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Court : Rajasthan

Decided On : Jan-02-1980

Reported in : 1980WLN(UC)100

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Criminal Appeal No. 62/1979

Appellant : Nagji and anr.

Respondent : The State

Judgement :

S.N. Deedwania, J.

1. Appellants Nagji and Dudji have preferred this appeal against the judgment dated 2-9-1975 by the Sessions Judge, Banawara convicting and sentencing them under Sections 147 and 366 IPC to rigorous imprisonment for three months and one year respectively.

2. Briefly stated the facts were these. Mst. Fatti pw.7 daughter of Mehji Bhil was working at Sukhnadi on 17.2.74. The appellants alongwith two three other persons came there and took her away by force. When Fatti did not return to her house in the evening, her brother Motia P.W.6 lodged F.I.R Ex p 4 on 18,2 1974 in police station Kalinjara It is further alleged that the appellants Nagji and Dadji took Fatti

to various places and also committed rape upon her. Fatti managed to escape from the appellants at village Fajne on 21.2.1974. P.W. 1 Kalu took her to police station Fajoa (Ratlam). At 11 a.m. on 22.2.1974, Fatti also lodged the F I R Esc. P 6. After necessary investigation a challan was filed against the two appellants and the three other accused under Sections 147 and 366 I.P.C. in the court of Munsif-cum Judicial Magistrate, Kushalgarh who committed the case to the court of Sessions. The two appellants and the three other co-accused pleaded not guilty. The defence of accused-appellant Nagji was that the father of Mst. Fatti married her with him after taking Rs 600/. She lived with him for four months and then returned to her parents. She was not sent back to Nagji. Appellant Dadji further stated in his statement recorded under Section 313 Cr. PC that complainant party was not even returning the money. While convicting the appellants the learned Sessions Judge observed that the statement of Mst Fatti p.w.7 was not wholly reliable as she had magnified the incident out of all proportion. Her statement therefore, needs independent corroboration. At this stage I may say that Mst Fatti appears to be a liar' she has given a much exaggerated version of the incident. However, it could not be said in the circumstances of the case and the evidence that she was not abducted as I would presently show after noticing the arguments advanced by the learned Counsel for the appellants and the learned public prosecutor.

3. I have carefully heard the learned Counsel for the appellants and the learned Public prosecutor and perused the record of the case. It was argued by the learned Counsel for the appellants that the learned Sessions Judge after acquitting the three co-accused was in error in convicting the appellants under Section 147 I.P.C. There was no cogent and reliable evidence that five or more than five persons participated in the crime. It was also argued that the appellants did not abduct Mst. Fatti. She rather voluntarily accompanied Nagji being his legally wedded wife. In any case the facts & circumstances of the case warrant that the appellants be released on probation.

4. The learned public prosecutor on the other band argued that there was evidence that the two appellants and three or more unknown persons participated in the crime and therefore, offence under Section 147 I.P.C. was proved. There

was no evidence that Mst. Fatti was ever married to Nagji, It is improbable and not warranted by the evidence on record to hold that Mst. Fatti voluntarily went with Nagji and Dudji. I have considered the arguments carefully. P.W. 7 Mst Fatti had stated that she was working at Sukhnadi. At about meals time Nagji, Dudji Raoji and four other persons came there and took her away by force. She has further narrated that she was raped both by Dudji and Nagji and was also given severe beating. She was taken from place to place. She was not even allowed to attend to the call of nature and was also not given any food or water. In the market of Fajna the two appellants took her while beating her. The appellant then went inside a hotel and she was left outside. Thereafter she ran away. There is no evidence or circumstances to support the later part of the statement of this witnesses which is inherently improbable. The learned Session Judge therefore. disbelieved the later part of the story and termed her as not a wholly reliable witness. However, I find that on the question of abduction, two other witnesses P W. 8 Kanna and P W. 9 Khaturam who supported her. They have said that seven persons abducted Fatti who had also implicated seven persons. However, after the acquittal of the three other co-accused it is not safe to rely upon the testimony of these two witnesses to hold that more than five persons participated in the crime. P.W. 8 Kanna could not identify any one except the appellants and one Raoji. The same criticism would apply to the statement of P.W.9 Khaturam and therefore, in my opinion that the prosecution could not prove beyond reasonable doubt that five or more than five persons were involved in the crime. However, their evidence is reliable to this extent that the appellants abducted Mst Fatti The motive appears to be that Rs,600/-were taken by the father of Fatti from appellant Nagji and then after his death her brother refused to marry her with him. No doubt Dudji and Nagji also stated about the marriage but there is no proof about the same. In my opinion because the family members of Fatti were not prepared to marry her and were also refusing to return the money, led to this crime. The statement of Mst Fatti is absolutely false on the point that she was abducted for being sold It appears that the appellants abducted her so that she could be married with Nagji, of course against her. This takes me to the question of sentence. The appellants are poor Bhils and were deprived of Rs. 600/-and the hopes of Nagji of marriage with Fatti were also dashed. The poor appellants could hardly have any legal recourse or

the means to have for it. In the circumstances they were naturally tempted to do the obvious act, i e. to abduct Fatti. The appellants are not professional criminals and in the circumstances they should be released on probation.

5. In the result the appeal is partly accepted and the appellants are acquitted of the offence under Section 147 and the sentence awarded to them is set aside. Their conviction under Section 366 I.P.C. is maintained but the sentence awarded to them is set aside, Each of the appellants are directed to be released on probation on his entering into a bond in the sum of Rs.100'/- and surety in the like amount to appear and receive sentence when called upon during a period of two years and in the meantime to keep the peace and be of good behaviour, in the court of Sessions Judge, Banswara.

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