

## **Shyam And Another vs State Of Maharashtra on 31 January, 1995**

**Equivalent citations: AIR1995SC2169, 1995CRILJ3974, AIR 1995 SUPREME COURT 2169, 1995 AIR SCW 3374, 1995 APLJ(CRI) 426, 1995 CALCRILR 371, 1995 SCC(CRI) 851, (1995) 2 CRICJ 503, (1996) 1 CURCRIR 215**

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**Bench: Madan Mohan Punchhi**

### **JUDGMENT**

1. Despite the concurrent findings of the Courts below that the prosecutrix was taken out of the lawful guardianship of her mother, for which the appellants were accountable under Section 366, I.P.C. we have come to the view on going through the record and hearing learned Counsel that the prosecutrix was an unreliable witness and no credence can be given to her word.

2. The two appellants were friends. They were young people at the time of the commission of the offence in the year 1984. Out of them, Shyam, A-1 wanted to marry the prosecutrix, Lalita. He made a proposal to her about two to three months prior to the occurrence which was spurned by her. On the day of the occurrence, she was incidentally at the common tap for washing clothes and to fetch water back home. The appellants riding their respective bicycles came at that time and at their asking she sat on the carrier of the bicycle of Suresh. A-2 and Shyam, A-1 followed that bicycle as if escorting. The prosecutrix was taken to a room in the house of someone where she was made to perform a ritual signifying marriage between her and Shyam, A-1. The mother of the prosecutrix finding the girl missing reported the matter to the police and on its activation the prosecutrix was recovered from that room along with Shyam the appellant. This is the sum and substance of the prosecution case as has been found by the Courts below.

3. In her statement in Court, the prosecutrix has put blame on the appellants. She has deposed that she was threatened right from the beginning when being kidnapped and she was kept under threat till the police ultimately recovered her. Normally, her statement in that regard would be difficult to dislodge, but having regard to her conduct, as also the manner of the so-called "taking", it does not seem that the prosecutrix was truthful in that regard. In the first place, it is too much of a coincidence that the prosecutrix on her visit to a common tap, catering to many, would be found alone, or that her whereabouts would be under check by both the appellants/ accused and that they would emerge at the scene abruptly to commit the offence of kidnapping by "taking" her out of the lawful guardianship of her mother. Secondly, it is difficult to believe that to the strata of society to which the parties belong, they would have gone unnoticed while proceeding to the house of that other. The prosecutrix cannot be said to have been tied to the bicycle as if a load while sitting on the carrier thereof. She could have easily jumped off. She was a fully grown up girl may be one who had

yet not touched 18 years of age, but, still she was in the age of discretion, sensible and aware of the intention of the accused Shyam, That he was taking her away for a purpose. It was not unknown to her with whom she was going in view of his earlier proposal. It was expected of her then to jump down from the bicycle, or put up a struggle and, in any case, raise an alarm to protect herself. No such steps were taken by her. It seems she was a willing party to go with Shyam the appellant on her own and in that sense there was no "taking" out of the guardianship of her mother. The culpability of neither Shyam, A-1 nor that of Suresh, A-2, in these circumstances, appears to us established. The charge against the appellants/ accused under Section 366, I.P.C. would thus fail. Accordingly, the appellants deserve acquittal. The appeal is, therefore, allowed acquitting the appellants.