

Ram Das Chhedi Vs. the State

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Court : Allahabad

Decided On : Mar-27-1971

Reported in : 1972CriLJ57

Judge : O.P. Trivedi, J.

Appellant : Ram Das Chhedi

Respondent : The State

Judgement :

ORDER

O.P. Trivedi, J.

1. This revision has been filed by Ram Das against his conviction under Section 420 of the Indian Penal Code. He has been sentenced to rigorous imprisonment for one year. Ram Das was prosecuted for offences punishable under Sections 363, 366 and 379 of the Indian Penal Code. He was however acquitted of these offences by the Assistant Sessions Judge, Gonda but was convicted under Section 420 of the Indian Penal Code and sentenced to rigorous imprisonment for three years and to a fine of Rs. 200/-, in default six months rigorous imprisonment. On appeal the conviction was maintained and the sentence was reduced to one year but the sentence of fine was maintained. Ram Das has therefore come in revision before this Court,

2. In short the prosecution case is that Smt. Sunderpata, who was a minor married girl, was abducted by Ram Das along with Babadin. who has submitted to the sentence and another accused who was acquitted, from the house of : her father Ram Dhiraj from village tyfunderawa Kalan, Police Station ICatwali, district Gonda between 6 and 6.30 p. m. by deceitful Inducement to the effect that she was unhappy and that another husband has been found for her who would give her good clothes and ornaments and maintain her well. The applicant secured the ornaments, which Smt. Sunderpata was wearing on her person in the way by dishonest inducement to the effect that it would not be safe for her to be putting on ornaments as it was getting dark. Upon this inducement the woman handed over the ornaments to Ram Das which were placed by him in a bag which he carried. She was carried by the applicant to railway station Subhagpur. When absence of the woman was discovered at her house her brother Ram Dayal (P. W. 1), her uncle Jangali Nath (P. W. 2) and Suraj Nath (P. W. 4) went out in search other. On reaching the railway station they found Smt. Sunderpata sitting along with the applicant on a bench at the platform. On seeing them the applicant fled along with the ornaments which were contained in his Jhola. After recovery Smt. Sundarpata was brought by these witnesses home the same night and on 17-9-1967 she lodged the first report at 1.35 p. m. at police station Kotwail, Gonda. The applicant pleaded not guilty to the charges framed against him and claimed to have been implicated falsely on account of enmity.

3. The first submission of the learned Counsel for the applicant is that the trial court having acquitted Ram Das of the offences punishable under Sections 363, 366 and 379 of the Indian Penal Code on the finding that Smt. Sunderpata was at the time of the incident over 18 years of age and having further found that she was a consenting party when she left the house of her father the applicant's conviction for cheating could not be sustained. In this connection it was submitted that on the question of the applicant having secured ornaments from Smt. Sunderpata by dishonest inducement there was her solitary statement without any corroboration. To my mind the acquittal of Ram Das of the charges for the offences punishable under Sections 363, 366 and 379 of the Indian Penal Code did not affect the finding of guilt on the charge of cheating because even if the finding that she was a major at the time of the incident and was a consenting party when she left the

house of her father were accepted to be correct that did not affect the main question involved in a charge under Section 420 of the Indian Penal Code.

The main ingredient of the offence of cheating is dishonestly inducing the person deceived to deliver any property to any person. The main question therefore is whether there was such evidence in the case on the basis of which one could reasonably hold that the applicant had obtained delivery of the ornaments from Smt. Sunderpata by dishonest inducement. -As to this no doubt the direct evidence consists only of the evidence of Smt. Sunderpata but in the very nature of things no other witness could be produced for the prosecution because no independent witness was present at the time. The question arises whether this statement of Smt. Sunderpata has received such corroboration as induces one to believe her statement. To my mind such evidence was found in the statements of Ram Dayal (P. W. 1) and Suraj Nath (P. W. 4) brother and real uncle respectively of Smt. Sunderpata. Ram Dayal stated in cross-examination that immediately on her recovery at the railway platform Smt. Sunderpata had told him that she had handed over her ornaments to Ram Das who had placed them inside his Jhola and that he had run away with the ornaments. The witness further stated that he had noticed Ram Das carrying a Jhola in his hand at the time when he was fleeing from the rail-way platform. To the same effect was the statement of Suraj Nath (P. W. 4) who stated that when he made enquiry from Smt. Sunderpata after her recovery she told him that Ram Das had run away with her ornaments. This statement of Smt. Sunderpata immediately after the occurrence was admissible as *res gestae* under Section 6 of the Evidence Act and to my mind provided the necessary corroboration so as to lend assurance about the trustworthiness of Smt. Sunderpata's testimony on the question of exercise of dishonest inducement by Ram Das.

4. Learned Counsel has also submitted that the prosecution story was false because the first report was filed after considerable delay. This submission does not bear examination because it was revealed by Suraj Nath that when they reached the house of the father of Smt. Sunderpata it started raining and continued to rain till 8 a.m. the next morning, thus explaining why they could not set out for the police station earlier. His evidence further shows that it had taken

the witnesses two hours to reach Munderwa Kalan from the said railway station and that the police station was 8 miles from Munderwa Kalan. In the circumstances delay in lodging the first report appears explained and I find that on the evidence produced in the case Ram Das was rightly held guilty of offence punishable under Section 420 of the Indian Penal Code. However, in my opinion the ends of justice would be served if the sentence of imprisonment is reduced to six months and the fine is maintained.

I should like here to observe that the Assistant Sessions Judge who tried this Case completely over-looked the fact that a person can be convicted under Section 366 of the Indian Penal Code both for kidnapping of a minor as well as for abduction of a major woman. After coming to the conclusion that Smt. Sundarpata was major at the time of occurrence he seems to have thought that there was an end of the matter and that conviction under Section 366 of the Indian Penal Code could not be recorded.... This is the first error into which the Assistant Sessions Judge fell. Another error into which he allowed himself to fall was that after having found that the woman was a major he failed to determine whether she had been abducted within the definition of abduction given under Section 362 of the Indian Penal Code. In that case it was his duty to determine with reference to the statement of Smt. Sunderpata and other evidence whether compulsion was exercised upon her by the applicant or whether deceitful means were used in inducing her to leave the house of her father. Instead the Assistant Sessions Judge appears to have fallen into the error of determining whether there was presence or absence of her consent in the case. The presence or absence of consent is not an essential ingredient of Section 362. There was positive statement of Smt. Sunderpata to the effect that she was induced by Ram Das on the promise of finding for her another husband who would keep her happy and supply her clothes and ornaments. The Assistant Sessions Judge did not record any finding on the presence or absence of the list of deceitful means by the applicant in dealing with the offence under Sees. 363 and 366 of the Indian Penal Code. The Assistant Sessions Judge appears to have been thinking of an offence of rape in which case only consent is a necessary ingredient,

5. The conviction of the applicant under Section 420 of the Indian Penal Code is maintained but the sentence of imprisonment is reduced from one year to six months rigorous imprisonment. The sentence of fine of Rs. 200/- is maintained. With this modification only the revision is dismissed. The applicant is on bail. His bail bonds are cancelled. He shall surrender forthwith to serve out the sentence.

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