

Emperor Vs. Qudrat and anr.

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Court : Allahabad

Decided On : Jul-19-1939

Reported in : AIR1939All708

Appellant : Emperor

Respondent : Qudrat and anr.

Judgement :

ORDER

1. This is a reference under Section 307, Criminal P.C., by the learned Assistant Sessions Judge of Benares. Mt. Bhagmania said to be about 12 or 13 years of age, was living with her father-in-law named Sudaman in village Lachhmangarh. On 1st August 1938, Sudaman found at about 8 or 9 P.M. that Mt. Bhagmania had disappeared from the house in which the family was living. Sudaman searched for the girl, but did not succeed in tracing her. He gave information to Lallan Singh, the zamindar of the village. The next day the Sub-Inspector of police station Balua happened to visit the village. Lallan Singh informed the Sub-Inspector of the disappearance of the girl. After some investigation Qudrat, accused, was summoned, and it is stated that he informed the Sub-Inspector that the girl would be found at the house of Mt. Rasulan, accused 2, in village Dharain. The girl was found outside the house of Mt. Rasulan and was made over to Iqbal Ahmad, the Sub-Inspector. Qudrat and Rasulan were prosecuted, the former under Sections 366 and 376, I.P.C., and the latter under Section 368, I.P.C. The case was committed to the Sessions and was tried with the aid of a jury. Mt. Bhagmania

stated how she was enticed away by Qudrat who, after having sexual intercourse with her, took her to the house of Mt. Rasulan at mid. night and left her in custody of Mt. Rasulan. After the examination of the witnesses for the prosecution and the examination of the accused, the learned Assistant Sessions Judge was of the opinion that there was no evidence on the record to prove that the accused had committed the offences with which they were charged. He accordingly directed the jury to return a verdict of not guilty. The jury, however, returned a verdict of guilty by a majority of 3 against 2. The learned Sessions Judge then made this reference under Section 307 of the Code, with the recommendation that this Court may set aside the verdict of the jury and may pass an order of acquittal in favour of the accused persons. The first question to be determined is whether the jury were entitled to return the verdict of guilty against the clear direction of the learned Sessions Judge to the contrary. Section 289(2), Criminal P.C., provides:

If he (accused) says he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or in a case tried by a jury, direct the jury to return a verdict, of not guilty.

2. The expression 'direct' leaves no room for doubt that the intention of the Legislature was that the jury was bound to accept the opinion of the Judge, whether they agreed with that view or not. This interpretation finds support from illustration (a) to Section 299 of the Code: It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do not agree with it.

3. This illustration apparently refers to the direction given by the learned Judge on points of law; but the same expression is used in Section 289 of the Code, and in our opinion it follows that the direction of the Judge that there is no evidence that the accused committed an offence is equally binding on the jury and must be followed by them. In other words, the question of absence of evidence is treated as a question of law and not a mere question of fact. Having regard to the clear language of the section, we have no hesitation in holding that the verdict of the

jury in the present case cannot be accepted.

4. The next question for consideration is whether the learned Sessions Judge was justified in holding that there was no evidence on the record to prove that the accused had committed the offence. In order to prove the charge of kidnapping, it was incumbent on the prosecution to prove that Mt. Bhagmania was under 16 years of age. Similarly to prove the charge under Section 376, the prosecution was bound to prove that; Mt. Bhagmania was below the age of 14, so that her consent to have sexual intercourse with Qudrat may be treated as no consent in law. Mt. Bhagmania herself gave her age as 12 or 13. It is manifest that Mt. Bhagmania herself had no direct knowledge about her age. It is also manifest that she did not derive this information from anyone else, otherwise we would expect that she would give a more definite figure. In her statement she does not say whether she derived this knowledge from her mother or father. That being so, we must disregard the statement of Mt. Bhagmania with regard to her age. P.W. 1, Sudaman, clearly stated that he did not know where and when Bhagmania was born, nor did he know Bhagmania from before her marriage. There is no other evidence on the record proving the age of Mt. Bhagmania, except the statement of the Civil Surgeon. In the opinion of the Civil Surgeon, Mt. Bhagmania's age was about 13. It appears that the doctor based his opinion on the particulars given in his report with regard to height, weight, etc. The learned Assistant Sessions Judge is of opinion that the medical evidence does not amount to legal proof of the age of Mt. Bhagmania. Under Section 45, Evidence Act,

when the Court has to form an opinion on a point of...science...the opinion upon that point of persons specially skilled in such...science are relevant facts. Such persons are called experts.

5. From the statement of the Civil Surgeon it does not appear that he brought any scientific knowledge to bear upon his opinion. The indications given by the doctor could be observed by a layman. It is true that a doctor is in a better position to form an opinion about the age of a person than a layman, but the statement of a doctor is no more than an opinion. This question has been considered in several cases. We need only cite the observations of their Lordships of the Judicial

Committee in Mohammad Syedol Ariffin v. Yeoh (1916) 3 A.I.R. P.C. 242. While considering the doctor's certificate on the question of age, their Lordships observed as follows:

Dr. Bright, on examination, says that he formed the opinion that the appellant was 21, judging by his teeth, his appearance and his voice. In their Lordships' view such a certificate is worthless. It is in truth not a certificate, but only an assertion of opinion.... Proof on the subject is not advanced by such documents.

6. From the report of the Civil Surgeon in the present case it would appear that he relied entirely on certain physical peculiarities, such as teeth, etc. In our opinion, the learned Assistant Sessions Judge was right in holding that there was no legal proof of the age of Mt. Bhagmania. That being so, the learned Assistant Sessions Judge was fully entitled under Section 389, Criminal P.C., to direct the jury to return a verdict of not guilty which the jury were bound to follow. For the reasons given above, we accept the reference, set aside the verdict of the jury and acquit Qudrat and Mt. Rasulan of the offences with which they were charged. Qudrat who is in custody shall be released forthwith, unless required in connexion with some other charge. Mt. Rasulan is on bail, and she need not surrender. The bail bonds are cancelled.