(1926) 28 BOMLR 300

Bombay High Court

Case No: Criminal Reference No. 80 of 1926

Emperor		APPELLANT
	Vs	
Shankar Narayan Gosavi		RESPONDENT

Date of Decision: Jan. 7, 1926

Acts Referred:

- Penal Code, 1860 (IPC) - Section 363

Citation: (1926) 28 BOMLR 300

Hon'ble Judges: Marten, J; Madgavkar, J

Bench: Division Bench

Judgement

Madgavkar, J.
This is a reference by the District Magistrate, of Satara asking us to enhance the sentences u/s 363 of the Indian Penal Code on the three accused, Shankar, Datta-traya and Dnyanu.

2. On the evidence the facts are clear, The three accused conspired to kidnap a minor girl aged thirteen from the custody of her husband, Accused Nos. 1 and 2 with two servants waited outside the village and accused No. 3, who had most acquaintance with the girl, went to her with a, false message and took her to the other accused outside the village. She was then ordered to take off her ornaments and to accompany the accused to the village of Mayani; and when she refused, they threatened to beat her and ultimately compelled her to go to that village. She remained there for twelve days before her husband obtained news and brought her back. In the interval accused Nos. 1 and 2 purchased some musical instruments and brought them. There is no evidence that she was violated. It is clear that at the least the common object was that she should join a company of dancing Gondhlie; for practical purposes the difference, at least after some time, would not be very great, A girl of thirteen or fourteen separated from her parents and her husband and going about with strangers as a Gondhli would in all certainty

become a loose character.

3. On these facts we agree with the learned District Magistrate that the sentence of one day''s rigorous imprisonment passed on each of the accused with a fine of Es, 50 in the case of accused Nos. 1 and 2 and of Rs. 100 in the case of accused No, 3 are entirely inadequate. We see no great difference between the criminality of each of the accused. The only thing to be said in their favour is that they are all about twenty years old and that no attempt on the girl''s chastity appears actually to have been made. In addition to the sentence undergone and the fine, we impose a sentence in the case of each of the accused of six months'' rigorous imprisonment.

Marten, J.
I only wish to add with reference to the case of Nemai Chattoraj v. Queen-Empress ILR (1900) Cal. 1041, F.B. which was cited by Mr. Modak, that in than case the accused in question never appeared on the scene until three weeks after the girl had been taken out of the custody of her guardian. That is a totally different case from the present case where all the three accused were together and then one of them goas forward and brings the girl a comparatively short distance from her parents'' house and then all the three force her to leave her guardian''s house for good.

2. As regards the other case in the Lahore High Court cited to us The Crown v. Jagat Singh ILR (1920) 1 Lah. 453. I am anable to accept the proposition that in no case can the High Court pass a substantive period of imprisonment, if the accused has served the sentence of imprisonment actually passed on him by the Court below. In this case the sentence of imprisonment was purely a nominal one, viz., one day''s rigorous imprisonment, and it may be that this meant in practice that the accused was released at the end of the day''s sitting. I decline to hold that there is any such rule of practice or otherwise as would prevent us from passing a substantive period of imprisonment in a suitable case like the present.