

Smt. Jasoda Vs. the State

Smt. Jasoda Vs. the State

SooperKanoon Citation : sooperkanoon.com/464953

Court : Allahabad

Decided On : May-14-1975

Reported in : 1976CriLJ360

Judge : Onkar Singh, J.

Appellant : Smt. Jasoda

Respondent : The State

Judgement :

ORDER

Onkar Singh, J.

1. This is an appeal by Smt, Jasoda who has been convicted and sentenced to three years' rigorous imprisonment under Section 326 read with Section 34, I. P.C.
2. The facts giving rise to this appeal are as follows: P.W. 3 Srimati Bitola daughter of P.W. 4, Birbal was married to Hardwari who was also an accused in this case and was convicted under Section 326, I. P.C. but was sentenced to a fine of Rupees 1,000/- only in view of the fact that during the course of trial he became crippled and the trial Court did not think it desirable to impose substantive sentence on him.

3. Smt. Jasoda appellant is the mother of accused Hardwari. There was another accused Bipati, Bahnoi of Hardwari who was also prosecuted along with Hardwari and Smt. Jasoda but has been acquitted by the trial Court. It appears that the relations between Smt. Bitola and her husband were strained and the former used to complain about it to Smt. Jasoda. It is said that 1½ years before the occurrence Hardwari had beaten his wife Smt. Bitola as a result of which Birbal had taken her to his house. She remained at the house of her father for about 1 1/2 years. A panchayat was held about 20 days before the present occurrence and it was decided by the panchayat that Smt. Bitola should go to the house of her husband Hardwari. After Smt. Bitola had come to reside with her husband, there again used to be quarrels between her and her husband and it is said that Smt. Jasoda used to take side with her son. It is further alleged that on the Sunday before the occurrence Birbal had asked Smt. Jasoda not to give him trouble any more as he had already sent his daughter to her and he had further told Smt. Jasoda that if Smt. Bitola did not behave properly, the matter will be referred to a Panchayat. On this Smt. Jasoda is said to have retorted that she would send Smt. Bitola to the Panchayat in such a condition that she would not be worth anything. It is said that on 14th March, 1967 at about 2.00 P.M. Hardwari, Bipati and Smt. Jasoda tied the hands of Smt. Bitola and threw her on a cot and Bipati and Hardwari burnt her private parts with a burning hot karchhul. Birbal on learning about it went to the house of Hardwari but he was not allowed to see her. Birbal then went to the police station and dictated the first information report. After investigation, the appellant along with Hardwari and Bipati were charged under Section 326 read with Section 34, I. P.C. Smt. Bitola was sent to Palia Dispensary where she was medically examined by Dr. G. S. Dikshit on 16-3-1967 at 6.30 P. M, He found the following injuries on her person:-

1. Contusion 3' X 1/3' on right middle part of back.
2. Circular abraded contusion 6' X 1 encircling around, whole of left fore-arm lower third part. The contusion was higher on back part than front part.
3. 1st and 2nd degree burn 5' x 2' lying transversely across middle part of left buttock.

4. 2nd degree burn 3 1/2' x 1/2-3/4' above burn No. 3.
5. 1st and 2nd degree burn 4' x 1 1/2' lying transversely across lower part of left buttock.
6. 1st degree burn 5' X 1' lying obliquely on middle of left buttock.
7. 1st degree burn 2' x 1 1/2 on back of left thigh upper part.
8. 1st and 2nd degree burn 5' X 1' on upper inner part of left thigh.
9. 1st and 2nd degree burn 4 1/2' x 1 1/2 ' vertical on left labia of vulva and around about.
10. 2nd degree burn on right labia of vulva lying vertical reaching up to anus.
11. 1st and 2nd degree burn on inner walls of vagina. In the opinion of the doctor contusions were caused by blunt object and burn injuries by applying heated object.

4. The appellant pleaded not guilty and stated that her son Hardwari had beaten Smt. Bitola and she had been falsely implicated in this case.

5. The prosecution examined seven witnesses in all. Most of the prosecution witnesses turned hostile. P.W. 5 Dorey stated that the appellant had no hand whatsoever in the commission of the offence, P.W. 6 Lallu Ram could not support the prosecution case and stated that he had not seen any occurrence at all. Birbal is not an eye-witness of the occurrence. The trial Court held the appellant guilty on the solitary statement of P.W. 3 Smt. Bitola. It also observed that little corroboration of the statement of P.W. 3 Smt. Bitola could be had from P.W. 5 Dorey. It accordingly convicted and sentenced the appellant as mentioned above.

6. I have heard the learned Counsel for the appellant.

7. In my opinion the appeal should be allowed. The learned Counsel for the appellant has taken me through the statements of P.W. 3 Smt. Bitola and P.W. 5 Dorey. Smt. Bitola stated that Hardwari, Bipati and the appellant having tied her

threw her on a cot. Thereafter Smt. Jasoda sat in front of the door. Bipati heated the Karchhul and Hardwari burnt her private parts with it. In her cross-examination she stated that only Hardwari burnt her with the Karchhul. She stated that his mother meaning thereby the appellant remained sitting at the door and did not stop Hardwari from burning her private parts. She admitted that she complained to her father that the appellant did not stop her son from burning her private parts. Further in her cross-examination she stated that her father had asked her to name the appellant; and Bipati as they did not stop Hardwari from burning her private parts. The learned Counsel for the appellant has, therefore, contended that Smt. Bitola was making the statement at the instance of her father. Be that as it may, it is clear that according to the statement of Smt. Bitola her only grievance against the appellant is that she did not stop her son from doing the dastardly act. The learned Counsel for the appellant has rightly contended that there is no evidence in this case that the act was done by the appellant in furtherance of the common-intention of all the accused. In my opinion there is force in this contention. Section 34 says:-

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

According to the law laid down by the Supreme court, common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It is well settled that common intention in Section 34, I. P.C. presupposes prior concert. It requires a prearranged plan because before a man can be vicariously convicted for the criminal acts of another, the act must have been done in furtherance of the common intention of them all. Accordingly there must have been prior meeting of minds. The words 'in furtherance of the common intention of all' have introduced, as an essential part of the section, the element of a common intention prescribing the condition under which each might be criminally liable when, there are several actors. 'Common intention' is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention. The common intention contemplated by this

section is anterior in time to the commission of the crime, and does not refer to the time when the act is committed. See *Mabhub Shah* . In the instant case there is hardly any evidence of the common intention to commit the crime actually committed, Smt. Bitola herself has stated that Smt. Jasoda the appellant sat on the door and did not stop her son Hardwari from committing the dastardly act. The mere fact that the appellant had joined in tying the hands of the victim is no proof of the fact that the appellant shared the common intention with her son Hardwari in committing the offence which has actually been committed by her son. The mere presence of the appellant in the house is of no significance. In fact the trial Court has not believed the statement of Smt. Bitola in respect of the part assigned to Bipati. The trial Judge has observed that he did not think that Hardwari would have burnt the private parts of Smt. Bitola in the presence of a distant relation like Bipati. On a consideration of the above facts and the legal position, I am of the opinion that the prosecution has failed to bring home the offence to the appellant and in my opinion she could not be convicted with the aid of Section 34, I. P.C.

8. The result is that the appeal is allowed and the conviction and sentence of the appellant are set aside. The appellant is on bail. She need not surrender. Her bail bonds are cancelled and sureties discharged.