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Court : Allahabad

Decided On : Jun-02-1953

Reported in : AIR1954All51

Judge : Asthana, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 365; Code of Criminal Procedure (CrPC) , 1898 - Sections 423

Appeal No. : Criminal Appeal No. 1067 of 1950

Appellant : Roshan and ors.

Respondent : State

Advocate for Def. : J.R. Bhatt, Adv.

Advocate for Pet/Ap. : P.G. Gautam and ;Shiv Charan Lal, Advs.

Disposition : Appeal dismissed

Judgement :

Asthana, J.

1. The appellants along with 27 other persons were committed to the Court of Session at Mathura for trial under Section 395, I. P. C., for committing a dacoity at the house of one Sohan Lal on 25-7-1949, at 7 p.m. in village Gidoh which is four

miles to the south-west of P. S. Kosi, district Mathura. They were further charged under Section 365, I. P. C., by the learned Sessions Judge for abducting Smt. Kalawati, wife of Sohan Lal, with intent to cause her to be secretly and wrongfully confined in the house of one Roshan after abduction during the commission of the aforesaid offence.

2. The learned Judge found that both these offences were not proved against the accused and he, therefore, acquitted all of them of these offences. He, however, found the appellants guilty of the offence under Section 342, I. P. C. for wrongfully confining Smt. Kalawati in the house of Roshan and sentenced each of them to nine months' rigorous imprisonment. They have come up in appeal against their conviction and sentence.

3. The prosecution case is that Smt. Gyaso, widow of Tulla, who was the younger brother of Misri accused, was living with Misri after the death of her husband. She was turned out by Misri and went to her father's home in village Dudhola. She married someone in village Chant, P. S. Palwal. The accused Misri thought that Sohan Lal who was her brother-in-law, had sold her in marriage and was, therefore, annoyed with him. He convened a panchayat in the village two days before the Amawas of July 1949, and in that panchayat he accused Sohan Lal of having sold away his sister-in-law Smt. Gyaso. Kunwarpal too asked the panchayat to make inquiries into the matter and punish Sohan Lal if he had really sold away Smt. Gyaso.

The panches agreed to make an inquiry on 25-7-1949, but the accused Loka asked them not to make an inquiry and so the inquiry could not be made. On 25-7-1949. at about 7 p.m. the accused raided the house of Kunwarpal and Sohan Lal and beat them and looted their property. Thereafter they dragged away Smt. Shanti, wife of Kunwarpal, and Smt. Kalawati wife of Sohan Lal. Shanti was left near the house of one Natthan from where she went to the house of her sister and thereafter to her own house. Smt. Kalawati was taken away to an unknown place and was recovered the next day by the police from the house of Roshan accused where she had been locked in a room. A report of the occurrence was made by Kunwarpal on 25-7-1949, at 9-30 p.m. at P. S. Kosi about two hours after the

occurrence and in that report all the accused were named.

4. The accused Nathua in his statement before the committing court denied the accusations against him and stated that he had been falsely implicated on account of enmity though he did not mention the cause of enmity or the persons with whom he had it.

5. The accused Misri also denied that he committed the offence with which he was charged. His case was that Sohan Lal had sold his wife & he had convened a panchayat in connection with it and Sohan Lal promised to return his wife but did not do so, that a panchayat was again convened by him and in that panchayat Sohan Lal made a promise and made over his wife to the panches in 'Zamanat' and subsequently he made a report and got this case started against him.

6. The accused Roshan stated that there were two parties in the village. He denied that Smt. Kalawati was recovered from a locked room in his house on 26-7-1949. He did not specifically mention anything as to why the case had been started against him.

7. The learned Sessions Judge after a consideration of the entire evidence on the record came to the finding that the prosecution case regarding the forcible removal of Smt. Kalawati from her home and her being wrongfully confined in the house of Roshan from where she was recovered had been fully made out. He, further, found that though she was wrongfully confined but having regard to the fact that the house of Roshan was in the village abadi it could not be unknown to the neighbours that Smt. Kalawati was confined there and in the circumstances it could not be held that she was secretly confined. He was not satisfied that any dacoity had been committed at the house of Sohan Lal or that any of his property had been removed. According to him the only offence which was proved against the three appellants was one under Section 342. I. P. C. and he, therefore, convicted and sentenced them as stated above.

8. In my opinion the reasoning of the learned Judge that the three appellants were not guilty of the offence under Section 365, I. P. C. simply because the house of Roshan wherein Smt. Kalawati was locked was in the abadi does not appear to

me to be correct and if the finding that she was forcibly dragged from her house by the three appellants and was kept in a locked room in the house of Roshan is correct the offence under Section 365, I. P. C. is clearly made out.

9. The question for consideration is whether from the evidence on the record it is proved that the three appellants forcibly dragged away Smt. Kalawati from her house on the night of 25th July 1949. with the intention that she may be secretly and wrongfully confined.

10-19. (His Lordship after examining the evidence stated): It appears to me that Misri somehow believed that Sohan Lal, who was the brother-in-law of Smt. Gyaso. had given Smt. Gvaso to someone in marriage and on account of this fact he was very much aggrieved against him. It, further, appears that when he was unable to obtain her back he along with a number of other persons went to the house of Sohan Lal and forcibly dragged Smt. Kalawati, wife of Sohan Lal, in order to take revenge against him and after dragging her she was locked in the house of Roshan.

20. There is no doubt that the intention of the appellants in dragging her was to secretly and wrongfully confine her and this intention is proved from the fact that she was actually locked in the house of Roshan from where she was recovered. Even if the evidence of Kalawati that she was locked in the house of Roshan by all the three appellants is not believed in view of the fact that this statement of her's is inconsistent with that which she had made before the police wherein she has mentioned the name of Roshan only as the person who removed her from the house of Misri and locked her in his own house, the offence under Section 365, I. P. C. against the appellants is proved because they were the persons who dragged her from her house with the intention of secretly and wrongfully confining her and which intention is proved by the fact that she was found locked in the house of Roshan and recovered from there.

21. It was argued on behalf of the appellants that there was no satisfactory evidence that the house from where she was recovered by the police really belonged to Roshan. All the prosecution witnesses in this case have stated that the house belonged to Roshan and he used to live in it and there does not appear

any reason to disbelieve their evidence.

22. I am, therefore, of opinion that from the evidence on the record it has been satisfactorily proved that Smt. Kalawati was dragged from her house by the three appellants. Roshan, Misri and Nathua with the intention of being secretly and wrongfully confined and that she was recovered from the house of Roshan the next morning where she was locked in a room. There can be no doubt that the intention was to secretly Confine her there and this intention is proved from the statement of Smt. Kalawati that she was removed to that house early in the morning when it was still dark. The mere fact that the house is in the 'abadi' does not necessarily prove that her relations or friends knew that she was kept there.

23. The question which next arises is what offence is made out. In my opinion the offence clearly falls within Section 365, I. P'. C. It has been argued on behalf of the appellants that as they have been acquitted of this offence they cannot be convicted of it in appeal. The question for determination is whether it is open to this Court in appeal to alter the conviction from one under Section 342 which is a minor offence to one under Section 365, I. P. C., which is a major offence if from the evidence on the record it is proved that the latter offence was committed.

Learned counsel for the prosecution relied on the case in -- 'Raghubir v. Rex', AIR 1951 All 365 (A). In this case the accused were convicted by the trial Court under Section 304, I. P. C. The accused filed an appeal to this Court and it was found in appeal that from the evidence on the record it was proved that the offence under Section 302, I. P. C. had been committed. It was held by a Division Bench consisting of Sapru and V. Bhargava JJ. that under Section 423, Cr. P. C. it was open to an appellate Court to alter the finding and convict the accused under the proper section but the sentence which had been passed by the trial Court could not be enhanced. Accordingly they altered the conviction from Section 304 to Section 302, I. P. C. but maintained the sentence of transportation for life. In view of this decision I am of opinion that the conviction of the appellants can be altered from Section 342 to Section 365, I. P. C. Accordingly I convict the appellants under Section 365, I. P. C. instead of Section 342, I. P. C. but maintain the sentence which has been imposed on them by the lower Court.

24. The result is that this appeal is dismissed with this alteration that the conviction of the appellants is altered from one under Section 342 to one under Section 365, I. P. C. As the appellants are on bail they shall surrender to it and serve out the sentence. Leave to appeal is granted.

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