



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 688 OF 2002

Limbaji Gokul Kopanbaine,
Age : 18 yrs, Occu. Labour,
R/o. Asrachiwadi, Tal. Renapur,
Dist. Latur.

... Appellant
[Orig. accused no.2]

Versus

State of Maharashtra

... Respondent

.....
Mr. V. D. Gunale, Advocate for the Appellant.
Mr. N. D. Batule, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.02.2024

Pronounced on : 21.02.2024

JUDGMENT :

1. Convict for offence punishable under Section 366-A of the Indian Penal Code [IPC] is taking exception to the judgment and order passed by learned Additional Sessions Judge Udgir dated 30.10.2002 in Sessions Case No. 149 of 2001 which was tried for the offences punishable under Sections 366-A, 376 r/w 34 of IPC.

IN BRIEF CASE OF PROSECUTION IN TRIAL COURT IS AS UNDER:

2. Victim, a minor studying in 8th standard, was put up with her elder sister on account of pregnancy and delivery of her sister at Bhutekarwadi. Complainant father of victim was residing at Asrachi Wadi. On 10.03.2001, father-in-law of sister of victim came and informed father of victim that in the intervening night of 09.03.2001 and 10.03.2001, Limbaji and Ashruba, both residents of Asrachi Wadi, had come to Bhutekarwadi and abducted victim inducing her by promise of marriage and therefore, father approached police station and gave report.

on the strength of report lodged by father, crime no. 42 of 2001 was registered and investigation was completed by PW8 ASI Suryawanshi, who chargesheeted both accused, Ashruba as well as Limbaji and they were made to face trial before Additional Sessions Judge, Udgir, who on appreciation of evidence, convicted present appellant Limbaji for offence punishable under Section 366-A of IPC but acquitted him for offence under Section 376 of IPC. Even accused Ashruba was acquitted from offence under Section 376 of IPC.

Consequently, conviction for offence under Section 366-A of IPC is now assailed before this Court by filing instant appeal.

SUBMISSIONS

3. Learned counsel for the appellant would point out that there is apparently false implication. He pointed out that main charge is of Section 376 IPC, that too, against main accused no.1 Ashruba, but on complete appreciation, learned trial court has acquitted main accused from said charge. However, present appellant-accused no.2 is alone held guilty for offence under Section 366-A of IPC and that too, without any concrete, reliable and trustworthy evidence.

4. Learned counsel also questioned the prosecution case by advancing argument that, at the first count, there is no convincing evidence about victim to be minor. He further submitted that even otherwise, there is no direct evidence on the point of victim being abducted from her house. Father has apparently lodged report on receipt of information from father-in-law of sister of victim and therefore, FIR is on hearsay information.

5. He took this court through the testimony of PW2 victim and her sister PW5 and other witnesses and submitted that required ingredients for attracting Section 366-A are patently missing. Therefore, evidence on behalf of prosecution as regards involvement

of appellant being very weak, conviction ought not to have been recorded. Resultantly, it is his submission that conviction on improper appreciation cannot be allowed to be sustained and hence, he prays to allow the appeal.

6. While opposing and refuting the above submissions, learned APP pointed out that victim is shown to be a minor. Her date of birth is 17.04.1986. She was abducted on 09.03.2001. Therefore, apparently at such time, victim was minor. Then learned APP took this Court through the evidence of victim and answers given by her in cross and pointed out that her evidence alone clearly shows that victim was taken on promise of marriage. Victim has also deposed about she being taken to a temple and some rituals being performed there. Therefore, role of appellant is explicit and hence, he justifies and supports guilt recorded by learned trial Judge and prays to dismiss the appeal for want of merits.

7. Apparently, present appellant is original accused no.2, who was chargesheeted for commission of offence punishable under Sections 366-A and 376 r/w 34 of IPC. Charge is at Exhibit 4. However, he is convicted only for offence under Section 366-A of IPC, which provision reads as under :

“366-A. Procuration 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 may be, 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.”

8. Before advertng to the merits of the evidence on this count, it is also desirable to deal with the settled legal position which is found in following pronouncements of the Hon’ble Apex Court.

In *Ramesh v. The State of Maharashtra* AIR 1962 SC 1908, the Hon’ble Supreme Court has in para 7 observed thus:

“7. There are three principal ingredients of the offence.

(a) That a minor girl below the age of 18 years is induced by the accused,

(b) that she is induced to go from any place or to do any act, and

(c) that she is so induced with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person.”

Law to this extent is also dealt in *Mohammed Nisar Riyaz Khan and Etc. v. State of Maharashtra* 2007 CriLJ 562 (Bom); *Sat Parkash v. State of Haryana and another* ABC 2016 (I) 180 SC and *Iqbal v. State of Kerala* (2007) 2 SCC 724.

9. Keeping above legal requirements into consideration, if the evidence of the victim **PW2** is subjected to scrutiny, it is emerging that PW2, who gave her age as 14 years and spoke about studying in 8th standard, stated that she had been to her sister on account of her delivery. That, delivery of her sister was performed and on the 8th day of delivery, she deposed that, Limbaji came to the house at Bhutekarwadi at around 13.00 hours and told her that there is marriage in the relation and asked her to come for attending the said marriage upon which she replied that nobody was in the house, but he told that he had met her grand-parents at Hipparga and that they had told him to bring her. Therefore, after taking meals at her sister's place, she accompanied him and they came to Ahmedpur and from there she was taken to Latur. She deposed that Ashruba was present at ST stand Latur. Then she was taken to Tuljapur. Ashruba purchased tickets for himself, Limbaji as well as for her and she was taken to the land where there was Akhada of one Muslim person. She stated that she was kept there for five to six days and during such period, Ashruba raped her and had sexual intercourse with her against her will and in spite of her resistance. After 8 to 9 days, Gokul and Sandipan came to Tuljapur and they all brought her to the land of Ashruba and there also Ashruba raped her against her will. She deposed that Limbaji told her at Bhutekarwadi that her marriage was

to be performed with Ashruba and asked her to accompany him. Thereafter she was brought to police station and was subjected to medical examination.

10. Above witness is subjected to extensive cross and the relevant cross is in para 4 where she has answered about reaching Hipparga around 2.30 to 3.00 p.m. and there to be bus for Asrachi Wadi from Kajal Hipparga at around 4.00 p.m.. She stated that she resisted to accompany Limbaji to Ahmedpur but he told that her marriage is to be performed with Ashruba and asked her to come. He did not allow her to run away. She deposed that they reached at Latur at 4.30 p.m. She stated that Gokul, Limbaji showed her knife and threatened to kill her if she informs anybody. She answered that they reached at Tuljapur around 11.30 p.m. and stayed at Devi Temple and she was compelled to bow before the Goddess and that she did not voluntarily bowed. She named Ashruba, Limbaji and Gokul to be with her at the temple. She admitted that she did not attempt to run. She stated that whenever she went to answer call of nature, Limbaji and Ashruba were guarding her. Omission is brought to the extent of Ashruba having intercourse with her against her will. But she has volunteered, on which learned trial court has noted as “witness volunteered that she was threatened by accused not to state so”.

11. **PW4** Shahanur Inamdar seems to be the agricultural land owner. According to him, both accused came with one girl and that accused Ashruba introduced the girl to be his wife and had sought work and therefore, he engaged Ashruba and the girl for labour work. He deposed that they stayed for three days in the land itself and after three days, police came and took the boy and the girl. He identified victim in the court.

12. **PW5** sister stated that after meals when her family had been to court for attending date at Ahmedpur, she went to sleep and that she does not know when both, Limbaji and her younger sister left the house. When she woke up, she found both of them not in the house.

In cross, she answered that Limbaji had come to the house at around 2.00 to 3.00 p.m. That, after meals, she slept and woke up around 5.00 p.m but no person was around.

13. **PW6** is the father, who lodged FIR.

14. On critical analysis of above evidence, here, victim is found to be stating that present appellant accused Limbaji came to her sister's place and told her that there is marriage in their relation and as beng

told by her grand-parents, he asked her to accompany him and brought her to Ahmedpur and from there to Latur, Tuljapur and about staying in the land of PW4. There she alleged rape but at the hands of accused Ashrubu. Her examination-in-chief does not show that she was taken from house of her sister under the pretext of performing her marriage with Ashrubu. She does not utter about inducement or forced to join. She seems to have deposed about nobody to be in the house. However, surprisingly the sister, at whose place victim was staying, apparently seems to be sleeping but she does not know on what pretext Limbaji took her younger sister.

15. Regarding marriage ceremony, victim is apparently found to be merely deposing that in the temple at Tuljapur, they were there at about 11.30 p.m. She merely spoke about being compelled to bow before the Goddess. Therefore, no necessary ceremony or rituals seem to have been performed.

16. Even as stated above, victim has stated about she being taken by Limbaji alleging some marriage of relative. She is not taken on assurance of marriage with Ashrubu. If the legal requirements attracting Section 366-A IPC are taken into consideration, the essential ingredients apparently seem to be missing. Resultantly, in

the considered opinion of this Court, when accused no.1, who was indicted for rape, is already acquitted for want of evidence and there being no convincing evidence except that of victim, which too is ambiguous about being taken for marriage with Ashruba, guilt for offence under Section 366-A of IPC seems to be unwarranted.

17. After considering the observations of learned trial Judge, there is apparently improper appreciation. Legal requirements have been lost sight of while holding accused appellant guilty. Therefore, intervention at the hands of this Court is necessary. Accordingly, I proceed to pass the following order:

ORDER

- I. The criminal appeal is allowed.
- II. The conviction of appellant Limbaji Gokul Kopanbaine for offence under Section 366-A of IPC awarded by learned Additional Sessions Judge, Udgir in Sessions Case No. 149 of 2001 on 30.10.2002, is hereby quashed and set aside.
- III. The appellant is acquitted of the offence punishable under Section 366-A of IPC.

- IV. Bail Bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. There is no change in the order of the trial court as regards *muddemal* is concerned.

[ABHAY S. WAGHWASE, J.]