

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPEAL NO.4 OF 2015**

Ms. S.K. L.*,
Age-26 years, Occu:Nil,
R/o-Tarakpur,
Dist-Ahmednagar.

...APPELLANT

(*Orig. Complainant/Prosecutrix
Name - as in Petition)

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Sonai Police Station,
Tq-Newasa, Dist-Ahmednagar,
- 2) Vishal s/o Pradip Torne,
Age-29 years, Occu:Education,
R/o-Padhegaon, Tq-Shrirampur,
Dist-Ahmednagar,
- 3) Savita Pradip Torne,
Age-50 years, Occu:Household,
R/o-Padhegaon, Tq-Shrirampur,
Dist-Ahmednagar,
- 4) Pinki Julias Salve,
Age-30 years, Occu:Household,
R/o-Balajinagar, Wadgaon Sheri,
Pune, Dist-Pune,
- 5) Soni Swapnil Tribhuvan,
Age-24 years, Occu:Household,
R/o-Sanjaynagar, Shrirampur,
Dist-Ahmednagar,

- 6) Swapnil Ramesh Tribhuvan,
Age-29 years, Occu:Labourer,
R/o-Sanjaynagar, Shrirampur,
Dist-Ahmednagar,
- 7) Ranjan Amrut Salve,
Age-45 years, Occu:Service,
R/o-Tilaknagar, Shrirampur,
Dist-Ahmednagar.

...RESPONDENTS

(Respondent Nos.2 to 7 are
Ori. accused Nos.1 to 6)

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Mr.Gautam J. Pahilwan Advocate for Appellant.
Mr.S.D. Kaldate, A.P.P. for Respondent No.1.
No notice was issued to Respondent Nos.2 to 7.

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**CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.**

DATE : 30TH JUNE, 2015

JUDGMENT [PER A.I.S. CHEEMA, J.] :

1. Original complainant, the prosecutrix has filed this Appeal against the acquittal of Respondent Nos.2 to 7 (original accused Nos. 1 to 6) in Sessions Case No.90 of 2014 vide Judgment dated 28th October 2014 by District Judge-1 and

Additional Sessions Judge, Newasa, Dist-Ahmednagar. The accused were charged with offence punishable under Section 366, 376, 471, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 (for short "I.P.C."). The accused No.1 Vishal Pradip Torne came to be convicted and that too only for offence punishable under Section 471 of I.P.C. regarding using of false and bogus school leaving certificate of prosecutrix. For rest of the offences, all the accused persons came to be acquitted and thus the present Appeal against the acquittal.

2. The case of prosecution, in nut-shell may be stated to be as under:-

(A). On 31st January 2013 the prosecutrix filed FIR with Sonai Police Station, Dist-Ahmednagar. She informed Police that she was working as Nurse at Sonai in the Primary Health Center. In the FIR she has given her age as 26

years and mentioned that she was unmarried and on the suggestion of co-worker Sushila she and her family had met the accused No.1 and his family, to explore possibility of marriage. Although accused persons liked her, the maternal uncle of the prosecutrix had reserved the decision whether to accept the proposal. The antecedents of accused No.1 were verified and when it was found that cases of theft were filed against him and externment order was also passed, they had refused the marriage proposal. Thereafter accused No.1, on phone, tried to persuade prosecutrix not to decline the marriage proposal. The accused No.1 Vishal (hereafter referred as "accused") threatened her not to under-estimate him. She made complaint to mother and sister of accused but they asked her to agree to the marriage. She had filed complaint regarding behaviour of the accused to the Police Station on 11th January 2013. Coming to know about the same, the accused came to her hospital compound in the evening of 11th January

2013 and quarreled with her and forcibly took her on motorcycle. On the way, a friend Bharat joined them for some distance. Then she was taken at Shrirampur to the house of accused No.4 Soni. The father-in-law of Soni did not permit them to stay there. Then she was taken to the place of friend of Swapnil - accused No.5, in Kanda Market. Next day arrangements were made and the accused and prosecutrix travelled to Pune by bus. According to prosecutrix, she was threatened by knife and so she kept quiet. At Pune they were received by Pinki - accused No.3. They stayed at the house of Pinki, accused No.3. At the instigation of Pinki, accused No.1 raped the prosecutrix. According to the information given by prosecutrix, she was then taken by bus to Nashik and at Nashik they stayed at the place of a friend Amol where again she was raped by the accused. On 23rd January 2013 she was taken to Church at Ahmednagar and forcible marriage was brought about in the Church. She was taken back to Nashik. On 25th January 2013, she

managed to give a phone call to her brother Kumar (PW-3). Her brother and mother PW-3 Kshma and other family members came to Nashik. On 26th January 2013, she again managed to make a phone call and she was told that her family was at Dwarka Police Station. She managed to reach the Police Station and as her mental condition was not good, her family sent her to relatives at Gujrat. When she felt better, she came back on 31st January 2013 and filed the FIR.

B). The Police Station, Sonai registered the offence at Crime No.13 of 2013 on 31st January 2013 at 18.00 hours. A.P.I. Vilas Patil (PW-7) carried out the investigation. The prosecutrix was sent for medical examination. Statements of witnesses were recorded. Clothes of prosecutrix were seized vide Panchanama (Exhibit 88). The Spot Panchanama of the hospital at Sonai was prepared (Exhibit 89). Accused No.1 was arrested. Accused No.1 agreed to show the different places where the

prosecutrix was taken at Shrirampur, Nashik and Pune. Memorandum in this regard was prepared (Exhibit 91). A.S.I. Dhangar took the accused No.1 to the place at Shrirampur and Panchvati - Nashik, regarding which Panchanama Exhibit 92 was prepared. A.S.I. Jagtap was shown by accused No.1 the place where prosecutrix was taken at Pune. Panchanama Exhibit 93 was prepared in that regard. On 14th February 2013 accused gave discovery of knife used in the incident from his house, regarding which Memorandum and Panchanama Exhibit 94 was prepared. Police investigated from concerned school regarding issue of school leaving certificate of the prosecutrix to support charge that false certificate was got prepared. The seized clothes and blood samples were sent to C.A. and reports were obtained. Motorcycle used for the offence was seized. Police found that there was sufficient evidence of kidnapping and rape as well as other offences had been committed. Consequently, charge-sheet was filed.

3. Matter was committed to the Court of Sessions. The Sessions Court framed charge as mentioned above. Prosecution led evidence of seven witnesses. The defence of the accused Nos. 2 to 6 was of denial. The defence of accused No.1 was also of denial but he took a stand that the prosecutrix had willingly married him and she has not been kidnapped or raped. The trial Court considered the evidence and arguments and convicted the accused No.1 only for using of false and bogus school leaving certificate, under Section 471 of I.P.C. and for the said offence, imposed punishment of three months imprisonment and compensation of Rs.50,000/- to be paid to victim and in default to suffer simple imprisonment for five months. The accused No.1 has not challenged that sentence. For all other Sections with which the accused persons were charged, they had been acquitted.

4. When this Appeal came up before this Court for admission, Counsel for Appellant has been heard fully.

5. The learned counsel for the prosecutrix submitted that the trial Court wrongly acquitted the accused persons. It forgot that even the uncorroborated testimony of the prosecutrix in such matter could be relied on. The prosecutrix was supported by the evidence of PW-2 and PW-3. The trial Court wrongly observed that as the prosecutrix had not complained to anybody, there was no forcible kidnapping. The prosecutrix had claimed that she was threatened by knife and there was threat given that her brother and uncle would be killed and so she had kept quiet. The trial Court wrongly relied on photographs admitted by the prosecutrix without negatives being brought on record. Trial Court wrongly concluded that rape had not been established. The learned counsel for the Appellant - prosecutrix claimed that the

Judgment of the trial Court was required to be reversed and the accused persons should be convicted for the offences with which they were charged and should be punished.

6. The learned A.P.P. for the State has also been heard.

7. Perusal of the record of the trial Court shows that the prosecutrix deposed as PW-1. She proved the FIR Exhibit 53. Her evidence is in consonance with the FIR which she had filed. Another document Exhibit 70 was proved as the complaint she had given to the Police Station on 11th January 2013. The prosecutrix deposed that as to how she was taken from the hospital compound and how the father-in-law of accused No.4 did not let them stay at Shrirampur in their house and they went and stayed at the place of a friend of accused No.5 Swapnil, at Kanda Market. She gave evidence as to how on next day they travelled by

bus to Pune. She has deposed regarding she being raped by the accused at the house of accused No.3 Pinki, on instigation of accused No.3. Her evidence further brought on record that they travelled by bus to Nashik and stayed at the place of friend called Amol. She deposed that on 23rd January 2013 she was brought to Church at Ahmednagar and she was compelled to marry accused No.1. She claimed that accused got a stamp paper executed from her. According to her, she was then asked to inform her brother (PW-3 Kumar) to bring her clothes and documents at Padhegaon. She deposed that she was again taken to Nashik and the accused No.1 forcibly had sex with her giving her threats. On 25th January 2013 she gave a mobile phone call to her brother taking mobile from a woman and informed her address at Nashik. On 26th January 2013 again, at 1.00 p.m., she contacted her brother taking mobile of one vegetable vendor. Brother told her that they had reached at Dwarka Hotel. She went to Dwarka Hotel and to Dwarka

Police Station. Police called her family members. Seeing her mental condition, she was sent to her maternal aunt at Gujrat. On 31st January 2013 she has given the FIR. She identified the knife before the Court.

8. The complainant in her evidence has been supported by the evidence of PW-2 Kshma, her mother, and PW-3 Kumar, her brother. There is also evidence of PW-4 Nana Barse, her maternal uncle. For portion of kidnapping of prosecutrix till meeting at Dwarka Hotel, the evidence of these witnesses is hear-say. One Shilpa Kedare (PW-6), claiming to be social worker in Snehalay Sanstha, Ahmednagar where PW-4 Nana Barse was also attached, has also deposed, what she heard.

9. PW-5 Arun Nimse was a teacher in Zilla Parishad School, Ukkalgaon, who was examined to claim that school leaving certificate, Article "A" before the Court was not from their school. PW-7

Vilas Patil is the A.P.I. who investigated the offence. A.S.I. Dhangar and A.S.I. Jagtap, referred to by PW-7 Vilas Patil, were not examined.

10. Regarding the evidence of prosecutrix that earlier there was get together between the two families to see if marriage could be settled, does not appear to be in dispute. As regards alleged kidnapping, the cross-examination of PW-1 brought on record details which show that the dispensary concerned where she was working, is in a place which is crowded and the road near the dispensary remains busy. Police Station and S.T. Stand are nearby. She admitted that relatives of patients keep waiting in the porch of dispensary. Quarters of medical officers are adjacent to the road. The staff quarters are also there where people are residing. There are hotels, shops and residential premises adjoining the dispensary. There is a tea stall of Karan Barde near the gate

of dispensary. The evidence of prosecutrix is that at such place the accused No.1 had come on motorcycle and that he abused her and pulled her hair and threatened her with knife and forcibly took her on motorcycle and left such spot. Looking to the spot as mentioned above, it is surprising that there is no supporting evidence to the prosecutrix evidence on this count.

11. The evidence brought on record by the prosecution is that the prosecutrix was taken by accused No.1 to the place of accused No.4 Soni but her father-in-law objected and they could not stay there. It is surprising that still the prosecution was brought against accused No.4 Soni also. There is other evidence that the motorcycle was kept at the place of accused No.5 Swapnil, and the prosecutrix and accused No.1 travelled by bus to Pune. There is evidence of further travelling from Pune to Nashik and back to Ahmednagar for marriage and again back to Nashik. It is surprising that

during all these travels, the prosecutrix never complained to anybody that she had been kidnapped or was being forcibly taken. She has, of course, deposed that the accused No.1 had threatened to kill her brother and maternal uncle and also threatened her with knife. However, it is not a matter of solitary instance at one place. It is a series of acts with multiple travels involved. Still the prosecutrix wants it to be believed that all these travels were against her wish and still nobody knew, although she is adult who has been working in the hospital as a nurse and claimed to be 26 years of age and thus an independent person. It is surprising that even PW's 2 to 4 did not file any complaint when she was missing for so many days.

12. The prosecutrix claimed that at Pune at the place of accused No.3 Pinki, on the instigation of Pinki, she was raped by the accused No.1. She also deposed that at Nashik also

forcible intercourse was committed with her. However, the prosecution did not bring on record any medical evidence in support of the claim that intercourse had been committed with the prosecutrix.

13. The evidence is that the prosecutrix was brought to Ahmednagar and in the Church her marriage was performed by the priest. Prosecutrix accepts that marriage did take place but continues to claim that she was threatened. In cross-examination, she admitted certain photographs shown to her. Although in Appeal stand is taken that negatives were not proved, however, when the positives of the photographs have been admitted by her, the trial Court rightly referred to them. The prosecutrix admitted that one of the photographs Exhibit 65 showed a woman offering sweets to accused No.1. She admits that said photograph was of her maternal aunt and on the backside husband of her maternal aunt was present. This was in

context with marriage which had taken place at Ahmednagar. There is substance in the defence that when marriage was performed relatives of the prosecutrix also attended. The trial Court rightly referred to this evidence to find that forcible marriage was not established.

14. Although the prosecutrix claims that she managed to contact her brother on 25th January 2013 taking mobile from somebody and on 26th January 2013 also she could manage to phone call and then go to Dwarka Police Station, however, no evidence is brought from said Police Station as to what transpired at that place. Although it is claimed that prosecutrix escaped on 26th January 2013, the FIR was filed only on 31st January 2013. The reason given is that the prosecutrix was not in a good mental condition. However, if she was in the mental condition to make calls and manage to escape on 26th January 2013, the reason for delay cannot be said to be satisfactory.

15. No doubt the prosecution collected further evidence regarding accused showing places where prosecutrix had been taken, however that cannot be treated as discovery. The discovery of alleged knife from the house of accused at Padhegaon also is not of much help, as the knife could be available in house. Panchas of the discovery were also not examined.

16. C.A. Reports at Exhibit 95 to 97 also did not show detection of any semen or blood or any other evidence to inter-link the prosecutrix with accused No.1.

17. Trial Court marked Exhibit 114 to leave application of prosecutrix for period from 11th January 2013 to 11th February 2013 filed on 28th January 2013. Roznama does not show how it was marked Exhibit. Even ignoring this document, we find it difficult to rely on her.

18. We have gone through the reasons recorded by the trial Court in appreciation of the above evidence. Even after carefully going through the material available, we are unable to find that the trial Court committed any error in appreciation of evidence or its conclusions drawn. View taken is possible view. There is no reason to interfere in the Judgment of the acquittal. There is no reason to entertain or allow the Appeal.

19. The Appeal stands dismissed.

[A.I.S.CHEEMA, J.]

[S.S. SHINDE, J.]