

The State Vs. AshiruddIn Master and ors.

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Court : Guwahati

Decided On : Nov-24-1950

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : The State

Respondent : AshiruddIn Master and ors.

Judgement :

Thadani, C.J

1. We have before us a reference made by the learned Asst Ses J. L. A. D. under Section 307, Cr. P.C. in a case in which one Ashiruddin Master & Abdul Kuddus were found guilty by a majority verdict of the Jury under Section 366, I P.C. The learned Judge disagreed with the verdict of the Jury & made this reference in the interests of justice.

2. Ashiruddin & Abdul Kuddus were tried along with 3 others -- one Hayet Ali. Kaset 'alias' Kashem Ali, & Mongla Munshi

-- under Sections 147 & 366, I. P.C. with the aid of a Jury. The Jury found Hayet Ali, Kaset 'alias' Kashem Ali, & Mongla Munshi not guilty - a verdict with which the learned Judge agreed.

3. It appears from the summing up to the Jury that the learned Judge, short of saying so, directed the Jury to find all the accused persons not guilty under

Sections 147 & 366, I. P.C. The main point upon which the learned Judge has made the reference is that the requisite intention as described in Section 366, I. P.C. has not been proved by the prosecution. He has referred to the evidence of Korpan P. W. 1, a brother of the girl said to have been abducted, in which, he had stated

...At the time the girl was being taken away, the accused persons did not say that she was being taken for being married to Kased.' The learned Judge has also referred to the evidence of the girl (P. W. 9) wherein she had stated that she was not asked to marry anybody. Relying upon these two statements, the learned Judge has taken the view that the intention of compelling the girl to marry some one against her will has not been proved.

4. As regards the alternative intention described in Section 366, I. P.C. the learned Judge has referred to the evidence of the girl who has stated

When I was brought back to Ashiruddin's house, he wanted to ravish me, but I refused when he caught hold of me. I cried. His two wives appeared & intervened, when Ashiruddin left the place.

The learned Judge rightly observed that the girl had not made any such statement to the Police, & pointed out that even the mother of the girl has not corroborated the girl's evidence in this particular, & that when the girl was recovered she did not allege that anybody had attempted to have sexual intercourse with her, The learned Judge therefore points out that assuming the girl was abducted, in the absence of evidence that she was abducted with the intention as described in Section 366, I. P.C., no conviction can be recorded against the accused persons.

5. Mr. Medhi the Senior Govt Advocate has not supported the reference. He contends that the prosecution has established from the evidence of the abducted girl, her mother, & her brother, as also from the surrounding circumstances that the girl was, in fact, abducted & that the persons who participated in the abduction were the 2 persons against whom the Jury has brought a verdict of guilty under Section 366, I. P.C. Mr. Medhi. however, conceded that it was correct to say, as the learned Judge has stated, that the prosecution has failed to prove that the

intention of these two persons was not (sic) to compel the girl to marry some one against her will. But he contends that on the evidence of the girl wherein she states that Ashiruddin attempted to have sexual intercourse with her, the Jury could properly draw an inference that the intention of the accused persons at the time of the abduction was that she would be forced or seduced to illicit intercourse or, at any rate, they knew that that would be the case.

6. While we agree that it is open to the Jury to draw inferences from proved facts, we think that where two inferences can be drawn from proved facts

-- one which leads to the inference that the intention of the accused persons was culpable within the purview of the I. P.C. & the other not so culpable

-- the Jury is bound to give the accused the benefit of that inference which was not culpable.

7. It is to be observed that in the complains filed by the brother of the girl two days after the alleged abduction, the only intention ascribed to the accused persons was that they had abducted the girl with the intention of marrying her to Kased who has been acquitted. Ordinarily speaking, when a body of persons are alleged to have abducted a girl with the intention of compelling her to marry one of the abductors or a stranger, it is reasonable to suppose that the abductors, apart from the abductor with whom the girl was going to be compelled to marry, would not have the intention of seducing her to illicit sexual intercourse. The only evidence which was before the Jury as to the intention of the accused in abducting the girl was the evidence that Ashiruddin asked the girl to have sexual intercourse with him after the abduction. We do not think it follows from this evidence that Ashiruddin had at the time of the abduction the intention of seducing the girl to illicit intercourse. It may well be that after the abduction Ashiruddin made improper overtures to the girl, without having any intention at the time of abduction to seduce the girl. This subsequent conduct of Ashiruddin does not necessarily lead to the inference that Ashiruddin had the intention of seducing the girl at the time of the abduction. We think the Jury, in discarding the alternative inference which was innocuous from the point of view of the I. P.C. acted unreasonably & to the prejudice of the accused persons in bringing the verdict which they did.

8. We therefore, accept the reference & set aside the verdict of the Jury & order that Ashiruddin & Abdul Kuddus who have been found guilty by the Jury be acquitted. They will be set at liberty forthwith.

Ram. Labhaya J.

9. I agree.

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