
(2014) 08 BOM CK 0148
In the Bombay High Court
Case No : Criminal Appeal No. 350 of 2000

Rohidas

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 363, 366
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2016) ALLMR(Cri) 173 : (2014) 4 BomCR(Cri) 128 : (2014) 4 Crimes 95

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : S.S. Choudhari, Advocate for the Appellant; P.P. More, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—The present appeal has been filed by the appellants-original accused Nos. 1 and 2 against their conviction under sections 363 and 366 read with Section 34 of the Indian Penal Code, 1860 (IPC in short). Each of them has been sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 500/- each and in default, to suffer rigorous imprisonment for one month. Being aggrieved, the present appeal has been filed.

2. Case of the prosecution in brief is as under :

(a) On 7.5.1996, complainant Nivrutti, Resident of Ashtur, Taluka Loha, District Nanded filed F.I.R. at Crime No. 38/1996 with Police Station Malakoli, Taluka Loha, District Nanded. The complainant is father of the victim girl. The complainant informed police that, he has been working at the place of one Laxman Ishwarrao on the field and residing there. He has three sons and two daughters. Victim (named in the F.I.R.) is aged 16 years. She was at the place of her maternal uncle at Malewadi, Taluka Gangakhed for the last two months. On

3.5.1996, she came with her grandfather to the place of complainant at Ashtur. On 5.5.1996, at about 4.00 a.m., while they were sleeping, Rohidas Laxman Malge (accused No. 1) kidnapped his daughter by putting her in the jeep. This was seen by one Balaji Manik Jadrane when he was going from the field towards village. The complainant searched for his daughter. Balaji informed that his daughter (referred here as "Victim") had been kidnapped. In the morning he went and searched for his daughter at Malewadi. It was found that the accused No. 1 Rohidas had been lurking near the house and had evil eye on the victim. Coming to know this, the F.I.R. was filed. The offence was registered on 7.5.1996 at 11.30 Hrs.

(b) P.W. 8 Dattatraya Potdar, Police Head Constable, registered the offence and the investigation was handed over to P.W. 10 Shripat Jankar (Police Head Constable). He went to the spot and prepared panchanama (Exhibit 26). He recorded statements of witnesses. On 10.5.1996, the investigation was taken over by P.S.I. Devidas Dhole (P.W. 9). After couple of days, the victim was reached to Malewadi and P.W. 9 recorded her statement on 17.5.1996. She was got medically examined. Statements of witnesses were recorded by P.S.I. Devidas also. The accused were arrested on 23.5.1996. The jeep in which the victim was kidnapped, was also seized and statement of driver was recorded. After the investigation, the charge sheet was filed. The victim was of Mahar caste and her certificate was also enclosed. As per the case of prosecution, the accused persons kidnapped the victim from Ashtur when in the night while sleeping with her parents, she had got up and gone for urinating, and accused had forcibly taken her to various places and ultimately to Mumbai. Later on she was brought back to Malewadi and left.

3. The charge sheet was filed in the Court of Judicial Magistrate, First Class, Kandhar and the offence being Sessions triable, the matter was committed to the Court of Sessions. Charge was framed against both the accused under Sections 363 and 366 read with Section 34 of the Indian Penal Code. Additional charge was framed u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Prosecution brought on record evidence of 11 witnesses. The defence of the accused is of denial. Looking to the suggestions made to the witnesses, it is suggested that her uncle was residing at Dombivali in Mumbai and she on her own went to the place of her uncle and while she was returning back, she happened to see accused No. 2 Vilas in the train and thus, false case is filed. It is claimed that, accused No. 1 Rohidas was working with one Umrao and the buffaloes of P.W. 5 Venkati, the uncle of victim had gone in the field of Umrao and accused No. 1 had quarrelled with P.W. 5 Venkati and so, false case has been filed.

4. I have heard learned counsel for the appellant-accused. The appeal memo raises grounds, and the learned counsel for appellant has argued that, what was the age of the victim was doubtful and she must be more than 18 years of age at the time of incident. Regarding the places where the victim was taken or kept, no

witnesses from those places have been examined. There was delay in filing of the F.I.R. The incident was stated to be of the night of 4th 5th May 1996, but the F.I.R. was filed only on 7/5/1996 in the morning. The driver who drove the said jeep was not examined. P.W. 5 Balaji was not reliable as the incident was of 4.00 a.m. and it was dark. The victim had gone to the place of her uncle and accused have been falsely involved. There are contradictions and omissions in the evidence and thus, prosecution case deserves to be discarded.

5. Per contra, the learned A.P.P. submitted that, it was natural for the parents of the victim (P.W. 1 Nivrutti and P.W. 4 Shashikala) to first search for the victim and when they went to P.W. 5 Venkati, the maternal uncle of victim, they came to know about accused No. 1 being missing from the village and due to the earlier conduct of accused No. 1, the parents were satisfied that he must have kidnapped the victim and so the complaint was filed. Thus, according to A.P.P., the delay is not fatal and it is satisfactorily explained. Learned A.P.P. argued that, witness P.W. 3 Balaji has no axe to grind against the accused persons and whatever he saw in the early morning of that night, he informed the complainant and the witnesses reliable. Evidence of P.W. 5 corroborates victim who had lot of opportunities to see and identify accused persons. Learned A.P.P. submitted that, the victim is corroborated by P.W. 3 Balaji and the evidence has been properly accepted by the trial Court. The record shows that, the victim was threatened throughout and she was too young to raise protest. The evidence on record of the doctor, read with the school record, shows that, the victim was hardly 16 years and about 1 month old at the time of incident. She was not consenting party to the accused and the age would be immaterial for kidnapping or abduction when it is forcible.

6. Having heard counsel for both sides, I have gone through the evidence with the help of learned counsel for the appellants and the learned A.P.P. The evidence of P.W. 1 Nivrutti as well as P.W. 4 Shashikala, the parents of the victim, shows that, the victim, who was residing for some time with her uncle P.W. 5 Venkati at Malewadi (where the accused were residing) had come to Ashtur and in the night concerned, was sleeping outside the house with the family. Then if the evidence of P.W. 7, the victim is perused, she has deposed that, she was sleeping near her mother in the field in front of the hut. At about 4.00 a.m., she got up for urinal and went for the purpose. At that time, accused No. 1 Rohidas came there and he pressed her mouth and accused No. 2 was with accused No. 1. They lifted her and took her near a temple. A jeep was standing there. She was made to sit in the jeep. She was given threat that if she raised cry, they would kill her. Her evidence shows that the jeep then went towards Lahural Road.

7. The above evidence of Victim P.W. 7 needs to be then read with the evidence of P.W. 3 Balaji. His evidence is that, he was residing in the field at village Ashtur in those days. Nivrutti (complainant-P.W. 1) was working at the place of Laxman and residing at village Ashtur. On 5.5.1996 in the morning at 4.00 a.m. he was coming to his house from his field and he saw one girl and two boys going by the

road. The evidence is that, one jeep came there and the three went in the jeep towards village Lahural. The further evidence is that, he heard the said girl raising cry, but those persons were carrying her. According to him, he then went to the house of Nivrutti and told him that his daughter was kidnapped. According to him, he could identify the victim on the spot. He claimed, he could identify the victim on the spot that she was..... (He gave her name in evidence, which I am not reproducing). He claims that, he had seen the boys who were taking the victim. Although he claimed that he could identify them, in Court he was able to identify only accused No. 1 Rohidas. The evidence of the victim was not challenged on the count of visibility. When the witness was going from field to his house, naturally he had source of visibility. In the matter of Machhi Singh and Others Vs. State of Punjab, Hon"ble Supreme Court accepted that Villagers living in villages where electricity has not reached as yet, get accustomed to seeing things in the light shed by the lantern. Their eye sight becomes accustomed to the situation.

In the present matter also, the witness was going home and naturally his eyes were accustomed to proceeding and seeing even in low visibility. He deposed that, he could identify the victim on the spot. As this evidence was not denied on the count of visibility, the evidence need not be suspected.

8. Thus, the evidence of the complainant Nivrutti supported by his wife P.W. 4 Shashikala read with the evidence of P.W. 3 Balaji and the victim, corroborates each other that in the night concerned, the victim was forcibly taken away, which was seen by P.W. 3 Balaji, and Balaji immediately informed the complainant.

9. The evidence of P.W. 7, the victim, then shows that, from Ashtur the vehicle was taken near Malewadi Canal and then to Gangakhed. According to her, at Gangakhed, she asked for water and accused No. 2 Vilas offered her a tablet. Because of the same, she became drowsy and thereafter did not understand anything. When she gained consciousness, they were at Aurangabad and after staying at Railway Station, she was brought back to Parbhani and then taken to Parali where they stayed for one night in the house of a relative of accused No. 2 Vilas. Her evidence is that, in the evening she was taken by S.T. bus to Mumbai and they got down at Panvel. She was taken to Dombivali to the house of brother-in-law of accused Vilas. Accused No. 2 Vilas then came back while accused No. 1 Rohidas stayed with her at Dombivali. The victim has then deposed that, accused No. 1 Rohidas at Dombivali told her that he would marry with the victim and that he would conceal the said fact and keep her hidden for six months. Her evidence is that she refused to marry accused No. 1 Rohidas.

10. It has been argued for the appellant that, the victim did not raise hue and cry and there is nothing to show that she tried to run away. The evidence clearly is that, from Ashtur she was taken by pressing her mouth and by giving her threats. The evidence shows that, she was given tablet to keep her drowsy. It is also in her evidence that, during the entire travel, the accused persons were threatening her and so, she could not tell anybody on the way. She was cross-

examined, but in the cross-examination also nothing could be extracted to show that she was consenting to the whole incident. Her evidence shows that, both accused kept guarding her. The evidence of the victim shows that, when she was kept at Dombivali, accused No. 2 Vilas had gone back and he came back after two days and informed accused No. 1 that police were enquiring with his parents. It is only thereafter that she was asked to come back to her native place and she was brought to Malewadi. Her evidence shows the route travelled while returning back and she has deposed that she was asked to get down near water tank at Malewadi and the accused threatened her not to disclose the incident to anybody or she will be killed. She deposed that, she went to her maternal uncle (P.W. 5 Venkati) and informed the incident. If the evidence of P.W. 9, who recorded the statement, is perused with reference to the evidence of victim, the omissions pointed out are that, she did not tell the police that both the accused brought her to village Malewadi or that she did not tell that the accused brought her up to Parbhani. These omissions are hardly material. The evidence of the victim appears to be reliable and the trial Court has rightly accepted her evidence.

11. Evidence of P.W. 5 Venkati shows that the victim was residing with him for some days at Malewadi and had then gone to the place of her parents at Ashtur. He knew both the accused. He deposed that, P.W. 1 Nivrutti, the father of victim came to the village and stated that his daughter has been kidnapped by two persons and all of them had gone by jeep. P.W. 5 Venkati deposed that, he searched for the victim at Malewadi. His evidence is that, accused No. 1 Rohidas had an evil eye on the victim and was taking round of his house. He noticed that accused No. 1 was also not found in his house after the incident and so he thought that victim had been kidnapped by the accused No. 1. The evidence of P.W. 5 Venkati shows that they searched for the victim for two days and she was not found and thereafter they went to Malakoli Police Station and lodged the complaint. He has deposed that, after 10-12 days the victim came back home and she told about incident to him. It appears that the victim told the incident to her parents also. The defence brought on record, some omissions in the evidence of the parents and P.W. 5 to argue that there were variations in what the victim told on returning. What the victim told these persons on returning would in any case be heard for these witnesses. The omissions in the details of what was told are not material. The victim did tell after coming back that she had been kidnapped by the accused persons is common.

12. Going through the above evidence and the reasonings recorded by the trial Court to accept the evidence of these witnesses, I find that, the trial Court has rightly accepted the evidence regarding kidnapping of the victim from the guardianship of her parents.

13. Regarding the age of the victim, there is evidence of P.W. 2 Dr. Hukumat Premchandani who had got her X-ray done and on the basis of X-ray and clinical examination, his opinion as per the medical certificate (Exhibit 24) was that, the victim at that time was more than 14 years old, but less than 16 and half years.

Learned counsel for the appellant argued that, ossification test was not done by this witness and margin of error should be counted over and above this period. However, this is not the mere evidence of the age of the victim. There is evidence of P.W. 11, the Assistant Head Master from the school where victim had studied, produced at Exhibit 46 from the school record. No doubt, the victim had got admitted to the Ahilyadevi Holkar Middle and Higher School on 2.7.1993 in the 8th Standard and that was not her first school, however, the record kept in the school in ordinary course showed that, her date of birth was 5.4.1980. The incident is dated 5.5.1996 and she was 16 years and about 1 month old at the time of incident. The learned counsel for the appellant argued that, P.W. 1 Nivrutti admitted that he might have married 20 years back and the victim was born one year after the marriage. P.W. 4 Shashikala had admitted that their marriage took place 20 years ago and in the same year, the victim was born. The learned counsel argued that, this shows that at the time of incident, the victim was more than 18 years of age. I do not find substance in this argument. Both these witnesses are apparently illiterate. They were deposing in the year 2000 and their evidence cannot be read as if they were deposing on the date of incident. The trial Court has recorded various reasons while discussing the dispute regarding age and found that, the victim was below 18 years of age at the time of incident. I do not find any reason to disagree with the trial Court.

14. Apart from the above, even if she was above age of 18 years, the evidence on record shows that she was forcibly taken by the accused persons and while she was kept at Dombivali, the accused No. 1 was proposing her that he wanted to get married to her for which she was not agreeable. The evidence shows that, when the accused persons found that the police were enquiring with the parents of accused No. 1, they brought back the victim and left her in the village. The trial Court has rightly concluded that, the offence under sections 363 and 366 read with Section 34 of the Indian Penal Code was established.

15. As regards delay, I find substance in what the learned A.P.P. has submitted that the parents initially searched for the victim and when they came to know from P.W. 5 Venkati regarding the accused No. 1, the F.I.R. naming accused No. 1 was filed. When a young girl is missing, it is natural for the parents to first search on their own as going to police station immediately may put in jeopardy the name of the victim. In this situation, it is natural for parents to be reluctant and only when they find that they have no other way of reaching their daughter, resort to Police Station is taken. In this circumstance, I do not find that the delay is not explained or that the delay is such that the witnesses should be disbelieved.

16. I do not find any substance in the arguments raised on behalf of the appellant/accused. For above reasons, there is no substance in the appeal.

17. The appeal is dismissed. The conviction and sentence imposed by the trial Court is maintained. The appellants-accused to surrender to their bail bonds.