

K. Joggayya Vs. King

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Court : Orissa

Decided On : Mar-31-1949

Reported in : AIR1951Ori142

Judge : Ray, C.J. and ;Panigrahi, J.

Acts : India Penal Code (IPC), 1860 - Sections 340, 342 and 366

Appeal No. : Criminal Appeal No. 49 of 1948

Appellant : K. Joggayya

Respondent : King

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : P.V.B. Rao, Adv.

Judgement :

Ray, C.J.

1. The appellant has been convicted under Sections 366 and 342, Penal Code, and has been sentenced to undergo rigorous imprisonment for three years and pay a fine of RS. 100/- for the first offence and six months rigorous imprisonment for the second.

2. The prosecution case is that the appellant abducted the girl (p. W. 1) while she was on her way back after purchase of paddy in Nuapali village in company with about 9 or 10 others each of whom had a bag load of paddy on the head. The accused happened to be by the side of the road when Chandramma and patty were proceeding to the aforesaid village for purchase of paddy. He also was found loitering on the road near a tank while they were returning. He came with a stick from behind the girl and pushed down the bag load of paddy from her head and forcibly carried her away in his arms lifting her body by putting one-hand under the knees and another around the neck. In this condition, he took her to some distance and then dragged her to his house through the back door and bolted the same. First of all, he took her to the house by back door then to the middle house which was then closed. Certain outsiders, being informed of the occurrence by P. ws. 3 and 4, wanted to intercede on her behalf and persuade the appellant to let her go but to no effect. Later, the village Karji was informed, who also came on the scene and repeated the same request but in vain. He then submitted his report to the Police on which the First In. formation Report was recorded. Before the Karji sent his report, the father of the girl had also come to the place on getting information from somebody whom La could not name. The girl was brought into the room at about 10.30 A.M. and was kept confined till 5 P.M. of the day when, only on the appearance of the Sub-Inspector on the spot, the door was opened and she had to come away. At the time when she was released, she was found to be perspiring, weeping and almost run down; for sometime she fainted, but her mother took her up into a relation's house where she was given some food. Later, she conducted the Sub-Inspector to the place from where she was forcibly carried away, and the paddy bag, that she had been carrying at the time, was identified, out of several other such bags belonging to her companions and was seized. The Sub-Inspector made an investigation and submitted charge-sheet. Ultimately, the appellant was put on trial and has been convicted and sentenced as above.

3. The evidence consists of that of the girl and her two companions, p. Ws. 3 and 4. These are the eye-witnesses. P, W. 2 is the father who came to the scene after hearing about abduction. The only inmate in the house of the accused on the date of the occurrence was his mother who has not been examined either by the prosecution or by the defence nor is it known under what circumstances she was

left out. The learned Sessions Judge has believed the evidence of P. Ws. 1, 3 and 4 on the point of actual occurrence, namely, carrying and dragging the girl inside the house and patting her in confinement. He has believed P. w. 1 wish regard to hex story that this confinement and abduction was with the object of compelling her to marry. The evidence of witnesses, other than those mentioned above, is more or less corroborative proving the antecedent and subsequent facts which strongly probabilise the prosecution story. Mr. P. V. Rao, the learned counsel for the appellant, except raising certain points does not seriously dispute the story in its broad outlines nor has he indulged, and that I think rightly, in dealing with immaterial discrepancies in the statements of the different witnesses deposing on an identical point. The points of dispute are : (i) that the girl had come to the accused's house voluntarily; (ii) assuming that she was dragged, it does not amount to an offence under a. 366, as the prosecution has failed to establish from the facts and circumstances proved that the abduction was with the intent that she may be compelled to marry the appellant against her will; it is not the prosecution case that the intention of the appellant in abducting her (p. w. I) was that she may be forced or induced to have illicit connexion; (iii) assuming her story her being lodged in a room which was bolted-to be true, it does not amount to an offence of wrongful confinement.

4. I shall deal with these points seriatim in the order in which I have referred to them.

5. That the girl came of her own accord to the accused's house is urged on the basis of a few statements on record, namely, that she was in the habit of coming to the accused's house now and then, both during when her eldest sister, the lawful married wife of the appellant, was in the place and also when she was absent. It is urged that had she been forcibly dragged in the manner alleged by the prosecution, she must have sustained certain injuries, in view of the fact that she was dragged for some distance over the field on which there were shrubs, and bushes here and there; and, further, that it would be impossible to believe that she, when carried against her will, would not struggle and would inflict injury on the body of the appellant. As to her coming of her own accord to the house of the accused, there is no evidence in support of it except the statement of the accused.

The circumstances are militant against the theory as according to the evidence of p. w. 2 and p.w. 1 herself the appellant was not on good terms with his first wife (Chandramma's eldest sister) and the latter had left her husband's place and come to reside with her father. The difference between them was due to the fact that all her children so far born, about five in number, died premature deaths and the appellant wanted to marry afresh. There is some difference of version as to whether she gave her consent to such marriage. But from the statement of the accused in his examination under Schedule 42, Criminal P. C, it appears that she gave up taking her meals for three days when her husband (the appellant) had gone out to Ganjam to seek for a marriageable girl and that; she had to be sent away to her father's place. Chandramma is a girl of 17 and it is inconceivable that she should take this difference between her sister and her husband in lighter spirit. Under the circumstances, after her eldest sister came over to live in her father's house, the younger should (not?) like to go there of her own accord. With regard to the absence of the injuries likely to be caused by the forcible dragging, there is no evidence either way. Unfortunately, the Sub-Inspector did not send up the girl for medical examination for that purpose. According to his statement, he had sent up the girl to the doctor for examination of her age. There is no dispute that she has reached 17. Therefore, non-examination of the doctor leads to no point in favour of the defence. Under the circumstance in the absence of any evidence as to presence or absence of injuries, it is difficult to speculate. Even if such injuries are to be expected, they should be merely slight scratches. In view of the fact that the girl belongs to a labour class and is accustomed to walk on such rugged and bushy grounds, it is likely she may not incur any such injuries by such forcible dragging. Lastly, with regard to whether she would struggle and, in course of that, would inflict injuries on the body of the appellant, there is no likelihood, because as the learned Judge observed 'the appellant is a strong and a robust man of 30 while the girl though 17 is lean and thin. 'Besides, they were previously known to each other being very near relations. Under the circumstances, it is difficult to believe that the girl would struggle and that seriously. Under the circumstances, I would accept the finding recorded by the trial Court that the girl was, in fact, forcibly carried. The two eye-witnesses, p. ws. 3 and 4, have given their evidence without any serious contradiction, nor is there anything to suggest that they had been

tutored. There was suggestion to p. w. 3 in cross-examination whether she was a servant under p. w. 2, the appellant's father-in-law. She repelled that suggestion as untrue. Mr. Rao relies upon this suggestion with great emphasis. That this suggestion was an after-thought is clear from the fact that it was never made to p. w. 2 while it was known p.w. 3 was going to be examined as a prosecution witness. With regard to p. w. 4. it is contended that her name was not mentioned as one of the members of the party that proceeded in company with Chandramma for purchase of paddy and in this connexion he further argues that on her own statement she was not examined by the Sub-Inspector during the investigation. In the First Information Report, it is written that 'ten Mailpila had accompanied Chandramma for purchasing paddy.' It is urged that they should not exclude P. w.4 who was a boy. In the list of ten persons appended to the report, the name of the 4th man is Pirinti Ramayya which is admittedly a male name. P. W. A was in fact, examined by the Police on the very first day. Therefore, I would read the word 'Maipila' to mean 'to both women and children'. So there is no substance in this point. The evidence of P. ws. 3 and 4 is, therefore, quite convincing and there is no reason to disbelieve any one of them' The next contention of Mr. Rao is that at any rate the requisite intention for the offence has not been established. He argues this on the strength of statement made by P. W. 1, which reads: 'the accused was all along requesting me to marry him.' His submission is that mere request and keeping her sometime in his house in order to get an opportunity to request repeatedly and in an impressive manner will not make out an intention that she may be compelled to marry. This statement, however, carries a different meaning from what it-is sought: to attribute to it in view of the context in which it stands. The passage, of which the expression referred to is the last sentence, reads:

'It is not a fact that I used to go to the house of the accused very often. Nor is it a fact that he and I are friends. I never went to his house with my sister. Daring my childhood, I might have gone there once or twice with my mother. I was not afraid of the Police on seeing the Police on that day. The accused was all along requesting me to marry him.'

It is admitted that the appellant had been requesting his father-in-law, p. w. 2 (who is also his maternal uncle) to give Chandramma in marriage to him on account of failure of issue ' by his first wife and that P. W. 2 used always to refuse. It is also admitted that the appellant was on frequently visiting terms to Chandramma's house. The meaning of this passage is, therefore, clear that while requesting the father to give his daughter in marriage, the daughter was also being requested from time to time to agree. This statement is in reference to what happened inside the room where she was confined.

As to what happened there is deposed to by Chandramma as follows:

'Some outsiders asked the accused to open the doors, but he refused to open it. The accused asked me to stay there as he would marry me. I refused to stay there and marry him. as he had turned out my sister. Inside the room, I was standing and crying.'

6. This is the evidence from which the intention has to be judged. If this evidence is believed, as it is believed, it is clear that the accused's intention was not only to persuade her to change her mind to accept him as her groom but also to marry her, her refusal notwithstanding, that he kept her confined from 10 30 A. M. to 5 P. M. while the girl was standing and crying and refused to stay and marry and gave out her reasons which were very convincing. There can be no other conclusion than that his intention was to compel her to marry or, if opportunity permitted, to marry her forcibly. Even repeated requests to one who knew her limitations, namely, that she was completely within the grip of the requester where she was imprisoned and was given no food and drink, certainly amounted to forcing her to consent. Even if consent in such circumstances would have been given, that would not amount to consent in law. This is hardly anything less than what can be called 'force' in law. I have, therefore, no hesitation in concluding that the requisite intention was there, and the offence under S 366 as charged, has been committed and the appellant has been rightly found guilty under the section.

7. With regard to the finding of wrongful confinement, Mr. Rao controverts whether the middle room in which she was lodged was chained from outside or bolted from inside. His sub-mission that if it was bolted from inside, it was quite open to her to

open the door and come out. As she did not do so, there seems to be no desire in her to go out. The evidence on this point consists only that of the statement of P. W. 1 (Chandramma). The evidence of P. Ws. 3 and 4 must, from its very nature, be confined to bolting of the back door of the house. They do not say that they passed through back door or front door of the appellant's) house and came near the middle room. Confining ourselves to the evidence of P. W. 1 on this point, she says that she was taken to the middle room and it was closed. Then follows her statement that in that room she was all along standing and crying and the appellant was asking her to marry. Mr. Rao is willing to take it as a fact that on the evidence, the appellant was in the same room as the girl. If that be so, the fact that the girl did not make an attempt to open the door would make no difference. She knew that she was 1951 Orissa/19 hardly a match for a robust man like the appellant and that any attempt either to open the door or to run away would be completely fruitless. Let us take it to be a fact that he was not all the while in the room but the room was closed. In that case, it would mean closing it from outside. On that hypothesis, Mr. Rao is agreeable to accept that wrongful confinement is complete. Let us further assume that the middle room was not closed at all but the back door and the front door of the house were closed and admittedly the accused was inside. The result will be same. Absence of a desire to move on the part of the person confined no doubt, detracts from it being an offence under Schedule 42 but mere omission of an attempt to run away when there is a watch, does not mean absence of a desire. Mr. Rao has referred to us a passage from the Mayne's Commentary on Criminal Law to the effect that, if escape is open to a person and if he wished to avail himself of it, his confinement will not mean wrongful confinement. The question, therefore, is whether an escape was open to Chandramma. That an escape is open will not depend upon whether she could open the door herself if she wished, but upon whether she would be feeling confident that she should be able to extricate herself from the confinement notwithstanding the presence of the confiner, who was able-bodied, robust and strong man, as against a lean and thin girl who was confined. In this case it cannot be said that, an escape was open to her. I should quote a passage from Ratnalal's Law of Crimea which seems to be based upon a decision of the Bombay High Court with which, with great respect, I agree. The passage is at p. 839 :

'Proof of actual physical obstruction is not essential to support a charge of wrongful confinement. It must in each case, be proved that there was at least such an impression produced in the mind of the person detained as to lead him reasonably to believe that he was not free to depart and that he would be forthwith restrained if attempted to do so. The mere threat of some future harm in case of departure would not suffice if he knew that it was open to him to go away and refrained from doing so lest he should suffer such harm. But if the circumstances were such as to justify and to create the belief that he could not depart without being seized immediately, than it would be proper to hold that ha was obstructed and confined.'

8. In this case, I have already demonstrated from the circumstances proved and admitted, that Chandramma would have no other belief than that she could not depart without being seized immediately. In this view of the matter, I cannot accept the contention and shall hold, agreeing with the learned Sessions Judge, that the offence of wrongful confinement has also been established. In the result, the appellant's conviction under this section must stand.

9. Mr. Rao baa appealed to us in the circumstances of the present case as to severity of the sentence. The circumstances are as follows.

10. The appellant's first wife is the eldest sister of Chandramma. The appellant was brought up in her father's family, the latter being his maternal uncle. That on account of failure of issues, as already referred to, he was intent upon and had expressed his desire to marry Chandramma. He had been bold enough to advance his proposals to Chandramma directly. There is nothing to show that, if her father agreed to the marriage she would be an unwilling agent. The circumstances were different, however, when she was abducted, wrongfully confined and then asked to agree to the marriage, All the while, there were seasons for the appellant to believe that if he could have the girl in his house, the latter would agree and the father-in-law would reconcile himself to the position. As a matter of fact, he has used no violence to the girl nor has made any effort to outrage her modesty. Under the circumstances, rigorous imprisonment for one year would meet the ends of justice. According to the judgment of the Court below,

both the sentences should run concurrently. It will be so in, this Court also. The sentence of fine does not seem to be severe and must stand.

11. In this result, the sentence of three years rigorous imprisonment under Schedule 66, Penal Code, shall be reduced to one year. Subject to this modification in the sentence, the appeal is dismissed.

Panigrahi, J.

12. I agree.

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