

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 875 OF 2015

1. Babaji @ Ananda Ramji Brahmne
Age 34 years, Occupation Agriculture
R/o Lohtar, Tq. Pachora,
Dist. Jalgaon.

2. Vasant Daga Bagul
Age 59 years, Occupation Service,
R/o Tarkheda, Tq. Pachora,
Dist. Jalgaon

Appellants

Versus

State of Maharashtra

Respondent

Mr. Joydeep Chatterji, Advocate for the appellants.
Mr. A.A. Jagatkar, APP for the respondent-State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 18th July, 2019.

ORAL JUDGMENT :

1. Heard learned counsel for the respective parties.

2. Accused no. 1 herein is convicted for an offence punishable under Section 363 r/w section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.5,000/- in default, to suffer simple imprisonment for one year whereas, appellant no. 2 is convicted for offence punishable under Section 376 (2)(g) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and fine of Rs. 5,000/- in

default, simple imprisonment for one year, by the Additional Sessions Judge, Jalgaon in Sessions Case No. 9/2010 vide judgment and order dated 25.11.2015. Hence this appeal.

3. Such of the facts necessary for the decision of this appeal are as follows :

PW 1 and PW 2 happen to be the parent of PW 4 Miss 'X' who is the victim in the present case. On 09.02.2004, PW 1 Bhika Girdhar Bramhane lodged a missing report at Pachora Police Station in respect of his daughter Miss 'X' who had left the house on 07.02.2004 as she was annoyed with her mother who had asked her to perform domestic chores in the house. Despite several efforts, Miss 'X' could not be found. It is pertinent to note that original accused no. 1 happens to be the first cousin of the victim and he resides in the neighbourhood of the victim. PW 1 had not raised any suspicion against the present appellants.

4. The victim returned home on 12.07.2004 and then narrated to her parents the ordeal that she had to go through for five months. According to her, on the date of the incident, accused no. 1 herein came to their house and informed the victim that accused no. 2 would secure a job for her and therefore, she should meet him. He had asked her to accompany him to Pachora railway station. Accused no. 1 and his wife Shobhabai had taken the victim to Pachora railway station and handed over her to accused no. 2 Vasant. Accused no. 1 Babaji had asked the victim to accompany accused no. 2. Thereafter accused no. 2 had taken the victim to Nasik where they stayed in a lodge. Accused no. 2 had

called the original accused no. 3 and 4 (Vijay and Dinesh) to railway station to take them to a lodge. Dinesh and Vijay had administered liquor to the victim. Dinesh had sexually assaulted the victim and thereafter she was in the company of accused no. 2 Vasant who had sexually abused her for a period of 15 days continuously. Vijay and Dinesh parted their company after they had supplied a bottle of liquor and food to accused no. 2 and the victim. He used to administer liquor and food to her and thereafter subject her to sexual assault. After 15 days, she had accompanied Dinesh to Kalyan. There they stayed for one month in a hotel. Dinesh had employed her in a dance bar. He used to accompany her to the dance bar everyday and used to sexually assault her. Dinesh had introduced the victim to one Mansoor who had solicited to marry her. Thereafter Mansoor had taken her to lane no. 13. There she was kept with Shantabai and compelled into prostitution. She stayed at that place for about four and half months and thereafter she begged before Mansoor to release her as she wanted to visit her parents. He dropped her to Chalisgaon. Then she came to Pachora. As she was not keeping good health, she lodged the report after two to three days.

5. The sterling testimony of the victim has not been seriously challenged by the defence. Instead, it is elucidated in the cross-examination that Shantabai was a brothel keeper. Mansoor had left the victim in the custody of Shantabai, who had compelled her into prostitution. There were 12 other girls residing with Shantabai. The victim had no reason to make any complaint against the other girls. She has specifically stated that she could not converse with the other girls as they were well versed only with

Kannada language. Besides that, there is nothing on record to even remotely indicate that the accused have been falsely implicated.

6. Learned counsel for the appellants vehemently submits that there is an admission in the cross examination that even prior to the incident, the victim had been to Erandol, she was wandering in the village and she was brought back home by the police. The said fact cannot be disputed since PW 1, father of the victim, has also admitted the same. Learned counsel for the appellants submits that the victim was in a habit of withdrawing herself from the custody of her parents on trifling reasons and therefore, appellant no. 1 cannot be convicted under section 363 of the Indian Penal Code as the victim had voluntarily accompanied him.

7. The record would indicate that the police had arrested Dinesh and Mansoor however, they were enlarged on bail after filing of the charge-sheet and since then they are absconding. Trial against the absconding accused has been separated.

8. As against this, learned APP rightly submits that it would be incumbent upon the Court to appreciate the conduct of accused no. 1 as contemplated under Section 8 of the Indian Evidence Act. It needs to be noted that accused no. 1 happens to be the first cousin of the victim. He resides in the neighbourhood of the victim. He was fully aware that the victim has accompanied Vasant as he was the same person who had handed over her to the custody of Vasant and yet he maintained silence for five months. This by itself would indicate that he had intentionally induced the

victim to withdraw herself from the custody of her parents by luring her with lucrative job at the behest of accused no. 2 and yet he maintained silence. Therefore, it would not be necessary to intervene with the judgment and order thereby convicting accused no. 1 for offence punishable under Section 363 of the Indian Penal Code.

9. Learned counsel for the appellants submits that infact, appellant no. 2 was about 49 years of age at the time of the incident and as on today, his age is more than 65 years and therefore, he deserves leniency mainly on health grounds since he was once released on temporary bail as he was ailing. Learned APP submits that infact he was admitted in J.J. Hospital in Mumbai by the jail authority and in order to take proper care of his health, he is lodged in Byculla jail. Therefore, sympathy or leniency on the ground of age would not be available for him.

10. It is more than clear that the evidence of victim inspires confidence and moreso, since the prosecution has proved guilt of the accused beyond reasonable doubt, the appeal deserves to be dismissed.

11. Accused no. 1 Babaji @ Ananda Ramji Brahmne shall surrender before the learned Sessions Judge, Jalgaon, before 31st July, 2019. In the eventuality he fails to appear before the police, the police shall arrest him and take him into custody.

12. The sentence of fine is maintained.

13. Learned APP submits that he would inform the concerned Superintendent of Police forthwith about dismissal of the appeal and to take accused no. 1 into custody at the earliest.

14. Appeal is accordingly dismissed.

(SMT. SADHANA S. JADHAV, J.)

dyb/

{7}

criappeal875.15.odt