

NAGPUR HIGH COURT

Sakhu

Vs

Crown

Criminal Appeal No. 240 of 1949

(Mudholkar, J.)

24.02.1950

JUDGMENT

Mudholkar, J.

1. The applt Mt. Sakhu was tried for an offence under section 302, Penal Code, but was convicted under Part II of Section 304, Penal Code, and sentenced to undergo rigorous imprisonment for a period of two years.
2. According to the prosecution, the applt was married to one Ganpat in the 'pat' form about two and a half years ago. Thereafter, she lived with Ganpat for a few 'months and then went to live with her father Bali at Naigaon. She had lived with him for about ten months when on 28-3-1949 Ganpat went to Naigaon with some of his friends to fetch her back. On arrival at Naigaon, Ganpat visited Bali's house and asked him to send the applt back with him. Bali refused to do so and even closed the door of the house. Ganpat and his companions then tried to force open the door. As soon as they succeeded in doing so, the applt rushed at Ganpat and inflicted two or three injuries with a knife on the neck of Ganpat. As a result, Ganpat fell down and later died.
3. According to the prosecution, the applt was egged on by her father Bali to kill one of the members of Ganpat's party. Therefore, Bali was also made a co-accused in the case. The learned Add Ses J. found that two of the companions of Ganpat had actually caught hold of Bali and taken him away before the assault took place and therefore has acquitted Bali.
4. The applt, while denying the fact that she was married to Ganpat, pleads that she inflicted the injuries on Ganpat in self-defence because Ganpat was trying to abduct her by force.
5. It seems to me that the question whether the applt was married to Ganpat or not is of little importance in considering whether the defence under section 100, Penal Code, is available to the applt. This is because, in my opinion, she being a major was free to refuse to go with Ganpat,

whether he was her husband or not, and Ganpat's attempt to take her away by force was an unlawful act. Section 100, Penal Code, would justify the use of force by a person who is assaulted with a view to abduction even if the force used by him were to result in death, provided of course it was necessary for that person to use that much force.

6. The first question to be considered therefore is whether Ganpat assaulted the applt with a view to her abduction. It is clear from the evidence of all the witnesses for the prosecution that Ganpat was bent on taking the applt away by force and that he had actually brought other persons along with him to help him in his project. Sonba (P. W. 6) admits that when the applt came out of the house, Ganpat tried to catch hold of her. I may mention that this witness had admitted before the police that Ganpat actually caught the applt by her waist and that one of his (Ganpat's) companions caught her hair but that he went back on that statement before the Ct of Session. Dhondba (P. W. 7) had also stated before the police almost the same thing as that stated by Sonba (P. W. 6), but he too went back on that statement before the Ct of Session. The most that can, therefore, be done is that the statements made by these two witnesses before the police should be eschewed while those made by them before the Ct of Session can be accepted with caution. There is, however, the evidence of Ragho (P. W. 14) who says that Ganpat not only said that he would somehow carry away the applt but he actually caught her by the waist after she opened the door. This Ragho was a companion of Ganpat and he admits that he caught the applt's hand after she had inflicted two injuries on Ganpat. In the circumstances I think it is quite safe to conclude that Ganpat did actually put his arms around the waist of the applt and that it was, thereafter, that she struck two or three blows on his neck.

7. The next question is whether the applt had exceeded her right of self-defence. Bearing in mind the fact that the only other inmate of the house, her father, was already put under restraint by two of the companions of Ganpat, it was natural for the applt to think that the only way in which she could prevent her abduction was to incapacitate Ganpat from carrying out his purpose. It was apparently with that object in view that she attacked Ganpat with a knife after he forced open the door and caught hold of her by the waist. It may be that she could have stopped after inflicting one injury, but placed as she was, it was certainly difficult for her to judge whether what she had done was enough to serve her object, i.e., prevent her abduction. That accounts for her inflicting more than one injury on the neck of Ganpat. It is true that neck is a vital organ but when a lone woman has got to fight by herself for preserving her personal liberty, I think she has a right even to cause an injury (or injuries) on such vital part of the body.

8. For these reasons, I am of the opinion that the applt did not exceed her right of self-defense and that consequently she is entitled to an acquittal. Accordingly, I allow her appeal and set aside the conviction and sentence passed on her.

Appeal allowed.