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ilu and ors. Vs. Emperor

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Court : Kolkata

Decided On : Aug-28-1934

Reported in : AIR1934Cal847,153Ind.Cas.454

Appellant : ilu and ors.

Respondent : Emperor

Judgement :

1. The abovenamed four appellants were tried by the learned Assistant Sessions Judge of Hooghly sitting with a jury on charges under Sub-section 344 and 366, I. P. C. The jury returned a unanimous verdict of guilty and the learned Judge agreeing has convicted them as above and sentenced the appellant Abdul Latif to undergo rigorous imprisonment for 5 years and each of the other appellants to undergo rigorous imprisonment for four years and six months. The case for the prosecution shortly stated is as follows: The appellants are residents of Bagnan P. S. Polba in the District of Hooghly. One Kusum Bala Dasi, a woman aged 16 or 17 years who is P.W. 2 in the case was living at the time of the occurrence in the house of her brother Gokul P. W. 10. Her husband Keshab P. W. 8 was also living with her in the same house but at the time of the occurrence he was away. One day in Agrahayan 1339 B. S. at about 10 A. M. Kusum carried some food to the field where Gokul was working. While returning the woman was way laid by these four appellants who gagged her and carried her off by force to the house of the appellant Abdul Latif.

2. There it was alleged, she was kept wrongfully confined for about 8 months and during this time Abdul Latif had sexual intercourse with her. In Sraban 1340 B. S. she was taken by these appellants to Syeduddin Ahmed, S. I. Jogachia in the District of Howrah and in the thana she was wrongfully confined for about 10 days. The Secretary of the Arya Samaj, Calcutta, got information about the matter and deputed his durwan Joy Narain Singh, P. W. 1, to make inquiries. He went to Jogachia dressed as a hawker and had an interview with the woman in the thana house of the Sub-Inspector Jogachia. Then he made more inquiries and ultimately filed a petition of complaint on 9th August 1933. The husband Keshab also filed a petition of complaint on 31st August. Meanwhile it appears, in April 1933, that is to say during the period of the alleged confinement in Abdul Latif's house the woman's brother Gokul was arrested on a charge of dacoity and subsequently he was tried and convicted in a proceeding Under Section 110, Criminal P. C, in consequence of which he was sent to jail. On 27th April Suresh Boy, Sub-Inspector of Polba P. S., who is Court witness 2, held an investigation in connexion with the dacoity case and examined the girl whom he found living in a chalaghar in the Musalman quarter. It appears that later there was an information brought to the police that the girl had attempted to commit suicide and also that she had been abducted.

3. It may be that Gokul said this to a police officer while in jail. At any rate, there is no doubt that Bhababhim Singh, A. S. I., Dadpur outpost, under Polba P. S. came to the village and recorded the statement of the girl on 17th June which is Ex. 4, and he submitted a report on 18th June following, which is Ex. 3. In that statement the girl is reported to have said that she has separated from her husband and brother and was living in her own hut on the bank of Bhairabipara tank and according to the A. S. I. she was there living as a prostitute. On the complaint filed by Joy Narayan P. W. 1, a warrant for the production of the girl was issued and she was brought from Jogachia thana. It was reported by the Circle Inspector Court witness, that the girl told him that she had come to Jogachia Thana to work as a maid-servant. The defence is that there is a daladali in the village and that the case is the outcome of enmity, the men of the party of Mr. Alani having instituted the case through the agency of Joy Narayan Singh. Mr. Pugh for the appellants has contended that the learned Judge's charge to the jury is open to serious

objection because it is meagre and inadequate, their being no proper sifting of the evidence, which again is inherently improbable and full of material inconsistencies. Mr. Basu appearing for the Crown has contended that the jury having believed the evidence the matter is concluded and it is not open to this Court to interfere in appeal. Mr. Pugh has further drawn attention to a passage in the order of the learned Judge by which he sentenced the accused and it is as follows:

The accused after the delivery of the verdict asks me to refer the case to the Hon'ble High Court Under Section 307, Criminal P. C. But in view of the petition filed to day by the P. P., regarding the charge and the unanimous verdict of the jury, I do not think that it is; necessary for the ends of justice to submit the case to the Hon'ble High Court.

4. Mr. Pugh has contended that the learned Judge apparently realised the weakness of the prosecution evidence and thought that the jury would acquit, and that he would have referred the case to this Court Under Section 307, Criminal P. C,, bad he not been influenced by the attitude of the Public-Prosecutor. This action on the part of the Public Prosecutor in filing a petition has been repudiated by Mr. Basu in this Court and it is not clear what reason there was for the filing of such a petition when the jury had returned an unanimous verdict of guilty. But it lends colour to Mr. Pugh's argument that the Judge was at first in favour of making a reference against the verdict of guilty. With regard to that it must be said that it was the duty of the Judge to make up his own mind about the case. It must be remembered that Section 307, Criminal P. C., places a powerful weapon in the hands of the Judge in the mofussil, and it is not available to a Judge of this Court sitting in Session to prevent miscarriage of justice on account of a wrong verdict on the part of the jury, and in view of its provision, it is necessary that the trial Judge should for himself appreciate the evidence and form his own opinion on the case so as to see whether it is necessary for the ends of justice to make a reference against the verdict. But not only for the purposes of this section, but likewise for the purposes of proper and intelligent summing up it is necessary that the Judge should appreciate the evidence properly. This Court has pointed out more than once that the expression 'summing up the evidence of the prosecution and defence Under Section 297, Criminal P. C. does not mean that a Judge

should give merely a summary of the evidence. He must marshall the evidence so as to bring out the lights and the shades, the probabilities and the improbabilities so as to give proper assistance to the jury who are required to decide which view of the facts is true, On a question of misdirection as to evidence this Court has to see whether it is reasonably probable that the jury would not have returned the verdict but for the misdirection complained of. In the case of Basil Ranger Lawrence v. The King, 1933 PC 218 Lord Atkin said as follows:

Nor are their Lordships satisfied that in any case the jury must have returned a verdict of guilty. It is true that there was evidence against the accused but a close scrutiny of the evidence fails to satisfy them that upon a proper direction the jury might not reasonably have come to the conclusion that the guilt of the accused was not established beyond a reasonable doubt.

5. In that case the trial Court had omitted to give a direction on certain filamentary principle of law but where the misdirection has been as to evidence the argument applies with equal force and it is for consideration whether on proper direction and having all the circumstances before them the jury as reasonable men would have found that the charge was proved. Now in the present case there are certain features which are probably beyond controversy and which may at first sight favour the prosecution. It is pointed out by Mr. Basu for the Crown that it is not worthy that the complaint was instituted at the instance of a third party, the Arya Samaj. Next there is no doubt that the girl was actually found in the thana. Further there is no doubt that sometime before that the girl was found living at her village but away from her own people and the house of her brother. On the other hand, these features apparently favourable to the prosecution are counterbalanced by others which the learned Judge failed to point out. The circumstances indicate that the Secretary of the Arya Samaj might have been misled because the prosecution was really the work of the Durwan, P. W. 9, who was seen associating with some Mohammedana specially Nasirul Huq at the latter's house. The jury might have felt some sympathy for the Arya Samaj but the learned Judge omitted to warn the jury that they must not be actuated by any sentimental consideration. It appears that news was brought to the Secretary of the Arya Samaj by two upcountry men but these have not been produced. Then as regards the finding of the girl in the thana

the question is whether the circumstances connected therewith are inconsistent with the defence case namely that the girl was living there voluntarily. There is no discussion of this in the charge. According to the prosecution case she had been questioned by two police officers while she was living in the village. To them she did not divulge the truth. But nearly nine months after the occurrence while she was still in the hands of the Sub-Inspector, who was in the thana at the time she chose to divulge the story to a passing hawker.

6. The learned Judge does not discus; the evidence at all from the point view of probability. If it is true the for eight or nine months the girl was living in the house of Latif, the question for the jury was whether that would be consistent with her story of abduction and wrongful confinement, but this is not brought out by the learned Judge in his charge. Then, as mentioned already, there is the evidence of three police officers, all Hindus, who took part in the investigation while the girl was alleged to have been kept under wrongful confinement. The girl admits the interviews with the two police officers. The learned Judge ought to have placed before the jury the statement made by the girl on 27th April 17th June and 9th August respectively before the Sub-Inspector of Kolba, the Assistant Sub-Inspector of Dadpur and the Circle Inspector. These are quite inconsistent with the prosecution case. Mr. Basu for the Crown has contended that very likely these police officers had been gained over by the accused party and they were carrying on a sort of bogus investigation in order to meet the defence case. This is far fetched, but it was no doubt for the jury to decide and the learned Judge never put it to them. The three Hindu police officers were examined as Court witnesses because the prosecution were under the impression that it was their duty to examine only those witnesses who would support the prosecution case and not necessarily those who would tell the truth. However they were examined and the girl's sister-in-law Nisoda was also examined as a Court witness. The learned Judge told the jury that if they believed these witnesses the prosecution would fall to the ground and he left it at that. He did not discuss what reasons there were for believing or for disbelieving, , having regard to the probabilities, or otherwise and the inconsistencies in the evidence.

7. The girl's sister-in-law Nisoda is entirely hostile to the prosecution case. She supports the defence and in fact she brought a criminal charge of rape against the complainant Joy Narain. The husband who subsequently filed a petition of complaint tells a story which also is not consistent with probability. He says that he was sent by the accused Purna to his native village where he lived for 8 months; a most docile act on his part. The question is whether he had abandoned the girl for the time, but the learned Judge did not invite the jury to consider the probabilities on this point. Then as regards the girl herself, leaving aside the question as to whether the so-called Court witnesses should be believed or not, the learned Judge did not examine her evidence in detail to show how far the evidence was probable or consistent. To us it seems that her evidence bristles with improbabilities and inconsistencies. It is noteworthy that in the petition of complaint filed by Joy Narain and also in the petition filed by the husband no case of abduction by force or wrongful confinement in the house of Abdul Latif was alleges. No doubt P. W. 1 was not an eyewitness but his evidence is that he had ascertained the facts from the girl herself and from her brother Jugal.

8. The latter is alleged to be an eyewitness to the occurrence and so is a Mahommedan, P. W. 3, who however admits that he did not tell any one of the occurrence, but the learned Judge -did not point this out to the jury. Then, again the brother of P. W. 10 says that he laid an information of the occurrence at Poba Thana, but the Daroga refused to record it as if he had already been gained over to the side of the accused. He further says that he complained to the Magistrate about the abduction of his wife, and this complaint was also ignored. This was never pointed out to the jury. Thus with regard to the summing up of the evidence the charge of the learned Judge is quite colourless and he gives no advice as to credibility. On the contrary, the record discloses that some inadmissible evidence has been introduced. For instance, one witness deposes to other incidents of alleged abduction on the part of the accused but the learned Judge never took care to warn the jury that this evidence as to the bad character of the accused, which might have been let in through the inaptitude of the defence, must be left out of consideration. Again P. W. 4 speaks of the beating of Gokul which is hearsay, but it was let in and the learned Judge did not warn the jury on this point.

9. The husband in his complaint mentioned Section 498, I. P. C., as one of the offences complained of. But this charge apparently was not persisted in and although, as mentioned already, the prosecution started out with a case of enticement, in the evidence, a case of abduction and forcible confinement was sought to be made out. In his summing up what the learned Judge did was to give to the jury a string of points, but he did not express any opinion either way nor did he discuss the evidence in detail The result is that the jury got no assistance. Furthermore the learned Judge did not take care to discuss the evidence as against each accused separately, although no case has been made out even on this evidence Under Section 344, I. P. C, against all the accused. Our conclusion is that the learned Judge did not place the evidence properly before the jury and that his charge was vitiated by serious misdirection. Having regard to the state of the evidence we do not think that there should be a retrial of the case. The result is that we allow the appeal, set aside the conviction of, and the sentence passed on the appellants, acquit them of the offences under Sub-section 344 and 366, I. P. C., and direct that they be forthwith set at liberty. The appellants will be discharged from their bail bonds.

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