

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1145 OF 2002

State of Maharashtra.	...	Appellant.
V/s.		
Mangesh Shankar Jadhav,		
Age 22yrs., R/o village Surav,		
Tal. Mangaon, Dist. Raigad.	...	Respondent.

A.S.Shitole, APP for the appellant- State.

None for the respondent.

CORAM : S.B. SHUKRE, J.

DATED : 15th October 2015.

JUDGMENT :

This appeal has been preferred against the judgment and order dated 10th July 2002 passed by Ad-hoc Addl. Sessions Judge, Alibag in Sessions Case No.145/2001 thereby acquitting the respondent of the offence punishable under section 366A of the Indian Penal Code ("I.P.C." for short) with which he was charged and for which he was prosecuted by the trial Court. Briefly stated, the facts of the case are as under:

The respondent was prosecuted for the offence punishable under section 366A of I.P.C. by the Court of Ad-hoc Addl. Sessions Judge,

Alibag in Sessions Case No.145/2001. The allegations against him were that on 6th September 2001 at about 11.00 a.m. at Mangaon the accused had kidnapped one girl knowing it to be likely that the girl would be compelled to marry against her will or with a view to seduce her to illicit intercourse. At the time of offence, the girl was alleged to be of the age of 15 years only. Since the respondent pleaded not guilty to the charge which was framed against him, he was tried by the learned Adhoc Addl. Sessions Judge in accordance with law. On merits of the case, the learned Judge found that the charge of offence punishable under section 366A of IPC was not proved against the respondent and, therefore, vide judgment and order dated 10th July 2002, the learned Judge acquitted the respondent of the said offence. Being aggrieved by the same, the State is before this Court in the present appeal.

2. I have heard Mr.Shitole, learned A.P.P. for the appellant- State. None appeared on behalf of the respondent. I have carefully gone through the record of the case including impugned judgment and order.

3. On going through the evidence of the prosecutrix, who has been examined as PW-2 in this case, it is seen that the prosecutrix had left her house of her own accord and voluntarily and that out of her own free will, she had chosen to stay at various places along with the respondent. It is further seen that although she had several opportunities to raise alarm, which she would have if the allegations made by her in the complaint were true, still the prosecutrix did not do so. It also appears that even though the prosecutrix was below the age of 15 years she had

developed sufficient maturity to understand the consequences of her moving around with the accused. On 6th September 2001, although the prosecutrix had left her house for going to school, she did not attend the school and decided to accompany the accused to wherever the accused would take her. She, after meeting the accused i.e. respondent, got into an auto-rikshaw together with respondent and went to Nagothane. From there she, along with the respondent, travelled by truck and went to Chembur and there she along with respondent, stayed in the house of one Sunita, a sister of the respondent. It is further seen that she was in this house for 3 to 4 days and thereafter she, along with respondent, went to some place in the State of Gujarat, where both of them stayed in the house of friend of the respondent for about 7 to 8 days. In the entire journey along with the respondent, the prosecutrix never suggested to the respondent for taking her back to her parent's house or never complained to anybody about the conduct of the respondent. The fact that the prosecutrix had travelled to so many places and for so many days along with respondent and had chosen to stay together with the respondent at different places without any protest would show that the prosecutrix was standing on the threshold of maturity and, therefore, I am of the view that the learned trial Judge rightly concluded that there was no convincing evidence brought on record by the prosecutrix showing that the respondent had enticed away or taken away the girl from the custody of her lawful guardian without consent. The essential ingredient of the offence punishable under section 366A of IPC is precisely of enticing away the girl or taking away the girl without consent from the custody of her lawful guardian. This ingredient has not been fulfilled by the facts

brought on record by the prosecution in the instant case. The view taken by the learned trial Judge, therefore, cannot be said to be perverse or arbitrary. The impugned judgment and order deserve no interference by this Court. The appeal needs to be dismissed.

4. The appeal stands dismissed.

(S.B. SHUKRE, J.)

Sanjay Nanoskar, P.S..