

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.341 OF 1997**

Rajanish alias Pawan Prakash Gujar,
Aged : 22 years, Occ.: Business,
R/o : 313, Prasanna Park,
Shankar Sheth Road, Pune

.... Appellant

Vs.

The State of Maharashtra

.... Respondent

Ms. Simantini Mohite I/by Mr. M.S. Mohite for the Appellant
Mr. S.R. Agarkar, APP for the State.

**Coram : Smt. Sadhana S. Jadhav, J.
Date : 3rd June 2019**

JUDGMENT :

1. Heard the learned counsel for the parties.
2. The appellant herein is convicted for the offence punishable under Section 366 read with 34 of the Indian Penal Code and sentenced to suffer simple imprisonment for six months and fine of Rs.5,000/-, in default, simple imprisonment for two months by the learned 6th Additional Sessions Judge, Pune vide judgment and order dated 27th May 1997 in Sessions Case No.17 of 1996. Hence, this appeal.

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

The father of victim-Ms."X" happen to be the business partner of father of the accused-appellant. They were dealing in a screen printing business. The accused used to visit the house of the victim quite often since they happened to be family friends. It is also the case of the prosecution that the victim also used to visit the firm and most of the times, the accused was in the office when she visited. The incident is dated 11th August 1995. It is alleged that at about 7.00 am., the victim was proceeding to her College alongwith her friend PW-3. It is alleged that the appellant had followed the girls in a red coloured car. The appellant was accompanied by his friends. The appellant had insisted upon the victim to board the car and accompany him. She had refused to oblige and had entered into compound of Tarachand Hospital alongwith her friend. The accused-appellant had followed her, caught hold of her hand and she was forced to sit in the car. The car was driven on Pune-Solapur road. It is also alleged that the appellant was forcing her to marry him and had informed her that all preparation for marriage have been made.

He had also disclosed that he had made preparations for her further education. She insisted that she wanted to return home. However, upon her persistent requests, the appellant-accused had finally turned the car and driven towards Pune. At the signal, the car halted. She had alighted from the car and had taken auto-rikshaw, returned home and informed her parents about the same. The parents had lodged a report, on the basis of her information. Crime No.113 of 1995 was lodged against the appellant-accused at Samarth police station. The accused was taken into custody on the same day.

4. At the trial, the prosecution has examined seven witnesses to bring home the guilt of the accused. The case rests upon the evidence of the victim-PW2, her friend PW-3, who had accompanied her and her mother PW-5.

5. According to PW-2-victim, she was studying in 11th standard and she normally used to leave her home for school at about 6.30 to 6.45 am. She has deposed before the Court in consonance with her F.I.R.. She was confronted with the greeting cards, which she had sent to the accused. She has disowned the

handwriting on the greeting cards. In the cross-examination, she has admitted that she had rather sent greeting card to the accused. She has denied that she had accompanied the accused voluntarily. The greeting cards are exhibited and they are at Exhibit '22' collectively. The greeting cards were sent to the handwriting expert and the opinion of the handwriting expert (Exhibit 32) is that on comparison, the handwriting on the greeting card and that of the victim are similar in nature. Suffice it to say that the greeting cards were sent to the appellant by the complainant.

6. PW-3 is Ms. Preeti Katariya who had accompanied the victim at the time of the incident. She had made frail attempts to corroborate the evidence of the victim and her father. In the cross-examination, she has admitted that she was with the victim, when the victim was talking with the accused in front of Tarachand Hospital. She had allegedly informed PW-1 about the fact that the victim was taken away by the accused.

7. It appears that even before the victim had returned home, PW-1 had been to Tarachand Hospital and when he did not find his

daughter there, he had lodged a report, which is at Exhibit 16. According to him, the father of the accused and his nephew were partners in printing business. It is pertinent to note that in the same breath, PW-1 has stated that PW-2, the victim, had returned home at about 9.30 am. In fact, Tarachand Hospital is at a distance of hardly 10 minutes from the house of the victim. PW-1 has denied to have stated the portion marked "A" in the F.I.R., which reads as "upon hearing hue and cry from the car, some people had apprehended the car and noted the registration number of the car as MMF-9020". According to PW-1, the said fact was informed by his daughter PW-2. However, she has denied to have informed accordingly to her father. The narration has been blown out of proportion. It is pertinent to note that the mother of the victim PW-5, Pratibha Lahote has specifically admitted that on 11th August 1995, her daughter was not wearing a school uniform. She had left the house in the morning at about 6.30 to 6.40 am.

8. In this case, the defence of the accused needs to be taken into consideration. In the statement under Section 313 Cr.P.C., the accused has specifically stated that the victim was not only

acquainted with him being family friends, but also they were in love for about three years. Their relation was not liked by the parents of the victim and they had expressed the same on more than two occasions. He has also informed the Court that in fact the parents of the victim i.e. PW-1 and PW-5 were looking out for prospective proposals. However, the victim had vowed her love for him and was insisting upon getting married to the accused. The victim had contacted him two days prior to the incident and had informed him that since there is a strong opposition by the parents, in the eventuality, he refused to marry her, she would prefer to commit suicide rather than getting married to anybody else. That she had also informed him that on 11th August 1995, she would not be wearing her school uniform and that she would meet him at Tarachand Hospital and from there they should proceed together.

9. Learned APP, at this stage has fairly pointed out the seizure of clothes, which is at Exhibit 12 and which shows that the clothes of the victim was a pink coloured frock. The same is corroborated by PW-5. Learned counsel for the appellant also submits that in fact it was neither a week end nor her birthday that

she would not be going to school in her school uniform and this would be sufficient to show that she had called the accused to meet her near Tarachand hospital, had voluntarily accompanied her. The statement of the accused would inspire confidence of the Court. The story as narrated by the victim is also unbelievable that when the car had stopped at a signal, she had simply alighted, taken auto-rikshaw and reached her house. This Court cannot be oblivious of the fact that the accused, even according to the prosecution, without any persuasion had returned to Pune, would show that there was no element of kidnapping, abducting or inducing the victim to compel her marriage, lest she causes any harm to herself. It is pertinent to note that no injury was caused to the victim in the said transition.

10. Learned counsel for the appellant further submits that only because the parents were against the relationship between the victim and the appellant/accused, the victim was pressurised to lodge a false F.I.R. and hence the accused has been falsely implicated. In view of the above discussion, the accused/appellant deserves to be acquitted of all the charges levelled against him. Hence, the following order :

O R D E R

- I) The appeal is allowed.
- II) The judgment and order of conviction passed in Sessions Case No.17 of 1996 by the learned 6th Additional Sessions Judge, Pune on 27th May 1997 is hereby quashed and set aside.
- III) The accused-appellant is hereby acquitted of the charges levelled against him.
- IV) Bail bonds of the accused-appellant shall stands cancelled. He be set at liberty.
- V) Fine amount if paid, be refunded as per rule.

(Smt. Sadhana S. Jadhav, J)