's A2 to A7 as the malefactors who were indulged in the act of abduction, but whereas the account of PW1 in chief placed that five accused persons indulged in the imputed act, and whereas the previous statement of PW1 reduced to writing namely the Complaint Ex P1 ascribed the commission of offence as to abduction by eight persons excluding the abettor A1. Thus the account of PW1 stands inconstant as to the identity of the accused's involvement in the blatant act. Further PW1 in her examination in chief placed that she oblivious of the identity of the accused A5 Aniyar, the said accounts places and points to the element of suspicion enmeshed in the prosecution assertion.

9. The version of PW1 in the examination in chief placed and specified that the alleged act of forced removal by abduction from the Periyandavar Chamber transpired at around 12.00 PM in the noon, and being confined in the accused A1's brick unit Suganya Chamber's and was later released at 03.00PM based on negotiation by an advocate. The version stands contrasting to the version placed in the Ex P1 complaint, wherein it was placed that the alleged act of abduction was placed transpired at around 07.00PM on 06.08.2006 and was released from the wrongful confinement only the next day. Thus the versions of PW1 stands contradictory as to the critical incident sets out contradiction on material point, which altogether affects the reliability of account of PW1.

10. PW2 Manivel father of PW1 adduced by the prosecution as eye-witness to the alleged occurrence testified that he is not cognizant as to the factum of the case averred by the prosecution and turned hostile, likewise the account of PW3 Elizabeth

mother of de facto complainant stood devoid of any incrimination placed against A1 and A5. Analogous to PW2, the witnesses PW4 Jebaraj @ Jeyaraj, PW5 Sekar and PW7 Velankanni, advanced by the prosecution as witness to the incident and witness to the investigation carried by the investigating agency in the scene of occurrence turned hostile, and failed support the prosecution assertion. Whether the evidence of hostile witness to be totally discarded, the answer specified being no, this court proceeds with the view laid down in the case State Vs Harischandra Tukaran, wherein it being specified that when the testimony of such witness is acceptable to the extent to which it is corroborated by the evidence of reliable witnesses, but in the case for consideration, is no such evidence adduced behest the prosecution, to corroborate with.

11. PW6 Raja the brother-in-law of LW2 David testified to the aspect that, twenty years before David placed to have approached PW6 seeking change of job from Suganya Chamber to Periyandavar Chamber. The proposal of David was placed to be deferred by the owner of Peryandavar Chamber. The factum being so five persons hailing from Suganya chamber placed to have approached the de facto complainant PW1 Tamilselvi and placed to have convoked PW1, based on the said convoke PW1 placed to have left with the said five persons. The version of PW6 stands unspecified as to any use of force or snatch by forceful removal by means of lorry as accounted by the prosecution fable. The cross of PW1 portrays the factum of existence of wage advance received by PW1 and her deceased husband LW2 David. The version of PW6 in chief delineates the aspect that the work was sought to be executed by PW1 for the advance wage received, by the imputed accused's while she was in Periyandavar chamber and PW1 placed left with the imputed person on their requisition. The existence of intention to abduct stands unplaced nor proved by the prosecution. In State of U.P Vs Laiq Singh the Apex court has held that the, intention of the abductors has to be judged from the facts and circumstance of the case including what the abductors did at the time of the abduction and immediately

thereafter. The existence of such overt act so as to grapple the offence under section 365 or 374 IPC stood unemphasized nor attracted in the version PW6.

12. The testimony of PW8 Mangaleswaran merely shimmers the factum of registration of FIR and the steps in investigation process conducted, naught was brought by the prosecution to point as to A1 and Complainant A5's involvement in the crime except as to the version of PW1 which requires corroboration. The version of PW1 altogether disregarded the imputation pertain A5. PW1 accounted as to kidnapping of the child of PW1, who was subsequently recovered by the police based on the complaint so lodged, but the said assertion of PW1 was elicited by the defence in the cross of PW8 IO mangaleswaran, and PW8 denied to assertion accounted by PW1. Thus the prosecution assertion and imputation stands dosed up with incongruity as pointed out by the defence. Thus a cloud of doubt engulfs the prosecution case.

Thus on the stand point view of prudent man, from the above discussion, it has come out that the prosecution has not proved the guilt of the accused A1 and A5 beyond reasonable doubt. As such the offence allege against the accused A1 U/s 365 r/w 109 (2counts), 374 IPC and A5 U/s 147,365(2 counts) IPC was not proved and found not guilty. Hence the accused A1 and A5 are acquitted U/s 248(1) of Cr.P.C.

Typed by me in my computer, verified by me to be correct and pronounced in open court on 23rd day of October, 2024.

**S/d.Tr.R.Arun Pandian, 23.10.2024,
Judicial Magistrate,
Manamadurai.**

Prosecution Side Witness

1. PW1 – Tamilselvi
2. PW2 – Manivel
3. PW3 – Elizabeth
4. PW4 – Jeyaraj @Jebaraj
5. PW5 – Sekar
6. PW6 – Raja
7. PW7 – Velankani
8. PW8 – Mangaleswaran

Exhibits of the Petitioner

1. Ex. P1 – Complainant
2. Ex. P2 – Witness Signature of PW6 in Observation Mahazar
3. Ex. P3 – Witness Signature of PW7 in Observation Mahazar
4. Ex. P4 – Observation Mahazar
5. Ex. P5 – Rough Sketch
6. Ex. P6 – Report as to extrication of section imputed.

Defence Side Witness

NIL

Exhibits of the Defence

NIL

Material Objects for Both Petitioner and Respondent

NIL

Note:

1. During the period of trial the accused were enlarged on bail.
2. No witnesses were held more than three days without examination.
3. Decision of court intimated to the complainant police.
4. The copy of this order is directed to be sent to the Honble Chief Judicial Magistrate, Sivagangai.
5. Judgement Date : 23.10.2024

**S/d.Tr.R.Arun Pandian, 23.10.2024,
Judicial Magistrate,
Manamadurai.**

//True Copy//

**Judicial Magistrate,
Manamadurai.**