

Naresh Chandra Vs. Emperor

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Court : Kolkata

Decided On : Apr-12-1938

Reported in : AIR1938Cal479

Appellant : Naresh Chandra

Respondent : Emperor

Judgement :

Derbyshire, C.J.

1. This is an appeal by one Haripada Dalai against his conviction and sentence in respect of an offence under Section 366, I. PC., that is to say, abduction. The trial was before the Additional Sessions Judge of Khulna with a jury. The facts alleged by the prosecution are these: Abala Dasi is a married girl. She did not live with her husband at her father-in-law's house but lived with her own mother where it is said her husband visited her from time to time. She is described as a beautiful girl. On the evening of 23rd April 1937, it is said that she went out on to the verandah of the house where she was living with her mother for the purpose of relieving nature. Whilst she was there she was seized by three men Haripada the appellant, Sashi and Kangla. She was taken into a jungle not far away and kept there a matter of two days where she was ravished by Kangla and also by Naren and Panchu who came from time to time. After two or three days she was taken by Panchu and Naren from this place in the jungle to a place called Bhara Simla and left near the edge of a tank. She recognized her whereabouts but did not go home. She went to

the house of one Purna where she stayed one day. Purna is alleged to have locked her up when she went there, but her father coming in search of her found her, it is said, inside a room which was fastened from outside. He open. 3d the fastening and when he released her she told him the story of abduction by these persons named and the rape. As a result these proceedings were brought.

2. The Magistrate sent up four of the accused, namely Haripada, the appellant, Sashi, Kangla and Panchu for trial on charges under Section 376 and Section 366, I.P.C. When the trial in question began, the Additional Sessions Judge proceeded with the charge of rape against Panchu only and proceeded against Sashi, Kangla and Haripada the appellant, on charges under Section 366 I. P. C, namely abduction. All the charges were tried together. Sashi was found not guilty of any offence. Kangla was found guilty under Section 366, I.P.C., the appellant cinder Section 366 and Panchu under Section 376. Haripada alone has appealed. The evidence against him is that of the girl or is derived from the girl. But there is a confessional statement made by Panchu. Now, that statement is to the effect that Haripada took part in the abduction of this girl, and in her being imprisoned, if I may use the word, in the jungle and contains an allegation that Haripada was anxious to make away with the girl's life in order to prevent proceedings being brought in respect of the abduction and the rape. That statement or confession was made before a Magistrate and as so of ten happens to these statements or confessions, it was retracted during the course of the proceedings before the Judge and the jury. Now, the total evidence against the accused appellant is what the girl said and what her father told the jury the girl said when she was liberated, and which substantially agrees with what the girl said in the witness-box, and the statement or confession of Panchu. Now under Section 30, Evidence Act.

When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

3. The Explanation added to the section says - 'offence' as used in this section, includes the abetment of or attempt to commit the offence.' Now, Panchu who made the confession was not being tried for the same offence as the appellant Panchu was being tried for rape and the appellant was being tried for abduction under Section 366, an offence committed before any rape was committed. So that this is not a case in which more than one person was tried for the same offence. Nor is it a case of Haripada being tried for abetment of rape - the offence of which Panchu was found guilty - or of an attempt to commit rape. I am of the opinion therefore that this particular confession of Panchu ought not to have been taken into account against the appellant. Now it was impossible for the Judge to keep out that confession because it was evidence relevant and cogent against Panchu who was being tried at the same time. What the learned Judge in his summing up did was to warn the jury that this confession being the confession of an accomplice and furthermore being retracted, was of very little effect against the appellant. In my view he ought to have told the jury and told it quite plainly that they must not take it into account at all. He did not do that. There is some other evidence on which the jury could convict. They could convict on the testimony of the girl alone, but that would not be wise or prudent. To some extent the girl's testimony is corroborated by that of her father speaking to what the girl said immediately she was released.

4. The question is, has there been any miscarriage of justice? That is a very difficult thing in this case to say. The nature of the statement or confession made by Panchu will be bound to influence the mind of the jury against the appellant. In my opinion it must have had a considerable effect upon the jury when they came to consider their verdict. It is very difficult to say whether there has or has not been a miscarriage of justice in this case. But the confession as being given against the accused appellant which ought not to have been given might have seriously prejudiced him. I am of opinion, under these circumstances, that this is a case in which the conviction against the appellant and the sentence passed upon him should be set aside and the case should be remitted to the Court at Khulna to be retried by a Judge other than the Judge who tried the case before.

B.K. Mukherjea, J.

5. I agree.

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