Madansingh Vs. the State

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Court : Rajasthan

Decided On : Aug-27-1952

Reported in : AIR1954Raj38

Judge : Ranawat, J.

Acts : Evidence Act, 1872 - Sections 32(5)

Appeal No. : Criminal Appeal No. 37 of 1952

Appellant : Madansingh

Respondent : The State

Advocate for Def. : C.B. Bhargava, Deputy Govt. Adv.

Advocate for Pet/Ap. : J.B.L. Saxena, Adv.

Judgement :

Ranawat, J.

1. This is an appeal by Madansingh, who has been convicted of an offence under Section 353, I. P. C. and sentenced to two years rigorous imprisonment, by the Sessions Judge Jaipur city.

2. It is alleged by the prosecution that Mt. Sohni, daughter of Ramchandra, was for some time in the employment of Madansingh, who was a peon in the Customs

Department posted at Niwaria. A few days before the occurrence Sohni left the service of the accused, though she used to visit occasionally his house. On or about 19-10-1948, it is said, the accused came to Devpura in a motor truck from Jaipur and in the evening the same day he went to Niwaria and brought Mt. Sohni with him. He then left Sohni on the roadside and, came to Devpura and again returned to the place where he had left Sohni and he got into the motor truck along with Sohni and took her to Jaipur. Sohni was left by the accused at the house of one Chitar from which place the police recovered her a few days' later. The father of Sohni lodged a complaint at the police station Panwar on 21-10-1948 and the police recovered the girl on 30-10-1948 from the house of Chitar and got her medically examined by Dr. Bhatnagar as to her age. The case was challaned under Section 366, I. P. C. against the accused but subsequently the charge was altered from Section 366 to Section 363, I. P. C. The Sessions Judge, Jaipur, after holding the trial held that the accused had taken Mt. Sohni out of the guardianship of her father and. that Sohni was a minor girl of the age of below 16 years. The accused was, therefore, convicted under Section 363, I. P. C.

3. The case of the accused was that the mother of the girl had requested him to take the girl to Jaipur some day for site seeing, and the girl herself told him that she had obtained the consent of her father for going to Jaipur. The accused with the permission of the mother and the father brought Sohni to Jaipur and that he had not kidnapped her from the guardianship of her lather. On behalf of the defence the fact of the minority of Mt. Sohni was also disputed.

4. The trial court considering the evidence of Dr. Bhatnagar and an entry made by Bhanwarlal in his panchang on the basis of the statement of the father himself, came to the finding that the age of Mt. Sohni at the time of the occurrence was below 16 years.

5. In this appeal, the learned counsel of the accused has pressed the following two points:

1. That the trial court erred in admitting the entry made by Bhanwarlal in his panchang into evidence and that entry was not admissible into evidence under Section 32(5), Evidence Act. The statement of Dr. Bhatnagar is based on the

report of and a skiagram taken by the Radiologist which have not been brought on the record of the case and it has not been proved that the skiagram on which the opinion of the learned Doctor was based related to Mt. Sohni. The statement of the father cf Mt. Sohni should not have been believed as he has been found to be wrong at least in one particular in so far as he has stated that the girl was married in Sambat year 2006 about 8 or 9 months before the occurrence. The occurrence took place in the Sambat year 2005 and hence the marriage of the girl could never have taken place in St. 2006. The finding regarding the age of the girl being below 16 years is, therefore, wrong.

2. That Sohni herself accompanied the accused from Niwaria to Jaipur and that the accused did not take her out of the keeping of the lawful guardian.

6. The learned Government Advocate has frankly conceded that Dr. Bbatnagar's statement is not of much assistance to the prosecution as his opinion has been based on a report of and skiagram taken by the Radiologist, which have not been produced as pieces of evidence by the prosecution and the prosecution also failed to prove that the skiagram which was considered by Dr. Bhatnagar was of Mt. Sohni. It is, therefore, not necessary to discuss the question of the value of the medical evidence in the present case. The learned Government Advocate has, however, argued that in the present case the statement of the father of the girl and the entry made by Bhanwarlal in his panchang should both be considered to be sufficient to establish beyond any doubt that the age of the girl was below 16 years. A very interesting point has been raised by the side of the appellant regarding the admissibility into evidence of the entry made by Bhanwarlal in his panchang. Badri Narain, son of. Bhanwarlal, has been produced and from his statement it has been established that Bhanwarlal died 8 or 9 years ago and that the entry appearing in Ex. P-6 is in the handwriting of Bhanwarlal. Exhibit P-6 would be admissible in evidence under Section 32(5), Evidence Act, if it is found that this entry amounted to a statement of a deceased person relating to relationship by blood, marriage or adoption made before the question in dispute was raised and that the person making the statement had special means of knowledge. Under Section 32(5), Evidence Act, it is also necessary that the statement in order to be admissible should relate to the existence of relationship

by blood, marriage or adoption. The question of age has been considered to be a question of relationship in the meaning of Section 32(5) and a statement about the date of birth made by the deceased person, having special means of knowledge about the relationship of the man in question is admissible in evidence under Section 32(5) if it had been made before the Question in dispute arose. The father of Mt. Sohni has stated that when Sohni was born he went to Bhanwarlal and consulted him about the position of the stars at the time of her birth. This shows that Bhanwarlal was in a position to possess knowledge about the date of birth of the daughter of Ramchandra. Bhanwarlal, therefore, had special means of knowledge under the circumstances of this case to make an entry about the birth of a daughter to Ramchandra. it is vehemently contended by the learned counsel of the accused that the statement of Bhanwarlal regarding the birth of a female child of Ramchandra should be rejected on the ground of hearsay. The knowledge, if any, of Bhanwarlal must have been derived from what Ramchandra told him and if Bhanwarlal had been alive his statement would have been inadmissible as hearsay. It is stressed that the statement of Bhanwarlal cannot be admitted into evidence under Section 32(5), Evidence Act simply because this statement had been produced after the death of its maker. In reply to this contention of the appellant the learned Government Advocate has put his reliance on the judgment of Sir John. Wallis C. J. in -- 'Ramanathan Chetty v. Murugappa Chetty', AIR 1917 Mad 930 (A), in which it has been observed as, follows: 'As regards the plaintiff's own statement in evidence and in the affidavit Ex. A, the subordinate Judge does not appear to question its admissibility and it would appear to be admissible under Section 21(1) read with Section 32(5), Evidence Act, if made by a person having special means of knowledge and it appears to be settled that such knowledge need not be personal knowledge but may be derived from hearsay.' (p. 932).

7. That was a case of an admission but the remarks of the learned Chief Justice were made also as regards the statements under Section 32(5), Evidence Act. There is nothing in the language of Section 32 which would bar a statement on the ground of hearsay if the statement is otherwise admissible under the provisions of that section. In -- 'Debi Pershad v. Radha Chowdhrain', 32 Cal 84 (PC) (B), it has been held by the Privy Council that statements of strangers who heard the parents

of the plaintiff reciting the names of their ancestors at Shradh ceremony are admissible into evidence to prove the pedigree of the plaintiff as statments of persons who are dead. Though no reference of Section 32(5) appears in this judgment, such statements could not have been held admissible otherwise than under Section 32(5). It goes without saying that in that case the statements could not have been free from the fault of being hearsay, because the persons who stated based their information on the statements made by the ancestors of the plaintiff. In the present case Bhanwarlal has been proved to be in a position to know about the birth of a female child of Ramchandra and as such he can be regarded as a person having special means of knowledge relating to the relationship of Ramchandra's chila and the fact of the date of her birth. The entry in the panchang made by Bhanwarlal is, therefore, admissible, and the question that it was based on hearsay evidence is not of much importance as the requirements of Section 32(5) are fully satisfied. The entry Ex. P-6, however, is silent regarding the name of the child and there is no evidence on the point regarding the number of children Ramchandra had. It is, therefore, difficult to say anything from the entry itself whether the particular entry related to Mt. Sohni or it was regarding some other child. But if this entry is examined along with the statement of the father of the girl it may be fairly presumed that the entry was made on the information given by Ramchandra relating to the birth of Sohni. The statement of Ramchandra also goes to show that Mt. Sohni was born in Sambat year 1992. It is true that he has made a blunder in his statement regarding the year of the marriage of Mt. Sohni. But from this circumstance alone it cannot be gathered that he was also wrong in giving the year of Sohni's birth. His statement in this behalf receives support from Ex. P-6 and taking both of them together it may be safely concluded that the age of the girl at the time of the occurrence was below 16 years.

8. As regards the point of taking Sohni out of the guardianship of her father, the statement of the accused himself goes to show that he took Mt. Sohni himself from Niwaria to Jaipur but his explanation is that he did so at the instance of the girl and with the permission of her mother and on the understanding that the girl had obtained the consent of her father. There is no evidence whatsoever on the record of the case on the point of permission of the father or of the mother of Mt. Sohni

regarding her taking away to Jaipur by the accused. It seems difficult to think that if Ramchandra or his wife had given permission to Sohni to visit Jaipur with the accused he would have lodged a report with the police only two days after the disappearance of the girl. In his first information report Ramchandra does not name the accused. In his statement, however, Ramchandra has said that Sohni went with the son of the accused from his house on the day when she disappeared but this version is contrary to the report which he made at the police station on 21-10-1948 and cannot be believed to be true. It is urged on behalf of the accused that the girl voluntarily stopped a truck near Deopura in which the accused was travelling and she got into it and went to Jaipur herself. Reliance is placed in this behalf on the statement of Onkar. It may be pointed out that Onkar had stated that on the day ol occurrence the accused came in a truck from Jaipur to Deopura and he left for Niwaria the same evening. When the truck was loaded and was ready to leave for Jaipur the accused returned but he again went away. The witness accompanied the truck up to the point where the truck got on the metalled road and he found the accused there and saw him getting into the truck all alone. It is further stated that after about 100 paces the truck stopped and a girl got into it. It may be-that after the accused had left the girl at some point on the metalled road and had gone to Deopura to give instructions for the starting of the truck he returned and got into the truck before he reached the spot where he had left Mt. Sohni on the road. The statement of Onkar simply shows that the accused and Sohni got in the truck, at different points but reading this along with the statement of the accused there remains no doubt, that the accused had left the girl on the roadside and he took her with him in the truck and brought her to Jaipur. So far as the question of taking of Sohni out of the guardianship of her parents is concerned, there is no doubt that the accuseds did do so. The only explanation which the accused offered was about the permission of the parents of Sohni regarding her taking to Jaipur but on this point no evidence has been adduced and under the circumstances of the case there is no room to believe that the accused had brought Sohni to Jaipur with the permission, of her parents. The statement of Chitar that the accused told him. that Sohni was his wife's sister goes to show that the conduct of the accused in this affair was not, bona fide. If he had brought the child for sight seeing with the permission of her parents there was no reason for

the accused to give false particulars about her relationship.

9. The sentence of two years under the circumstances of the case appears to be a bit severe, and the ends of justice would be met if it is reduced from two years to 12 months' rigorous imprisonment only.

10. This appeal is dismissed but the sentenceof the accused is reduced from two years to oneyears' rigorous imprisonment only under Section 363I. P. C.