

Raj Narain and ors. Vs. State

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Court : Allahabad

Decided On : Oct-06-1953

Reported in : AIR1954All249

Judge : Randhir Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 146, 147, 149, 304, 451 and 456

Appeal No. : Criminal Appeal No. 277 of 1952

Appellant : Raj Narain and ors.

Respondent : State

Advocate for Def. : M.L. Trivedi, Adv. for ;Addl. Govt. Adv.

Advocate for Pet/Ap. : H.K. Ghose, Adv.

Judgement :

Randhir Singh, J.

1. The appellants Raj Narain, Kallu and Banwari have been convicted by the Sessions Judge of Rae Bareilly and have been sentenced to various terms of imprisonment under Sections 304, 342, 366, 454, 149 and 147 of the Indian Penal Code. Raj Narain has been sentenced to ten years' rigorous imprisonment while the other two have been sentenced to seven years' rigorous imprisonment under

Section 304 of the Indian Penal Code. Raj Narain has been sentenced to five years' rigorous imprisonment and the other two appellants to four years' rigorous imprisonment under Section 366 of the Indian Penal Code. Kallu and Banwari have been sentenced to six months' rigorous imprisonment while Raj Narain has been sentenced to nine months' rigorous imprisonment under Section 342 of the Indian Penal Code. Kallu and Banwari have been awarded one year's rigorous imprisonment under Section 454 of the Indian Penal Code. Raj Narain has further been sentenced to two years' rigorous imprisonment under Section 149 and Kallu and Banwari to one year's rigorous imprisonment under Section 147 of the Indian Penal Code.

2. Briefly stated the story for the prosecution was that Pearey Lal deceased wanted to marry and he expressed this intention to Raj Narain appellant who was a distant 'bhanja' of Pearey Lal. Raj Narain succeeded in getting a woman for him and he brought her to Pearey Lal some time about June or July, 1951. He demanded Rs. 300/- from Pearey Lal which sum was paid to him and Raj Narain went away. He used to visit Pearey Lal off and on and some 15 or 20 days before the occurrence Raj Narain came to the house of Pearey Lal in the company of two other persons, including Kallu appellant, and told him that he would take away the woman. Pearey Lal told him that he could take away the woman if he returned Rs. 300/- which had been taken by him. Raj Narain then held out a threat of taking away the woman by force and went away. A report was lodged by Pearey Lal at the police station about this occurrence on the 8th January, 1952, at about 11 a. m. The appellants in the company of 7 or 8 persons came to the house of Pearey Lal and others and they entered the house. Two of them are said to have caught hold of Pearey Lal while the other two held his brother Bhagwati. The remaining two then dragged away the woman from the house and while leaving the house they chained the outer door. Pearey Lal and Bhagwati raised an alarm and the neighbours ran up and unchained the door when Pearey Lal told them that his wife had been taken away by force by Raj Narain and his companions. These persons and some others then went in pursuit of the abductors and they overtook them near the grove of Siddhu at a distance of about half a mile from the house of Pearey Lal. There was some exchange of hot words and Raj Narain appellant then gave a lathi blow on the head of Pearey Lal who fell down and died. Raj Narain's

companions then took away the woman.

3. First information report was lodged by Bhagwati, brother of Pearey Lal, the same day at 6 p. m. at police station Salon, which was at a distance of 8 miles from the place of occurrence. The police came to the place of occurrence and the dead body of Pearey Lal was sent to the mortuary for post mortem examination. After the case was investigated six persons, including the appellants, were sent up for trial.

4. The defence of Raj Narain was that the woman had come to his house for protection some time in Asarh and that he had taken this woman to be kept at the house of Pearey Lal as he apprehended that the Thakurs of his village would interfere if he himself kept the woman at his house. He went to the house of Raj Narain a few days before the occurrence when the woman complained of him of ill treatment and he therefore brought her back a few days after from the house of Pearey Lal. When he had reached a short distance from the village with the woman he was attacked by Pearey Lal in the company of 22 or 23 other men and Pearey Lal then struck him with a lathi which he warded off and he also then plied his lathi in self-defence. The other two appellants denied their complicity in the affair and stated that they had been impleaded on account of enmity.

5. The lower Court found that the woman who had been taken away had been forcibly abducted by the appellants who had also committed culpable homicide not amounting to murder and the other offences with which they were charged in furtherance of a common intention. He there-tore convicted the appellant and sentenced them as mentioned above. The case was, however, not established against the other three accused who were acquitted. The appellants have now come up in appeal.

6. Bhagwati mentioned the names of several persons who were present at the time of the occurrence. Of these Parsu Pasi, Ganga Bishen Brahman, Badri Pasi and Ori have been examined on behalf of the prosecution. Besides these Bhagwati, the own brother of Pearey Lal, deceased, who was present at the house at the time of the alleged abduction, as also at the time when Pearey Lal was assaulted near Siddhu's grove has also been examined. Bhagwati narrates the

incident as it happened from the time when the appellants in the company of several other persons entered the house and took away the woman by force after chaining the outer door. He also states that some 15 or 20 days before the occurrence Raj Narain and some others had come to their house and had threatened to take away the woman who had become the wife of Pearay Lal and that Pearay Lal had told them that he would not be willing to part with the woman except on repayment of Rs. 300/- which had been paid by him in this connection to Raj Narain. A copy of the report which was lodged at the police station about this occurrence has also been filed. It is Ex. 9. In this report which was made by Pearay Lal himself he states that Raj Narain had arranged to get him a wife and had taken Rs. 300/- from him in this connection. Bhagwati also states that some sort of ceremony including 'bhanwars' was performed when Pearay Lal took the woman as his wife in 'Asarh' before the occurrence.

Rameshwar Singh mukhia was also examined on behalf of the prosecution to prove that Pearay Lal had borrowed some money from him in this connection and had told him that he had to pay Rs. 300/- for the woman who was to be given to him as his wife by Raj Narain. The other witnesses examined on behalf of the prosecution were not present at the ceremony of marriage which was performed but they do state that this woman lived as the wife of Pearay Lal till she was taken away by the appellants. Ori states that he was attracted to the house of Pearay Lal on hearing the alarm and when he went to the house he found the door chained from outside. Bhagwati asked him to unchain the door and when it was unchained Bhagwati and Pearay Lal told him that Pearay Lal's wife had been taken away by force by Raj Narain and others. In the meantime the other witnesses, Parsu Pasi and Ganga Bishen Brahman also arrived and both of them went in the direction in which the abductors had taken the woman. They further stated that Pearay Lal who was a few paces ahead of them overtook Raj Narain and others and tried to stop them when there was an exchange of hot words between Raj Narain and Pearay Lal. Raj Narain then gave a lathi blow on the head of Pearay Lal and he fell down and died. The evidence of these witnesses has been read out by the learned Counsel for the appellants. Nothing has, however, been pointed out in the cross-examination to discredit the testimony of any of these witnesses. None of them has any reasons to have any leanings towards the complainant or any bias

against the appellants.

7. The report of the post mortem examination of the body of Pearay Lal reveals three injuries on his person. Two of them were abrasions on the arms and one was a contused wound on the head. Although the skull was not fractured, death was found to be due to concussion of the brain.

8. It, has been argued on behalf of the appellants that Raj Narain acted in self-defence and reliance has been placed on the evidence of Badri Pasi who stated that while hot words were being exchanged between Pearay Lal and Raj Narain both of them raised their hands. No evidence has been led in defence on behalf of the appellants to prove that Pearay Lal assaulted or attempted to assault Raj Narain first. The evidence of all the prosecution witnesses, on the other hand, shows that Pearay Lal did not attempt to strike Raj Narain and that it was Raj Narain appellant who gave the first lathi blow to Pearay Lal. There is, therefore, nothing in the evidence to justify the existence of the right of private defence. Moreover, it is in evidence that the woman who was being abducted by the appellants had become the wife of Pearay Lal and as such Raj Narain and his companions had no right to take her away by force. This woman has not been examined evidently because it was not possible for the prosecution to have produced her as she had been taken away by Raj Narain and his companions and her whereabouts were not known to Bhagwati or anybody else who was interested in the prosecution. Raj Narain appellant in his statement before the Sessions Judge stated that after he had struck a lathi blow he took away the woman to his house and there she was asked by him to go wherever she liked and that her whereabouts were not known to him.

9. The story for the defence appears to be rather improbable. Raj Narain appellant stated that he went to the house of Pearay Lal all alone and that 20 or 25 persons in the company of Pearay Lal attacked him while he was bringing the woman with him without any objection having been made by Pearay Lal. If 20 or 25 persons had tried to stop Raj Narain, who was all alone, from taking the woman it is difficult to believe that Raj Narain would have succeeded in taking her away in the teeth of interference and obstruction on behalf of Pearay Lal and 20 or 25 other persons.

The defence story is, therefore, improbable and there is nothing to show that the version given by the prosecution was not substantially correct.

10. It remains now to be seen if all or any of the offences for which the appellants have been convicted have been established against them. All the three appellants have been convicted under Section 304 of the Indian Penal Code on the ground that each of them was possessed of the common intention of committing the offence. The evidence for the prosecution shows that the main objective of the appellants and their companions was to take away the woman by force. At no stage was it suggested on behalf of the prosecution that the appellants or their companions had any intention to commit the murder of Pearay Lal. It also does not appear from the evidence that even when there was an exchange of hot words between Pearay Lal and Raj Narain at the place of occurrence a common intention to murder Pearay Lal had developed. If one member of an unlawful assembly suddenly takes it into his head to commit an offence which does not appear to have been in furtherance of any common intention, the other members of the assembly cannot be liable for the offence committed by that member. In the present case it appears that Raj Narain all of a sudden struck Pearay Lal on the head and the blow proved to be severe resulting in the death of Pearay Lal. The other two appellants cannot, therefore, be held guilty under Section 304 read with Section 149 of the Indian Penal Code.

11. As regards the offence under Section 342 for which all the appellants have been held guilty, it has not been proved as to which of the persons accompanying Raj Narain had chained the door from outside. It could not be the intention of the unlawful assembly to chain the door and it could also not be said to be in furtherance of any common intention. Presumably it struck somebody while the abductors were taking the woman to chain the door in order to stop Pearay Lal from chasing them. In the absence of direct evidence to prove as to which of the persons of the unlawful assembly was responsible for this act, the appellants cannot be found guilty under Section 342 of the Indian Penal Code.

12. Then again all the appellants have been convicted under Section 454 of the Indian Penal Code. There is no evidence on behalf of the prosecution to prove that

the appellants took precautions to conceal their presence while entering the house of Pearay Lal and the utmost that can be said in this respect on the evidence on record is that the appellants entered the house of Pearay Lal with the common intention of abducting the woman. They would therefore be guilty under Section 451 of the Indian Penal Code and not under Section 454. Their conviction under Section 454 of the Indian Penal Code, cannot, therefore, stand.

13. The offence under Section 368 of the Indian Penal Code has clearly been established against all the appellants as their common intention was to take away the woman who had become the wife of Pearay Lal by force. They have been, therefore, rightly convicted under Section 366 of the Indian Penal Code. Although the number of persons ultimately convicted in this case was only three, there is satisfactory evidence to establish that there were more than five persons who had taken part in the abduction and the criminal house trespass. The appellants were, therefore, members of an unlawful assembly and have been rightly convicted under Section 147 of the Indian Penal Code.

14. No question of a conviction under Section 149 arises as the offence of culpable homicide was not one of the common objects of the unlawful assembly.

15. The learned Sessions Judge has sentenced Raj Narain appellant to ten years' rigorous imprisonment under Section 304 of the Indian Penal Code. The sentence appears to err on the side of severity. It was a single blow which caused the death of Pearay Lal and this blow had also not resulted in the fracture of the skull. It appears to me that a sentence of five years' rigorous imprisonment shall meet the ends of justice. Kallu and Banwari cannot be held guilty under Section 304 of the Indian Penal Code and their conviction under this section cannot stand. The conviction under Section 342 of all the three appellants also cannot stand. The whereabouts of the woman who was abducted are not known and it appears that she had gone from place to place before she entered into a sort of marriage with Pearay Lal. It is not known whether she was agreeable to go sway with Raj Narain when he took her away although the fact that she had been dragged leads to the inference that she was an unwilling party to the abduction. A sentence of two years' rigorous imprisonment under Section 366 of the Indian Penal Code for each

of the appellants would in my judgment meet the ends of justice. The conviction under Section 454 is altered to one under Section 451 of the Indian Penal Code in the case of all the three appellants and six months' rigorous imprisonment under Section 451 would be sufficient in the circumstances. The conviction of Raj Narain under Section 149 is also set aside but the conviction and sentence of Kallu and Banwari under Section 147 should stand.

16. As a result the conviction of Raj Narain under Section 304 of the Indian Penal Code is maintained but the sentence of imprisonment is reduced to five years' rigorous imprisonment. The conviction and sentence of Kallu and Banwari under Section 304 and the conviction and sentence of all the three appellants under Section 342 are set aside. The conviction under Section 454 is altered to one under Section 451 of the Indian Penal Code and the sentence is reduced to six months' rigorous imprisonment. The conviction of all the three appellants under Section 366 I. P. C. is also maintained but the sentence is reduced to two years' rigorous imprisonment. The conviction and sentence of Kallu and Banwari under Section 147 I. P. C. are maintained but the conviction of Raj Narain under Section 149 is set aside. The sentences to run concurrently. The appellants are on bail and they shall surrender to their bail to serve out the remaining part of their sentences.

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