SUPREME COURT OF INDIA

Ram Das

Vs.

State of W.B.

Crl.A.No.78 of 1953

(N. H. Bhagwati, B. Jagannadhadas and T. L. Venkatarama Ayyar, JJ.)

24.02.1954

JUDGEMENT

VENKATARAMA AYYAR, J.:

1. The appellant was convicted by the First Class Magistrate, Hoogly for an offence under section 354, I.P.C. and sentenced to two years' rigorous imprisonment. On appeal the Sessions Judge, Hoogly, confirmed both the conviction and the sentence, and a revision petition preferred to the High Court was rejected. This matter now comes before us on special leave under Article 136.

2. The facts which are not in dispute may first be stated.

Smt. Parul Bhattacharya, P.W. 6, is the wife of C.W. 1, who was employed in the Sodepur colliery. She came to Calcutta for confinement, and after delivery she started to rejoin her husband and boarded the Moghalsarai Passenger on 11-9-1951. She was escorted by a relation of hers, Rabindra Narayan Chakrabarti, P.W. 5. They got into an interclass compartment.

Another lady, Jyotsna Das, P.W. 9, travelling by the same train to see her father who was ill at Barakar, got into the same compartment at Howrah. She was escorted by P.W. 1, a friend of her father. There were some other passengers besides; but they go down at Panduah, leaving P. Ws. 1,5,6 and 9 as the sole occupants of the compartment.

The appellant who was also travelling by the same train but in a different compartment got down at Panduah for the reason that that was overcrowded and changed over to the compartment occupied by P. Ws. 1,5,6 and 9.

After the train started, differences arose between the appellant on the one hand and the other passengers on the other; a scuffle ensued; P.W. 1 pulled the alarm chain, and the train stopped at Boinchi. The police came on the scene, and found that P.W. 6 who had got down on the platform was weeping and that inside the compartment the appellant was standing with his hands clutching the chains attached to an upper berth and violently kicking the passengers. The constables who went in were also kicked, but somehow managed to pull him out of the compartment. Meantime, the people who had collected on the platform began to belabour the appellant with shoes and umbrellas until the police took him into safe custody.

3. The charge against the appellant was that he assaulted P.W. 6, Parul Bhattacharya, with intent to

outrage her modesty. That she was assaulted by the appellant is established beyond all doubt. P.W. 6 deposed; "The accused kicked me. I got injuries on my arm, hand and back." This is corroborated by the evidence of P. Ws. 1 and 5.

P.W. 2 is the doctor who examined her shortly after the incident, and he stated that he found scratches above the wrist in the right forearm and contusion below the shoulder in the right arm. Indeed, counsel for the appellant did not seriously challenge the correctness of the finding of the courts below that the appellant did assault P.W. 6. He only threw out a suggestion that P.W. 6 might have intervened on the side of P. Ws. 1 and 5 when they were engaged in a scuffle with the appellant and chance blows might have descended on her. This is a wholly gratuitous suggestion, and is opposed to the evidence on the side of the prosecution, and must accordingly be rejected. The finding of the Courts below that the appellant assaulted P.W. 6 must therefore be accepted.

4. The next question is whether he did so with intent to outrage her modesty, or with the knowledge that it would be outraged. Having gone through the entire evidence, we are not satisfied that that has been established.

The most serious allegation against the appellant on this part of the case is that he forcibly held the two ladies to his breast. The first information report given by P.W. 5 stated that he "in his naked condition clasped both of them on to his breast". The evidence in the case, however, does not bear this out. P.W. 1 stated that the two ladies became frightened at the attitude of the appellant and went down to the floor of the compartment for safety, and then the appellant caught hold of them and embraced them. P.W. 5 deposed that the appellant caught hold of both the ladies, and then they went down to the floor of the compartments. In his examination-in-chief, he said nothing about the appellant embracing the ladies. In cross-examination, however, he deposed that the appellant embraced both the girls from behind. P.W. 6 stated that she and P.W. 9 went down on the floor out of fear and shouted. She did not state in examination-in-chief that they were embraced. In cross-examination, however, she added that she had been embraced. P.W. 9 deposed that the appellant was able to catch hold of P.W. 6 but that she herself was not caught. She does not speak to his embracing even P.W.6. On this evidence, we find it difficult to hold that the incident of embracing has been proved beyond doubt.

P. Ws. 1, 5 and 6 also stated that the appellant first removed his coat and belt and put them on the upper berth and then removed his trousers and become a practically naked. But it is admitted by P. Ws. 1 and 6 that he had his underwear, and it is possible that the removal of trousers was with a view to lie on the berth. No inference could therefore be drawn from it that the intention of the appellant was to outrage the modesty of the ladies. We cannot help thinking that the first information report presents an exaggerated account of what really happened. It is also stated that the appellant was starting at the ladies "with lustful eyes". But this impression appears to be more psychological than factual. The story of a person trying to outrage the modesty of two women in the presence of two gentlemen is so unnatural, that there must be clear and unimpeachable evidence before it can be accepted.

5. The truth appears to be that the appellant who had been travelling from Calcutta in a crowded compartment changed over to the compartment where there were only four passengers with a view to get sleeping accommodation. Finding all the three lower berths occupied, he made an attempt to forcibly occupy the seat on which P.W. 6 was lying with her babe. There was opposition from her, and in overcoming it, the appellant assaulted her.

Her cries brought down P. W. 1 from his upper berth and he and P.W. 5 took it up with the appellant and a scuffle ensued. P.W. 9 deposed that while she was asleep, she was roused by the noise of altercation. Then she joined P.W. 6, and both of them ran for safety to the floor of the compartment below the berth. The appellant finding himself attacked by both P.W. 1 and P.W. 5, must have made to stand clutching the two chains attached to the upper berth by his arms and kicking his assailants. That was the scene which was witnesses by the police officers when the alarm chain was pulled and the train stopped at Boinchi. As far as it is possible to reconstruct, that appears to have been the course of events.

6. If that is the position, we have no doubt that the appellant cannot be held guilty of an offence under section 354. What he did was with a view to secure a berth for himself and not with a view to outrage the modesty of P.W. 6. The proved facts are not sufficient to support an inference that the appellant was actuated by the intention to outrage her modesty.

7. This question was not considered by the Courts below from this point of view. It appears to have been assumed that either there was an offence under section 354 or none at all. The point was not considered whether even if the assault was true it was such as would fall under section 354.

For this state of affairs, however, the appellant was largely to blame. The line taken on his behalf in cross-examining the prosecution witnesses was that P. Ws. 1 and 5 were not honest escorts of P. Ws. 9 and 6 and that they were having a merry time of it with them a suggestion which appears to be as unfounded as irrelevant. And there cannot be any doubt that, in proceeding on the footing that when once assault is proved, it must be held to fall under S. 354, the courts below were greatly influence by this stand of the appellant. It is in this view that they dismissed the discrepancies generally as of slight moment.

Before us, counsel for the appellant did not repeat this suggestion. On the other hand, he relied on the statement of the accused under section 342 wherein he stated that when he got into the compartment he was abused by the passengers in a language which he did not understand and was assaulted. No suggestion was made in this statement that there was anything improper in the association of P. Ws.1 and 9 or P. Ws. 5 and 6. We have accordingly come to the conclusion that while the appellant was undoubtedly guilty of having assaulted P.W.6 it cannot be held that he did so with intent to outrage her modesty, or with the knowledge that it would outraged. We, therefore, acquitted the appellant of the charge under section 354, and substitute therefore a conviction under section 352 for assault.

8. Coming next to the sentence, it must be noted that the appellant is a railway officer of some status, and as such it was his duty to behave fairly and courteously to passengers. His conduct in forcibly trying to occupy the seat occupied by P.W.6 and her babe and assaulting her when she resisted, calls for censure, and he has added insult to injury in casting aspersions on the character of P. Ws. 6 and 9. Under the circumstances, we must award the maximum sentence permissible under section 352. We accordingly sentence him to three months' rigorous imprisonment.

9. The appeal will accordingly be allowed to this extent. It is represented to us that the appellant had served about eight months out of the sentence of two years' rigourous imprisonment imposed on him by the courts below before he was enlarged on bail by this Court. There could be no question therefore of the appellant being sent again to jail. The only order that has now to be passed is that his bail bond do stand cancelled.

Order accordingly.

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