

Gautam Sahebrao Khande & Anr. .. Appellants
Versus
State of Maharashtra .. Respondent
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CORAM: BHARATI DANGRE, J.
DATED : 27th OCTOBER, 2023

1 On 28/11/1995, one Pundalik Manore, resident of Jivdanipada, Vasai, District Thane, lodged a complaint informing that his daughter who is married 6-7 months prior, but presently in his house, went missing. When inquiries were made in the neighbourhood, it is revealed that she accompanied a lorry driver, Gautam Khande and therefore, he reached his house and questioned him about his daughter but he gave evasive response. When he was brought to the police station, he disclosed that he had kept her in the house of one Ramsevak Yadav in Vasai. When the search was carried out, his daughter was not traced and hence, the complaint was registered.

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accused nos.1 and 2 along with one third person.

The daughter of the complainant returned to her house on the next day but the prosecution against the accused continued and on completion of investigation, a charge-sheet came to be filed.

2 The Sessions Judge, Palghar charged the accused of inducing the minor girl under the age of 18 to proceed from Jivdanipada with an intent that she is likely to be forced to illicit intercourse.

As the accused persons pleaded not guilty, they were tried in Sessions Case No. 906 of 1996.

3 In support of the prosecution case, the complainant entered the witness box as PW-1 and he proved the complaint lodged by him (Exh. 14). He deposed before the Court that he went to Virar Police Station and lodged a complaint against the accused no.1, by expressing doubt upon him as he was working as a driver at the stone quarry.

When subjected to cross-examination, he categorically admit that since a quarrel had ensued with his daughter, she left her house voluntarily and on the next day she returned, but she did not disclose any details to him.

PW-1 deposed before the Court that at the time of the incident his daughter had attained 19 years of age and she was already married.

4 The victim herself stepped into the witness-box as PW 3 and before the Court, she testified that she was acquainted

with accused no.1 Gautam, as he was the driver of the truck and he abducted her from Virar and took her to Vasai and kept her in the house of accused no.2. It is her version that she was kept in his house for one night and then accused no.2 dropped her at Virar and she reached the house of her parents.

She deposed that she was aged 12, when the incident had taken place. She denied the suggestion that she had left the house on account of some quibble. She also denied the suggestion that she was aged 19 when the incident took place and she had concocted the story.

5 In order to establish the age of the victim, a teacher PW-2, a teacher from Navjivan School is examined by the prosecution, who has brought on record the extract of the School Admission Register, which has an entry of the date of birth of PW-3, as 7/08/1981, and it was recorded that she left the School on 15/06/1990. PW-2 admitted that on 22/07/1988, she was not serving in the School and she had no personal knowledge in respect of the entry at No. 335 at Exhibit-17.

The Investigating Officer, PW-4 is also examined, as he arrested the accused no.1 on 28/11/1995 and accused no.2 on 29/11/1995 and filed the charge-sheet. The Officer categorically state that he had recorded the statement of the victim, who had given her age as 19 years on 28/11/1995.

6 It is in light of this evidence, the Additional Sessions Judge, Palghar recorded a finding that the evidence and circumstances placed before him are conclusive in nature and accused nos.1 and 2 are guilty of the offence of kidnapping a

minor girl, but since no involvement of accused no.3 was shown, he was acquitted of the charge.

Upon recording of the finding of guilt against the two accused persons, they were sentenced to undergo or suffer Rigorous Imprisonment (RI) for three years and to pay fine of Rs.1000/- each, in default to undergo Rigorous Imprisonment for one month.

7 The present appeal is filed by the two appellants, on being aggrieved by the finding of conviction and the sentence imposed upon them by the impugned order.

On the appeal being admitted, the appellants were released on bail and the sentence imposed on them was suspended by order dated 13/07/2004.

8 I have heard Advocate Ms. Leena Patil, who is appointed by the Legal Services Authority to represent the appellants. I have also heard the learned APP, Mr. Agarkar for the State and perused the Record and Proceedings placed before me.

Both the appellants stand convicted for committing an offence under Section 366A of IPC, which punishes procurement of minor girl. The Section reads thus:

Section 366A -

“366A. Procurement of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl maybe, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and

shall also be liable to fine”.

The necessary ingredients of the offence under Section 366A, which could be deduced from the said Section is inducing any minor girl under the age of 18 to go from any place or to do any act with intent, that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person. In order to establish the offence under Section 366A, it is necessary to prove that a minor girl, under the age of 18 is abducted or kidnapped by inducing her, or with an illegal intention, and upon such act being established against an accused, he shall suffer a punishment under Section 366A, which make procurement of a minor girl a punishable offence. It is necessary to establish intention on the part of the offender, that the girl may be forced or seduced to sexual intercourse with another person or the offender must know that such girl is likely to be forced or seduced to illegal intercourse.

The offence provided under the provision is attracted when it is established that there is inducement, with a particular object and when after the inducement, the offender offers the girl for illicit intercourse or she is seduced by any person.

Hence it is necessary to find out, whether the ingredients of the above Section are established by the prosecution, through reliable and cogent evidence, in this case.

9 Section 366A is attracted, when the girl is below 18 years of age and the case of the prosecution is shaky and unreliable on this aspect.

PW-1, the father of the complainant has deposed before the Court that at the time of incident, his daughter was aged 19 and this appear to be a truthful version as he has also deposed that she was married and necessarily she must have attained 18 years of age.

In the complaint, the father has narrated that 6 to 7 months prior, his daughter was married.

10 PW-3, the victim girl has deposed that she was 12 years of age when the incident took place, whereas the Investigating Officer in his cross-examination has admitted that the victim has given her age as 19 years on 28/11/1995, when he recorded her statement under Section 161. Though in the cross-examination she admit that while recording her statement she had given to the police her name, address and age and she also categorically admit that in the year 1995 she was married.

An attempt is made to establish the age of the victim by the prosecution by examining the teacher at Navjivan School, who also did not lend any certainty, as what was produced by PW-2 is the certified copy of the Extract of School Register, where the date of birth of PW-3 is recorded as 7/08/1981 and the date of her School leaving is recorded as 15/06/1990 and the date of her admission is reflected as '22/07/1988', when she was admitted in 1st standard. However, the necessary details about the documents on the basis of which the entry was recorded, is not brought on record by the prosecution as PW-2 has admitted that she had no personal knowledge in respect of the said entry at Exhibit 17.

Thus the prosecution has conclusively failed to establish that the victim was minor and since it charged the accused with Section 366A, it was the duty of prosecution to prove the relevant aspect/fact.

11 Another important ingredient of Section 366A being inducement of a minor girl to go from any place with an intent that she will be forced or seduced to illicit intercourse and this ingredient is conspicuously absent in the case of the prosecution. Though PW-3 on material aspect contradicts PW-1, who has admitted in the cross examination that the girl had left the house after a quibble, it is her version that accused no.1 abducted her by deceit and she was taken to Vasai and she was kept in the house of accused no.2. According to the victim, she was knowing Gautam Khande and as per her father, when he lodged the complaint, he expressed suspicion on the accused as he was informed by a lady in the neighbourhood that she had eloped with lorry driver Gautam and therefore, search was taken for them.

12 The inconsistency in the prosecution case is glaring. As per the complainant, PW-1, after lodging a complaint on 28/11/1995 his daughter returned home on the next day but did not disclose him anything, whereas, as per the victim, accused no.2 left her at Narangiphata, Virar and she returned to her father's house and thereafter visited the police station. The prosecution has failed to establish the intent for which the victim was induced, as it is not her version that she was forced or seduced to illicit intercourse and for this reason, the offence

under Section 366A is not made out by the prosecution and rather on the very first premise about the minor age of the victim itself the prosecution case has faltered.

It is the duty of the prosecution to prove its case beyond reasonable doubt by bringing on record cogent and reliable evidence, but in this case, when the evidence on record is appreciated, which is full of contradictions and inconsistencies, and create a doubt, the benefit of this doubt must go to the accused persons, as the prosecution has failed to prove its case beyond reasonable doubt.

The impugned judgment which has failed to appreciate the loopholes in the case of the prosecution, therefore cannot be sustained and it deserve to be quashed and set aside.

For the reasons recorded above, the impugned judgment dated 18/03/2004, passed by the Ad-hoc Additional Sessions Judge convicting the appellant Nos. 1 and 2 for committing an offence under Section 366A is quashed and set aside.

Both the appellants are acquitted from the charge under Section 366A r/w 34 of IPC and their bail bonds stand cancelled.

The Appeal is allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)