



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 77 OF 2006

1. Satish @ Satyanarayan S/o Bhairavsingh Girigujar
Age: 27 yrs., Occu.: Labour,
R/o.Village Panwadi,
Tq. & Dist.Sajapur, Madhya Pradesh.
 2. Sow. Anita w/o Satish Girigujar
Age: 22 yrs., Occu. : Labour,
R/o. As above.
-Appellants

Versus

- . The State of Maharashtra,
through Police Station Railway Purna,
Tq.Purna, District : Parbhani.
-Respondent

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Advocate for Appellants : Ms.Archana Jadhavar (Appointed)
APP for Respondent : Mrs.Ashlesh S.Deshmukh

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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 22 OCTOBER, 2024
PRONOUNCED ON : 25 OCTOBER, 2024**

JUDGMENT :-

1. Instant appeal takes exception to judgment and order dated 12-01-2006 rendered by learned 3rd Adhoc Additional Sessions Judge, Parbhani in Sessions Trial No.93 of 2005 recording guilt of the appellants for offence under Section 363 read with 34 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. In trial Court, both above appellants were chargesheeted on the premise that on 24-03-2005 they abducted and kidnapped informant's daughter and his minor granddaughter with intent to compel informant's daughter to marry against her will and further force her to indulge in sexual intercourse.

On report of PW1 Peeraji at exh.11, crime was registered for offence under Sections 363, 366, 366A read with 34 of the IPC and tried by 3rd Adhoc Additional Sessions Judge, Parbhani vide Sessions Trial No.93 of 2005.

On appreciation of oral and documentary evidence, learned trial Judge acquitted both accused from charge under Sections 366 and 366A read with 34 of the IPC, but convicted them for offence under Section 363 read with 34 of the IPC. Hence, instant appeal.

SUBMISSIONS**On behalf of appellants :**

3. Learned Counsel for the appellants challenged above judgment on the ground that prosecution has miserably failed to prove its case and charges beyond reasonable doubt. Leaned Counsel took this Court through the evidence of prosecution witnesses, more

particularly, PW1 informant, his daughter PW2 and minor girl PW3 and would submit that they are not consistent and are not supporting each other on material count. That their evidence is full of material omissions, contradictions and they are at variance with each other.

4. Learned Counsel submitted that very informant's evidence is confusing. She emphasized that for almost more than two months informant has not lodged missing report of his own daughter or grand daughter. That delay of more than two months has occurred in lodging report of which there is no plausible explanation. She pointed out that he informed that his daughter, who was a widow, had left the house with her own daughter to visit her brother's place. That he claimed that he learnt that she did not reach there and she was searched for, but still no missing report was lodged with Police authorities.

5. She further submitted that PW2 Mainabai, who was said to be a victim, has alleged that she was abducted, but her testimony categorically shows that she herself accompanied the accused. There is no element of force or inducement. That her version is falsified by her own daughter PW3, as according to learned Counsel, PW3, the

minor, has admitted that accused and PW2 Mainabai and her daughter PW3 were travelling in different bogies and therefore, there is no question of abduction. She pointed out that there was no attempt to raise alarm or inform anyone about alleged abduction and therefore, she questions the credibility and veracity of evidence of PW2 Mainabai. Learned counsel pointed out that there is no evidence to show that victim was taken or sold as is alleged by her. Learned counsel pointed out that the man to whom she was allegedly sold is not surprisingly apprehended and even no investigation has been carried out in that regard, to which it is pointed out that there is clear admission by very Investigating Officer. For all above reasons, she questions the very charge and case of prosecution.

Taking this court through the evidence of minor PW3, learned Counsel pointed out that her version does not tally with her own mother PW2 in whose company she was for several days. According to learned Counsel, minor's evidence gives a different complexion to the story of prosecution. That her evidence cannot be readily accepted as there is every possibility of child being tutored by PW1 grandfather, PW2 mother and PW4 Shanker.

6. Learned counsel also criticized evidence of PW4 Shanker, who

allegedly informed PW1 informant about seeing PW3 on the Railway Station and further being brought to Police Station. Learned Counsel pointed out that both PW2 Mainabai and PW3 admitted in cross-examination that they never gave statement to Police.

7. Lastly, it is submitted that in the entire prosecution evidence, required ingredients for attracting offence of Section 363 of the IPC are patently missing. That there is no evidence of taking away or inducing in any manner and therefore, she questions both the findings and conclusion reached at by learned trial Judge, when according to learned Counsel, trial Court itself has discarded and refused to accept prosecution story regarding commission of offence under Sections 366 and 366A of the IPC. Seeking reliance on judgment of Hon'ble Apex Court in *S.Vardarajan v. State of Madras*, 1965 (2) Cri. LJ. 33, she urges to allow the appeal by setting aside the impugned judgment.

On behalf of State :

8. Learned APP supported the conviction by pointing out that PW2 Mainabai and her daughter PW3, who are mother and daughter are victim. That while going to her brother's place, PW2 Mainabai, who was accompanied by PW3, was lured with proposal of

marriage, food and shelter. However, evidence shows that appellants took them and sold to one person and further took away minor PW3 from the custody of PW2 Mainabai without her free consent. Therefore, according to learned APP, offence of Section 363 is complete. Both PW2 Mainabai and PW3 named and identified accused. For above reasons, according to learned APP, no fault can be found in the manner of appreciation or the conclusion drawn by learned trial Court and ultimately, she prays to dismiss the appeal.

**STATUS OF PROSECUTION WITNESSES AND SUM AND
SUBSTANCE OF THEIR EVIDENCE IN TRIAL COURT**

9. **PW1** Peeraji Nathuji More, informant, in his evidence at exh.10, deposed that Mainabai is his daughter and Jyoti is her daughter. That Mainabai lost her husband 4-5 years back. That his elder son Chandrakant used to reside at Palasi. At the time of Holi festival, his daughter and granddaughter left to visit Chandrakant, but when he himself went to Palasi, he did not notice either his daughter or granddaughter and therefore, they searched for, but not traced. After 2-3 months, Shanker Surve of his village informed him on phone about seeing granddaughter in company of a man and a woman. On such information, he approached Police Station and there he came across his granddaughter, Shanker Surve and one

couple. On enquiry, his granddaughter told about her mother being sold. He brought back his granddaughter after lodging report exh.11.

Material omissions are brought regarding this witness stating before Police that Shanker Surve gave phone message to him that he had seen his daughter Mainabai at Kanhergaon Police Station; and that his granddaughter Jyoti telling this witness that accused have sold away her mother.

10. **PW2** Mainabai d/o. Peeraji More in her evidence deposed that at the time of Holi, she started for her brother's house with her daughter. That at Kanhergaon Railway Station, she came across a man and a woman. According to her, they forcibly took her and her daughter with them. They told that they would perform her marriage and so she accompanied them. They also assured her food. But later on, she was beaten and restrained from returning back home. That they took away her amount and she was taken to Panwadi and sold to one person. Her daughter was brought back to Umra. She was brought by Police.

11. **PW3** Jyoti d/o. Uttam Tajne stated that her father is no more.

That incident took place 2-3 months back. That during rainy season, she and her mother were going to her maternal uncle's place at Palasi and so they came to Kanhergaon Railway Station. Accused before the Court came there. While all were sitting under Neem tree, accused told her mother that there is "*Saptah*" and to come there and they would give food, clothes and shelter. That Train going to maternal uncle's village came, but accused asked them to accompany them. Thereafter, she and her mother were forcibly made to board in a Train by the accused and they were made to alight at Akola Railway Station and from there they boarded another Train and went to Panwadi.

There, marriage of her mother was performed with Shankar Singh and accused obtained money from Shankar by selling them and they both left the spot. She insisted to drop her back to her maternal uncle's place, but they did not listen. Then accused again came and made an enquiry with me whether she had maternal aunt's daughter and whether she would come with them to which she denied. Thereafter, she was brought by them to Washim Railway Station and from there they came back to Kanhergaon, had meals and while accused went to answer call of nature, she met Mathurabai and her husband Shanker and they took her to Railway Station Office

and a message was passed to Police where her uncle and grandfather came and brought her home.

12. **PW4** Shanker Shrawan Surve claims that he knew PW2 Mainabai and her daughter PW3. That while he and his wife had been to Kanhergaon Railway Station on 10-06-2005, PW3 came running, embressed him and told that a man and woman beat her and then she did not want to go with them, rather asked them to take her to her village. On further enquiry, she showed accused. Therefore, he took PW3 to Railway Station Office, sought help, accused claimed their concern about PW3 and Station Master gave message to Police, who came there. That grandfather and maternal uncle of PW3 were informed and her custody was given to her grandfather.

13. **PW5** Gautam Tukaram Dhule is the Railway Employee, who stated that while he was on duty in Railway Station Office, passenger came with a girl and told that parents of the girl are detached from her. Thereafter, accused came in search of girl in their office. But the girl told that they were not her parents and they sold her mother, after which Station Master gave information to Police.

14. **PW6** Prakash Chaghanlal Patedar deposed about Maharashtra Police coming and taking custody of a lady and he later received information that accused before the Court had brought the lady to their village.

15. **PW7** Bhagwan Dattatraya Kapkar is the Investigating Officer.

ANALYSIS

16. Here though appellants were chargesheeted for offence under Sections 363, 366, 366A of the IPC, guilt is apparently recorded only for offence under Section 363 read with 34 of the IPC.

Essential ingredients of offence under Section 363 are as under :

“Kidnapping from India -

(1) The victim kidnapped was residing in India at the time of offence;

(2) Accused committed offence of enticing the person kidnapped;

(3) The kidnapping was without the consent of the victim or of someone legally authorised to give the consent.

Kidnapping from lawful guardianship -

(1) The victim kidnapped was a minor being below 16, if male, or below 18, if female;

(2) The victim kidnapped was in the keeping of a lawful guardian;

(3) Accused took or enticed away the victim from such keeping of the lawful guardian;

(4) Accused did so without the consent of the lawful guardian.”

17. The landmark judgment on the above provision, which still holds the field is of ***S.Vardarajan v. State of Madras***, 1965(2) Cri. LJ 33, wherein the Hon’ble Apex Court enunciated the legal requirements for attracting offence under Sections 361 and 363 of the IPC and gave lucid distinction between the phrase “taking” and “enticing” and when offence can be said to be proved or made out.

18. Undisputedly prosecution put-forth a case that PW2 Mainabai, a widow, daughter of PW1 informant and PW3 his granddaughter i.e. daughter of PW2 were said to be abducted and kidnapped. They both being examined, their evidence is of significance. This Court has already noted substance of their testimonies in aforesaid paragraphs. It is noticed **PW2** Mainabai claimed to have left the house with her minor daughter to visit her brother’s place at Palasi and they both reached Kanhergaon Railway Station. She deposed that at Railway Station, she came across a man and a woman and she identified both of them in the Court. She alleged that she and her daughter forcibly being taken by them. According to her, she was

told that they will perform her marriage and therefore, she claims that she accompanied them. She further deposed that they also stated that they would provide food to her. She further testified that after taking her with them, they took away amount from her and she was taken to Panwadi and sold to one person. Her daughter was brought back to Umra.

Her above discussed testimony shows that she herself accompanied when said man and woman told that they would perform her marriage. She has not at all testified and clarified how acquaintance and conversation developed between them and reached to the point of her marriage. Infact she was at that time accompanied by her daughter. She has not elaborated that she indulged in some conversation previously with them and disclosed them about her family life. She directly deposed that they told her that they would perform her marriage. Her such version clearly shows that some discussion must have taken place before alleged offer by said man and woman. She has categorically stated that she accompanied them. Therefore, necessary elements and ingredients of abduction have vanished due to her such testimony. She has herself stated that she went with them because they assured her to provide food. It is even pertinent to note that, she has not elaborated

where she was taken, which of the two accused beat her, where she was beaten and where she was restrained. Her testimony is thus full of ambiguity. If according to her, she was sold to one person, she should have named that person and even investigating machinery was expected to take such person in custody and it was expected of investigating machinery to conduct detail and thorough investigation to unveil the truth. By what mode she was taken has not come on record.

In **cross-examination** she herself has admitted that while proceeding towards house of her brother at Palasi and on reaching Kanhergaon Railway Station, she did not even purchase Railway Tickets to undertake the journey. She admitted regarding not informing anyone at Railway Station about she being prevented to board the Train going to her brother's place. She also admitted about not informing any of the passengers either on the Railway Station or in the Train that she was being taken away or abducted. On the contrary, she in paragraph 2 of cross-examination, after stating that she was prohibited from entering Train of her choice, she and her daughter kept waiting at the Railway Station and admitted that they did not make efforts to return back to village. Rather she also answered that she had told her daughter Jyoti that accused are trying

to forcibly take her with them and Jyoti had been to the village. Her such answer shows that minor had returned back to her grandfather's place at Ganeshpur. She contradicts herself in cross-examination by answering that when accused told that they would perform her marriage, she denied their proposal. This is contrary to what she stated in examination-in-chief that they told her that they will perform her marriage and would provide her food, she was taken. In paragraph 3 of cross-examination, she admitted that her daughter begs in the Train and she and her daughter eat the material received in the begging. She also admitted about accused telling her that it is not good to beg and rather was suggested to take meal at '*Bhandara*'.

The above discussed cross-examination, clearly suggests that her testimony that she was forcibly taken or abducted is suspicious. In spite of Train going to her brother's village not being boarded, she has not returned to the village Ganeshpur and has rather deposed about sending her daughter Jyoti to village for allegedly informing her father with regard to being prevented from boarding the Train.

19. Similarly, **PW3** Jyoti testified that at Kanhergaon Railway Station at around 2 p.m., accused persons, she herself, her mother together sat under the Neem tree and their accused allegedly told her

mother that there was “*Saptah*” and that they should come there and they would get food, clothes, shelter. According to her, Train going to her maternal uncle’s village came but accused asked them to accompany them and so they missed the Train. This is exactly contrary to her mother’s version about offer of marriage, food and on such count, she and her mother being taken. She did state that she and her mother were forcibly made to board the Train, in cross-examination paragraph 4 she answered that she asked her mother to return back home after departure of Train going to her maternal uncle’s village, but she deposed that her mother did not listen and rather compelled her to accompany her. According to her, accused induced to accompany them and accordingly, her mother agreed. She also answered that there being rush of passengers she and her mother boarded different bogie of the Train whereas accused boarded different bogie. Her such answer also creates doubt about mother’s version regarding forcibly taken or abducted.

20. Another witness, who is also crucial is **PW4** Shanker and he claims that on 10-06-2005, he saw PW3 Jyoti and she came and wept and informed that one man and woman beat her and she does not want to go with them and requested him to take her to village

Ganeshpur and she also pointed to the accused. This witness claims that accused came and claim their concern with PW3 and thereafter, Station Master telephoned Police Chowki and Police came and they were asked to go to Goregaon Police Station and there he called maternal uncle and grandfather of PW3 and there custody of PW3 was given to her grandfather. His such testimony shows that on 10-06-2005, only PW3 was spotted on the Kanhergaon Railway Station. Evidence of PW3 in witness box is that accused brought her from Washim Railway Station to Kanhergaon. It is still not clear as to when and how the PW3, a minor, was brought from Panwadi to Washim Railway Station. If according to PW4 Shanker, he came across PW3 Jyoti at Kanhergaon Railway Station on 10-06-2005 and he took her to Station Master and on information of Station Master, Police of Police Chowki had come there and they were directed to go to Goregaon Police Station, his statement was expected to be recorded on same day or atleast on the next day, but apparently his statement has been recorded by the Police after almost a week.

21. It is also pertinent to note that on meticulous appreciation of documentary evidence of prosecution, it is noticed that inspite of PW3 Jyoti handed over in custody of PW1 Peeraji on 10-06-2005, in

view of version of PW4 Shanker, FIR is not registered on the same day, rather FIR carries date as 11-06-2005. It is also emerging that PW1 Peeraji as well as maternal uncle of the minor had allegedly come to take custody of PW3 Jyoti, a minor. Therefore, it was possible to record their statements or take report. Even statement of minor and her mother i.e. PW3 and PW2 respectively are recorded on 18-06-2005. Informant Peeraji in his examination-in-chief itself has stated that after leaving house to go to village Palasi, PW2 Mainabai left with PW3 Jyoti during Holi festival, which generally happens in March. Therefore, for more than two months neither missing report is lodged and as stated above, even inspite of PW3 Jyoti traced and taken in custody on 10-06-2005, there is no prompt FIR by PW1 Peeraji. The delay coupled with above narrated mysterious circumstances and ambiguity emerging from evidence of PW2 Mainabai, prosecution version apparently has no head and tail. Essential ingredients of abduction or kidnapping are patently missing. PW3 minor was in company of PW2 mother herself, who is her natural guardian atleast till Panwadi. PW2 mother does not depose that without her consent, her daughter was removed, rather it is evident that PW3 minor was brought back and found at Kanhergaon Railway Station itself. PW2 Mainabai speaks that she

being taken to Panwadi and PW3 Jyoti was brought back at Umra. Where is this place has not been investigated. It was essential because PW3 Jyoti is allegedly traced at Kanhergaon Railway Station. It is pertinent to note that here very informant's evidence shows that there are material omissions regarding he receiving message about spotting PW2 Mainabai at Kanhergaon Police Station and that PW3 Jyoti further told informant about her mother being sold. Therefore, though distinct places are coming on record, there is no clarity. With such quality of evidence, there is no element of inducement, enticement or kidnapping or even abduction as PW2 Mainabai herself has agreed to accompany alleged man and woman. In spite of several opportunities to evade company or escape, no efforts are done by PW2 Mainabai and PW3 Jyoti. Therefore, with such quality of evidence, prosecution case cannot be said to be proved beyond reasonable doubt. There are several lacunae, lapses and ambiguities in the prosecution case and hence, it is unsafe to accept such version of prosecution.

22. Further on same set of evidence, learned trial Judge has already acquitted accused from the charge of Section 366 and 366A of the IPC. No sound reason is assigned for recording guilt for

offence under Section 363 of the IPC and as such there is apparently improper appreciation and erroneous approach calling for indulgence of this Court.

23. Learned Counsel for appellants pointed out that learned trial Judge has awarded sentence of simple imprisonment for six months to appellants, but MCR period was from 12-06-2005 to 11-01-2006, which is apparently beyond six months.

Learned APP has placed on record papers purportedly received from Jail Authority, Parbhani dated 24-10-2024 conveying that convicts - Satish @ Satyanarayan Bhairavsingh Girigujar and Anita Satish Girigujar are already released on 16-01-2006 and 30-01-2006 respectively.

SUMMATION

24. To sum up, for above reasons, as prosecution has failed to establish the charge of Section 363 read with 34 of the IPC beyond reasonable doubt, benefit of the same is required to be extended by allowing the appeal. Accordingly, I proceed to pass following order.

ORDER

I) Criminal Appeal No.77 of 2006 is allowed.

II) The conviction awarded to appellant nos.(1) Satish @ Satyanarayan s/o Bhairavsingh Girigujar and (2) Sow.Anita w/o Satish Girigujar in Sessions Trial No.93 of 2005 by the learned 3rd Adhoc Additional Sessions Judge, Parbhani on 12-01-2006 for the offence punishable under Section 363 read with 34 of the Indian Penal Code, stands quashed and set aside.

III) The appellants stands acquitted of the offence punishable under Section 363 read with 34 of the Indian Penal Code.

IV) **The bail bonds of appellants stand cancelled.**

V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

VII) The fees of the learned Counsel appointed for appellants is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(ABHAY S. WAGHWASE)
JUDGE