

CASE NO.:
Appeal (crl.) 1024 of 2002

PETITIONER:
Rajendra @ Raju

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 01/10/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

Delay in filing special leave is condoned.

Leave granted.

The prosecution case is that on 5.6.1997 PW 1 - Shahnaz Bano along with her daughter Sabana Bano - PW 22 went to Jaswant Talkies at Nagpur to watch matinee show which was over by 3 p.m.; that as the said PW 1 and PW 22 emerged out of the theatre, the appellant, who was going on road on a scooter No. MFW 9252 Bajaj Super, having seen them, is stated to have stopped the scooter and offered to give lift to them on his scooter upto their house; that when PW 1 declined to accept his offer, the appellant is stated to have threatened PW 1 that he would kill her by pointing out a knife at her; that on account of the fright created by the appellant, PW 1 is stated to have gone with him on his scooter along with her daughter PW 22; that PW 1 and PW 22 were thereafter taken to a Lodge owned by PW 3 Smt. Shabha located in Buldi area and on reaching that place the appellant is alleged to have held the hand of PW 1 and started taking her towards a room inside the Lodge; that the son of PW 3 started closing the door of the room from outside allegedly on the direction of the appellant and on seeing this PW 1 asked the boy not to close the door and at that time her daughter PW 22 Sabaha Bano was also inside the room; that thereafter, PW 1 forcibly pulled her hand out of the appellant's hold and managed to become free from the clutches of the appellant and went out of the room along with her daughter; that PW 1 then started crying "Beijjatee" and on seeing the mob gathering on the road, the appellant is stated to have driven away on his scooter; that, thereafter, PW 1 and PW 22 went to their house in a cycle rickshaw; that on reaching home PW 1 narrated the incident to her husband who asked her to lodge a report at the Police Station and said that otherwise he would not keep her at his home; that PW 1 and her husband went to the Police Station and lodged a complaint at about 5 p.m. as per Exhibit 22 which was registered for offences under Section 341, 354, 366 and 506 of the Indian Penal Code at about 8.05 p.m; that the appellant is also stated to have reached the same Police Station by then where the complaint had been lodged in which he was working and on noticing that case had been registered against him, he left his scooter in front of the Police Station and ran away. PSI PW 10 seized the scooter and drew a seizure memorandum and recovered a Spear Blade from the dicky of the said scooter; that the appellant is stated to have surrendered at the Police Station and a charge sheet was filed against him. On committal to the Court of Session he was tried for offences under Sections 341, 354, 366 and 506 Part II IPC.

The trial court held the appellant guilty of the charges levelled against him and sentenced him to undergo different periods of imprisonment for offences under Sections 341, 506 Part II and 366 IPC. The substantial sentence

imposed on the appellant was to undergo rigorous imprisonment for 10 years and to pay certain amount of fine. The appellant preferred an appeal. The High Court set aside the conviction and sentence imposed on the appellant under Sections 341 and 506 Part-II IPC and acquitted the appellant of those offences. However, the High Court maintained his conviction under Sections 354 and 366 IPC by modifying the sentence to six months for the offence under Section 354 and six years for the offence under Section 366 with a fine of Rs. 500. Hence this appeal.

After analysing the evidence the High Court came to the conclusion as follows :-

"24. It is difficult to believe that the accused obstructed the prosecutrix and her daughter Shabana in the square near Jaswant Talkies and forced them to sit on the pillion at the point of knife and then forcibly took them up to the lodge at Buldi. This occurrence was alleged to have taken place at 3 p.m. It was in the broad-day light. The alleged obstruction was in front of Indora Police Outpost. The evidence shows that the accused along with the prosecutrix and her daughter Shabana crossed some eight squares on the scooter while going from Jaswant Talkies to Buldi. One has to pass first through Indora Square. Then ahead of Indora Square, there is a Kadbi Chowk. After Kadbi Chowk, a railway bridge is there. Thereafter, there is a Gaddigudam Chowk. Thereafter comes LIC square. Thereafter there is a Reserve Bank Chowk. Thereafter there is "T-Point" and then comes Variety Square. In almost all the squares, there are traffic signals. At some squares, the traffic police are on duty. The road by which the accused took the prosecutrix and PW Shabana is a highway running through the city and it is the busiest way. It is a crowded road and there is always a heavy rush of people and vehicles on that road. The scooter cannot be driven fast on that road. Buldi is a market area, naturally having a huge rush of customers and other people. The vehicle must have been driven slowly all the while on the above road. The prosecutrix could raise the shouts. When the scooter was slow, the prosecutrix and her daughter could have got down from the scooter.

25. The evidence of the prosecutrix show that the weapon was in the dicky and not either in the hands of the accused or in the front side helmet box. The accused was driving the scooter with both of his hands. The prosecutrix could have resisted and struggled and could have got down from the scooter on the way. If the accused had to take them under the fear of knife, he would not have placed the weapon in the dicky and he would have kept it in the front side helmet box while driving the scooter. The evidence on record also shows that at one point, that is, at the Variety Square, the scooter had halted for five minutes. At that place also, the prosecutrix and her daughter Shabana did not get down. It is worth noting that Sitabuldi Police Station is just in that Square. No attempt was made by the prosecutrix to invite the attention of the members of public all along with road though they had crossed the distance of about six kilometers through the thick crowd or at the place where the scooter had stopped for some time. The evidence of PW Shabana also shows that all of them had taken tea, it might be on reaching the place near the Lodge.

26. . As already stated above, the knife or the weapon was not in the hands of the accused nor was in the place of helmet box. Even as per the own evidence of the prosecutrix, it was in the dicky. The accused was not alleged to be in the uniform of police. So the above story of taking the prosecutrix and her daughter at the point of knife to such a long distance through a crowd of people and vehicles is not worth believing. As per the evidence of the prosecutrix and PW Shabana, the story at the subsequent stage shows that the prosecutrix rescued herself from the Lodge by giving a jerk to the hands of the accused which invited the attention of the mob on the road. The prosecutrix could struggle with the accused in the Lodge in a room, which was somewhat a secluded place. She could have easily struggled with the accused on the crowded road or could have invited the attention of the people. The learned Additional Public Prosecutor submitted that at the time when there was an attempt on the

part of the accused to confine the prosecutrix, she gained courage. Had it been a fact that the accused took the prosecutrix and Shabana forcibly on the scooter, then on noticing that they were being taken elsewhere, that is to say, to the place other than to their house, the prosecutrix would have immediately suspected a foul and could have gained courage and would have raised the hue and cry. It seems that the prosecutrix came to Buldi area along with the accused on his scooter willingly.

27. Though this is the state of things, it cannot be said that the prosecutrix was knowing the design of the accused. The further story that the accused took the prosecutrix inside the room of the Lodge and made an attempt to close the door, inspires confidence. There is no reason to distrust this story. The evidence of the prosecutrix and her daughter Shabana clearly shows that the prosecutrix got rescued herself and her daughter from the clutches of the accused while she was being confined in the room when she came to know the design of the accused. Then the fact remains as to how did she come up to Buldi on the scooter of the accused without offering any resistance. The necessary inference, that has to be raised, is that the accused must have brought the prosecutrix and Shabana to Buldi area by making some misrepresentation or under some pretext and as the prosecutrix was knowing the accused, since he was visiting the area of hutment of the prosecutrix, she must have accompanied the accused on his scooter along with her daughter believing in his representation."

It is not that PW 1 was not knowing that the appellant was not taking them to their house but somewhere else. If PW 1 did not want to go with the appellant, there was hardly any difficulty for her to have declined. If really the appellant intended to have sexual intercourse with her there would have been no chance either for her or her daughter to rescue themselves from the clutches of the appellant while they were being confined in a room of the Lodge. Even if PW 1 came to Buldi area along with the appellant on his scooter to go to her home, on noticing that she was being taken elsewhere to a place other than her home, she would have immediately suspected a foul play and would have raised an alarm. It cannot be taken that PW 1 is so innocent as to be carried away by the antics of the appellant to simply go with him when she did not intend to go with him. At the same time, the High Court held that "the accused must have brought the prosecutrix and Shabana to Buldi area by making some mis-representation or under some pretext and as the prosecutrix was knowing the accused, since he was visiting the area of hutment of the prosecutrix, she must have accompanied the accused on his scooter along with her daughter believing in his representation". While the High Court held that though PW 1 did not disclose as to what representation was made by the accused or under what pretext she and her daughter were taken by the accused on his scooter and, on the other hand, PW 1 introduced the story of her forcibly taking, nevertheless, it held that it was by adopting deceitful means that PW 1 was abducted by the appellant. This conclusion of the High Court rests on a pure figment of imagination inasmuch as what misrepresentation or pretext was held out to PW-1 is not spelt out and not established as a fact. The High Court could not have speculated on how PW-1 could have accompanied willingly right upto the lodge and then infer that she did so only yielding to a pretext or misrepresentation held out to her when in fact no evidence was adduced on this aspect at all. Therefore the finding that the appellant adopted deceitful means to abduct PW-1 or PW-22 cannot be sustained. In order to constitute offence of 'abduction' a person must be carried off illegally by force or deception, that is, 'to compel a person by force or deceitful means to induce to go from one place to another'. In the instant case, neither of these two ingredients are established.

On reaching the Lodge, it is difficult to visualise that the appellant had asked PW-1 to have sexual intercourse with her in the presence of her 11 years old child, and that he allowed her to easily slip out of his hands from the Lodge, if that was his intention. Hence that part of the case also is doubtful.

These facts are sufficient to hold that the offence alleged against the appellant was not established. The view taken by the High Court appears to us to rest on surmises. In that view of the matter, we allow this appeal and set aside the order passed by the High Court affirming the conviction of the appellant under Section 366 IPC read with Section 354 IPC.

JUDIS