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Court : Allahabad

Decided On : Mar-12-1935

Reported in : AIR1935All665; 155Ind.Cas.662

Appellant : Narain and ors.

Respondent : Emperor

Judgement :

Kendall, J.

1. The three appellants have been convicted by the learned Sessions Judge of Bareilly of an offence under Section 366, Penal Code, and sentenced to three years' rigorous imprisonment. The trial was by jury, and the appeal is made on the ground that there was a misdirection of the jury by the learned Judge. The three appellants and one other were charged with abducting. Mt. Tulsha while she was going on her way to Khamaria with her maternal uncle Hira Lal, in, order that the appellant Narain should commit illicit intercourse with her, and knowing it to be likely that she would be forced to illicit intercourse with another person by means of criminal intimidation. It has been; pointed out that in the charge to the jury the Judge has not explained the ingredients of an offence under Section 366, Penal Code. The first of the ingredients is the abduction of the woman, and the second is the:

intention that she may be compelled or knowing it to be likely that she may be compelled or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she would be forced or seduced to illicit intercourse.

i.e., the object of the abduction must be an enforcement or compulsion or seduction to illicit intercourse. At the beginning of the charge to the jury the Judge said that the prosecution case was that the idea of the accused was to bring such influence to bear on the woman or her family that the burglary case which was then pending against Narain accused would be withdrawn or seriously prejudiced. This matter is again referred to a little lower down where the Judge says that the defence does not:

carry any great weight if their intention was merely to force her family to withdraw the case by abducting her or to force her herself to give evidence in favour of Narain.

2. If this was the object of abduction, then Section 368 would not be applicable. It is true the Judge remarks:

Section 366 also refers to a case in which the accused knows that it is likely that the woman will be seduced or compelled to illicit intercourse, and it is on this case that the prosecution proceeds.

3. I am not quite clear as to the meaning of this sentence. If the object of the accused was to bring pressure to bear on the husband then it can hardly be said that they knew it to be likely that she would be forced or seduced to illicit intercourse. Putting the case at its highest, it may fairly be said that the jury were likely to be misled, that is to say, that they were likely to believe that what they had to find was not that the woman was abducted for illicit intercourse but, that she was abducted for the purpose of bringing pressure to bear on her husband and if the jury brought in a verdict of guilty on this understanding it is quite clear that the conviction under Section 366 ought not to stand.

4. It should be remarked that We Judge did not in his charge remind the jury that if they had any reasonable doubt about the guilt, of the accused, they were to 'bring'

in a verdict of not guilty.

5. I therefore allow the appeal, set aside the order of conviction and sentence; passed on the appellants, and direct that the case be returned to the learned Sessions Judge for re-trial. The appellants may remain on bail until further orders have been passed by the Sessions Judges.

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