Ali Hyder Vs. Emperor

Ali Hyder Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/867324

Court : Kolkata

Decided On : Aug-09-1938

Reported in : AIR1938Cal769

Appellant : Ali Hyder

Respondent : Emperor

Judgement :

Bartley, J.

1. The appellants have been convicted, in accordance with the majority verdict of the jury upon a series of charges framed under Sections 342 and 376, I.P.C. They have been convicted unanimously in respect of two connected charges, that is to say, two charges based on the same incident under Sections 342 and 376, I.P.C. One of them has also been convicted under Section 377, I.P.C. The case is one of an unusual nature, and is only too clear that it has been mishandled in the Court below by the prosecution, by the defence, and by the learned Judge. The prosecution was so ill-advised as to resist, successfully, a perfectly valid objection to the multiplicity of the charges preferred and investigated in a single proceeding. The defence was so ill-advised as to set up a case which has been completely abandoned in this Court to the extent of a specific disclaimer by the learned advocate appearing for four of the appellants. The charge of the learned Judge is marred by unnecessary rhetoric and inadequate directions on evidence.

2. The case which deals with a series of offences said to have been committed between September 1936 and June 1937, first came before the Courts in the shape of a complaint lodged by one Bindu Goalini on 6th July 1937. Her story then was that some time in September she travelled by train from Sealdah to Belgurriah to stay with her sister. In the compartment she met four of the appellants who proposed to take her to her destination. She left the train with them at Titagarh and was taken to a house where she met the appellant Hyder. There all the appellants ravished her. Later they took her to Hajinagar, where they kept her confined for six weeks while two of them ravished her at intervals. From Hajinagar she was taken back to Titagarh and finally handed over to appellant Aziz who kept her confined for about two months. One Wednesday she escaped and met a woman who took her to the Arya Samaj. She was treated there until she appeared in Court.

3. At the commitment stage the story developed, and though it could not be expected that the complaint, covering as it did the occurrences of months, should contain anything like a detailed narrative, some of the additions are substantial. One is that after an abortive attempt to escape on her part, appellant Haider deliberately injured her private parts with a hard substance. Another is that while she was in the house of Ahmed and Aziz they and Haider habitually had intercourse with her against the order of nature. The jury have convicted Aziz only on this charge. Upon these allegations, the appellants were jointly tried on a series of ten charges. Four of these were of wrongful confinement. The first related to the confinement in Titagarh, against all the appellants. The second charged two of them with respect to the detention at Hajinagar. The third again, related to the second detention at Titagarh, and the last to the confinement in the house of Ahmed at Titagarh. The charges of rape were drawn in a peculiar manner, in view of the fact that rape is in law, a single act of sexual intercourse. Each of them specifies an offence of rape, committed either on an indefinite date, or between periods extending from six weeks to six months. The time covered is from September 1936 to June 1937. The charge tinder Section 377, Penal Code, specified an offence committed between the end of December 1936 and June 1937.

4. It is unnecessary to emphasize the difficulty of proving, or rebutting, charges drawn in such fashion. Corroboration of the complainant in respect of the offence alleged is a practical impossibility in the absence of any definite averments as to the time of its occurrence. The charges actually framed are either so vague and general as to be bad in law, or are, in the alternative, absurd. Neither of these offences is a continuing offence. The learned Judge in the Court below took the view that the joinder of charges was legal because all the incidents which were the subject-matter of those charges formed part of the same transaction. That of course is a question of fact, but I am doubtful if an offence under Section 376 committed by five persons before the end of September 1936 can rightly be held to be part of the same transaction as an offence under Section 377 committed by three of them between the end of December 1936 and the end of June 1937. I have no doubt however that the multiplicity of the charges tried together in the present case must have operated to the prejudice of the accused.

5. On these findings alone, I should be prepared to set aside the verdict and the sentences, in the present case. It is however necessary to go further and to consider, in the light of the summing up of the actual evidence, whether, and to what extent, a retrial should be ordered. The defence in the Court below, repudiated before us, was that the charges were concocted by the Arya Samaj, the Society which undoubtedly helped the complainant to bring her case before the Courts. A great deal of the evidence, and much of the charge, is devoted to that aspect of the case. As I have said,, this defence has been wholly abandoned before us, and its sole importance now is that the learned Judge, in commenting on the lack of evidence in support of it at the outset of his charge, expressed himself in language more colourful than appropriate to the somewhat sordid and scanty materials actually before the jury.

6. The real question in this case is whether the evidence of the complainant has been materially corroborated with respect to all or any of the charges. I have already pointed out the difficulty involved by the manner in which the charges under Sections 376 and 377 have been framed, which is that it is impossible to corroborate a story of an assault of which the date and the time is not specified. (His Lordship then discussed the evidence and proceeded.) To sum up, there is no

corroboration of the charges of sexual offences. The scanty evidence as to the presence of the girl at or about Titagarh station and at the Hajinagar house is not inconsistent with the case that if she was there at all, she was at least, not under restraint. Further some of that scarify evidence to my mind, bears all the marks of fabrication. The whole story is vague in details, and the corroboration which might have been expected has not been given. In my opinion therefore, while the convictions and sentences on the appellants must be set aside, this is not a case in which a retrial should be ordered, and I would direct that the appellants be acquitted and released. The order of the Court accordingly is that these appeals are allowed, the convictions and sentences passed upon the appellants are set aside, and they will be acquitted and released.

Henderson, J.

7. I agree. It is to be regretted that the learned Judge did not explain the case to the jury succinctly, and in plain and simple language. Indeed a great deal of what he said must have been quite unintelligible to them. In my opinion, the first point taken in both the appeals with regard to the misjoinder of charges is alone sufficient to entitle the appellants to succeed. The learned Judge held that the various allegations made by the prosecution against the various appellants were really part of one transaction. My learned brother has set out what those allegations are. I need only to say that if they are all part of one transaction, words can have no meaning. The legal effect of this is that the convictions could not be sustained. I am further of opinion that, even if these charges did form part of one transaction, the appellants would be entitled to succeed on the ground of prejudice. They raised the question at the trial. One of their difficulties was the vague way in which the charges were actually drawn. I cannot imagine how it could be possible to defend themselves in one trial on such a multiplicity of charges without being embarrassed. No useful purpose could be served by the opposition raised on behalf of the Crown, It is not a case in which it was necessary to pass consecutive sentences with regard to several convictions. The learned Judge passed one sentence which he considered adequate to cover the whole case.

8. I am therefore of opinion that the verdict of the jury has been vitiated by misdirections. It is unfortunate that at the trial, the appellants put forward a suggestion that a case which was false from top to bottom had been engineered by the Arya Samaj. I am glad that Mr. Basu expressly dissented from this, in this Court. The matter, however, has some practical importance, because the learned Judge dealt with it at very great length at the first part of his charge. On reading the whole charge, it seems to me that the jury must have had an impression, that if the defence failed to make out this case, the prosecution automatically would have gone a long way towards success. In my opinion, the learned Judge should merely have told the jury that there was no evidence whatever, in support of this suggestion; but that the prosecution were in no way absolved thereby from proving the truth of their own case. I have no doubt that the officers of the Arya Samaj were acting from the highest motives and that they bona fide assisted the girl to prosecute a complaint which she had undoubtedly made. But that is not relevant to the only question which the jury had to determine.

9. The learned Judge undoubtedly warned the jury that it is dangerous to convict of sexual offences unless there is some corroboration of the evidence of the girl. But he did not deal with the matter in connection with the facts of this case. He should have explained to the jury that in order to satisfy themselves whether there was such corroboration they should see whether there was any evidence to prove a fact which would support the inference that the individual accused persons were guilty of some specific charge. Had he done that it would have become immediately clear that there was no corroboration, whatever, of the charges of rape and sodomy. The evidence which might be said corroborative of a charge of wrongful confinement is briefly as follows: (His Lordship then discussed the evidence and proceeded.) Finally, in my opinion the learned Judge did not deal with this evidence in a satisfactory way. It is marked with suspicious features. Instead of putting it before the jury, and leaving it to them to decide whether they were prepared to believe it, he went out of his way by special pleading to ask the jury to believe the whole of it.

10. I agree with my learned brother that we ought not to order a retrial. What I have said with regard to the actual evidence makes it clear that the corroboration

even if the evidence be accepted as true, is practically nothing, and the convictions of any of the appellants could not possibly be justified unless the girl herself is believed. Her story is full of improbabilities and bears some of the hall-marks of concoction.. Now it is quite clear, that unless the story of the incident in the train is a true story, no reliance whatever can be placed on the prosecution case. The story is a highly improbable one, and the remaining evidence about it strongly suggests that it is false. Prosecution witnesses Nos. 2 and 3 saw the party at the station at the end of the January. They had some conversation and Ahmed told them that the woman was a person of his Mahalla, and that he was taking her to her sister. It is quite obvious that if her evidence was true, she would immediately have protested that she was nothing of the kind, and that she was being taken to her aunt at Belghurria. The only reasonable inference to draw from this evidence is that the woman was going with Ahmed of her own accord.