

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.376 OF 2002

Chandrakant Tukaram Gulbhile,
Age 47 years, Occ. Agri.,
r/o. Dipe Wadgaon, at present
at Vakilwadi Kain, Tq. Kaij,
Dist. Beed ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.S.P.Katneshwarkar, advocate for appellant

Mr.R.V.Dasalkar, APP for respondent - State

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 09, 2016

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the conviction of the present appellant for the offence punishable under Section 366 of Indian Penal Code and consequential sentence to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/- by the learned

Ist Adhoc Addl. Sessions Judge, Ambajogai, Dist. Beed in Sessions Case No.62 of 2000, present appeal is preferred by the original accused.

3] The prosecution case, in short, is as under :-

. That, the complainant PW 1 – Dattu Tapse had served as a driver over the tempo of present appellant for a period of two and half years before the alleged incident. Some dispute had arisen between them due to non payment of the salary. Therefore, in the month of February, 2000, the complainant had left the job of the appellant.

. In the situation, on 28th April, 2000, the complainant along with his wife Rajashri and daughter Usha were proceeding on foot by Kanadi road to Kaij. At that time, present appellant came by his tempo from behind. He asked the wife and daughter of the complainant to sit in the

tempo. Accordingly, both of them sat in the tempo. Thereafter, the appellant abused the complainant and by leaving him there, went away by the tempo with wife and daughter of the complainant.

. Thereafter, upto 4th May, 2000, the complainant made inquiry about his missing wife and daughter with his relatives and ultimately, filed complaint on 4th May, 2000 with Kaij Police Station.

. During investigation, the victim of the offence PW 3 - Rajashri was found at village Kallam. She was brought to Kaij Police Station. She made a statement to the Investigating Officer that in fact, she had some dispute with the complainant and she went to reside with her sister at village Kallam and that she did not want to cohabit with the complainant. She has also stated to the police that she had no complaints against anybody.

4] The appellant was tried for the offence. The complainant PW 1 - Dattu deposed on the line of the prosecution case. He added that at the time of taking away his wife and daughter, the appellant threatened him that if he would say something, the appellant may commit his murder. The appellant also told that as he was an ex-military man, even if he commit four murders, he would not be punished.

5] PW 3 - Rajashri, the victim, in the deposition box, however, made somersault. She deposed that in fact, the appellant had caught her hands and compelled her to sit in the tempo. The appellant threatened her that he would commit murder of herself, her daughter and husband. He left her husband i.e. the complainant on the road and took the tempo towards Ambajogai. He parked the tempo near a petrol pump at Ambajogai. At that time,

she and her daughter sneaked away by taking a chance that the appellant had stepped down from the tempo to bring something.

. In the cross-examination, when her earlier statement made to the police, was confronted to her, she deposed that she did not make said statement. Investigating Officer PW 5 – Police Head Constable – Dattatray Sonar proved the earlier statement.

. In the circumstances, the learned Addl. Sessions Judge believed the prosecution case and convicted the appellant, as detailed supra.

6] Learned counsel for the appellant submitted that the prosecution case was ridiculous and the learned Addl. Sessions Judge ought to have disbelieved the same.

7] On the other hand, learned A.P.P. submitted that the complainant as well as the victim have deposed that by use of force, the victim and her

daughter were taken away by the appellant and therefore, no fault can be found with the reasonings of the learned Addl. Sessions Judge.

8] On the basis of this material, following points arise for my determination :-

A] Whether the prosecution has proved that on 20th April, 2000 at about 5:30 pm. at village Kaij, present appellant had kidnapped and abducted the victim in order that she may be forced or seduced to have illicit intercourse ?

B] Whether the prosecution has further proved that on the given date, time and place, the appellant has given provocation to the complainant, knowing that it would cause the complainant to break the public peace ?

. My findings to the above points are in the negative. The appeal is therefore, allowed and the

appellant is acquitted from the offences, for the reasons to follow.

R E A S O N S

9] The complaint would show that the present appellant had simply asked the wife of the complainant to sit in the tempo. She obliged and sat into the tempo with her daughter and went away. It was the complaint of the complainant that during the said episode, the appellant abused him and inferred that the appellant abducted his wife for certain immoral purpose.

10] It is to be noted that though the alleged incident has occurred on 28th April, 2000, the complaint came to be filed on 4th May, 2000. In the complaint, it is explained that as the complainant was making search of his missing wife and daughter "with the relatives", the complaint could not be filed earlier

. The statement of the PW 3 - victim recorded by the police would throw light on this aspect of delayed complaint.

. While the complainant in the complaint has explained that as he was searching for his missing wife with the relatives, he could not file the complaint for five days, the statement of PW 3 - victim recorded by the police, would show that in fact, she had started residing with her sister and did not want to return to stay with the appellant.

. No doubt, PW 3 - Rajshri, victim, disowned her earlier statement in the witness box. The learned Addl. Sessions Judge could not have believed her statement made for the first time in the witness box.

. Besides this, during the cross-examination, this witness deposed that she managed to sneak away

from the clutches of the appellant just within two to three hours. She was, however, not found for about five days as per the complaint of the complainant himself.

11] If all these facts are taken into consideration, it can be definitely be concluded that the prosecution has failed to prove its case.

12] In the circumstances, the following order :-

A] The appeal is hereby allowed.

B] The impugned judgment and order dated 9th July, 2002 passed in Sessions Case No.62 of 2000 by the learned Ist Ad-hoc Addl. Sessions Judge, Ambajogai, Dist. Beed, convicting and sentencing the appellant for the offence punishable under Section 366 of Indian Penal Code, is hereby set aside.

. Instead, the appellant is acquitted from the said offence.

C] Bail bonds of the appellant shall stand cancelled.

D] Fine amount, if any, deposited by the appellant be refunded to him after a period of eight weeks.

Sd/-

[M.T. JOSHI, J.]

kbp