Shamlal Singh and Another Vs Emperor

Court: Calcutta High Court

Date of Decision: Jan. 15, 1924

Citation: AIR 1925 Cal 980 : 85 Ind. Cas. 716

Hon'ble Judges: Panton, J; Greaves, J

Bench: Division Bench

Judgement

1. The two accused in this case have bean convicted of an offence under the provisions of Section 366 of the Indian Penal Coda, that is to say,

abducting a woman with intent to commit rape. Each of the accused has been sentenced to undergo rigorous imprisonment for a term of five years.

2. Now 12 points have been urged before us on behalf of the appellants. First, it is said that there has been no sufficient compliance with Section

342, of the Cr. P.C. Apparently, what happened is this that the accused were asked if they desired to make any further statement to what they had

made before the Committing Magistrate and they refused to do so or to call any evidence. Now we have had occasions to point out more than

once that the proper method of applying Section 342 is to bring to the attention of the accused specific matters which appear in the evidence

against them and that merely questioning them generally as to whether they have anything to say or anything to add to what was said before the

Committing Magistrate is not a satisfactory method of applying Section 342, and we hope that the Courts in future will bear this in mind when the

time comes to question the accused under the provisions of Section 342, but we are not prepared to say that what was done in this ease

necessitates a new trial.

3. The second point urged is that the Judge was not justified in stating to the Jury his impression of the demeanour of some of the witnesses without

recording, as it is said he should have done, his views at the end of their depositions. But after all, there is really nothing in this point. The Jury saw

the witnesses and it was for them to judge whether the demeanour of the witneses was such as to discredit in any way the evidence that they had

given.

4. Thirdly, it is urged that there was a material defect in that the Doctor was not examined-in-chief before the Jury but his deposition before the

Committing Magistrate was read without his being actually called. But after all, he was cross examined and the Jury had an opportunity of judging

of the credibility as a result of the cross-examination that was held.

5. Fourthly, it is said that the two witnesses Komez Mandal and Laskar Sardar who were called before the Committing: Magistrate and who

subsequently ware allowed to be treated as hostile witnesses should at any rate, have been tendered for cross-examination before the Jury. We

think that there is considerable force in this comment. But after all, despite what has been urged by the learned Vakil, it does not seem to us that

their evidence was very material. It was directed to the question why the woman was taken to the accused, Sham Lal"s house against her wish

instead of being taken to her own bari but I doubt really if their evidence affected the matter very much one way or the other.

6. Fifthly, it is urged that there was no proper summing up to the Jury and we were referred to various discrepancies appearing in the evidence of

the prosecution witnesses, which it is said, should have been pointed out to the Jury in some detail. But the summing up has been read to us and we

are not prepared to say that it is so deficient in this or in other matters that we should direct the accused to be re-tried.

7. Sixthly, it is said that the learned Judge should not have suggested to the Jury that Komez and Laskar were won over by the defence and that

there was evidence to this effect whereas it is said that there was not. We do: not think that there is much substance in this point. What the learned

Judge did say in his charge is: "" The defence urge you to consider that if they had been examined in this Court they would not have supported the

prosecution story. The prosecution admit the argument and state that those men have been won over by the defence."" This being the charge, we do

not think that there is really any force in what was urged with regard to the sixth contention.

8. Seventhly, it is said that the learned Judge should have told the Jury that the evidence with regard to the conduct of the brother of the second

accused and that of the first accused"s relations was not evidence against the appellants. It is said that this evidence was prejudicial to the accused

and that the Jury should have accordingly been warned with regard to it. But the same remarks that we have made with regard to the evidence of

Komez and Laskar apply to this evidence and I doubt if it is really very material.

9. Eighthly, it is said that the Jury"s attention should have been drawn to the fact that the nearest neighbours were not called and it is said that this is

really no explanation and that the explanation which was given by the Police that there were only women in this house is of no value. We do not

think, however, that there is very much in this point.

10. Ninthly, it is said that the attention of the Jury was not directed to the effect upon the prosecution case of what would have happened if they

had disbelieved the story of rape. It is suggested that they did not accept this story. I am not sure whether this is so or not but I am Inclined to think

that probably the Jury came to a unanimous verdict because they did accept the evidence of the woman prosecution witness No. 1. with regard to

the fact that she was raped.

11. Then the tenth point dealt with the fact that the charge of rape was not originally made by the woman herself and criticism has been directed to

the suggestion made by the Judge to the Jury that probably she did not raise this question at first out of her natural modesty. We do not think, after

referring to the passage in the charge which will be found at the foot of page 5 of the copy before us, that there is really anything in this point.

12. The eleventh point is that the defence case was not properly put to the Jury and it is said that all that the learned Judge did was to direct the

Jury''s attention to the line of the cross-examination as suggesting what the case was. It is said, however, that this was not sufficient and that the

learned Judge should have specifically placed before the Jury the fact that the defence case was that the woman had eloped with some person.

Here again, reading the charge on this point, we do not think that from the charge it can be shown that the defence case was not fairly put to the

Jury by the Sessions Judge.

13. Lastly, criticism is directed to the Judge''s interpretation of ""reasonable doubt."" But here again we do not think that this can be seriously

objected to. After all, the case was really a very simple one. The woman had told her story and there was the evidence of Ambica with whom the

woman lived. It was really for the Jury to decide whether they accepted the simple story of these witnesses or whether they were not prepared to

accept it. This seems to us the only question that really arises in this appeal. The Jury thought fit to accept that story and it is not open to us to say

after seeing the evidence that there was no evidence upon which the Jury were justified in accepting the prosecution story.

14. For these reasons the appeal is dismissed.