

CASE NO.:
Appeal (crl.) 791 of 1998

PETITIONER:
Gabbu

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 12/05/2006

BENCH:
S.B. Sinhan & P.P. Naolekar

JUDGMENT:
JUDGMENT

P.P. Naolekar, J. :

Accused-appellant Gabbu was tried for committing offences under Section 366 read with Section 34 and under Section 506-B of the Indian Penal Code (IPC) along with Sheru who was charged under Sections 366, 376 and 506-B, IPC and Sardar charged under Sections 368 and 506-B, IPC. The Session Court convicted the accused-appellant under Sections 366 and 506-B, IPC and respectively sentenced him to undergo two years rigorous imprisonment with fine of Rs. 500/- and one year rigorous imprisonment with fine of Rs.500/-, and in default of the payment of fine simple imprisonment for two months was awarded. Accused Sheru was convicted under Section 366 and 376, IPC and the third accused Sardar was acquitted. The High Court in appeals preferred by the accused appellant and the other accused Sheru, confirmed the order of the Session Court. Feeling aggrieved by the order of conviction and sentence, accused-appellant Gabbu has preferred this appeal by special leave. The other accused Sheru has not filed any appeal and order of conviction and sentence against him has attained finality.

As per the prosecution case, complainant Bisan Singh, the husband of prosecutrix, and the prosecutrix were labourers and residing behind the Technical School, Dhar. On the night of 25.7.1992 when the complainant was sleeping in his house, his wife Sita Bai went out of the house to attend the call of nature and there the accused-appellant along with accused Sher Singh alias Sheru at point of a weapon gave her threats and abducted her against her wishes. The complainant kept on searching his wife and he went to the house of accused Sheru at Brahmakundi and came to know that the accused was missing since last night. He made search at other places also but could not find her. He narrated the story to different persons who told him that the accused had taken away his wife somewhere else. The report was lodged on 26.7.1992 at the Police Station, Dhar, but the same was not registered properly.

As per the prosecution version, when the prosecutrix went to attend the call of nature she was threatened by the accused-appellant by showing a knife and the other accused put a hand on her mouth and they abducted her. The accused-appellant accompanied the prosecutrix and the other accused upto the place called Gunabad. Thereafter, the other accused took the prosecutrix away to Ghata village by truck and thereafter to Bhanwar Kuan, Indore in a motor. Thereafter, she was taken to village Nibhodi where she was allegedly kept in the house of the acquitted accused who was a distant relative of the other accused Sheru. She was sexually exploited and raped by the other accused at that place. The prosecutrix escaped from Nibhodi and reached her maternal uncle's place and narrated the

incident to him and her husband. A report to the Superintendent of Police regarding this incident was given and the case was registered against the accused persons on 22.10.1992.

In this appeal, we are concerned with the case of accused Gabbu only who has been convicted under Sections 366 and 506-B, IPC. So far as this accused is concerned, the Session Court found that accused Gabbu and Sheru came to the house of prosecutrix in the evening of the day of incident when her husband was not there. They said to the prosecutrix that as no child was born to her they would administer some medicine to her so that she would become pregnant and accordingly applied some medicine on the hand of the prosecutrix. She raised alarm and later informed her husband about the application of medicine by the other accused who was accompanied by the accused-appellant, thereafter she was abducted by the accused at night. The Session Court further recorded a finding that the prosecutrix in her statement clearly stated that accused Sheru and Gabbu entered in her house at night and accused Gabbu showed knife to her and Sheru put his hand on her mouth and brought her upto Gunabad, the statement of the prosecutrix that she was abducted by Gabbu cannot be disbelieved. So far as Section 506-B, IPC is concerned, the Session Court held that accused-appellant Gabbu pointed knife at her person and threatened to kill her and on the basis of her evidence, the charge is proved. The High Court held that nothing is brought in the cross-examination of the prosecutrix whereby the story of the incident narrated by her, should not be believed. The story given by her is tell-tales and does not create any doubt about all what has been said by her. The argument that normally a person will raise a cry when he is being forcibly taken away, was dealt with by the High Court by recording a finding that she did not raise alarm as she was frightened and it was to be borne in mind that she was an illiterate, rural and rustic village lady who would believe in superstitions, more particularly when in 10 years married life she did not have a child and accused-appellant Gabbu had promised her that he would do something by which she could have a child. The tribe to which the prosecutrix belonged is known to believe in superstitions. The High Court observed that it was not impossible that because of the fear she did not raise any cry, more particularly when she was taken away to a place unknown to her.

As far as delayed FIR is concerned, it was held by the High Court that the complainant had already gone to the police station immediately next date, i.e. on 26.7.1992 and made a complaint. Since it was not registered by the police, a written complaint was made on 22.10.1992 when the prosecutrix returned back and thus the prosecution had established its case and accordingly the High Court confirmed the order of conviction and sentence passed against the accused-appellant.

The prosecution case centres around the statement of the prosecutrix who was examined as Witness No. 4. She deposed that on the day of incident in the evening accused-appellant Gabbu came with the other accused Sher Singh (Sheru) and they told her that she had no child and then asked her to show her hand. On her refusal to show the hand, Gabbu forcibly caught her hand and accused Sheru applied some medicine. Thereafter, they again came at 10-11 p.m. They forcibly made her to get up. Sheru forcibly caught her mouth and Gabbu pointed the knife towards her and threatened not to raise alarm. She did not raise any alarm because she was frightened. Sheru and Gabbu took her on foot upto village Gunabad. Thereafter, she accompanied the other accused Sheru as Gabbu, the accused-appellant, left them at Gunabad. She further narrated about what happened to her when she went along with the other accused. She agreed in her cross-examination that there was no door in her hut and also no arrangement of light. Oil was applied by Sheru, the other accused, forcibly. On the day of incident, she along with her husband was sleeping on one single cot. She recognized Gabbu from his

voice when he said if she would raise alarm she would be killed. In this commotion, her husband got up. The accused forcibly dragged her and took her away. She stated that she had not gone on her own desire. The threat was given by Gabbu at village Gunabad.

It appears from the evidence of the prosecutrix that the story of the prosecution as alleged in the FIR that the prosecutrix was abducted when she had gone to attend the call of nature has been given a complete go-bye by the prosecutrix when she stated that the accused entered in her house where she was sleeping with her husband and from there she was forcibly taken away by the accused-appellant with the other accused. She also stated that due to the commotion her husband woke up, yet the accused forcibly dragged her away from her house.

It is difficult to believe that the prosecutrix who is a matured lady married for 10 years would be made to walk from her place of residence to the other village and she would not raise any hue and cry apart from the fact that her husband who was sleeping with her had woken up and yet the accused had forcibly taken the prosecutrix away from her house. The husband in natural course of conduct would have resisted her wife being taken away forcibly. If he had some handicap because of being single, he would have certainly raised alarm and called the other persons. The place from where the prosecutrix was taken away, as referred in the FIR on one hand and stated in the evidence of the prosecutrix on the other, raises a grave doubt about the happening of the incident as alleged by the prosecution.

Delay in lodging the FIR is another factor which creates doubt in the prosecution version.

Apart from this, to constitute an offence under Section 366, IPC, it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal Section. So far as a charge under Section 366, IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366, IPC, the Court cannot hold the accused guilty and punish him under Section 366, IPC.

We have gone through the statement of the prosecutrix. The prosecutrix nowhere alleged that she was abducted with the intention to commit an offence, that she was compelled to marry the accused or any other person or that the accused knew that she would be forced or seduced to illicit intercourse or that it was likely that she would be forced or seduced her to illicit intercourse.

The story unfolded from the evidence led by the prosecution appears to be that the accused-appellant along with the other accused in the evening went to the house of the prosecutrix and the other accused applied some medicine on her hand so that she might get pregnant after 10 years of marriage. The accused might have persuaded her to accompany them so that they could administer the medicine to her and she being an illiterate lady believing in the superstitions agreed to accompany them. After the accused-appellant left both of them at village Gunabad, the other accused had other intentions and committed the offence as alleged by the prosecution. That does not ipso facto prove the fact that from the very beginning the accused-appellant had any intention of inducing the prosecutrix to forcibly marry him or the other accused or

she was induced or seduced to illicit intercourse with the accused-appellant or with the other person whose company he left at Gunabad. There is no allegation that from the house of prosecutrix upto Gunabad the accused-appellant made any advances against the prosecutrix so as to show his intention of committing forcible intercourse with her.

In overall consideration of the material placed on record by the prosecution, we do not find that the prosecution has proved that the accused-appellant has committed an offence under Section 366, IPC. There is a doubt as to the place of incident and the motive of the accused in taking away the prosecutrix. We find it difficult to believe in the story put up by the prosecutrix that she was forced to leave her place of residence under a threat by showing a knife to her.

For the aforesaid reasons, we allow the appeal and set aside the order of conviction and sentence passed by the Session Court and confirmed by the High Court under Sections 366 and 506-B, IPC against the accused-appellant.