

Fazaruddin and ors. Vs. Emperor

Fazaruddin and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/876676

Court : Kolkata

Decided On : Jan-28-1925

Reported in : AIR1926Cal105,90Ind.Cas.433

Judge : Babington Newbould and ;B.B. Ghose, JJ.

Appellant : Fazaruddin and ors.

Respondent : Emperor

Judgement :

1. The appellants have been found guilty under Section 366, Indian Penal Code, by the unanimous verdict of the Jury and have been sentenced each to five years' rigorous imprisonment.

2. It is contended that the trial has been vitiated by the exclusion of relevant evidence and also misdirection by the Judge in summing up to the Jury. It is suggested for the defence that the woman who has been found to be abducted, Bibijan, was actually missing in the evening and, therefore, could not have been, as alleged, abducted at midnight. The witness Nur Muhamad Munshi gave evidence that he had seen three women, who were sleeping in the same bari as the complainant and his wife that night, searching something at dusk. These women were not examined as witnesses and when the witness was asked what reply one of these women, who were searching for something, gave, he was not allowed to answer the question. We hold that the learned Sessions Judge was

right in excluding this evidence. This alleged search that evening cannot be treated as part of the same transaction as the abduction at night so Section 6 of the Evidence Act cannot make it admissible. Section 8 is of no help to the appellants since these women were neither parties to the case nor agents to any party. Section 9, the only other section of the Evidence Act on which reliance is placed, is equally inapplicable.

3. As regards misdirection, several points have been argued, but they really all amount to this--that the learned Sessions Judge in dealing with these points expressed his opinion too strongly in favour of the prosecution. But though the learned Judge expressed his opinion strongly it is evident from his charge that he was careful to impress on the Jury that on all questions of fact the decision rested with them and over and over again in the charge we find remarks like these. 'I have the entire evidence to you to judge,' 'you are the Judges and you are to decide if you find the above question against the accused.' There is no harm in the Trial Judge expressing his opinion on the fact and in fact it is his duty to do so to assist the Jury provided that he is careful to express his opinion in such a way as not in any way to interfere with the duties of the Jury to finally decide according to their own view of the facts. All the points to which reference is made, we find, have been adequately and properly dealt with in the charge to the Jury. The suggestions made on behalf of the defence have been considered. The points as to non-examination of various witnesses have been discussed. One other point of importance taken is that the deposition of witnesses before the Committing Magistrate was wrongly put in in accordance with the provisions of Section 288, Cr. P.C. It is contended that the concluding words of this section 'Subject to the provisions of the Indian Evidence Act' mean that the depositions cannot be put in under this section unless they are admissible under some sections of the Indian Evidence Act. This is not the meaning of these words. The evidence of the deposition when put in under this section becomes substantive evidence and is used as such. But obviously it cannot be put in evidence as substantive evidence if for any reason it is irrelevant under the Evidence Act. To adopt the interpretation which we are asked to put on these concluding words would be to render the provisions of Section 288 unnecessary and superfluous.

4. Having regard to the nature of the offence which the Jury have found to have been committed we are unable to hold that the sentence passed is too severe.
5. The appeal is dismissed.
6. The appellants must surrender to their bail and under go the unexpired portion of the sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com