

Prafulla Kumar Bose Vs. Emperor

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Court : Kolkata

Decided On : Sep-03-1929

Reported in : AIR1930Cal209

Appellant : Prafulla Kumar Bose

Respondent : Emperor

Judgement :

1. The appellant Profulla Kumar Bose has been convicted by the Sessions Judge of Sylhet under Section 366, I.P.C., and has been sentenced to undergo rigorous imprisonment for 18 months and to pay a fine of Rs. 1,200, or in default to undergo rigorous imprisonment for 18 months more. The fine has been ordered to be paid as compensation; to the father of the girl in respect of whom the offence has been found to have been committed. The trial was held with the aid of a jury on charges under Sections 366, 368 and 376, I.P.C. The jury were unanimous in their verdict. They found the appellant not guilty under Section 376, I.P.C. They held that he was guilty under Section 366, LP. C, finding that-the girl had been kidnapped, the seduction having taken place before the girl left her father's place They held that in the circumstances the offence under Section 368, I.P.C., did not arise.

2. The story needs no recounting. It is set out in all its harrowing details in the voluminous charge which the learned Judge delivered and which purports to deal with every point in controversy with all the evidence bearing on it and from all conceivable view points. Put in a nutshell, the story is that the appellant who was

an Assistant Surgeon at Sunamgunge in the District of Sylhet, taking advantage of his position as the next door neighbour, and abusing the confidence that was reposed on him as the medical attendant of the girl who was placed under his treatment and which enabled him to have almost free access into the house wherein the girl lived, kidnapped or abducted the girl on or about 20th August 1920, and removed her from place to place keeping her concealed to avoid detection till the girl was recovered at a place called Khalsini, near Chandranagore on 23rd March 1923. The story is that in the meantime the girl gave birth to a child, which however died. Information of the girl having left her father's house was given to the police almost simultaneously with her disappearance. The appellant remained at Sunamgunge till April 1921, presumably to keep up appearances. Subsequently, some time in 1922, the father on receipt of some information against the appellant applied for and obtained warrant for his arrest and search warrant for the production of the girl. After the girl was recovered, on 23rd March 1923, as already stated, the usual investigation by the police followed, and a charge sheet was submitted against the appellant on 10th June 1924. The appellant, however, could not be arrested then. He eventually surrendered on 21st December 1927.

3. In this appeal which the appellant has filed to this Court from his conviction and sentence, various grounds have been taken which we propose to deal with one by one.

4. It has been urged in the first place that the learned Judge has not correctly explained the offence, punishable under Section 366, I.P.C. It has been argued that the expression in order that she may be forced or seduced to illicit intercourse' has been wrongfully explained. The contention is that the learned Judge wrongly explained the two words 'forced' and 'seduced.' As regards the word 'forced' the learned Judge said as follows:

Force implies not merely physical force but also the force of circumstances. For instance, a girl who has been kidnapped from her father's house may be placed in such circumstances that she has no option but to submit to illicit intercourse. For instance, if she was entirely in the power of her kidnappers or abductors, her

consent might be nothing more than a mere submission to their will.

5. It is contended that this explanation of the word 'forced' goes far beyond the definition given in Section 349, I.P.C. This argument overlooks that the definition that is given is not the meaning of the verb 'force' but of the expression 'to use force.' In our opinion there is no reason to suppose that the word 'forced' as used in Section 366, I.P.C., was not used in its ordinary dictionary sense which would include forced by stress of circumstances. Assuming, however, that the learned Judge was not right in the meaning he gave to the word, the error, even if there was any, did not matter, because the learned Judge made it plain to the jury that the question they had to consider was:

whether or not the doctor's main motive in kidnapping or abducting the girl was that she should be seduced to illicit intercourse with himself.

6. It is 'seduction' that the jury had to deal with and not 'force,' and the verdict shows that the jury rightly understood the point. As regards the word 'seduced' the learned Judge told the jury by reference to some decided cases that though the word 'seduction' is sometimes used to mean to induce a girl to part with her virtue for the first time, the word as used in the section should not be taken to have that narrow meaning, but that even though a girl may have by the first act of seduction surrendered her chastity, subsequent seduction for further acts of illicit intercourse was also meant to be included. It has been urged that this view is wrong and as authority in support of this contention *Rex v. Moon* [1910] 1 K.B. 818 has been cited, though that case, amongst others, has been relied upon by the learned Judge and in support of the view he took. We are of opinion that the view taken by the learned Judge is correct. It is the view taken in several reported decisions on the section, and is amply supported by what Channel, J, as well as the Court of appeal says in the case of *Rex v. Moon* [1910] 1 K.B. 818 as regards the meaning of the word. The Court of appeal in that case only held that the wider meaning should not be given to the word 'seduction' as used in the particular section of the Children's Act, 'in view of the words 'or prostitution' that stood next to it.

7. The second ground urged is that the learned Judge mixed up the two offences of kidnapping and abduction and did not keep the elements of those offences separate before the jury. As indicating this confusion, reliance has been placed upon the following passage in the summing up:

I should also be glad if you would come to a further finding of fact whether you think that the girl had been kidnapped or abducted or kidnapped and abducted.

8. This contention in our opinion has no substance inasmuch as one of the questions in dispute in the case was that relating to the age of the girl. If the girl was 16 or over, she could only be abducted and not kidnapped, but if she was under 16 she could be kidnapped as well as abducted if the taking was by force or the taking or enticing was by deceitful means.

9. Thirdly it has been contended that the charge under Section 366, I.P.C., should have been split up into two, one relating to kidnapping and the other to abduction, and it has been said on the authority of the case of *Isu Sheikh v. Emperor* : AIR1927 Cal200 , that it was illegal to frame one count of charge setting out both the offences in the alternative. We are not prepared to say that a charge of latter character contravenes the requirements of the law, far less that there was the least prejudice caused to the appellant thereby.

10. The next ground of objection relates to the admission of oral evidence from the girl as regards certain letters which she said she had received from the accused and which she returned either to a man of the accused named Ram Charan, or to the accused himself. This ground has been pressed with considerable force. What happened was that no exception was taken to the reception of this evidence when it was given but several days after the deposition was over, an application was made objecting to it on the ground that the notice contemplated by Section 66, Evidence Act, had not been given. The learned Judge then passed an order that as the accused denied having got the letters in his possession this was a case in which he would dispense with the notice. It has been urged that the fact that objection was not made at the time did not matter and that the subsequent dispensing with of the notice would not make the evidence admissible that was inadmissible at the time it was given. The first of these propositions need not be

disputed : Kameshivar Pershad v. Amanutulla [1898] 26 Cal. 53, and the second one is obviously just. But there are several answers to the appellant's contention. One is that the learned Judge might have expunged the evidence that had already been given and after dispensing with the notice, allowed the same evidence to be given over again this technical defect of procedure that there was, in not adopting this course can well be condoned. Another is that the case can hardly be regarded as one in which the originals are 'shown or appear to be in the possession or power' of the accused, - it not having been stated by the girl that that was so, and it not having been the case of the accused that he had the letters. It was therefore not a case under Section 65, Clause (a), but rather under Clause (c) of that section. If so, it was only a question of sufficiency of the search that should have been made for justifying the reception of secondary evidence. In such a case, as the Judicial Committee has pointed out:

whether or not there was evidence of such an amount of search for the originals as would justify the Court in admitting secondary evidence of it was a point which was proper to be decided by the Judge of first instance, and was to be treated as one depending very much on his discretion, and the conclusion should not be overruled except in a very clear case of miscarriage of justice : Harripriya Debi v. Rukmani [1892] 19 Cal. 438.

11. Anent this ground it has been also urged that sufficient directions were not given by the learned Judge to point out to the jury the improbability of the girl remembering the contents of the letters for such a length of time, but we do not think that there is anything in this objection.

12. The fifth ground is a complaint against the procedure adopted by the learned Judge in interposing too frequently in the midst of the examination and the cross-examination of the girl by putting questions to her. We have examined the evidence that was elicited in that way, and we think that the only object of the learned Judge was to clear up matters involved in obscurity, and that except as regards one or two points, what was said, in answer to the question put as aforesaid, was in favour of the accused. Of course if the learned Judge hampered the prosecution or the defence by taking the case out of their hands that would be

a different matter; but no complaint of that character was made at the time, and there is nothing on which such a complaint can reasonably be made now.

13. The sixth ground is to the effect that the learned Judge did not give sufficient or proper directions as regards the non-examination of witnesses. What he did was to tell the jury:

It has also been pointed out that a number of persons whose names transpired in the evidence, have not been examined as witnesses and during the course of the arguments the learned defence pleader produced a list of 26 persons who are according to his contention should have been examined by the prosecution.

14. Having said this the learned Judge proceeded to deal specially with one of these witnesses, namely the husband of the girl. Then he said generally:

If such witnesses are not produced and examined, you may draw an inference that their testimony would not have supported the prosecution case.

15. He then briefly discussed the information on the record regarding the said 26 witnesses in order to explain to the jury to what extent the said witnesses could have given material evidence and placed the whole list before the jury in that way.

16. We do not think there was anything left unsaid that should have been said on the question of non-examination of material witnesses. Amongst these witnesses were the astrologer and the mother, for whose non-examination a good deal of argument has been advanced before us. Hemangini also is mentioned in that list.

17. It has been contended as the seventh and eighth grounds that the learned Judge should have told the jury that if the charge of rape failed the evidence of the girl and of the other witnesses should be regarded as very much discredited. The ninth ground is to the effect that on the question of omission on the part of the girl to state before the Committing Magistrate matters that she spoke to in the Court of Sessions the Judge's remarks had the effect of minimizing the importance of the omission. We do not feel pressed by any of these grounds.

18. The tenth and last ground is a complaint as regards the examination made of the appellant by the learned Judge. The contention is that after the appellant had declined to make a statement the learned Judge should not have put questions to him in the way that he did. Objection is also taken to the form of the questions, their range and their number and it is also said that the questions were of an incriminating character and were in the nature of cross-examination. Now the first question that the learned Judge put and the answer that the appellant gave to it were as follows:

Q. Do you wish to make a statement? You are not bound to do so but if you do so your answers may be taken into consideration at the trial and put in evidence for or against you.

A. I am not guilty. I do not wish to make any statement. What I have got to say my lawyers will say in the argument.

19. After this the learned Judge put to the appellant a very large number of questions covering almost every single point which formed the main allegations in the case for the prosecution. It is true that if an accused prefers to be reticent the Court should not hold an, inquisitorial proceeding, but what was done in this case was something entirely different. The fact that the appellant declined to make a statement would not necessarily indicate to the Judge that the appellant would not like to answer specific questions put to him. The appellant did answer all the questions without demur. The questions were not inquisitorial or of a cross-examining character, and were not intended to fill up the gaps, if any, in the prosecution case. They were clearly put with the object of knowing what portion, if any, of the prosecution case was also the case for the defence, so that the learned Judge might be better able to place the case properly before the jury. They were also put to give the appellant a proper opportunity of explaining, if he would the circumstances appearing, against him in the evidence. No advantage has been taken of any slips, that the appellant may have made in his answers. The questions may have been somewhat inconvenient for the appellant, but there is nothing therein of which he can legitimately complain.

20. We are unable to hold in appellant's favour upon any of the ten points on which the appeal has been pressed.

21. The appeal is accordingly dismissed.

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