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Court : Allahabad

Decided On : Mar-27-1930

Reported in : AIR1930All497; 125Ind.Cas.577

Judge : Barjor Jamshedji Dalal, J.

Appellant : Ram Saran and ors.

Respondent : Emperor

Judgement :

Dalal, J.

1. The facts proved to the satisfaction of the Sessions Judge and all the assessors are that Ram Saran, father of a married woman, Suraj Bali and Jagardeo, went to the house of the woman's husband, took the woman away from the house and left her at Jagardeo's house in the position of the wife of Jagardeo. These facts have been conclusively proved. The only question is whether the acts of the appellants amount to an offence. The principal question from the decision is whether the young woman is under 18 or over 18. The burden of proving that she was over 18 lay on the prosecution. I have gone through the evidence. It is of an exceedingly slight nature. The medical witness was of opinion that the girl was under 18 years of age on the date of the occurrence. He, however, gave his opinion in a very hesitating manner to the effect that there might be a difference in the estimate of a year or so. One year is of great importance when the doctor thinks that she is 17

and it is asserted on behalf of the appellants that she is 18. On the side of the appellant Ram Saran the evidence is produced to the effect that the girl is about 22. The girl appeared in Court yesterday and from her appearance she did not appear that she was under 19. All these are mere opinions and there is no definite evidence. Under the circumstances the benefit of the doubt must be given to the appellants, particularly in a case like this, where the father himself has taken the girl from her husband.

2. The next argument is that the act would not be covered by the provisions of Section 366-A. It is true that those provisions were enacted to give effect to the International Convention for the Suppression of Traffic in Women and Children signed at Geneva in 1922. When a married girl is unhappy with her husband and the father takes her from the husband's house and gives her as a wife to somebody else that can hardly be called trafficking in women. At the same time, having regard to the provisions of the section, I am of opinion that the act of the father would come within these provisions. The provisions will apply to Ram Saran and Suraj Bali. The girl was seduced to illicit intercourse and induced to leave her husband's house for the purpose. It was objected that there was no evidence of inducement. The word 'induce,' however, is used in its ordinary meaning of any words of inducement flowing from one person to the girl. The father's telling the girl to come away with him from a house where she was unhappy would amount to an inducement. If the girl had been held by me to be under 18 years of age, I am of opinion, that Ram Saran and Suraj Bali would have been guilty under Section 366-A. As regards Jagardeo, the principal offender, who had kept the girl as his wife, the provisions would not apply as the inducement to leave must have for its object seduction by another person and not by the person who himself induces the woman to leave. Very likely the wording of the section makes the offence much wider than may have been intended by the legislature, but the business of a Court is to interpret the words as they stand and not to make an attempt to discover what offence is particularly meant and what kind of offenders the legislature desired to include in the definition.

3. In the result I set aside the conviction and sentence and order the release of the appellants. If any of them is on bail his bail bonds shall be cancelled.

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