Satyawan Janardan Khanvilkar Vs State of Maharashtra

Criminal Appeal No. 1325 of 1979

Court: Bombay High Court

Date of Decision: Aug. 29, 1980

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 363, 366

Hon'ble Judges: P.S. Shah, J

Bench: Single Bench

Advocate: V.H. Gumaste, for the Appellant; S.B. Patil, for the Respondent

Final Decision: Allowed

Judgement

P.S. Shah, J.
The appellant was tried by the Addl. Sessions Judge, Ratnagiri, for offences under sections 363 and 366 of the Indian Penal

Code. The learned Judge acquitted him u/s 366 of the Indian Penal Code, but found him guilty u/s 363 of the Indian Penal Code and sentenced

him to suffer rigorous imprisonment for two years and to pay a fine of Rs. 500/-, or in default to suffer further rigorous imprisonment for two

months. The appellant has challenged this order of conviction and sentence passed against him.

2. The facts in so far as the material are these. The prosecutrix, Snehlata, is the daughter of Jagannath of village Mitgavane, Taluka Ratnagiri,

District Ratnagiri. Her date of birth is March 6, 1962. It is the case of the prosecution that on March 27, 1978, the appellant who was then

residing in Bombay came to the village and kidnapped Snehlata who was a female under the age of 18 years from the lawful guardianship of her

father and committed an offence punishable u/s 363 of the Indian Penal Code. The other charge which has not been held proved by the learned

Judge is that the appellant abducted her with intent that she will be forced to illicit intercourse, an offence punishable u/s 366 of the Indian Penal

Code. As stated earlier, this latter charge has not been held proved and the appellant has been acquitted of that charge. It is the case of the

prosecution that on March 27, 1978, Snehlata left he father"s house to attend a private coaching class at about 7 a.m. and was expected to return

back by 9 a.m. She, however, did not return. The father made enquiries and came to know on that very day that she left with the accused for

Bombay. Search was made by the father. He wrote letters to his relations in Bombay who informed him that his daughter was staying with the

appellant at Bombay. The father, therefore, filed a complaint with the police on April 7, 1978. After investigation, a charge-sheet was lodged by

the police against the appellant for the aforesaid two offences.

3. At the trial, the prosecutrix did not support the prosecution. She was treated hostile and cross-examined by the prosecution. The only evidence

on which the prosecution relied was that of her father, Jagannath (P.W. 2) and witness, Haidar Khan (P.W. 3). Evidence was also led by the

prosecution to establish her age as being below 18 years. The birth extract proved by the prosecution clearly showed that Snehlata was born on

March 6, 1962, and, therefore, had completed 16 years on the date of the incident. The learned Judge relied on the evidence of the father and

Haidarkhan and held that it was the appellant who induced Snehlata and took her away to Bombay on March 27,1978. The learned Judge

disbelieved the case of the accused that he was not in the village on March 27, 1978, or that he did not induce or take away Snehlata from the

village to Bombay. In this view of the matter, the learned Judge found the appellant guilty and convicted him u/s 363 of the Indian Penal Code.

4. Mr. Gumaste, the learned Counsel appearing for the appellant, did not dispute before me the finding of the learned Judge that Snehlata was born

on March 6, 1962, and that she was only 16 years of age on date of the incident. He, however, contended that the prosecution had failed to

establish its case that the appellant was in the village on that day or that he took away Snehlata with him. He submitted that the learned Judge was

in error in placing reliance on the interested testimony of the father and Haidarkhan who is admitted his friend. He also submitted that Snehlata who

was educated and appeared for S.S.C. Examination in the previous year was a bold girl and was capable of taking her own decision. He

submitted that even if the prosecution has held to have established its case that the appellant was in the village on that date or that he was seen in

the company of Snehlata on that date that would not by itself justify the conclusion that he took her away to Bombay. According to him the

essential ingredient of the offence is ''taking away'' which has not been established in this case. In support of his submission, the learned Counsel

relied on the decision in S. Varadarajan Vs. State of Madras, I see considerable merit in the submissions of the learned Counsel. There are certain

important aspects of evidence which are not in dispute. The appellant who is a young man aged 23 is also a resident of village Mitgavane. He was

residing in Bombay since two years prior to the incident. Snehlata had fallen in deep love with him since prior to the appellant shifting to Bombay.

She had appeared for S.S.C. Examination .That some time prior to the date of the incident, but had failed in the examination and was attending a

private coaching class for S.S.C. That was bold girl is also seen from the fact that both of them used to ride together on a bicycle in the village. The

evidence on record shows that she was capable of taking her own decisions. She left the house on the date of the incident for good and went to

Bombay and since then has been residing with the appellant as husband and wife. In fact, both of them got marred three days after the incident i.e.

on March 30, 1978, at Bombay. As held in Varadarajan''s case ""taking or indicting away"" a minor out of the keeping of a lawful guardian is an

essential ingredient of the offence of kidnapping. The question is whether there is any evidence worth the name to show that the appellant had

enticed away or taken away Snehlata as alleged by the prosecution. Mr Patil, the learned Public Prosecutor, relied on the testimony of the father

and Haidarkhan and contended that their evidence establishes the presence of the appellant in the village on the date of the incident as well as the

fact that the appellant had left the village with Snehlata on that day. As far as the father''s evidence is concerned, he has no personal knowledge

about the appellant and Snehlata going together. All that he has said in his evidence is that in the month of March 1978 the appellant had come

from Bombay. He has further stated that on March 27, 1978, at about 7.00 a.m. he saw that she was going to attend her coaching class. As she

did not return as usual at about 9 a.m. on that day, he started making enquiries and at about 10 a.m. Haidar Khan told him to have seen his

daughter roaming with the appellant and that the appellant was reported to have left the village in the same afternoon. In his cross-examination he

stated that the appellant had come to the village prior to 7/8 days of the date of the incident, and that at about 3 p.m. Haidar Khan told him to have

seen the appellant moving with his daughter. The witness has not specifically stated that he had seen the appellant personally at any time. The first

information is solely based on what was told by Haidar Khan to him when he made enquiries. His evidence is not of much assistance to the

prosecution on the vital question as to whether Snehlata was taken away by the appellant on that day. Witness, Haidar Khan, has stated in his

examination-in-chief that the appellant had come to the village at the time of sigma i.e. on about March 24, 1978. He further gave evidence to the

effect that the complaint, Jagannath, had met him at about 11 a.m. and had made enquires with him about his daughter and then he told him that his

daughter, Snehlata, had left with the accused. In the first place, the evidence of Haidar Khan is not consistent with what Jagannath has stated in his

evidence. All that Jagannath has averred in his evidence is that Haidar khan told him that he had seen Snehlata roaming with the accused. He did

not state that Haidar Khan told him that his daughter, Snehlata, had left with the appellant. It is also difficult to believe the evidence of Haidar Khan

on this question because he had not stated before the police that Snehlata had left with the appellant. This is a serious and important omission

which cannot be lightly brushed aside, particularly having regarding to the fact that the father himself has not stated that Haidar Khan told him that

Snehlata had left with the appellant. It must also be noticed that although the complaint was lodged on April 7,1978, the statement of Haidar Khan

was not recorded till April 30, 1978. Under the circumstances, it would be hazardous to place any reliance on the evidence of witness, Haidar

Khan. Even the presence of the appellant on the date of the incident in the village has not been clearly established by the prosecution. None of the

two witnesses, Jagannath or Haidar Khan, has positively stated that he saw the appellant on the particular date of the incident in the village. Their

evidence on this question is vague and cannot be acted upon. The prosecution has, therefore, miserably failed to establish its case that it was the

appellant who took away Snehlata from the village to Bombay. On the other hand, Snehlata has stated in her evidence that she alone went to

Bombay on March 27, 1978. Her evidence that she was visiting Bombay twice a year i.e. Diwali holidays and summer holidays right from the age

of 12 years and stayed there with her relations has not been challenged in the cross-examination. She was thus capable of leaving abode of her

parents on her own and no wonder if she decided to leave the parental house as the parents were opposed to her love affair with the appellant. It

is, therefore, not possible to uphold the view taken by the learned Judge. The prosecution has failed to establish its case against the accused. The

accused is, therefore, entitled to acquittal of the offence u/s 363 of the Indian Penal Code.

5. In the result, the appeal is allowed. The order of conviction and sentence passed by the learned Addl. Sessions Judge, Ratnagiri, is quashed and

set aside and the accused is acquitted. Bail bonds cancelled.