

Bhola Sardar and ors. Vs. Emperor

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Court : Kolkata

Decided On : Sep-04-1936

Reported in : AIR1937Cal22

Appellant : Bhola Sardar and ors.

Respondent : Emperor

Judgement :

1. The six appellants have been convicted of various offences in connexion with an incident which is said to have taken place with regard to the wife of prosecution witness No. 1. Very briefly the prosecution case was as follows: The appellants Bhola Sardar, Sahizuddin, Amar Dokandar and Oizuddin forcibly broke into the house of the complainant and carried her off. They then and there raped her in a field. She was subsequently taken to the house of the appellant Kasamuddin and raped there by him. Finally she was taken to a hut in a field where she was raped by Kasimuddin and other people and eventually she was made over to the appellant Akbar Sarkar who took her to his house and there raped her.

2. We admitted this appeal on the grounds of misjoinder. Now it would be quite impossible to try all these charges together unless it could be said that all these offences were committed in the course of the same transaction. It might be said with some show of reason that the act of the first four appellants in abducting her and raping her then and there was one transaction. But in our opinion it is opposed to all common sense to say that subsequent acts committed by Kasamuddin and

Akbar Sarkar were committed in the course of the same transaction. On behalf of the Crown Mr. Bhattacharjee attempted to support this joint trial on the ground that the prosecution case really was that the first four appellants were sent by Akbar Sarkar to carry off the girl. The only evidence in support of this is a statement made by the girl herself to the effect that Akbar Sarkar told her this. Even if this be true I am unable to see how subsequent rape by Akbar Sarkar would amount to the same transaction and in no case could it be said that the alleged rape by Kasamuddin was in any way connected with it. In our opinion this joint trial was quite illegal.

3. Nor does the matter stop there. When the case came on for trial before the learned Assistant Sessions Judge the appellants Kasamuddin and Akbar took this objection and asked for separate trials. Even supposing a joint trial were legal, it is in no sense compulsory, and the learned Judge would have been well advised to accept this objection, inasmuch as these two appellants were liable to be prejudiced by the admission of evidence which is quite irrelevant so far as the charges against them are concerned. We therefore allow this appeal and set aside the conviction and sentences passed on the appellants. It will be open to the Crown to take such steps as they consider necessary for separate trials as indicated by us in our judgment, that is to say, the first four appellants may be tried together and the other two appellants must be tried separately. The appellants will be treated as under-trial prisoners pending further orders passed by the learned Judge.