

PETITIONER:

RAJESH & ORS., TAUFIQ AHMED AMINUDDIN, SANTOSH SHASHIKANTAMB

Vs.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT: 13/08/1998

BENCH:

G.T. NANAVALI, G.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO. 425 OF 1998
WITH
CRIMINAL APPEAL NO. 755 OF 1998
J U D G M E N T

NANAVALI J.

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 Nos. 2, 3, 6, and 7 in the trial court. They had filed SLP (Crl.) No. 2629 of 1996 along with Navneet, Accused No. 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 No. 4. Criminal Appeal No. 755 of 1998 is filed by Santosh who was Accused No. 5. Accused No. 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.

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 No. 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 others were able to run away. It was also the prosecution case that Accused No.1 and appellants Rajesh and Taufiq were caught from a nearby place within a short time after 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 Section 366, 354 and also under Section 3074 read with Section 34 IPC as there was an allegation that they had tried to assault Dr. Mahajan with deadly

weapons.

In 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 that all the 7 appellants guilty as stated above.

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

The learned counsel for the appellants submitted that the finding recorded by the courts below that Accused No.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 clopement, in view of such a defence raised by Accused No.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, as 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 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 name in the complaint itself as the persons whose names were disclosed by Appellant Irshad when he was caught and asked by Dr. Mahajan and 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 the 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 N. 1 were together in the car when Archana was being abducted. Therefore, the conviction of Accused No. 1 under Section 366 and all the appellants under Section 366 read with Section 109 IPC is quite proper.

But, at the same time, it also clearly appears that Accused No. 1 Navneet and Archana were close to each other while they were studying at Nagpur. Accused No. 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 No. 1 probably believed that she would come with him. Accused No. 1 and the appellants were all College-going boys. The incident took place in the year 1991. Consisering all these circumstances were are of the opinion that 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.

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.

JUDIS