

Rampratap Vs. State

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Court : Rajasthan

Decided On : Mar-14-1969

Reported in : AIR1970Raj250; 1970CriLJ1559; 1969()WLN190

Judge : B.P. Beri, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 366 and 376; Code of Criminal Procedure (CrPC) - Sections 177, 180 and 235

Appeal No. : Criminal Ref. No. 199 of 1968

Appellant : Rampratap

Respondent : State

Advocate for Def. : G.M. Mehta, Deputy Government Adv.

Advocate for Pet/Ap. : P.N. Dutt and; K.N. Tikku, Adv.

Judgement :

ORDER

B.P. Beri, J.

1. The learned Additional Sessions Judge, Jhalawar, 1ms recommended the quashing of the order of the Magistrate, Bhawani-mandi whereby he has held that the inquiry of offences under Sections 360 and 376 I. P. C., although committed at

Bhawani-mandi and Indore respectively, could be conducted by him at Bhawanimandi.

2. The facts which it is necessary to recall for the disposal of this reference, briefly stated, are these. Rampratap has been accused of kidnapping a minor girl Geeta from Bhawanimandi (Rajasthan) on or about the 13th March, 1967. He took her to Indore and there on or about the 16th March, 1967, committed rape upon her. On behalf of the accused, a question was raised that the offences under Section 376 I. P. C. according to the prosecution having taken place at Indore, the learned Magistrate, Bhawanimandi, had no jurisdiction to inquire into it. This objection was rejected by him. He held that Section 177 read with Section 180 Cr. P. C. and more particularly its illustration (c) authorised him to inquire into the case at Bhawanimandi. The accused came in revision before the Additional Sessions Judge and he has made the recommendation as indicated earlier.

3. Mr. K. N. Tikku, learned counsel for the accused, supports the reference while the learned Deputy Government Advocate opposes it.

4. Mr. Tikku argued that the offence of kidnapping under Section 366 is independent of the offence under Section 376 I. P. C. and on the plain language of Section 177 Cr. P. G. the case of rape cannot be inquired into by the Magistrate Bhawanimandi as he has no jurisdiction to inquire into an offence which is alleged to have taken place at Indore. In support of this contention, he relied on Emperor v. Mohanlal Aditram, AIR 1928 Bom 475 (2).

5. The learned Deputy Government Advocate submitted that Section 180 and particularly illustration (c) supports the inquiry or trial of cases where the facts are related to one another as in the instant case. In support of his contention he relied upon Purushottamdas v. State of West Bengal, AIR 1961 SC 1589, The State of Andhra Pradesh v. Cheemalapati Ganeswara Rao, AIR 1963 SG 1850, Moujali v. Emperor, AIR 1941 Sind 121 and Gul Mohammad v. Crown, AIR 1951 Ajmer 68.

6. Section 177 Cr. P. C. reads as follows:--

'Ordinary place of inquiry and trial.

Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.'

This section is the first section of Chapter XV entitled as 'Of the Jurisdiction of the Criminal Courts in Inquiries and Trials' and as the language shows and more particularly the word 'ordinarily', the section seems to have been moulded imparting to it a certain amount of flexibility. It came for interpretation before the Supreme Court in AIR 1961 SC 1589 (supra). To be exact, let me quote the language of their Lordships:

'It is further significant to notice the difference in the language of Section 177 and Section 233. Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court except in the cases mentioned in Sections 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open: Its provisions are not peremptory. There is no reason why the provisions of Sections 233 to 239 may not also provide exceptions to Section 177, if they do permit the trial of a particular offence along with others in one Court. On the other hand, Section 233, dealing with the trial of offences, reads:

'For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239.'

The language is very peremptory. There is a clear direction that there should be a separate charge for every distinct offence and that any deviation from such a course would be only in cases mentioned in Sections 234, 235, 236 and 239.

It is true that it is not stated in express terms either in Section 235 or Section 239, that their provisions would justify the joint trial of offences or of persons mentioned therein in a Court irrespective of the fact whether the offences to be tried were committed within the jurisdiction of that particular Court or not. But such, in our opinion, should be the interpretation of the provisions in these two sections. The sections do not expressly state that all such offences which can be charged and

tried together or for which various persons can be charged and tried together must take place within the jurisdiction of the Court trying them.'

7. In the instant case, the inquiry in regard to the actions of the accused firstly relates to an offence which he is alleged to have committed under Section 366 of the Indian Penal Code at point B (Bhawani Mandi), then he and the girl proceeded to Indore (I) and it is alleged that they stayed in a hotel and the accused committed the offence of rape. The offences under] Section 366 and Section 376, in the circumstances of the case, it appears, are so related to one another that their inquiry can be justified both under the provisions of Section 180 Cr. P. C. as well as Section 177 read with the provisions of Section 235.

8. Section 180 Cr. P. C. reads as follows:--

'When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.'

The essence of the provision to my mind is that where there are two acts done at two different places and each one of these acts is an independent offence but they are related to one another, both the offences can be enquired into or tried at either of the places. The illustration (c) to Section 180 Cr. P. C. is very telling in its effect and it reads:--

'(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.'

9. Kidnapping and concealment of a kidnapped person are two distinct offences independent of one another. In a given case, there may be only kidnapping and no concealment of a kidnapped person. In another case it may be that one may not know who kidnapped and yet there may be concealment of the kidnapped at a different place. Notwithstanding this, the offence of kidnapping having taken place

at point A, and concealment having taken place at B, according to this illustration, they could both be tried at either of the places.

In the circumstances of this case, in my opinion, the alleged kidnapping and the alleged rape are so related to one another that they can be tried either at A or at B. The Bombay case, AIR 1928 Bom 475 (2), which has been cited by learned counsel for the accused revolves round the consideration of Section 177 Cr. P. C. only and has not taken into account either the provisions of Section 180 Cr. P. C. or Sections 235 to 239 of the Code of Criminal Procedure. The learned Judge's attention was not invited to the word 'ordinarily' in Section 177 itself. I am, therefore, with great respect, unable to agree with the broad proposition laid down in the Bombay case.

10. Section 177 speaks of the relationship of two acts each one of which is an offence and capable of being tried in isolation. Yet where they have a certain amount of relationship such as kidnapping and the concealment of the kidnapped person, they can be tried in the Court of the place where either the kidnapping took place or the concealment took place. Probably this relationship which has been expressed in the term 'transaction' in Sections 235 and 239 Cr. P. C. was responsible for persuading their Lordships of the Supreme Court in the above-mentioned judgment to say that these may also in appropriate cases be treated as exceptions to the flexible language of Section 177. Examined from that angle also, the alleged kidnapping of the girl from B, their going together to A and staying in a hotel where the rape is alleged to have been committed, in my opinion, can, in the circumstances of this case, constitute a 'transaction'. Even from this point of view, both these offences could be enquired into before the Magistrate at Bhawanimandi.

11. Apart from these considerations, I am left wondering as to why the accused is inviting inconvenience for himself.

12. In this view of the matter, I think I cannot accept the reference and hold that the order of the learned Munsiff-Magistrate dated the 26th July, 1967, is correct and is upheld and the reference is rejected.

