

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 241 OF 2002
CRIMINAL APPEAL NO. 242 OF 2002
CRIMINAL APPEAL NO. 243 OF 2002
CRIMINAL APPEAL NO. 258 OF 2002

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CRIMINAL APPEAL NO. 241 OF 2002

Ajmerkhan s/o. Supdu Khan Pathan Age. 43 years, Occ. Labourer, R/o. Nanegaon, Tq. Sillod, Dist. Aurangabad.	..	Appellant [ori. accused No.1]
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Versus

The State of Maharashtra	..	Respondent
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WITH
CRIMINAL APPEAL NO. 242 OF 2002

1. Rajmal s/o. Hari Bahiram Age. 43 years, Occ. Service, R/o. Room No.2, Building No.10, Police Colony, T.V. Centre, Aurangabad. <u>[Appeal abated as against appellant No.1 as per order dated 20.09.2016]</u>	..	Apellants [ori. accused Nos. 2 and 4]
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2. Deelip s/o. Sudam Shejul Age. 34 years, Occ. Nil, R/o. Behind Chelipura Police Chowki, Aurangabad.		
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Versus

The State of Maharashtra

.. Respondent

**WITH
CRIMINAL APPEAL NO. 243 OF 2002**

Khalil Anil s/o. Ajagar Ali
Age. 37 years, Occ. Labourer,
R/o. Aurangabad.

.. Appellants
[ori.accused No.5]

Versus

The State of Maharashtra

.. Respondent

**WITH
CRIMINAL APPEAL NO. 258 OF 2002**

Gajanan s/o. Sudhakar Bhalerao
Age. 31 years, Occ. Driver,
R/o. Quarter of CTR, House No.21,
N-7, CIDCO, Aurangabad.

.. Appellants
[Ori.accused No.3]

Versus

The State of Maharashtra

.. Respondent

Mr.N.L. Jadhav, Advocate for the appellants.
Mr.P.M. Kulkarni, APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	05.04.2023
PRONOUNCED ON	:	05.06.2023

J U D G M E N T :-

01. These appeals are by original accused challenging the judgment and order dated 02.05.2002 passed by the learned Sessions Judge, Jalna in

Sessions Case No.43 of 1998. Since all the appeals are arising out of the same judgment and same offence, all are taken together. After filing Criminal Appeal No. 242 of 2002, appellant No.1 Rajmal Hari Bahera died and therefore the appeal to his extent is abated.

02. The accused were tried for the offences punishable under sections 366 and 447 read with section 34 of the Indian Penal Code. They were convicted for both these offences. For offence punishable under section 366 of the IPC, they were sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs.500/-, in default, to suffer further rigorous imprisonment for one month. For the offence punishable under section 447 of the IPC, they were directed to suffer rigorous imprisonment for one month and to pay fine of Rs.100/-, in default, to suffer rigorous imprisonment for one week.

03. The story of the prosecution in short is that on 20.08.1995 one Harischandra-PW.1 filed a complaint that his daughter, namely, Gitabai P.W.2 was forcibly taken by the accused persons with them with a view to seduce her for illicit relations with accused No.1. A complaint was lodged with Police Station, Bhokardan. The marriage of P.W.2-Victim was performed with one

Nandram Manjarde of village Borgaon, Tal. Sillod. From the marriage she has one son and one daughter. Initially she stayed with her husband. While staying with her husband, accused No.1 came in contact with the husband of Geetabai for purchase of 2 cows. The amount for the cows was not paid immediately. The victim, therefore, had been to take the amount to accused No.1 at Bharadi. In the market she met accused No.1. Under some pretext he took the victim at a distant place, pushed her in taxi and took her away. She was with accused No.1 for some time thereafter. On a report of her husband, police traced her along with accused No.1 and she was brought back. She was produced in the Court where she expressed that she wants to reside with her father and since thereafter she was residing with her father. This was because of her husband was not ready to accept her after the incident. She, therefore, started residing with her parents at village Ibrahimpur in the field.

04. On the date of incident it is alleged that accused Nos.1 to 5 came to field of complainant in a car and parked it near the field. They started threatening the complainant that they will take the victim with them. On that the informant and brother of the victim started abusing. However, accused No.1 by holding hand of the victim pulled her in the car. It is further alleged

that other accused persons physically lifted her and put her in the car. Therefore, brother of the victim started shouting. On listening the shouts, the neighbours and villagers came to the spot and stopped accused persons. On getting intimation of this incident, police party came and the accused were handed over to the police. On this, the complaint was lodged. The offence was investigated and a charge-sheet came to be filed.

05. In support of the case, the prosecution examined nine witnesses Trial Court recorded finding that the accused are guilty of the offences punishable under sections 366 and 447 read with section 34 of the Indian Penal Code by way of the impugned judgment and awarded sentence as mentioned above.

06. P.W.1-Harischandra in his deposition deposed that marriage of the victim had taken place about 10 years before the incident with one Nandram Manjarde of Borgaon. Accused No.1 had purchased two cows from her husband, however, the amount was not immediately paid. The victim had therefore gone to collect the amount from accused No.1 at Bharadi in weekly bazaar. This incident took place after 5-6 years of the marriage. When she

met accused No.1 for demanding the amount, he took her in a jeep. Thereafter, they could not get her whereabouts. The husband of P.W.1's daughter lodged report in the police station about the incident. She was traced by the police and was produced before the Court. In the Court she expressed that she wants to reside with her father. Again after 7-8 months after the incident, 4-5 persons came to his house. Out of them, one was accused No.1 to whom he was knowing and to others he was not knowing. He could not identify other accused persons.

07. In the cross-examination, he accepted that on first occasion when accused No.1 had taken the victim, that time she stayed with him for three weeks. He did not make any inquiry with her as to whether she has married with accused No.1. He denied suggestion that she had gone with accused No.1 on her own. He denied suggestion that chapter case was filed against him and his family members on a complaint of the victim that there was danger to her life from these persons. He accepted that he had not stated to the police that while taking the victim with them accused have threatened the family members. He could not give names and description of the persons who were accompanied accused No.1. He could not tell whether accused Nos.2 to

5 were present with accused No.1 at the time of the incident.

08. The victim is examined as PW-2. About the earlier incident, she stated that she had been to weekly bazaar for taking money from accused No.1. He took her at some distance and pushed her in a taxi. However, she could not understand as to where she was taken. She could not state as to for how many days she was with accused No.1. Thereafter, she submits that her brother lodged complaint with police station and therefore police searched her. In the Court she stated that she wants to go with her father and therefore she started staying with her father, as her husband did not take her with him. About 5-6 months after the incident, the incident in question took place. She identified all the accused persons. She told that all these accused persons took her in one Maruti car of white colour. She identified accused No.1 as a police constable. She could not give names of other accused persons. She could identify them by looking at their face. She stated that she was forcibly taken by the accused persons.

09. In the cross-examination, she admitted that she did not resist accused persons. She denied that she married with accused No.1 on

22.03.1995. She denied that she lodged any report against her father and brother with the police stating that there was threat to her life from her father and brother.

10. PW.3-Jaising is brother of the victim. He deposed that on the day of the incident all the family members were in the field, weeding grass from the crop. The accused persons came to the field and took the victim with them forcibly. This witness could not identify accused No.3 i.e. appellant in Criminal Appeal No.258 of 2002. He could not tell whether accused No.3 was present or not. He deposed that his father had gone to call police and on that police came to the spot and accused were taken in the custody.

11. In the cross-examination, P.W.3 accepted that he had not stated before the police that accused No.1 caught hold of the victim. He accepted that he did not lodge report with the police in respect of first incident.

12. Next witness is P.W.4 - Tukaram Godaskar, owner of vehicle in which it is alleged that the victim was taken. He deposed that accused No.3- Gajanan was driver of the car and was also knowing the work of repairing of

the car. He deposed that accused Nos.3 and 5 had work-shop of welding. On the date of incident accused Nos.3 and 5 took the car for personal work. On next day there was news in the newspaper regarding the incident along with photograph. He identified car in the newspaper that it was his car. He deposed that accused No.1 had requested for car to go to Phulambri and he had given statement to that effect to police. His evidence is only to the extent that his car was taken by accused persons.

13. P.W.5-Ramsing is panch. He was called near white colour car bearing No. MRH 6019. The police seized the car.

14. P.W.6-Govindsing is cousin of father of the victim. He stated about the incident that he went there on hearing commotion of the complainant and his family members. He saw the victim being taken and pushed in the car forcibly. He could give name of accused No.1 only and he could not give names of other accused persons. In the cross he deposed that he came out of the house only on hearing the commotion. He stated that he had seen the victim and being put in the car.

15. PW.7-Deosingh is neighbour of the complainant. He was present in his field when the incident took place. He came to the spot on hearing the commotion. He identified accused Nos.1,2,4 and 5. However, he could not identify accused No.3. He also deposed that accused persons were apprehended and were handed over to the police. In cross-examination he accepted that his field was at a distance of about 1 km from the main road. He accepted that he did not see as to who actually put the victim in the car, as when he reached to the spot the victim was already in the car. The victim was also making commotion and she was not ready to go along with the accused. From the cross, omission is taken on record about the statement that accused No.2 was posing himself be a person from police force. He could not tell anything about earlier incident.

16. PW.8-Pralhad Chaudhari is police officer. He deposed about the complaint received by the police lodged by father of the victim. He took the complaint under his handwriting and registered the crime and handed over diary to the Assistant Sub-Inspector.

17. The last witness is PW-9-Tulshiram Navale i.e. the Investigating

Officer. He deposed in his evidence that in the field, crop of ginger was standing when he visited the spot. He called two panchas and prepared spot panchanama. He could not give registration number of white colour car. He seized the car. He arrested the accused persons and did the further investigation. In the cross-examination, he stated that the accused had no injuries. He could not give as to how it is mentioned in his statement. He could not tell whether accused No.1 had married with the victim.

18. On this evidence, the learned Advocate for the appellants submits that as a matter fact the victim and accused No.1 were married to each other, by inviting attention to Exh.83 i.e. memorandum of marriage issued by the Registrar of Marriage, Dhule, showing that the marriage had taken place on 20.03.1995. He further submits that the complainant could not identify other accused persons except accused No.1. From the evidence it is seen that the victim had stayed with accused No.1 for some period prior to 5-6 months of the incident. PW.2 Victim has also accepted that she stayed with accused No.1 for three weeks. All these facts necessarily go to show that in-fact it is because of relation between the parties accused No.1 had come to take the victim. None of the witness could give more details about this relation. However,

from the conduct of the victim and vague answers given by other accused on this aspect clearly shows that no ingredients of section 366 of the IPC are made out, submitting that there is no definite finding to show that the victim was being taken for marriage or for illicit relation. The charge is non-specific so far as this aspect is concerned. He relies upon judgment reported in 1979 AIR SC 1494 in the case of Ghotf Lal & Anr. Vs. State of Haryana and another judgment reported in 2006 AIR (SCW) 3212 in the case of Gabbu Vs.State of Madhya Pradesh and a judgment of Supreme Court in Criminal Appeal No.459 of 2016 in the case of Kavita Chandrakant Lakhani Vs. State of Maharashtra & Ors.

19. The learned APP submits that all the witnesses are consistent on the point of presence of the accused persons and trying to take away the victim by use of force. Accused No.1 is clearly identified by all the witnesses. PW.2 has identified all the accused persons. There is no discrepancy in the evidence of PW-3. He submits that the incident is clearly proved. The witnesses have specifically denied the suggestions that the victim was married with accused No.1 and under such circumstances, he submits that the learned Trial Court has rightly appreciated the evidence and has convicted the accused

persons. He submits that the appeals, therefore, deserve to be dismissed by holding the conviction.

20. This Court has gone through the judgments cited above. In the case of Ghotf Lal (Supra) the Hon'ble Apex Court has held that for maintaining conviction under section 366 of the IPC, mere finding that a person was abducted is not sufficient. It is necessary to show that if a woman is abducted for the purpose mentioned in section 366 of the IPC, in that case it was held that the prosecution could not prove these facts and the accused came to be acquitted by setting aside the judgment of the High Court confirming the conviction awarded by the Trial Court.

21. In the case of Gabbu (Supra) the Hon'ble apex Court has considered that to prove offence under section 366 of the IPC, mere finding that a women was abducted is not enough. It is necessary to further prove that the accused abducted women with an intention that she may be compelled or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

22. In the judgment in the case of Kavita (Supra), the Hon'ble Apex Court again reiterated these considerations, holding that mere abduction is not sufficient.

23. This Court, therefore, holds that the material on record in this case is short of making out case under section 366 of the IPC, especially in view of the fact that there is marriage certificate on record showing that the victim had married with accused No.1. From these material, there is reason to believe that there was a marriage. There is no specific denial of this fact by any of the witnesses. In the cross the answers are vague. There is no reason to disbelieve that the victim has accepted in her cross that she had stayed for three weeks with accused No.1. There is no evidence to show that she was staying there without her will or she had made any hue and cry on that.

24. So far as offence under section 447 of the IPC is concerned, this Court finds that even in this case, the ingredients are not proved. For that it needs to be proved that the tracepass is with an intent to commit an offence. From the evidence it cannot be said that these accused had entered the

property with intent to commit offence or to intimidate any person or the property. The learned Sessions Court has mainly considered that some incident has taken place where the victim was forcibly tried to be taken with the accused persons. The Trial Court has not taken into consideration that there was sufficient material to create doubt about the prosecution case, in view of the possibility of marriage between accused No.1 and victim and for this reason the accused persons had come to fetch her. Therefore, this Court finds that the conviction and sentence deserves to be quashed and set aside. Hence, following order :-

ORDER

- i) The Criminal Appeals are allowed.
- ii) The judgment and order dated 02.05.2002 passed by the learned Sessions Judge, Jalna in Session Case No.43 of 1998 is quashed and set aside.
- iii) The appellants are acquitted of the offences punishable under sections 366 and 447 read with section 34 of the Indian Penal Code. The fine amount, if any, paid by the appellants be refunded to them.
- iv) Appellants to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

[KISHORE C. SANT, J.]