

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
ABDUL HAFIZ FAROKI & ORS.

DATE OF JUDGMENT: 28/04/1998

BENCH:
G.T. NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 28TH DAY OF APRIL, 1998

Present:

Hon 'ble Mr. Justice G.T. Nanavati
Hon 'ble Mr. Justice S.P. Kurdukar
Mr. S.M. Jadhav, Mr. D.M. Nargolkar and Mr. S.S. Shinde,
Advocates for the appellant.
Mr. Y. Raja Gopala Rao, AC for the respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
NANAVATI, J.

These appeals are filed by the State of Maharashtra against the common judgment of the High Court of Bombay whereby it acquitted the accused who were convicted by the trial court for the offences punishable under Sections 120B, 376, 342 and 506 I.P.C.

The trial court believed the evidence of P.W.1 Rukmani and P.W. 2 Kesarbai and held that all the 8 accused including the one who had died during the pendency of the trial, had boarded the train leaving Pulgaon Railway Station for Wardha at 9.55 P.M., 2 were sitting and after the train left the Station they committed rape on P.W. 2 Kesarbai. The trial court also believed the evidence train when it was about 1/2 k.m. away from Wardha and then she was taken to the nearby hillock where again A-1 and A-2 committed rape on her.

The High Court, on re-appreciation of the evidence of P.W.1 and P.W.2 held that, apart from the inconsistencies to be found in their evidence, the version given by them was highly improbable. The High Court also held that in all probability Kesarbai had willingly gone along with A-1 and A-2. The High Court, therefore, acquitted all the 7 accused. The State of Maharashtra has, therefore, filed this appeal against their acquittal. During the pendency of these appeals, respondent Arun (A-6) died and, therefore, appeal against him has abated.

We have carefully gone through the evidence of P.W.1 Rukmani and P.W. 2 Kesarbai. Judging it on the ground of probability, their version that 8 persons had committed rape on Kesarbai and that too twice does not appear to be correct. In the first information report given by P.W. 1

Rukmani her version was that Kesarbai was taken into the latrine of the compartment and therein the accused had committed rape on her. In her evidence before the Court she changed her version and she and Kesarbai both stated that rape was committed on her not inside the latrine but inside the compartment on the floor in between two berths. Kesarbai at the time of the incident was not carrying on well with her parents and she had left Village Kekatumra with her aunt Rukmani two days before the date of the incident. They did not have money to purchase tickets and, therefore, they were travelling without tickets. That was the reason why they had to get down at Akola Railway Station and stay there for the whole day. They and boarded the train at Akola for going to Wardha at 12 mid night without purchasing tickets possibly believing that they will not be caught at night. However, the Ticket Checker caught them and, therefore, they were required to get down at Pulgaon. They stayed at Pulgaon for the whole day and boarded the train for going to Chandrapur at 9.00 P.M. Neither P.W.1 Rukmani nor P.W. 2 Kesarbai have stated why they wanted to go to Chandrapur. Neither Kesarbai nor her aunt had more than three rupees when they left Village Kekatumra. According to the evidence of P.W. 1 Rukmani after the accused had committed rape on Kesarbai they had pushed her giving kicks upto the door of the compartment and then had thrown her out of the compartment when the train was passing through the Wardha Railway Yard and was only a short distance away from the Station. Kesarbai has also stated that she was pushed out of the running train. If really 8 persons committed rape on Kesarbai and that too twice and had pushed her out of the running train after giving kicks then some injuries would have been found on her person. But except for a small incised wound on her right hand and some minor superficial abrasions on other injury was found on her person. If Kesarbai was really thrown out of the train while it was passing through the Railway Yard and was taken forcibly by A-1 and A-2 to the nearby hillock then she would have raised some shouts. But that is not her evidence. That appears to be the reason why the High Court held that possibly Kesarbai had gone with A-1 and A-2 willingly involved the accused. Considering the infirmities in the prosecution evidence, it cannot be said that the view taken by High Court is unreasonable and calls for any interference by this Court.

These appeals are, therefore, dismissed. The bail bonds of the respondents are ordered to be cancelled.