

Dova of Lungdai Vs. the State

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Court : Guwahati

Decided On : Mar-13-1961

Judge : H. Deka, C.J. and S.K. Dutta, J.

Appellant : Dova of Lungdai

Respondent : The State

Judgement :

H. Deka, C.J.

1. This rule was obtained by the accused who was convicted under Section 497 of the Indian Penal Code by the First Class Magistrate at Aijal and sentenced to one year's rigorous imprisonment and a fine of Rs. 1000/-. On an appeal to the Deputy Commissioner, the sentence was reduced to a fine of Rs. 1,000/- only. It is against this order of the appellate Court that the petitioner moved this Court and obtained a rule.

2. The ease for the prosecution was that Tlangbiakthanga of Lungdai filed a complaint against the accused Dova of Lungdai for alleged commission of an offence of adultery with his wife Hmangaihi. His case was that he was working in an operational area after his marriage leaving his wife at his house at Lungdai village since 1957 as the service men were not allowed to take their wives and children with them while working in an operational zone.

It was alleged that the accused who is a school teacher took advantage of his absence and carried on love affairs with his wife and had illicit intercourse with her on more than one occasion from October to December 1958, when the complainant came back to his house at Lungdai. The complainant got adverse reports against his wife and when he asked her as to the truth of the allegation, she admitted before her husband and other persons of the locality that the accused had as a matter of fact committed illicit sexual intercourse on more than one occasion with her.

The complainant thereupon filed this complaint against the accused. The accused, on the other hand, pleaded not guilty and his defence was that it was really out of grudge that the complainant had filed the complaint at the instigation of two of his witnesses and his brother with whom the accused had certain differences. The accused also examined some witnesses to rebut the charge of adultery as deposed to by Mst. Hmangaihi and other prosecution witnesses.

The question of marriage of Hmangaihi with the complainant Tlangbiakthanga and the knowledge thereof is not denied. The only thing denied is that the accused had sexual intercourse with the woman as alleged. Apart from the complainant's wife there were other prosecution witnesses he deposed to the effect that the accused was found in the company of Hmangaihi in a kitchen of Hmangaihi during a Sunday previous to the Christmas and that on one occasion she was seen coming out of the school house through a window.

3. The case really rests mainly on the statement of the woman, and other witnesses came forward only to supplement her. The learned Magistrate has observed that it is difficult to get actual eye-witnesses of the commission of adultery or sexual intercourse, and, therefore, the Court had to examine the circumstantial evidence. The learned Magistrate has accepted the prosecution story that the accused had on several occasions been seen in close company of Mst. Hmangaihi and their friendship is not seriously challenged, Sometimes the Court has to rely upon circumstances and the conduct of the persons concerned, and, here in this case a young man is found in the company of a young woman, whose husband is away, and had been on more than one occasion seen together

and in suspicious circumstances. Therefore, if the learned Magistrate accepted the version given by the woman Hmangaihi as supported by other witnesses, we do not think he is really wrong unless the accused succeeded in proving his defence through his witnesses or by the allegations made in the cross-examination.

The learned Magistrate considers that the defence witnesses are unworthy of any credit and 'even if those witnesses are relied on, no substantial defence is made out. It is not normally given to any other person to see the commission of any offence of adultery. Therefore, if the defence witnesses say that they have not seen them together 'r that they do not suspect that there was any adultery committed, that would not carry the defence case very far. Though the lower appellate Court has not considered the evidence in detail, and had taken the case for granted, we have applied our mind to the facts of this case and we see no reason to differ from the finding arrived at by the trial Court.

4. Mr. Choudhary for the accused has submitted before us that since the commission of adultery is a matter that might be tried under the tribal custom, the criminal Court should not have tried this case at all. We have before us no material in any form or shape, far less a statute, to indicate that the question of adultery between the tribals should be decided by a District Council Court coming within Paragraph 4 of the Sixth Schedule of the Constitution of India and we cannot hold that the trial by the Magistrate was wrong.

It has been conceded that the offence comes within paragraph 5(1) of the Sixth Schedule of the Constitution, and that there was no express authorisation by the Governor authorising any of the District Council Courts to try those offences, and that the Magistrate had jurisdiction. Apart from the provisions of the Sixth Schedule, the Rules

I framed under Paragraph 4 of the Sixth Schedule, published on 7th April, 1953, relating to the Mizo Hills administration indicate as per Rule 23(1) that a Subordinate District Council Court shall not be competent to try suits and cases - (a) to which the provisions of sub-paragraph (1) of paragraph 5 of the Sixth Schedule to the Constitution apply.

In this case admittedly this is the provision that would govern, and, therefore, we find it difficult to hold that any Subordinate District Council Court would be competent even to try any suit' apart from a case in regard to commission of such offences which Prescribe a penalty of imprisonment for not less than five years. In support of his contention Mr. Choudhary sought to rely on a correspondence passing between the Chief Executive Member, Mizo District Council, and the Secretary to the State Government, Tribal Areas Department, Shillong, wherein it is stated that these matters should be heard by the Courts of the District Council.

Unless there be distinct Provision in any of the statutes or rules legally framed that the District Council Court would have jurisdiction to hear the case, the jurisdiction of the Magistrate cannot be said to be ousted. In this matter we have considered the facts of the case as we have already indicated and we find no reason to interfere with the conviction. But having regard to the state of affairs in the district from where this case comes, we reduce the sentence of fine to Rs. 300/- in place of Rs. 1,000/-, as imposed by the appellate Court; in default the accused is to undergo two month's rigorous imprisonment. With this modification in the sentence, the rule is discharged.

S.K. Dutta, J.

5. I agree.

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