

Rajesh and Others

Vs

State of Maharashtra

with

Taufiq Ahmed Aminuddin

Vs

State of Maharashtra

with

Santosh Shashikant Ambekar

Vs

State of Maharashtra

Criminal Appeals No. 2 of 1997 with Nos. 425 and 755 of 1998

(G. T. Nanavati, S. P. Kurdukar JJ)

13.08.1998

JUDGMENT

NANAVATI, J.

1. All these appeals arise out of a common judgment and order passed by the High Court of Bombay in Criminal Appeal No. 102 of 1995. Criminal Appeal No. 2 of 1997 is filed by 4 appellants who were Accused 2, 3, 6 and 7 in the trial court. They had filed SLP (Crl.) No. 2969 of 1996 along with Navneet, Accused 1, but Navneet's SLP was dismissed at the preliminary hearing stage. Criminal Appeal No. 425 of 1998 is filed by Taufiq who was Accused 4. Criminal Appeal No. 755 of 1998 is filed by Santosh who was Accused 5. Accused 1 was convicted under Section 366 IPC and the other accused were convicted under Section 366 read with Section 109 IPC. All the 7 accused had appealed to the High Court but their appeal was dismissed.

2. The prosecution case was that on 24-12-1991 at about 6.00 a.m., they abducted Archana with the object of getting her married with Accused 1. However, they were not successful in taking her away as on hearing her shouts, Dr. Mahajan (PW 13) came there, then followed the appellants in his car, overtook them and prevented them from taking her away. While all the appellants were running away, they were followed by the persons who were with Dr. Mahajan and also by the two police constables who had come there in the meantime. Appellant Irshad was caught on the spot but the others were able to run away. It was also the prosecution case that Accused 1 and appellants Rajesh and Taufiq were caught from a nearby place within a short time after the incident. It was also the prosecution case that appellant Irshad, soon after he was caught, had disclosed the names of the

remaining accused as the persons who had come in that car with a view to take away Archana. On the basis of these allegations, all the accused were tried for the offences punishable under Sections 366, 354 and also under Section 307 read with Section 34 IPC as there was an allegation that they had tried to assault Dr. Mahajan with deadly weapons.

3. In the absence of any evidence regarding the assault on Dr. Mahajan with deadly weapons, the charge under Section 307 read with Section 34 IPC was held not proved. The trial court also held that the charge under Section 354 was not proved. It, however, believed the evidence of Archana, Dr. Mahajan (PW 13) and Constable Mule (PW 10) and held all the 7 appellants guilty as stated above.

4. The High Court, on reappreciation of the evidence, agreed with the findings recorded by the trial court and confirmed the conviction and sentence.

5. The learned counsel for the appellants submitted that the finding recorded by the courts below that Accused 1 had gone to Nandura for abducting Archana and that the appellants herein had helped him in doing so by accompanying him is not warranted by the evidence on record. He also submitted that the courts below committed a grave error of law in throwing the burden upon the accused to prove that it was a case of elopement, in view of such a defence raised by Accused 1. In our opinion, the learned counsel is right in his second submission but in view of the other clear and credible evidence on record, it cannot affect the conviction of the appellants. The evidence of Archana (PW 6), Dr. Mahajan (PW 13) and Police Constable Mule (PW 10) clearly establishes the presence of all the appellants and accused Navneet at Nandura, a place 200 kms away from Nagpur where the appellants and accused Navneet were residing. Their evidence also establishes that accused Navneet and appellant Manoj made her sit in the car in which they had come and were about to take her away and that they were prevented from doing so by Dr. Mahajan and the others. It is no doubt true that Archana (PW 6) did not name the appellants in her complaint as the persons whom she had recognized while she was being taken away in the car. She, however, did refer to their names in the complaint itself as the persons whose names were disclosed by appellant Irshad when he was caught and asked by Dr. Mahajan and the others as to who were the other companions and why they had come to Nandura. It appears that for some reason, she had tried to protect appellants Irshad, Taufiq, Santosh and Manoj even though they were known to her as they were studying with her in college previously. The omission, however, does not create any doubt regarding their presence at the time of commission of the offence. The evidence of Dr. Mahajan and Police Constable Mule is consistent on this point and it establishes that all the appellants and Accused 1 were together in the car when Archana was being abducted. Therefore, the conviction of Accused 1 under Section 366 and all the appellants under Section 366 read with Section 109 IPC is quite proper.

6. But, at the same time, it also clearly appears that Accused 1 Navneet and Archana were close to each other while they were studying at Nagpur. Accused 1 wanted to marry her. Archana's parents had shifted her from Nagpur to Nandura a few months before the incident took place. Archana had completed 18 years and Accused 1 probably believed that she would come with him. Accused 1 and the appellants were all college-going boys. The incident took place in the year 1991. Considering all these circumstances, we are of the opinion that the ends of justice would be met if their sentence is reduced from two years' rigorous imprisonment to one year's rigorous imprisonment. We, therefore, partly allow these appeals. Though the conviction of the appellants is maintained, the order of sentence is modified as stated above.

7. The appellants are on bail. Their bail is cancelled. They are ordered to be taken into custody to serve out the remaining part of their sentence.