IN THE COURT OF THE JUDICIAL MAGISTRATE NO III, SALEM

Presence: Mr.G.Dhanenthran B.Com B.L.
Judicial Magistrate of No.III, Salem
Thiruvalluvar Year 2032, Avani Month 13th day Wednesday

Year 2001, August 29th day case No: 51/2002

On behalf of Government
Inspector of Police Sevvaipettai Circle .....Complainant
Government Hospital Police Station
Crime No 8/99

Verses

1. Saradha w/o Sundaresan
2. Stella w/o Appadurai
3. John Bosco s/o Appadurai
4. Philomina w/o John Bosco ..... Accused
5. Vimala w/o Balaraman
6. Somu (alias) Somasundaram
   S/o P.Sonamuthupillai.

This case posted for hearing on 27.01.2000 and Judgment delivered on behalf of Government Asst.Government pleader 2 argued and on behalf of the accused advocate Mr.Pon Raman argued. After hearing both sides and after examining documents, judgment will be delivered to day.

JUDGEMENT

The Inspector of Police Sevvai pettai Police Station registered/lodged a complaint against the accused under section I.P.C. 363(a) by stating that this dated on 21.04.99, morning 6 clock, Salem at Government hospital, in maternity ward, from inpatient Kaliammal, accused No.1 kidnapped a female child for the purpose of money and also for the purpose of begging and sold for Rs.1000/= to the accused from No.2 to 5, and then the accused Nos.2 to 5 sold the said child to the accused for Rs.5000/= and then the accused No.6, sold the said child to the Madras Social Service Guild's Director Thangavel for Rs.7500/=.

2.Adequate time and the copies of these case were given to the accused at free of cost.

3. The Criminal charges were briefed to the accused, and the accused denied the charges

4. In order to prove the charges against the accused 10 witnesses were cross-examined on behalf of the government. Government side witnesses brief report as follows: -

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G.W.1 No.1.Kaliammal in her statement that she was residing at Koothathupatty, her husband is working as cooli. Last year she has delivered a female child at Salem Government Hospital. She has denied the knowledge of when the said baby was stolen. After signing duly she has received the child from the court after knowing the recovery of the kidnapped baby after signing in the complaint.

G.W.2 Mariammal stated that she is working as a nurse in the Government hospital Salem. On 20.04.99 after the completion of her night duty at Labour Ward, while she was in her room on 21.04.2000 morning 6.30 patient's relative came and said that baby was missing and they were unable to locate the baby, so they have written a memo and gave it to the hospital Police Station.

G.W.4, Rajendaran in his witness, stated that he is an auto driver at Thathakkapatti he located the missing baby at Pallipalayam at Vimala's house and that was reported to Annathanapatti Police. Then that was reported to police at Government hospital. The police taken him and Kumar to Madras. And met the accused Somu at Koyambedu. Somu stated that the babies were taken back from the orphanage. He signed in the above written statement.

G.W.5 Kumar stated in his witness on 14.06.99 that government hospital police enquired him and stated that stella traveled in his auto up to new bus stand along with the baby and through conversation he came to know that stella will be going to Chennai along with baby. He reported the same to the police. Police taken him and Rajendaran to Chennai, there they met accused some at Koyambedu, on Police Enquiry, Somu stated that Philomina, Stella and John Bosco gave the babies to him and that police wrote statement and police obtained signature from them. The accused Somu taken them to Nedungundram and recovered four babies and a notebook and then the police taken Somu to Salem. Somu identified Vimala, John Bosco and Stella and then the police arrested them. Police recorded Stella's oral statement and the police obtained signature from both of them.

G.W.7 Mathammal, in her witness statement stated that before 1 month her daughter Kaliammal was admitted in government hospital Salem. At 6-clock morning she went out to purchase milk, while returned back she has found that baby was missing; she woke up her daughter in her sleep and asked where was the baby. They searched the baby and baby was not located and that was informed to the duty nurse. Then she left the hospital along with her daughter after treatment. Then after hearing that the baby is in the police station and she has taken the baby from Salem Hospital Police Station after giving a complaint.

G.W.8 Thangavel stated in his witness that he has commenced a Social Welfare Organization in the year 1979 and running it as a Director of the organization. He stated that on dated 15.5.99, 23.05.99 and 12.06.99, Somu admitted 3 female and a male babies. On 16.06 99 morning Salem police came along with Somu and taken back the said babies by informing that those babies were stolen from Salem Government Hospital.

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G.W.9 Mahadevan Sub-Inspector of Police in his witness stated that on 14.06.99 afternoon 3 clock based on the receipt of the complaint given in person by the G.W.1 he registered a case under section 363 I P.C. in case No.8/99 based on the secret information given by Kumar and Rajendaran. He proceeded to Chennai along with the witnesses Kumar, Rajendaran and with police constables. On 15.06.99 morning 5 clock they have arrested Somu @ Somusundaram residing at Chennai Koyambedu, Mangammal Nagar near Perumal Koil. Based on Somu's statement he has taken somu to Chennai Social Service Guild and taken back 4 babies after Somu's identification and taken a register. Then they arrived Salem on 16.06.99 early morning 5.30 and arrested the accused Stella, John Bosco, Philomina and Vimala after Somu's identification. He recorded Stella's consent statement and then he came to police station along with babies. Then on 18.06.99 he arrested the accused Saradha near Annathanapatti bus stop by registered her consent statement. Then after completion of the enquiry he submitted report for the perusal of the Inspector of Police.

G.W. 10, Mr.Karunanidhi, Inspector of Police stated in his witness statement that he enquired the witness Thangavel obtained his statement, and completed his enquiry he prepared charge sheet against the accused on 15.09.99.

5. G.W.1's petition for the receipt of the baby in Government side witness document1, G.W.3's signature in Stella's consent statement in Government side witness Document 2, Somu alias Somasundaram's consent statement permitted portion in government side witness document 3, G.W. 5's signature in the consent statement given by Somu @ Somasundaram in government side witness document 4, recovery mahazor government side witness document 5, G.W. 5's signature in stalla's consent statement in government side witness document 6. G.W.6's signature in accused consent statement in government side witness document 7, first Information Report, Government side witness Document 8.

6. The Accused refused the witness given against the accused by the government witnesses under section IPC 313(1) (a). On behalf of the accused no witnesses were enquired.

7. In this case problem is to be decided whether the charges leveled against the accused are proved beyond the any doubts by the government side or not.

8.Two side's arguments were heard. Learned advocates of the accused submitted their arguments in writing. In that, no individual eye witness, in the government side no explanations were given for the delayed registration of the First Information Report, in the complaint no identification of the missing babies were given, it was reported that the missing babies were reported the police department through the memo, but documents was not marked as a proof, in that no identification of the baby was given, no address of the parents. Consent statement witnesses of G.W.3 Krishna and G.W.6 Balakrishnan were changed into counter-witnesses, No witnesses for kidnapping of babies and sold by the accused 2 and 6. As per the government case, it was stated that the consent statements were obtained near Annathanapatti bus stop but G.W.3 stated in the witness that 1st accused given statement in the police station, Police not conducted proper investigation,

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lot of irrelevancies in the witnesses, lot of doubts araised among the witnesses given about the babies recovery, there is no connection between the case and the accused, there is no mention about the baby's name age in the recovery mahazor in the charge sheet registered under section 363(a) of IPC. But there is no evidence under the said section, so the government cases against the accused were not proved beyond any doubts and it was prayed to release the accused.

9. Government side learned advocate prayed since through criminal charges and the witnesses against the accused are proved beyond doubts and so the accused should be punished vehemently.

10 Both side's arguments, witnesses and the documents submitted in this case were carefully examined. It was alleged in this case accused kidnapped the baby in Salem government hospital. There are 3 more similar cases are there of kidnapping babies against the accused including this baby there are 4 cases. To-day the said 4 cases are posted for judgment after the due recovery of the 4 babies from the chennai based Voluntary Agency based on the 1st accused consent statement, the other accused were arrested by lodging of charge sheet against the accused 1 to 6.

11.In this case G.W.1 given in her witness statement that she was admitted in the salem government hospital for treatment and then given witness about missing of her baby.

G.W.2 Mariammal stated in her witness statement that she is working as a Nurse in Salem Government Hospital. On 21.04.99 morning 6.30 hours G.W.1's relative said that G.W.1's baby was missing, then after informing to the Hospital, she has informed to the Hospital police station through memo.

G.W.3 Krishna was enquired as counter-witness G.W.4 Rajendran in his witness statement stated that he is working as an auto driver, the missing baby at pallipattu was in Vimala's house he showed it to Annathanapatti Police and then informed to the Hospital Police. Hospital Police taken Kumar and himself to chennai at Koyambedu, accused somu was enquired and then Somu informed that babies were in Nedungundram Ashram and somu get back the babies. Another auto driver Kumar was enquired on G.W.5 in her witness statement stated that Government Hospital Police enquired him and Rajendran, he dropped stella along with baby in New Bus stand and through conversation he heard from Stella that she is going to Chennai. Police taken him and Rajendran to Chennai at Chennai Police arrested accused Somu; police recovered babies and a notebook at Nedungundram, In that He and Rajendran signed their signatures.

12. In order to prove consent statement obtained from accused Saradha Balakrishnan G.W.6 was enquired. He was considered as counter-witness. G.W.1's mother Madhammal was enquired as G.W.7 she stated that she was there as an assistant to G.W.1 in hospital and she went out to buy milk for the baby and while returned back the baby was missing. Chennai, Nedungundram, resident Thangavel was enquired as G.W.8, in his witness statement he has stated he is running a social service agency and the accused Somu 4 babies by stating that they are deserted babies. G.W.9 Sub-Inspector,

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Mahadevan stated in his witness statement that he recovered 4 babies after receiving complaint and registered the same and then after investigation he arrested the accused and recovered the babies. G.W.10, Inspector of Police, Karunanidhi stated in his witness statement that after conducting further enquiries and prepared charge sheet against the accused.

13. In this case G.Ws 1,2,7 witnesses were witnesses for confirming the missing of babies G.W. 3 to 6 and 8 were important individual witnesses. The remaining witnesses are police side witnesses. They said witnesses are carefully examined. In they are G.W.3 Krishnan and GW.6 Bal Krishnan was given statement to the Police, while the Police arrested the accused Saradha and also while obtaining the consent statement from the accused they were with them. In this case, both of them are considered as counter-witnesses. The said witnesses were there while accused 6 was arrested.

14.In this case charge is framed under section 363 (a) of IPC. Section 363 (a) is attracts if only the minor children were kidnapped for a motive of using them for the purpose of begging. In this case among witnesses 1 to 10 there is no witnesses for kidnapping of babies for the purpose of begging. In this case, including the investigating officer in his witness statement stated that the babies were not kidnapped for the purpose of begging. In this case there is no evidence against the accused under IPC section 363 (a). In this case the Government side witnesses stated that by named the Madras Social Service Guild agency maintained many children including these babies, that agency is a Voluntary agency, where orphan children and deserted children were maintained that agency's Director G.W.8 Thangavel stated that deserted children were maintained in that home. So that there is no witnesses of kidnapping of the said babies for the purpose of begging. So I decide that there is no adequate witness for proving the charge under IPC section 363 (a).

16.But at the same time there is no doubt in that complaints in this case given by the parents about the kidnapping of baby is considered as crime under section 363 of IPC. 18 years in complete aged girls, 16years incomplete aged boys, children are kidnapped either from their parents or from their guardians are consider as crime under section 363 IPC. The recovered baby in their case in addition to 3 babies in other cases it was stated missing babies were recovered by the police chennai based agency "Madras Social Service Guild". The important witnesses in the case G.W.9, Sub Inspector Mahadevan G.W.4. Rajendran G.W.5 Kumar was stated that the babies admitted by the accused No.6 were very well maintained by the said agency. In this condition, based on the identification done by the accused No.1 and accused No.6 in this case, the arrested Stella, Vimala, Philomina have kidnapped the child at Salem Government Hospital and taken them to Chennai. It was mentioned in this case.

17. In this case the witnesses signed in the consent statement given by the accused 1 Saradha were changed into counter-witnesses. In this case G.W.9 Mahadevan stated in his witnesses statement that the accused Saradha accepted the crime and gave the consent statement. In addition to that he has stated that in his witnesses statement that Stella accepted the kidnapping of the baby and gave consent statement. We cannot deny and

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reject the witness given by the Sub-Inspector of Police. Even though he belongs to Police Department's witness and there was no enmity between him and the accused. So it is necessary to accept his witness. Based on the consent statements given by John Bosco, Philomina, it was stated that they were related in the alleged act but there are no other individual witnesses for their involvement in the alleged criminal act. But at the same time accused Saradha, Stella's consent statements given by them were clearly stated in the Police side witnesses. In this situation G.W.3 Kumar's witnesses statement he stated that Stella by named, was with a baby and dropped her in new bus stand. While police arrested Stella, she gave consent statement and in that statement In that he confirmed that he and Rajendran signed in that statement. In this case there is witness about the kidnapping of a baby in the Salem Government hospital by the accused Saradha, Vimala and Stella. It was made clear in this case the kidnapped babies were recovered in Chennai.

18. In this case, Based on the constent statement and identification done by the accused 6, the babies were recovered and in their regard Government side witnesses G.W.4 Rajendran, G.W.5, Kumar were given witnesses. There is no mention about the kidnapping of the said baby by the accused 6. In this case accused 1 to 5 it was mentioned that they have kidnapped the baby and sold to accuse 6. In this case it was stated in charge sheet that the said accused 6 purchased baby and sold to an agency in Chennai. But there were no witnesses for the alleged selling. Apart from that, In this case there was no witness against the accused ness about the kidnapping of the baby either from the parents or from the guardians. Even though there was a mention in this case about the kidnapping of baby by Phil mina, John Bosco there was not an iota of witness on the government side witnesses. In this case it was stated that the said Philomina and John Bosco were reported as kidnappers of the baby, there were no witness for the same and because of that I consider that there is not an iota of witness.

19. Apart from that in this case, there was no charge made and put by the government side against the accused 6, about the alleged purchase the baby and selling the same. There are no witnesses against the accused 6 about the kidnapping of baby by him. So, there is no witnesses for the alleged charge made against the accused No.3 John Bosco, accused 4, Philomina and accused 6 Somu @ Somasundaram under section IPC 363. So in this case I consider that there was no criminal charges were proved against the accused 3,4 and 6.

20. In this case it is surprise to note that the investigating Police Department, Sub-Inspector and the charge sheet framed Inspector of Police have not taken any action against the director G.W.8 Thangavel where the baby was recovered. Even though there was a mention about the sale of baby by the accused No.6, there was no mention about it in Charge Sheet. The witnesses were stated about the best maintenance of the recovered babies. The Police officers witnesses were also confirmed it Somu, in this situation for what purpose the baby was sent there and there was no mention about whether the baby was misused. The accused 6's consented in his statement that he sold the baby and the police have not given any explanation on that aspect. At least the police have taken action

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for keeping the custody of the said child with them. That shown police department's inaction.

21. In this case there was a witness while kidnapping a baby by the accused 5. By considering the circumstances, alleged incident and witnesses in this case, I consider that there are adequate witness and proof of kidnapping of the baby by the accused 1, 2, and 5.

22. In this case, the circumstances and witnesses are considered to be important even though there was no eye witnesses for the alleged kidnapping, In this case there was no enemity towards this accused 5's traveled in his auto with baby. So I consider that the above witnesses are important in this case. So their witnesses cannot be ignored. So I decided that there are adequate witnesses for the kidnapping of baby by the accused 1,2 and 5.

23. Finally, I consider that the charge leveled against the accused 3,4 and 6 under section 363 of IPC were not proved beyond any doubts by the government side. So I deliver judgment by stating that the accused 3,4 and 6 were not committed any crime under section 363 of IPC and release them under section 248 (1) Cr P.C.

24. I consider that the charges made under section on 363 IPC towards the remaining accused 1,2 and 5 were proved beyond doubt and so the accused 1,2 and 5 are committed crime under section 363 IPC.

25.The accused 1,2 and 5 prayed through their advocates to give light punishment since this is their first criminal act.

26.By considering this cases's nature, accused prayer and circumstances the accused 1,2 and 5 were committed crime under section 363 of IPC and pass judgment of 10 months rigorous imprisonment in addition to a fine of Rs.1000. In case of failure to pay the fine 3 months imprisonment. Since the accused were already imprisoned the said period can be deducted under section 428 Cr.P.C. and the accused should undergo the decided imprisonment at the same period as per the case No.50/2000. The total fine Rs.1000.

27. There were no assets in this case.

Myself dictated this to the shorthand stenographer, Stenographer taken in short hand and typed in detail by him and then it was corrected by my self today the 29th day August 2001 and delivered in the open court.

Sd.....
Judicial Magistrate
Salem

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Appendix
Government Side Witnesses: -

1. Kaliammal
2. Mariammal
3. Krishnan
4. Rajendran
5. Kumar
6. Balakrishnan
7. Mathammal
8. Thangavel
9. Mahadevan, Sub – Inspector of Police
10. Karunanidhi, Inspector, Sevvaipattai Police Station, Salem.

Government Side Evidence Documents:

1. G.W.1 Application by the parents for receiving baby in the court dt. 17.06.99
2. G.W.3 Signature in the Saradha's consent statement dated 18.06.99
3. 6th accused consent statement permitted portion dated 15.06.99.
4. G.W.5's signature in the consent statement given by the accused 6 dated 15.06.99
5. Recovery Mahazor dated 15.06.99
6. G.W.5's signature in the consent statement given by Stella dated 16.06.99.
7. G.W.6's signature in the consent statement given by the accused Saradha dt.16.06.99
8. First Information Report 14.06.99

Accused Witnesses witness - NIL

Material Evidence: Nil

Note:

1. Case's completion Note given to Police Department.
2. No witnesses were summoned more than 3 times.
3. During enquiry period the accused were in jail.
4. Time given to the accused to pay the fine up to 31.08.2001 and it was ordered to stop accused imprisonment period up to 17.9.2001.

Sd.....
Judicial Magistrate 3
Salem.

Sd....

Saratha
Stella
B.Vimala.

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Diary Shedule Case No. 51/2000

27.01.2000	under section 363(a) of IPC the case was registered and taken up Adjournment 18.2.2000 prepare summon to the accused.
18.02.2000	A3, not presented / appeared petition allowed. Other accused presented prepare copy adjournment 01.03.2000
01.03.2000	A3 not appeared Petition allowed other accused appeared. Issue copy adjournment 14.03.2000.
14.03.2000	A6 not appeared petition allowed other accused appeared. Issue copy adjournment 27.03.2000
27.03.2000	Accused appeared issue copies for necessary action. Adjournment 20.03.2000.
30.03.2000	Accused appeared charges examined charges denied under section 363(9) of IPC, accused denied the charges witness 1 to 3 send summon adjournment 19.06.2000.
05.05.2000	Accused appeared witness not appeared send summons 1 to 3 adjournment date 19.06.2000.
19.06.2000	Accused appeared witness not appeared send summons witness 1 to 3 Adjournment 25.07.2000
25.07.2000	Accused appeared witness not appeared send summons to witness 2 and 3 Adjournment 16.08.2000.
16.08.2000	Accused appeared witness appeared. G.W. 1 enquired send summons 2,3 Adjournment 21.09.2000.
21.09.2000	Accused appeared. witness 4 appeared GW 2 enquired. Send summons to 2,3 and 5 Adjournment 19.10.2000
19.10.2000	Accused appeared witness 9 appeared. GW 3 enquired Government witness document 2 marked. Send summons to 2, 7 and 8. Adjournment 15.11.2000.
15.11.2000	Accused appeared witness appeared G.W. 4 and 5 enquired. Government witness document 6 to 8 marked. Send summons to witness 2, 10 and 11 Adjourniment 20.12.2000.

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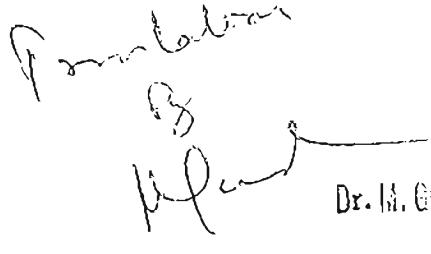
[illegible] ADVOCATE

20.12.2000	Accused appeared. Witness not appeared Witness 10 presented. GW 6 enquired Government side witness document 7 marked. Send summons 2 and 11 Adjournment 20.01.2001.
20.01.2001	Government Holiday Accused appeared send summon to 2 and 11 for enquiry Adjournment 19.02.2001
19.02.2001	A3 and A4 not appeared. Petition allowed Witness appeared. G.W.8 enquired issue summons to G.W. 3 and 4 petitions filed for cross-examination. Government side document 311 petitions filed Allowed adjournment on 08.03.2001 for cross examination GW 3 and 4.
08.03.2001	Accused appeared G.W.4 appeared. Cross-examined. Send summons to G.W.3 for cross –examination and summons to G.W. 12, 13 for enquiry Adjournment 23.03.2001.
23.03.2001	Accused appeared witnesses not appeared. Summon to G.W.3 for cross-examination adjournment 23.04.2001.
23.04.2001	Accused appeared G.W.5 was cross-examined issue summon to 12, 13 Adjournment 23.05.2001.
23.05.2001	Accused appeared witness not appeared issue final summons in 12, & 13. Adjournment 14.06.2001.
14.06.2001.	Accused appeared witness appeared G.W. 9 was examined Government side witness document 8 was marked. Issue new summon to GW.13 Adjournment 10.07.2001.
10.07.2001	Accused d used appeared witness appeared G.W. 10 Examined G.S. witnesses completed Adjourned for necessary action on 13.07.2001.
13.07.2001	Accused appeared action report not ready Adjourned on 17.07.2001 for necessary action.
17.07.2001	Accused appeared examined under section 313(1) (a) Cr.P.C. Adjourned on 25.07.2001 for examination of opposite side witness.
25.07.2001	Accused appeared opposite side witness not appeared Adjourned on 30.07.2001 for examination of opposite witness.
30.07.2001	Accused appeared. Return argument statement filed for accused A1 to 5 . A 6 argument was heard. Adjourned 03.08.2001 for argument by both sides appeals.



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03.08.2001	Magistrate's optional holiday accused appeared adjourned 7.8.2001 for argument.
07.08.2001	Accused 6 not appeared. Petition allowed. Other accused appeared. Adjournment for argument 10.08.2001.
10.08.2001	Accused appeared. Argument heard. Adjournment 14.08.2001 for final argument.
14.08.2001	Accused appeared. Argument heard. Adjournment 21.08.2001 for judgment.
21.08.2001	A6 not appeared. Petition allowed Adjournment 27.08.2001 for judgment.
27.08.2001	A3 not appeared petition allowed on condition adjournment on 29.08.2001 for judgment.
29.08.2001	Accused appeared Judgment delivered. It was decided that Accused 3,4, and 6 not convicted under section 363 of IPC and released as per section 248 (1) of Cr.P.C. It was decided that accused 1,2 and 5 were convicted under section 363 of IPC Judgment delivered Rigorous imprisonment for 10 months each was given to accused 1,2 and 5 in addition to Rs.1000 fine. in failure, 3 months additional imprisonment, judgment delivered time given up to 31.08.2001 paying fine accused imprisonment date stopped as on 17.09.2001. It was ordered to deduct the already imprisoned period under section 428 of Cr.P.C. C. of C.50/2000.

Sd.....
Judicial Magistrate.3
Salem.

Sd.....
Superintendent (C.S.)
District Court Salem

Translator

Dr. M. GOVINDARAJ, M.A., L.L.B., Ph.D.,
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