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SooperKanoon Citation : sooperkanoon.com/880520

Court : Kolkata

Decided On : Jul-20-1932

Reported in : AIR1934Cal85,147Ind.Cas.828

Appellant : Ramizulla and ors.

Respondent : Emperor

Judgement :

Mallik, J.

1. The three appellants Rami-julla alias Romiz, Husan Ali alias Husan, Idrisulla and another man Abbas by name were put on their trial on charges Under Sections 366 and 376, I. P. C. The trial was held with the aid of a jury. The jury unanimously found Abbas not guilty under either of the two charges. They unanimously found all the three appellants not guilty Under Section 376, but by a majority of 4 to 1 found them guilty Under Section 366, I.P.C. The learned Judge accepting this verdict sentenced the three appellants to rigorous imprisonment for 4 years and 3 months. The facts of the case for the prosecution were briefly these: On the night of 13th April 1931 at about 2 dandas of the night Latifa Bibi who is an unmarried daughter of the complainant Nasri, a young girl of about 14, went out to answer a call of nature accompanied by her mother, the wife of Nasri. The three appellants with the other persons came and dragged Latifa Bibi away and when Nasri on hearing the cries of his wife came out of the house and found his

daughter being dragged away, the accused persona threatened to assault him with lathis and Nasri thereupon had to retreat. Nasri wanted to get back his daughter by some amicable arrangement but was unsuccessful. He then went to Sylhet and on 15th April 1931 he filed a petition of complaint in Court. About a month later the complainant received some information about his daughter and on receipt of that information he went to a place called Sunachak with an Assistant Sub-Inspector of Police and some constables to find and recover his daughter Latifa Bibi from the house of one Ahmed. This was on 13th May 1931. An investigation followed with the result that four men were put on their trial as stated before. The charge which was drawn up against the accused in the present case runs as follows:

That you with others on or about 13th April 1931 at Malakandi kidnapped Latifa Bibi from the custody of her father Nasri or abducted a woman to wit Latifa Bibi in order that the said Latifa Bibi might be forced or seduced to illicit intercourse or knowing it to be likely that she might be compelled to marry against her will and thereby committed an offence punishable Under Section 366, I.P.C, and within the cognizance of the Court of Session.

2. On behalf of the appellants it was contended before us that this charge, framed as it was, was defective and by this defect the whole trial was vitiated. In support of this contention our attention has been drawn to a decision of this Court in *Mahomed Amit v. Emperor* : AIR1933 Cal194 where, in a case Under Section 366, I.P.C., the charge had been drawn up in similar terms and the conviction was set aside and a retrial of the accused ordered. The decision in this unreported case was based on another decision of this Court in the case of *Mafizaddi v. Emperor* : AIR1927 Cal644 where Cuming, J., held that kidnapping is an entirely distinct offence from abduction and the two being distinct offences separate charges should be drawn up if it was desired to charge the accused with both the offences. In a later decision of this Court in *Prafulla Kumar Basu v. Emperor* : AIR1930 Cal209 it was however held that when the question of the age of the prosecutrix is in dispute (as it was in the case before us) a charge Under Section 366, I. P. C. of kidnapping and abduction in the alternative is not illegal. It is no doubt desirable that it would have been much better if the accused in the present case had been

charged separately, on one head for kidnapping and on another for abduction. But the omission of the learned Judge in splitting up the whole thing into two parts would not in my opinion be sufficient for our interference unless it appears that that omission has caused a failure of justice or that the accused was in any way prejudiced thereby. That however does not appear to be the case in the case before us. Mr. Dass for the appellants contended that the accused had been prejudiced both at the trial and were prejudiced at the hearing of the present appeal. This contention does not appear to me to be well founded.

3. The prosecution had four points in their case. These four points were that Latifa Bibi had been taken away, that force had been used, that Latifa was a girl under 16 years of age and that the purpose was immoral; and when the charge against the accused was framed, in the way in which it was framed, these were the points which the accused were called upon to meet. The prosecution led evidence on each of these four points and the accused had ample opportunity to meet that evidence. In these circumstances I do not understand how it can be said that the accused was prejudiced by the way in which the charge in the present case had been drawn up against them. Mr. Dass contended that the accused, as appellants, were prejudiced in the present appeal inasmuch as it could not be ascertained from the verdict of the jury whether the jury found the appellants guilty of kidnapping or abduction, and in the absence of knowledge whether the appellants have been found guilty of abduction or of kidnapping, the learned Judge's charge to the jury could not be adequately assailed. I do not understand what difficulty there could be in assailing the charge on the ground of misdirection or non-direction. The learned Judge in his charge dealt with the abduction case separately from the case of kidnapping and there would be no difficulty whatsoever, in my opinion, to assail the charge on the ground of misdirection or non-direction if there had really been any in it. The only passage in the learned Judge's charge to the jury to which exception was taken before us runs in these words:

There is no evidence on the record that they had any intent or knowledge of compelling her to marry, but considering the age of the girl as well as of the accused, you may presume that the girl was abducted for immoral purposes.

4. It was said that the direction which the learned Judge gave was wrong in law. I am unable to say that there is any defect in what the learned Judge told the jury in this passage. This was not on an observation by which the jury were told to make any presumption of law. It was a passage by which the Judge told them that they might, if they chose, draw an inference on a question of fact, the question as to what the purpose of the accused was, on a consideration of some circumstances, namely the age of the girl on one side and the age of the accused on the other. Beyond this passage we have not found, and our attention was not drawn to anything in the learned Judge's charge to the jury to which any exception could be taken. I would not therefore interfere with the verdict of the jury in the present case. As regards the sentence our attention has not been drawn to any mitigating circumstances that would warrant us in reducing the sentence that has been inflicted. I would dismiss the appeal.

Patterson, J.

5. I agree.