

In Re: Surat Dhobni

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Court : Kolkata

Decided On : Jan-24-1884

Reported in : (1884)ILR10Cal302

Judge : Mitter and ;Field, JJ.

Appellant : In Re: Surat Dhobni

Judgement :

Field, J.

1. The additional evidence, which we directed to be taken by our order of the 11th December last has now been sent up by the Sessions Judge. In consequence of my learned colleague having some doubt, I have very carefully considered the question with which we have to deal. In the case of *Res v. Osborne* 1 C. and M. 624 referred to in my learned colleague's judgment, Creswell, J., said: 'What the prosecutrix said, at the time of the committing of the offence would be receivable in evidence on the ground that the prisoner was present and the violence going on but if the violence was over, and the prisoner had departed and the prosecutrix had gone on running away crying out the name of the person, it would not be evidence.' That was a case of rape, and I do not understand Creswell, J., to have meant that in order to render the statement of the prosecutrix admissible in evidence, both the presence of the prisoner and the continuance of the violence must have co-existed with the making of the statement. I understand the learned

Judge to have been speaking with reference to the circumstances of the case before him rather than to have been laying down any fixed rule which would require for its application the co-existence of the two circumstances just mentioned. In the case of *Rex v. Foster* 6 C. and P. 325 before three learned Judges--Park and Patteson, JJ., and Gurney, B.--the prisoner was charged with manslaughter, in killing a certain person by driving a cabriolet over him. A waggoner was called as a witness, and he said that he was driving his waggon, and that he saw the cabriolet drive by at a very rapid rate, but did not see the accident, and then he went on to say that immediately after, on hearing the deceased groan, he went up to him and asked him what was the matter. It was objected that what the deceased said in the absence of the prisoner as to what had caused the accident was not receivable in evidence, but the three learned Judges were agreed that under the circumstances it ought to be received. This appears to me to be a case more immediately in point than that of *Rex v. Osborne*. It must, however, be borne in mind that these English cases can be referred to only by way of illustration. They are not in any way binding upon us, regard being had to the provisions of Clause 1 of Section 2 of the Evidence Act. What, therefore, we have really to consider is whether the evidence is admissible under the Indian Evidence Act, and having given to the matter my most careful consideration, I have come to the conclusion that it is admissible. It is clear from the additional evidence now submitted by the Sessions Judge that the statement made by the girl was made in the presence of the prisoner and almost immediately after the infliction of the injuries by the tongs. I think, therefore, that it falls within the purview of Section 6 [see Illustration (a)] of the Indian Evidence Act. I think further that it falls within Section 8, Illustration (g), inasmuch as the accused person was present and made no answer denying that it was she who had inflicted the injuries upon the girl. The witness upon a re-examination has added certain matter which we are both agreed that we ought not to consider, but excluding this matter, the case in my opinion falls within the illustration just quoted. The occasion was certainly one upon which the prisoner, if she had not inflicted the injuries upon the girl, would, in all probability, have denied the charge made against her by the girl, and the fact that she did not do so appears to me to have been an acquiescence in the truth of the charge so made by the girl. As to the sufficiency of

the evidence, it is unnecessary for us to express any opinion. We are hearing this case merely in the exercise of our revisional jurisdiction, and the point to which we are agreed to limit ourselves is whether there is legal evidence upon which the prisoner might have been convicted, and this question I feel compelled for myself to answer in the affirmative.

Mitter, J.

2. I concur. I had some doubt upon the point fully discussed in the judgment of my learned colleague. But after considering the authorities referred to in it, I come to the same conclusion to which he has come.

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