

Saheed Mian and Etc. Vs. State of Bihar

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Court : Patna

Decided On : Oct-06-1999

Judge : R.N. Sahay, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 366, 366A and 376;
Evidence Act - Sections 106 and 114

Appeal No. : Cri. Appeal (S.J.) Nos. 242, 274 and 334 of 1989

Appellant : Saheed Mian and Etc.

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Behari Pd., A.P.P.

Advocate for Pet/Ap. : Yogendra Prasad Sinha No. 1, N.K. Sinha No. 3 and Arun Kumar, Advs.

Judgement :

R.N. Sahay, J.

1. In Sessions Trial No. 109 of 1987 on the file of 2nd Additional Sessions Judge, West Champaran, Bettiah, six persons were placed on trial to answer the charges under Sections 366A/109 and 376/109 of the Indian Penal Code. Accused Karmullah Ansari and Salim Mian were acquitted by the trial Court and remaining four accused persons were convicted of the charges framed against them.

2. In Cr. Appeal No. 334 of 1989 appellants are Zazul Mian alias Azzul Mian and his mother Raisani alias Raisan of village Tituhiya, P.S. Sikarpur in the district of West Champaran. In Cr. Appeal No. 274 of 1989 the appellant is Munir Mian of village Telpur, P.S. Lauria in the district of West Champaran. In Cr. Appeal No. 242 of 1989 appellant is Saheed Mian of village Baswariya, P.S. Chautarba in the district of West Champaran. Saheed Mian is the son of Salim Mian, who was acquitted by the trial Court.

3. On 31-5-1986 Shobha Kumari daughter of Ram Brichh Pandey of village Tutuhia disappeared from her home. Shobha was minor aged about 15 to 16 years. According to the evidence of Ram Brichh Pandey, father of the girl, he saw appellant Raisani coming to his house in early hours of the morning and talking to the girl. The girl went with Raisani saying that she was going to answer the call of nature. It was the prosecution case that Raisani was acquainted with the family of Ram Brichh Pandey. The evidence of Ram Brichh Pandey that he allowed his daughter to go with Raisani does not appear to be convincing. There is no other evidence against this appellant.

4. When the girl did not return after an hour, her father went to the house of Raisani. She did not give any satisfactory answer. A search was made for the girl but she could not be traced out. Ram Brichh Pandey suspected Zazul Mian and his mother having enticed away Sobha so that she would be married to appellant Zazul Mian. Both the appellants were arrested and investigation was taken up. The police was informed that the girl had been kept in the house of Saheed Mian in village Baswariya from where the girl was taken to another place. On 19-6-1986 Sobha was recovered from the house of one Nurul Hassan from a village in the district of Azamgarh in Uttar Pradesh.

5. The defence of the appellants was that Sobha Kumari was not minor and she had left her house and had gone with Zazul Mian on her own accord.

6. Appellant Saheed Mian is the Mausa of Zazul Mian. The evidence of Sobha is that she was taken by Zazul Mian from her village home and first taken to the house of Karmullah Ansari (since acquitted) of the same village of which Sobha belonged. From there she was taken to the house of appellant Munir Mian and

was kept for two days. Thereafter she was brought to the house of appellant Saheed Mian. She was taken to Gorakhpur from where she was taken to the house of Phupha of Zazul Mian at Azamgarh from where she was recovered. The evidence against Munir Mian is the same as the evidence against Saheed Mian. It appears that the statement of the girl was recorded on 23-6-1986 i.e. after four days of her recovery, during which period she was under the custody of her father.

7. According to the case of the appellants in Cr. Appeal No. 334 of 1989, Shobha Kumari has left the village on her own accord much before 30-5-1986 the alleged date on which she is said to have been enticed away. In support of this, the defence relied on the Station Diary Entry No. 663 of the concerned Police Station, which was not exhibited. The Officer-in-charge stated that he heard a vague information on 31-5-1986 that a Hindu girl was kidnapped by a Mohammadan. Shobha Kumari was produced before the Police one and a half months after she was enticed away. The evidence of Shobha Kumari is that she was taken to Sabeya Taipur Baswari Bagha Railway Station and then she went to village Amdehi. According to the defence she remained out of her house for 32 days. In this view of the matter, it is submitted that she had left her house on 15-5-1986.

8. According to the prosecution, the girl left the house on 30-5-1985 at 5.00 a.m. and when she did not return, suspicion arose in the mind of her father. However, the police was not informed on that day. On vague information he reached the Police Station on 31-5-1985. Learned counsel for the appellants has pointed out a number of circumstances which cast doubt on the prosecution case. Medical evidence also does not support the case of the prosecution. X-ray report was not produced. It is submitted that the girl could not be said to be a reliable witness since she had occasion to stay at Sabeya Taipur Baswaria Railway Station and had occasion to go to Bagaha town but she did not raise any alarm.

9. In Ramesh v. State of Maharashtra, AIR 1962 SC 1908 : 1963 (1) Cri LJ 16, the Supreme Court held that a person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of eighteen years, does not thereby commit an offence under Section 366A. It cannot be said that thereby he induces her to go from any place or to do any act with the intent or

knowledge as contemplated by Section 366A. The appellant before the Supreme Court had been convicted under Section 366A and 366 of the Indian Penal Code. Bombay High Court held that the appellant had abetted the commission of offence punishable under Section 366A of the Indian Penal Code by another accused by instigating later to bring the girl who was seduced. The Supreme Court held that the appellant would not be held guilty for committing the offence under Section 366A, Indian Penal Code.

10. In *Kamij Shaikh v. Emperor*, AIR 1948 Patna 73 : 1947 (48) Cri LJ 301, learned Judge of this Court held that the evidence does not always need corroboration in cases under Section 366A, but where it is found that the girl in question has been definitely lying on important points in her story, then it is unsafe to rely on other parts of her evidence to convict any person of a criminal offence unless that evidence is corroborated on material points. The presence of the girl in the house of the accused is not a material point for the purpose of corroboration. Learned Judge observed :- Now on neither of these points would the presence of the girl in the house indicate in any way which way the question should be answered. It is consistent with either answer to the question. It is useless to speculate on possibilities or probabilities. To my mind there are varieties of possibilities, and in the absence of reliable evidence it is wrong to take the view that one possibility is more probable than another and treat that probability as corroboration of a witness who has been found clearly unreliable. I can find no other circumstance in the evidence to corroborate the girl's story that she went to the house of the appellant as a result of inducement by him and I must, therefore, hold that the charge under Section 366A, Penal Code, has not been proved against the appellant.

11. In *Emperor v. Parag*, (1933) 34 Cri LJ 220 : AIR 1933 Oudh 45, Division Bench of Oudh Chief Court held that the essential ingredients of an offence under Section 366 or 366A of the Penal Code is that the accused intended or knew that it was likely that the abducted woman might or would be compelled to marry a person against her will or that she might or would be forced or seduced to illicit intercourse. In the absence of the evidence as to such intention or knowledge on the part of a person, he cannot be held guilty of the offence under Section 366,

however reprehensible his conduct might have been otherwise.

12. In my opinion, the conviction of the appellants Saheed Mian and Munir Mian deserves to be set aside and their appeals deserve to be allowed on the ground that the evidence does not disclose that they had participated and supported appellant Zazul Mian in his nefarious design. No doubt, the girl was kept in the house of appellant Saheed Mian for two days. Saheed Mian is the Mausa of Zazul Mian. The appellants are entitled to acquittal on the ratio laid down in *Emperor v. Parag* (supra).

13. So far Cr. Appeal No. 334 of 1989 is concerned, in my opinion, the evidence against the appellant Zazul Mian alias Azzul Mian is more than satisfactory for his conviction under Section 366A of the Indian Penal Code.

14. In *Mohammad Sadiq v. Emperor*, AIR 1938 Lahore 474 : 1938 (39) Cri LJ 844, it was held that the evidence of girl alleged to have been abducted must be taken with a great amount of caution. Learned Judge of the Lahore High Court held that even a forcible abduction does not amount to an offence under Section 366, unless there are other ingredients, namely the intention either that the girl should be seduced or forced to illicit intercourse or that she should be compelled to marry against her will. In cases of forcible abduction, there can seldom be direct evidence as to the actual intention of the abductor and that intention must be inferred from the circumstances of each case under Section 114, Evidence Act. Human nature being what it is, whenever one finds a young man abducting a girl of marriageable age, the first natural presumption must be that he has abducted her with the intention of having sexual intercourse with her either forcibly, or with her consent after seduction, or after marrying her. If he has any intention other than that which is suggested by the natural circumstances of the case, the burden lies upon him under Section 106, Evidence Act to prove that intention.

15. There is no reason not to accept the medical evidence that the girl was minor. Although no recent sign of sexual assault was found, medical evidence and circumstances indicate that she was with the appellant Zazul Mian for a month and she must have been subjected to sexual intercourse and hence Zazul Mian has rightly been convicted under Section 366A and 376, I.P.C. There is no valid

reason to interfere with his conviction. Zazul Mian had been sentenced to 10 years' imprisonment and he has already served out the sentence.

16. So far appellant No. 2 Raisani alias Raisan is concerned, the evidence of the informant that he saw this appellant going with his daughter does not appear to be convincing. It is not acceptable that a father would allow his minor girl to move along with a neighbour in the early hours of morning for no apparent reason. The defence case that the victim Shobha had left her house prior to 31-5-1986 appears to be convincing. I, therefore, set aside the conviction of appellant No. 2 Raisani of Cr. Appeal No. 334 of 1989 by giving her benefit of doubt.

17. In the result, in Cr. Appeal No. 334 of. 1989, appeal of appellant Zazul Mian is dismissed while the appeal of Raisani is allowed and she is acquitted by giving her benefit of doubt. She is discharged from the liability of her bail bonds. Cr. Appeal No. 242 of 1989 and Cr. Appeal No. 274 of 1989 are allowed and the conviction of the appellants is set aside and they are discharged from the liability of their bail bonds.

18. All the three appeals are accordingly disposed of.

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