Fatah and others v. Sardara and others

Bhandari, C. J.

of a part of the land in dispute and that they were recorded as occupancy tenants. A presumption at once arose that the land had descended to the son and grandsons from the common ancestor. This presumption relieved the collaterals of the duty of presenting further evidence in support of their assertion that the land in question was occupied by Than Singh and imposed a duty on the landlords to show that he did not occupy the land. They endeavoured to produce evidence in rebuttal in the shape of entries to the effect that no other son or descendant was recorded as an occupancy tenant. As the landlords offered evidence contrary to the presumption, the presumption disappeared and the case stood on the facts and whatever inference could be drawn therefrom. The trial Court and later the District Judge took the whole evidence into consideration and came to the conclusion that Than Singh did not occupy the land. This was a finding of fact; it was not unsupported by evidence and was not unreasonable or perverse. The weighing of such evidence and the inferences to be drawn therefrom, were matters entirely within the power of the Lower appellate Court and could not be disturbed on appeal. It seems to me, therefore, that this decision could not be contested in second appeal.

For these reasons, I would accept the appeal, set aside the order of the learned Single Judge and restore that of the trial Court. The landlords will be entitled to costs throughout.

Mehar Singh J.

MEHAR SINGH, J.—I agree.

APPELLATE CRIMINAL

Before Tek Chand, J.

KARTARA *alias* KARTAR SINGH,—*Convict-Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 628 of 1956.

1957

Aug., 6th

Indian Penal Code (XLV of 1860)—Section 366—"Seduced to illicit intercourse"—Meaning of—Whether

refers to inducement of a girl to part with her virtue for the first time or includes subsequent seduction for further acts of illicit intercourse—Seduction—When takes place—When constitutes a criminal offence—Seduction—Meaning of etymologically—Seduction—When is and when is not.

Held, that the word "seduced" in section 366, Indian Penal Code, is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse. The words 'seduced to illicit intercourse' do not refer to the first act of seduction only, when she is lured into surrendering her chastity.

Held, that it is "seduction" when a woman is induced to consent to unlawful sexual intercourse by enticements and persuasion overcoming her reluctance and scruples. It occurs where a man abuses the simplicity and the confidence of a woman, to obtain by false promise, what she ought not to give. It is a criminal offence where a female under 18 years has been induced to surrender her chastity to an unlawful sexual intercourse. Where this has been accomplished by her seducer by the use of seductive arts such as flattery, solicitation, importunity or by importing some other species of artifice, beguilement, or deception, the offence is completed. It does not matter whether the accused person achieved his object by means of brute force or she may have capitulated to the gentle promptings of confiding love by deceitful promises; his guilt in either case is established.

Held, that Etymologically the word 'seduction' is derived from two Latin words 'se' which means, away, and 'duco' which means to lead, and together they mean to lead away or to draw away. The term 'seduction', therefore, implies that the woman is led away, or is induced to stray away, from the path of rectitude. The act of seduction is done when the girl is drawn away from the virtuous course and then made to yield her chastity. But where the deviation on the part of the girl is the result of the promptings of her own inclinations, and she herself permits or encourages improper sexual relations, as opportunity comes her way, without the aid of any artifice or wile on the part of the man, it is no seduction.

King-Emperor v. *Nga Ni Ta.* (1), *Pessumal* v. *Emperor* (2), *Emperor* v. *Prem Narain* (3), *Krishna Maharana* v. *Emperor* (4), *Emperor* v. *Ayubkhan Mirsultan and another* (5), *Lakshman Bala* v. *Emperor* (6), *Prafulla Kumar Basu* v. *The Emperor* (7), *Shaheb Ali* v. *Emperor* (8), *Manicha Chetty* v. *Emperor* (9), and *In re. Khalandar Saheb* (10), relied on; *Emperor* v. *Baij Nath* (11), dissented from.

Appeal from the order of Sh. B. L. Goswamy, Additional Sessions Judge, Ferozepore, dated the 30th October, 1956, convicting the appellant.

M. S. GUJRAL, for Appellant.

K. L. JAGGA, for Advocate-General, for Respondent.

JUDGMENT.

TEK CHAND, J.—Kartara *alias* Kartar Singh, son of Amar Singh, of vilalge Mahianwala, tehil Zira, district Ferozepore, was convicted by the Additional Sessions Judge, Ferozepore, under section 366, Indian Penal Code, and sentenced to undergo imprisonment for a period of five years. There were two other accused persons, Hari Singh and Bachan Singh, who were acquitted of the offence charged. Tek Chand, J.

The prosecution story is that P. W. 1, Mohinder Kaur *alias* Joginder Kaur, a minor girl born on 11th of December, 1939, was suffering from an eye trouble (corneal opacity). Her parents, P. Ws. Kapur Singh and Nand Kaur, who were living in village Warrang, had called the accused who was known for his skill in curing diseases by conjuring spirits

(1) (1903) 10 Bur. L.R. 196
(2) (1924) 27 Cr. L.J. 1292
(3) (1928) 30 Cr. L.J. 218
(4) (1929) I.L.R. 9 Pat. 647
(5) A.I.R. 1944 Bom. 159
(6) I.L.R. 59 Bom. 652
(7) I.L.R. 57 Cal. 1074
(8) I.L.R. 60 Cal 1457
(9) 1935 M.W.N. 358
(10) 1955 Cr. L.J. 581
(11) I.L.R. 54 All. 756

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and then exorcising them. He applied his occult gift in expelling the spirits a few times before the occurrence and while he so busied himself it is said, that he used to play with her breasts, and while doing so he took care to see that his actions remained screened from the view of the credulous parents of the girl, they used to watch the treatment being given from some distance. Thus winning the confidence of the gullible parents he had a free access to their house, ostensibly for the purpose of curing the girl of the disease but actually for taking liberties with her person. He then asked her to elope with him, but according to her statement she rejected his amorous advances. She then stated that he committed sexual intercourse with her against her wishes. She tried to raise alarm but he gagged her mouth with a piece of cloth. After committing rape on her, he repeated his oventures that she should elope with him, but she declined to do so. This part of the story regarding rape on her and refusal on her part to go with him has been rightly disbelived by the learned Session Judge. On 25th of April, 1956, the date of the occurrence, while she was still under 17 years, she was taken from the house of her parents by the accused, and the two of them, proceeded by bus to Ferozepore, from where she was taken in railway train to Ludhiana. From there they went to Malerkotla, Barnala and then to village Bhadore where the other two accused, who have been acquitted, lived. The accused and the girl stayed with them. At this time, the money that the accused had with him, was nearly finished and they decided to proceed to Zira. At Zira Railway Station they were arrested on 4th of May, 1956. The girl noticed her father along with some policemen, and shouted for help. During the course of their sojourns from place to place, it is alleged that the girl was subjected to sexual intercourse by the accused on several occasions.

P. W. 3, Dr. Vidya Madan, stated in her statement dated the 29th of October, 1956, after examining the girl that she suspected that she was pregnant at that time and pregnancy might be seven months old. Mr. Manmohan Singh Gujral, learned counsel for the accused appellants, wants me to infer that the girl was used to sexual intercourse a considerable time prior to the date of occurrence.

The examination of the girl conducted in the retiring room of the lower Court by the lady doctor seems to be of a casual and perfunctory nature and the lady doctor's opinion rested on suspicion and was expressed in a language suggesting doubt and uncertainty in her own mind about the condition of the girl at the time of examination. I cannot deduce from the lady doctor's statement that the girl was of a loose character and was already leading a life of indulgence in unlawful sexual intercourse at the time of the alleged abduction as was found to be the case in *Shaheb Ali* v. *Emperor* (1). There is no evidence to suggest that the girl had already strayed from the path of virtue and had previous to her abduction been submitting to improper practices from her own lustful propensities and without any arts or blandishments of the person with whom she has had sexual intercourse. It will be a mistake to imagine that a single error on the part of the female will place her beyond the protection of the law punishing seduction.

Mr. Manmohan Singh Gujral basing his argument on *Emperor* v. *Baijnath* (2), contended that the term 'seduction' can only properly be held to apply to the first act of illicit intercourse, unless there be proof of a return to chastity on the part of the girl in the meanwhile, or unless possibly there is an intention on the accused's part that the girl should be seduced by some different man.

(1) I.L.R. 60 Cal. 1457.
(2) I.L.R. 54 All. 756.

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On the other hand there is a catena of authority to the effect that the word 'seduced' in the section is not used in the narrow sense, of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse. The words 'seducted to illicit intercourse' do not refer to the first act of seduction only when she is lured into surrendering her chastity.

In *King-Emperor* v. *Nga Ni Ta* (1), Adamson, J., said:—

> "It is a monstrous proposition, and one that would strike at the very roots of social and moral rectitude to hold that, because a man has induced a girl, while in the custody of her parents, to surrender her chastity, he committed no further act of seducing to illicit intercourse, when he persuaded her to live with him in a condition of concubinage not sanctioned by marriage."

In *Pessumal* v. *Emperor* (2), it was held that the word 'seduction' was not to be confined to the first connection with an unmarried girl.

> "When a man has induced a girl, while in the custody of her parents, to surrender her chastity to him, and, thereafter induces her to leave the protection of her parents and live with him in a condition of concubinage not sanctioned by law, he commits an offence under section 366. Every time a woman surrenders herself to a lover, whether it is the first or the twentieth time, there is a seduction."

This view was upheld by Allahabad High Court in *Emperor* v. *Prem Narain* (3), where the view

(1) (1903) 10 Bur. L.R. 196
(2) (1924) 27 Cr. L.J. 1292
(3) (1928) 30 Cr. and J. 218

was expressed that previous intimacy was wholly immaterial. In *Krishna Maharana* v. *Emperor* (1), a Division Bench of the Patna High Court held that a person may be guilty of kidnapping a girl for the purpose of seducing her to illicit intercourse even though he had also had such intercourse prior to the kidnapping. The High Court of Bombay has voiced dissent from the view taken by a Division Bench of the Allahabad High Court in *Emperor* v. *Baijnath* (2), *Emperor* v. *Ayubkhan Mirsultan* and *another* (3), and *Lakshman Bala* v. *Emperor* (4). Similar view has also been expressed by the High Court of Calcutta in *Prafullakumar Basu* v. *The Emperor* (5), and *Saheb Ali* v. *Emperor* (6). The High Court of Madras in *Manicha Chetty* v. *Emperor* (7), and the Andhra High Court in *In re Khalandar Saheb* (8), have accepted the above line of reasoning and have dissented from the Allahabad view.

It is 'seduction' when a woman is induced to consent to unlawful sexual intercourse by enticements and persuasion overcoming her reluctance and scruples. It occurs where a man abuses the simplicity and the confidence of a woman to obtain by false promise what she ought not to give. It is a criminal offence where a female under 18 years has been induced to surender her chasitity to an unlawful sexual intercourse. Where this has been accomplished by her seducer by the use of seductive arts such as flattery, solicitation, importunity or by importing some other species of artifice, beguilement, or deception, the offence is completed. It does not matter whether the

(1) (1929) I.L.R. 9 Pat. 647.
(2) I.L.R. 54 All. 756.
(3) A.I.R. 1944 Bom. 159.
(4) I.L.R. 59 Bom. 652.
(5) I.L.R. 57 Cal. 1074.
(6) I.L.R. 60 Cal. 1457.
(7) 1935 Mad. Weekly Notes 358.
(8) 1955 Cr. L.J. 581.

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accused person achieved his object by means of brute force or she may have capitulated to the gentle promptings of confinding love by deceitful promises; his guilt in either case is established.

Etymologically the word 'seduction' is derived from two Latin words 'se' which means, away, and 'duco' which means to lead, and together they mean to lead away or to draw away. The term 'seduction', therefore, implies that the woman is led away or is induced to stray away from the path of recitude. The act of seduction is done when the girl is drawn away from the virtuous course and then made to yield her chastity. But where the deviation on the part of the girl is the result of the promptings of her own inclinations, and she herself permits or encourages improper sexual relations, as opportunity comes her way, without the aid of any artifice or wile on the part of the man, it is no seduction.

The learned counsel for the accused appellant did not argue that the accused did not take the girl from place to place and did not question the veracity of the prosecution story relating to her movements from Warrang, the village of her parents, to Ferozepore, Ludhiana and other places till the arrest of the accused at Zira. I do not accept the contention of the learned counsel that the facts of this case do not establish the commission of an offence under section 366, but even if the contention of the learned counsel for the accused appellant were well-founded, the case would certainly fall under section 363 read with section 361 in which case also the maximum sentence that can be awarded is seven years.

The only question in this case is that of sentence. I have no doubt in my mind that Mohinder Kaur fell into temptations offered by the accused and she was not subjected to any force or compulsion. To the

various acts of sexual intercourse that took place she appears not to have been an unwilling party and such resistance, if any, as she might have offered seems to have been overcome by the accused. In view of these circumstances the sentence of five years' rigorous imprisonment appear to be excessive. While I maintain the conviction of the accused, I reduce his sentence and direct that he should undergo rigorous imprisonment for two years.

LETTERS PATENT APPEAL.

Before Bhandari, C. J., and Gosain, J.

SHRI JOTI PARSHAD,—*Petitioner*

versus

THE SUPERINTENDENT OF POLICE, GURGAON AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 1 of 1956, in Civil Write No. 375 of 1954.

1957

Aug., 8th

Constitution of India—Article 311—Reasonable opportunity—Meaning and scope of—Protection afforded by Article 311, not to be allowed to be rendered nugatory—Order of dismissal illegal—Order confirmed in appeal or revision, effect of—Departmental enquiry—Proceedings in nature of—Rules of natural justice, how far applicable.

Held, that:—

(1) If the safeguards provided by Article 311 of the constitution of India are not to be rendered illusory, the words "reasonable opportunity" must be deemed to mean "a real and adequate opportunity which is not merely norminal or a sham one". If a delinquent is asked to defend himself before a person who is already biased against him or who has already prejudged the issues and who is in no way amenable to consider the matter objectively and dispassionately, it cannot possibly be said that a reasonable or real opportunity to defend has been given to the delinquent.

(2) It is the duty of the Courts to see that the safeguards for public servants provided by the Constitution