

Paras Ram and ors. Vs. State

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Court : Allahabad

Decided On : Dec-08-1959

Reported in : AIR1960All479; 1960CriLJ1054

Judge : S.K. Verma, J.

Acts : Hindu Law; Indian Penal Code (IPC) - Sections 366

Appeal No. : Criminal Appeal No. 2268 of 1958

Appellant : Paras Ram and ors.

Respondent : State

Advocate for Def. : P.C. Chaturvedi, Govt. Adv.

Advocate for Pet/Ap. : S.P. Kumar, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Verma, J.

1. There are three appellants in this case -- Paras Ram, Sukkhi and Bashir. They, along with two other persons:, namely Gokul and Ghani, stood their trial before the learned Additional Sessions .Judge of Moradabad for offences, punishable under Sections 143, 363 and 368 I. P. C. One other accused, Man Singh, was

absconding, The learned trial Judge acquitted Gokul and Ghani but he convicted the three appellants under Section 366 of the Code. He sentenced Paras Ram appellant to four years' Rule I. and Sukkhi and Bashir to three years, R. I. each.

2. Paras Ram is a resident of village Guretha, Police station Moghalpura, district Moradabad. He had a son, Nanak. Srimati Mohandei, aged between seventeen and eighteen years, is the daughter of Ram Sarup deceased and Reotidei, residents of village Majhola, Police Station Kotwali, Moradabad. Mohandei was married to Nanak. Both Nanak, the husband of Mohandei, and Ram Sarup, her father are dead.

3. The prosecution case was that Nanak had been ailing for some time and he, ultimately died on 21-4-1957. Reotidei suspected that Paras Ram would sell Mohandei either during Nanak's illness or after his death. She therefore, brought her daughter to her own house about two months prior to the date of occurrence. Reotidei's husband, Ram Sarup, was very seriously ill with tuberculosis. Reotidei sent Mohandei to the latter's phuphi, one Ramdei. On 25-4-1957 the condition of Ram Sarup became very serious and Ramdei and Mohandei were, therefore, sent for by Reotidei.

They arrived at Ram Sarup's house at 11 a. m. By about 4 p. m. Ram Sarup began to breathe his last and he was laid on the ground. He died shortly thereafter. The prosecution allegation further is that the present appellants, along with Man Singh Ghani and Gokul, turned up at the house of Ram Sarup. On seeing them Mohandei tried to conceal herself in the quarters of one Hulasi. Man Singh dragged her out of the quarters and all the six accused persons took her forcibly away in a tonga. Two rickshaws are also said to have been employed to convey the accused persons. Reotidei lodged a report at Police Station Kotwali, at a distance of one mile, on 25-4-1957 at 5 P. M.

4. Investigation followed. Ram Chandra Singh, Second Officer of Police Station Kotwali (P.W. 13) investigated the case. He found Mohandei trace-less. He also could not find any of the accused persons. The appellants, Ghani and Gokul, ultimately, surrendered in court.

5. The prosecution allegation further is that the appellant Paras Ram ultimately, sold Mohandei for a consideration of Rs. 850/- against her will to one Amar Singh (C. W. 3), resident of village Mandi Dhanaura, Police Station Bachhraon, district Moradabad.

6. Paras Ram appellant denied having forcibly taken Mohandei from Ram Samp's house as alleged by the prosecution. He stated that his son, Nanak, died four days before the death of Ram Sarup which took place on 25-4-1957. Nanak died on Monday and on Tuesday Reotidei. Dalchand, Pershadi, Ram Singh and Chiranji came to fetch Mohandei. He refused to send her. There was some unpleasantness at his refusal. Ram Chandra, Mohandei's brother, went to Paras Ram on Thursday, at about 2,30 p. m.. and informed him that his (Ram Chandra's) father had died and that Mohandei should be sent. Mohandei thereupon was sent with Rani Chandra. Paras Ram alleged, further, in his defence that Mohandei was married to Amar Singh by Reotidei and not by him.

7. The learned trial Judge accepted the prosecution allegations as correct and convicted and sentenced the appellants mentioned above.

7A. The witnesses who deposed to the taking away of Mohandei from Reotidei's house on 25-4-1957 are Reotidei (P. W. 1), Chiranjilal (P. W. 2), Pershadi (P. W. 3), Dalchand (P. W. 4), Ramdei (P. W. 5), Vcdram (P. W. 6) and Rani Singh (P. W. 9).

8. Mohandei and Amar Singh could not be found at first. Warrants were issued for their arrest and proceedings under Sections 87 and 88 Cr. P. C. were also taken. They were, ultimately, examined as court witnesses.

9. Mr. P. C. Chaturvedi, learned counsel for the appellants, has not challenged the statements of the witnesses who have deposed to the taking away of Mohandei from her mother's house by Paras Ram and others. I have also perused the statements of these witnesses and I have no reason to doubt that what they have stated is true. Mr. Chaturvedi has also not challenged the evidence with regard to the age of the girl. His contention, however, is that Paras Ram, as the father-in-law of Mohandei, was her legal guardian and that he had every right to take her away

as he did. He has further contended that Karao marriage, after taking cash consideration for the bribe is recognised by custom in the community to which Paras Ram and Mohandei belong. He has contended, further, that if Paras Ram took his minor daughter-in-law away and married her to Amar Singh, he committed no offence.

In *Khudiram Mookerjee v. Ronwari Lal Roy*, ILR 16 Cal 584, *Beverley and Banerjee, JJ.*, held that the relations of a minor widow's deceased husband were entitled to be her guardian in preference to her paternal relations. The appeal in which this finding was given was directed against the order of the District Judge of Burdwan appointing the respondent in the appeal as the guardian of the minor Hindu widow. In *Tota Ram v. Ram Charan*, ILR 33 All 222, *Knox and Karamat Husain, JJ.*, considered the decision in ILR 16 Cal 584. In this case the District Judge of Ali-garh had an application before him made by a distant relation of the minor widow who was at the time in the custody of her father. The District Judge considered it expedient that she should remain in her father's custody in preference to that of a very distant relative.

He dismissed Tota Ram's application. On appeal *Knox and Karamat Husain, JJ.*, upheld that decision. From the report the exact relationship of Tota Ram with the girl is not clear. The learned Judges, however, felt that the Calcutta decision was based upon a text of *Narada* cited in the *Dayabhaga* and that no text of *Mitakshara* or the *Mitakshara* School of law had been brought to their notice- These observations were, however, made only incidentally, for the appeal was decided on the principles laid down in Section 17 of Act VIII of 1890, namely that the court had to consider the welfare of the minor while dealing with matters of guardianship under the Act. The ratio of the decision is to be found in the following observations:

'We think it by no means for the welfare of the minor that a girl of twelve or thirteen should be relegated to the guardianship of a distant relative when she has already at her own door a guardian and is living happily under the guardianship of her own father.'

The Hindu Minority and Guardianship Act, 1956 provided only for three classes of guardians, namely the father -- in the case of a boy or an unmarried girl; the

mother -- in the case of an illegitimate boy or an illegitimate unmarried girl, and the husband in the case of a married girl. In *Mst. Ganga Devi v. Narshtng Das*, AIR 1935 Lah 25, Beckett, J., observed as follows:

'Under Hindu Law, the father of a minor girl ceases to be the guardian of her person as soon as she is married. On the death of her husband, this right does not revive in favour of the father, but devolves upon the husband's relations.'

ILR 16 Cal 584 was relied upon for this proposition. I am of the opinion that when the statute is silent the rules of personal law of the minor widow must apply. I am further of the opinion, that after marriage the persons entitled to be guardian of a minor widow are the relations of the widow's husband and not her parents. The learned counsel for the State has relied upon certain authorities to the effect that, if it is in the interest or welfare of the minor to do so, the Court may appoint her father in preference to the sapindas of her husband.

There can be no quarrel with this proposition. So far as the Court is concerned, in guardianship proceedings, the sole consideration is the welfare of the minor, and, if the Court feels that the natural guardian is unfit, the Court may appoint any other suitable person. But that is not the question in the present case. If the matter came before a Court and the court had to choose between Paras Ram and Reotidei, it may well be that the Court would decide the question in favour of Reotidei, keeping in view the best interest of the minor. In the absence, however, of any order of the Court I have not the slightest doubt in my mind that it is Mohandei's father-in-law, namely Paras Ram, who was her legal guardian.

I should here like to point out though this is scarcely relevant -- that Reotidei was financially in very straitened circumstance and could not maintain her daughter. Mohandei (C. W. 1) has attempted to support the prosecution case, but even she has stated that her mother could not maintain her as she was too poor. Ramdei has also stated that Rain Sarup was a poor man and, as he could not feed Mohandei, he had sent her to the witness. Paras Ram had, in law, the right to the custody of Mohandei and, if he took her away on 25-4-1957 from the house of her impecunious mother, he committed no offence. The following statement of Mohandei shows, further, that her mother, Reotidei, was alive to the preferential

right that Paras Ram had to Mohandei's custody:

'My mother told Paras Ram that he should wait for a few days and take her away with her Consent My mother had said that after the burial ceremony of my father was over I should be taken the next day My mother peacefully told Paras (Ram) that I should be taken away after the funeral ceremony of my father.'

Amar Singh (C. W. 3) has stated that he was married to Mohandei in Karao, though he paid Rs. 850/- as her price. He stated further that Karao marriages were valid in his community and that it was customary to pay a price for women taken in marriage. The mere fact, therefore, that Paras Ram took some money from Amar Singh would not make any difference. Both Mohandei and Amar Singh have stated that she was, at first, unwilling to live with Amar Singh, but she got reconciled to him later on. Mohandei has stated as follows:

'I am quite happy with Amar Singh now. When I went to Amar Singh he kept me well. Now that I have gone to him I am happy with him.'

Even if it be assumed that Paras Ram married her to Amar Singh against her will, he cannot be said to have committed any offence, for it is open to a legal guardian to give his ward in marriage even though she is unwilling. I should also, however, like to point out that the alleged unwillingness of Mohandei appears to be scarcely anything more than the natural shyness of every girl when she goes to live with a new man, for there is evidence to the effect that she was perfectly all right and reconciled to Amar Singh after only ten or twelve days. Learned Counsel for the State has relied upon the decision of Satyanarayana Rao, J., reported in *Ethilarulu Ammal v. Pethakkal* : AIR 1950 Mad 390 . In this case the learned Judge was considering the effect of the surrender by guardian of a minor widow on the question of limitation under Article 44 of the Indian Limitation Act. Relying upon a Full Bench decision reported in *Chennappa v. K. Onkarappa* AIR 1940 Mad 33 the learned Judge observed as follows:

'That except the father and in his absence the mother of a Hindu minor no others are legal guardians. After marriage of a minor female the guardianship of the father is transferred to her husband and in default of the husband no other person is

entitled to act as a guardian de jure.'

In the Full Bench decision, which is the basis of the decision of Satyanarayana Rao, J., the question for consideration was whether the paternal grandmother of a Hindu minor was lawful guardian. The question there was not whether father-in-law could be the lawful guardian of his minor widowed daughter-in-law. It is obvious to me that when Satyanarayana Rao, J., used the words 'in default of her husband', he obviously meant, 'an unmarried girl.' The decision reported in : AIR1950 Mad390 , therefore, is not really in point and, in fact, that case does not militate against the view that I have expressed. The Madras case really in point is the one reported in Chinna Alagumperumal v. Vinayagathammal, 55 Mad LJ 861 : (AIR 1929 Mad 110) in which Devadoss and Mackay, JJ., held that the husband is the legal guardian of his minor wife and, if he happens to die during her minority, his nearest sapinda will be her guardian and not her paternal relations.

10. On the view that I have taken, Paras Ram cannot be said to have committed any offence. It follows that the conviction of the other two appellants, who only accompanied Paras Ram, is also wrong and must be set aside.

11. For the reasons given above, I allow this appeal, set aside the conviction and sentences of the appellants and acquit them. They are on bail, They need not surrender. Their bail bonds are discharged.

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