



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

CRIMINAL APPEAL NO. 138 OF 2002

Pratap Kashinath Gulve
Age: 34 years, Occu.: Labour,
R/o. Khamaswadi at present
residing at Village Bavi,
Tq. & Dist. Osmanabad.

....Appellant
(Accused)

Versus

The State of Maharashtra
Through Ganpati Gyandeo Bhosale
R/o. Khamaswadi, Tq.Osmanabad,
Dist.Osmanabad.

.....Respondent

.....
Advocate for Appellant : Mr.Rohit Patwardhan h/f. Mr.D.R.Shelke
APP for Respondent : Mrs.Ashlesha S.Deshmukh
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 MARCH, 2024

PRONOUNCED ON : 01 APRIL, 2024

JUDGMENT :-

1. Convict for offence under Sections 363 and 366 of the Indian Penal Code (IPC) hereby challenges judgment and order dated 12-02-2002 passed by Ad-hoc Additional Sessions Judge, Osmanabad recording guilt for above offences and sentencing accused to suffer rigorous imprisonment for one year for each of the offences and to pay fine.

FACTS LEADING TO THE TRIAL

2. First Information Report (FIR) exh.34 was lodged by father PW1 Ganpati alleging that he has two daughters, aged 13 years and 15 years respectively. On 21-11-1993 after having worked in the agricultural field, they returned home at around 06:00 p.m. Thereafter, his daughters went to answer call of nature. Only one daughter namely Sunita returned home. Sangita, who did not return, was searched for. He learnt that accused had met Sangita and had taken her away. Therefore, he lodged report exh.34.

PW7 Kondare (PSI), who was entrusted with investigation, carried out and completed the same and on gathering evidence, chargesheeted accused, who was finally tried by Ad-hoc Additional Sessions Judge, Osmanabad vide Sessions Case no.53 of 1999. Learned trial Judge examined in all nine witnesses and also gone through the documentary evidence like FIR, panchanama etc. and finally held case of prosecution proved and convicted appellant for commission of offence under Sections 363 and 366 of the IPC.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant submitted that there is false

implication. That no one had seen accused kidnapping the victim girl. That the girl herself does not speak of being kidnapped. That though prosecution claims that girl was taken by accused to various places, there is no witness on that count. He pointed out that at no point of time, victim raised alarm or informed anyone about she being kidnapped. That infact girl had left on her own. That there was no removal from custody of her parents. Therefore, necessary ingredients for attracting offence under Section 363 of the IPC is missing. Further according to accused, essential ingredients for attracting charge under Section 366 of the IPC is also missing. That there is no evidence of accusation about she being taken away on the pretext of performing marriage. That learned trial Court has not appreciated prosecution evidence in proper perspective. Further according to him, law has also not been correctly applied. That evidence of prosecution was not sufficient to record guilt as prosecution has miserably failed to establish its case beyond reasonable doubt. Hence, he prays to interfere by allowing the appeal.

On behalf of State :

4. Supporting the judgment of conviction, learned APP pointed

out that victim girl was apparently a minor. That her sister had reported father about accused taking her away. That she has been removed from custody of her natural guardian without their consent. Therefore, all necessary ingredients for attracting charge under Section 363 of the IPC being available, learned trial Court has correctly recorded guilt. Further according to her, likewise evidence of victim itself shows that essential ingredients for attracting offence under Section 366 of the IPC are also available. Hence, she submits that there is no illegality or perversity in the conclusion reached at by the learned trial Court and so she prays to dismiss the appeal for want of merits.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

5. **PW1** Ganpati Gyandeo Bhosale, father of victim, deposed about having two daughters aged 13 and 15 years respectively. According to him, on 21-11-1993 his both daughters went to answer call of nature but only one of them returned. Accused had taken away victim daughter and inspite of search, when she was not found, he lodged report exh.34.

6. **PW2** Sangita Ganpati Bhosale, victim stated that in the year

1993, she was 13 years of the age. On 21-11-1993 she and her sister went to answer call of nature. After crossing distance of two furlong from their house, accused was spotted near S.T.Stand. He forcibly pushed her in a Bus and took her to Osmanabad and from there took her to another Bus going to Yedashi and then finally took her to Barshi and from there to Kolhapur. There they resided at Shahu Market and accused worked as a Mathadi worker. There he established sexual intercourse with her and also performed marriage with her in a Temple at Kolhapur. She had two children from him. He had forcibly taken her and established sexual intercourse. Then she stated that thereafter, accused developed illicit relations with another lady and left her for two years. During such period, she stayed with mother-in-law.

7. **PW3** Sumanbai Ganpati Bhosale, mother of victim, also deposed that her two daughters went to answer call of nature in the evening. Only Sunita came home and told that accused took Sangita and therefore, her husband lodged FIR.

8. **PW4** Pandit Shivaji Mokashi stated that he knew Sangita as well as accused. According to him, when Sangita was going to

answer call of nature, accused took her towards Bus Stand at around 06:00 p.m. to 07:00 p.m. that day.

9. **PW5** Shaikh Mahbooh is Head Constable, who registered FIR in the capacity of Police Station Officer.

10. **PW6** Sunita Ganapati Bhosale, sister of victim, stated that on 21-11-1993 when she and her sister went to answer call of nature, accused caught hold hand of her sister and took her to S.T.Stand. She alone came home.

11. **PW7** Chandrakant Bhimrao Kondare (PSI) is Investigating Officer, who narrated all steps taken during investigation.

12. **PW8** Raosaheb Baluba Gadade, Head Master, stated that date of birth in the admission form exh.51 is 20-06-1977 and that the girl was admitted in the school on 30-06-1982. He placed on record leaving certificate exh.52. According to him, date of birth of girl was 20-06-1997.

ANALYSIS

13. Here conviction recorded by the trial Court is for both i.e.

offence under Sections 363 and 366 of the IPC. The essential ingredients for attracting said charges are reproduced as under :

Section 363 :

- “(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.“

Section 366 :

- “(1) Kidnapping or abducting any woman;
- (2) Such kidnapping or abducting must be -
 - (a) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will;
 - or
 - (b) 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.

The second part of the section requires two things -

- (1) by criminal intimidation or abuse of authority or by compulsion inducing any woman to go from any place; and
- (2) such going must be with the intent that she may be or with knowledge that it is likely that she will be forced or seduced to illicit intercourse with some person.
- (3) for ‘abduction’ use of force or deception is essential.
- (I) Kidnapping/abduction of a girl.

(ii) Inducing/compelling by force to marry/to have sexual intercourse against her will.”

14. After scrutinizing the evidence, more particularly, that of PW2 Sangita, victim, which is of much significance and also evidence of her sister as well as parents, they are found to be consistent that on the date of occurrence, while victim was proceeding to answer call of nature, accused took her towards Bus Stand and further at various places.

On the date of occurrence, victim was shown to be a minor. PW8 Raosaheb, Head Master, has placed on record very admission form as well as school leaving certificate. Said documents carry date of birth as 20-6-1977. Considering such date, which is not rendered doubtful, on the date of occurrence dated 21-11-1993, victim was 16 years of age and hence, a minor. She has been removed from custody of her parents without their consent. Therefore, considering the victim's evidence coupled with her sister and parents' evidence, and more particularly, when she was said to be forcibly taken, offence under Section 363 of the IPC is squarely made out.

15. On reanalyzing the evidence of PW2 Sangita, victim, in examination-in-chief itself she has stated that while at Kolhapur,

accused established sexual intercourse with her and also performed marriage with her in a temple. There is no distinct evidence of performing marriage, however, there is no reason to disbelieve her version. Nothing adverse has been brought in her cross-examination in that regard. Therefore, even essential ingredients for attracting offence under Section 366 of the IPC are shown to be available in the evidence of victim.

Resultantly, prosecution has proved offence both under Section 363 as well as Section 366 of the IPC by adducing cogent and reliable evidence.

CONCLUSION

16. After going through the judgment under challenge, it appears that there is no perversity, illegality or infirmity so as to overturn the judgment by allowing the appeal. No case being made out on merits, I proceed to pass following order :

ORDER

Criminal Appeal No.138 of 2002 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE