

Bhola Sardar Vs. Emperor

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Court : Kolkata

Decided On : Nov-25-1930

Reported in : AIR1932Cal417

Appellant : Bhola Sardar

Respondent : Emperor

Judgement :

S.K. Ghose, J.

1. The two appellants before us have been convicted under Section 373, I.P.C. and each of them has been sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 25 in default to undergo rigorous imprisonment for another three months. The prosecution case is that on 21st July 1929, a girl Nasirannessa was missing at night from the house of her husband Jamal Fakir. He lodged an information at the thana stating that his wife was missing and had eloped the previous night with Ajitulla, one of the ' two appellants before us. The prosecution case is that she was actually taken away by the appellant Bhola and brought to a house where she was made to have an illicit intercourse with Bhola and other persons. Subsequently, she was made over to the appellant Ajitulla who also had an illicit intercourse with her. Finally the girl was brought to the thana with Ajitulla by the chaukidar. The two persons who were tried in the same trial were acquitted. Mr. Khundkar for the Crown had conceded that the evidence adduced

by the prosecution in this case is very unsatisfactory. But he has contended that the learned Judge discussed the evidence very fairly and the jury had accepted the evidence as against these two appellants as true.

2. It seems to me that upon the question as to the age of the girl which is a material factor of the charge under Section 373, I.P.C., there has been a misdirection. On this charge it is incumbent on the prosecution to prove beyond a shadow of doubt that the girl is under the age of 18 years. The evidence however is vague and widely discrepant. The learned Judge points out to the jury that the mother of the girl who was a competent witness had not been examined, that there was no evidence of registration of birth, that the evidence of the girl herself and of the husband did not appear to him to be worthy of acceptance and that the doctor in his deposition gave a very vague opinion.

3. There was therefore no reliable evidence at all for the jury to consider. The girl and her husband had mentioned widely different ages at different times. Then the learned Judge told the jury that they might appeal to their own experience and apply that experience to the impression that they had formed on seeing the girl for three days. Such an impression however would never be a sure guide but the learned Judge gave to the jury no caution. Had he done so the jury would have seen that on the question of age the prosecution evidence left the matter in doubt. This is sufficient to show that there has been a material misdirection. The conviction of the appellants therefore cannot be sustained and having regard to the evidence in the case we do not think it necessary to send back the case for retrial.

4. The appellants are acquitted of the charge under Section 373, I.P.C., and are directed to be set at liberty. The fines if paid must be refunded.

Williams, J.

5. I agree.