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Court : Kolkata

Decided On : Jan-25-1934

Reported in : AIR1935Cal31

Appellant : KasimuddIn and ors.

Respondent : Emperor

Judgement :

1. The three appellants before us have been convicted by the Assistant Sessions Judge of Dinajpur of the offences under Sections 366 and 147, I.P.C., on the unanimous verdict of the jury and sentenced to undergo rigorous imprisonment for five years under Section 366 and two years under Section 147, the sentences to run concurrently. The case for the prosecution is that on 25th April 1933 the appellants entered the hut of a young widow Khadija, caught hold of her person, dragged her out of the hut, began to carry her away forcibly whereupon she began to scream, that on hearing her cries P. Ws. 2, 3, 4 and 5 came out and rescued her, after she was taken about two rashis from her house. The defence of the appellants is that they knew nothing of this occurrence, that the girl was married to the appellant Kasimuddin on 24th April 1933 and that on 26th April 1933, the prosecution witnesses assaulted Kasimuddin and drove him away.

2. By Section 418(1), Criminal P.C., an appeal to this Court against the conviction on a trial with the aid of a jury lies on a matter of law only. The first error of law on which the appellants rely is that the procedure with regard to the delivery of the

verdict by the jury is bad in law inasmuch as the jury were not justified in law in adding to their verdict their finding of the facts on which the verdict is based. This contention is not supported either by any provision of law or by any precedent. The statute law in this country has not laid down any particular form in which the jury are to deliver their verdict. Consequently there is no legal bar in the way of the jury, to return their verdict in any way they think fit provided it is complete and exhaustive as to facts in issue which go to make up the charges. There is therefore no substance in this contention.

3. The second error of law which is urged in support of, the appeal is that the heads of the re-charge on which the jury brought in their verdict of guilty under Section 147, I.P.C., were not recorded by the Judge as required by the proviso to Sub-section 5, Section 367 of the Code. It is clear however from the record that the fresh charge was the same as recorded in pp. 4 and 5 of the original charge. We are therefore unable to give effect to this contention. The third ground urged in support of the appeal is that on account of defective summing up of the evidence in the case the jury have been misled and an erroneous verdict has been returned by them. It may be pointed out here that the law only requires the heads of the charge to be recorded. The evident object of the legislature is to have a written record of the summing up of the evidence and the laying down of the law by the Judge to the jury in order to enable the Court of appeal to decide whether the Judge has properly marshalled the facts under distinct and separate heads while charging the jury for their substantial help and guidance in arriving at the conclusions on the facts in issue. In order to justify the appellate Court to set aside the verdict of the jury the finding that there are certain omissions or non-directions is not enough. The Court of appeal must be satisfied on a perusal of the charge and the material evidence in the case that the omissions are so important that it may be reasonably said that they have led to an erroneous verdict.

4. The learned advocate appearing on behalf of the appellants has drawn our attention to the omissions of the Judge: (a) to charge the jury with regard to the question of the benefit of the doubt; (b) to draw the attention of the jury to the absence of any explanation in the prosecution evidence as regards the injuries on Kasimuddin and Quasimuddin; (c) to point out to the jury that the explanation

about these injuries in the prosecution evidence before the Sessions Court was not given in the early stages of the case; (d) to place before the jury the terms and conditions in the marriage contract which make the story of abduction improbable and (e) to state to the jury that the taking of the copy of the entries of marriage register relating to the marriage by the complainant's party shortly after the registration of the marriage makes the defence case about marriage highly probable. We have examined the heads of the charge as recorded by the Judge in this case as well as the material portions of the evidence in the case bearing upon the omissions or non-directions stated above to satisfy ourselves whether there are really any omissions at all and if so whether the omissions are so important as to have misled the jury to an erroneous verdict. We are however not satisfied that sufficient grounds have been made out for our interference with the verdict. The Judge fully explained to the jury the meaning of the words 'reasonable doubt' and told the jury that the burden of proving the guilt of the accused beyond reasonable doubt was entirely on the prosecution. In this connexion the following observations, of the Madras High Court in the case of Para Thandan v. Para Senna Moonji (1906) 4 Cr LJ 502 are pertinent:

In this case the charge to the jury taken as a whole is very full and fair, but it is urged that the omission of the Sessions Judge to instruct the jury that if they entertain reasonable doubt as to the guilt of any one of the accused, the jury should give him the benefit of doubt and acquit him, amounts to a mis-direction in law. A direction in these terms is certainly a usual and most proper direction and it ought as a matter of practice to be given in every case; but we are not prepared to hold that the omission to give it must in every case constitute a misdirection of such a character as to render a conviction invalid.

5. Where however the Judge thinks that the evidence is so weak that there are very great doubts as to the guilt of the accused the omission to direct the jury| to give the accused the benefit of doubt may be a misdirection which may be said to have prejudiced the accused. The Judge's opinion on the evidence in this case and the summing up of the evidence and the law as recorded in the charge in this case do not show that the appellants have been in any way prejudiced. As regards the non-directions relating to the explanation of the injuries on Kaimuddin and

Quasimuddin, it appears that the evidence before the Sessions Court discloses the explanation and that the Judge pointed out to the jury that the prosecution witnesses in their statements before Mr. Rahaman did not mention any lathies. The omission to place before the jury the terms and conditions of the marriage contract could not have misled the jury in their finding on the material issues inasmuch as the jury disbelieved the defence case about marriage in spite of the oral evidence in support of the marriage and the registration of the marriage by the Kazi. Lastly the non-direction with regard to the taking of the copy of the entries of the Marriage Register kept by the Marriage Registrar is not in our opinion such an important omission as to have led to an erroneous verdict on the question of marriage inasmuch as its bearing therefrom is very remote in view of the events that have happened in this case.

6. The result therefore is that all the grounds urged in support of this appeal fail, and we are not satisfied that there are sufficient grounds in law to set aside the verdict of the jury. The sentences passed on the appellants however appear to us to be severe in view of the facts and circumstances of the case. In our opinion the ends of justice in this case will be adequately met if the appellants be sentenced to one year's rigorous imprisonment under Section 366, and to one year's rigorous imprisonment under Section 147, the sentences being directed to run concurrently. We accordingly affirm the conviction of the appellants under Sections 366 and 147, I.P.C., but set aside the sentences passed on them and in lieu thereof we sentence each of them to undergo rigorous imprisonment for one year under Section 366 and for one year under Section 147, the sentences to run concurrently. Subject to the modification in the sentences as indicated above the appeal is dismissed. The appellants must surrender to their bail and serve out the remaining terms of their imprisonment.