

SUPREME COURT OF INDIA

Ram Devi

Vs.

State of U.P.

Crl.A.No.26 of 1954

(S. R. Das, N. H. Bhagwati and T. L. Venkatarama Ayyar, JJ.)

22.02.1955

JUDGEMENT

BHAGWATI, J.:-

1. The appellant along with 5 other persons was charged under S. 368, Penal Code, for kidnapping or abducting one Chameli, a minor daughter of a railway employee one Net Ram, in order that she may be forced or seduced to illicit intercourse. The other accused were also charged with having committed offences under various other sections of the Penal Code but which are not necessary to mention for purposes of this appeal. The accused Prahlad Singh and Dhani Ram were acquitted, the accused Baburam was convicted under S. 366 and 368 and the accused Gokaran was convicted under S. 368 Penal Code. The accused Niranjana was also convicted under S. 366 and 368 and the Appellant was convicted under S. 366 Penal Code and was sentenced to 3 years' rigorous imprisonment.

On an appeal being taken to the High Court of judicature at Allahabad (Lucknow Bench) the accused Babu Ram and Gokaran were given the benefit of doubt and their convictions and sentences were set aside. The appeals of Niranjana and the Appellant were dismissed and their convictions and sentences were confirmed. The accused Niranjana did not apply for leave to appeal to this court but the Appellant did and she was granted special leave to appeal by this court under Art 136 of the constitution on 34-1953.

2. The case of the prosecution was that the appellant was a neighbour of Net Ram at Hardoi Station and was supplying milk to the family. On the evening of 30-4-1949 Chameli went to take milk from her house and she gave her besides milk some sweet saying that it was the Prasad of Katha. Chameli partook of that sweet prepared tea for her father and her father departed from the house after taking tea to attend his duties at the station at the time of the arrival of the DehraDun Express. Some time thereafter the appellant called Chameli from her house. Chameli went there and the appellant and she together went out for a walk. They were accosted by Shrimati Shanti, chameli's brothers wife and the appellant replied that they were going to answer a call of nature.

The accused Prahlad was following them and all of them went to the rest room of the station where the accused Dhani Ram as also Niranjana and Babu Ram met them. The appellant and Dhani Ram returned from there to their respective houses and Niranjana, Bahu Ram and Prahlad took Chameli

away, Niranjan and Babu Ram holding her hands and Prahlad following them the prosecution story further was that Chameli was thus taken by these accused to the village Kanehta where she was mishandled by the accused Babu Ram and Gokaran and was ultimately truced by the police in the house of Niranjan. The police after due investigation challaned the appellant and the other 5 accused to stand their trial for the several offences with which they were charged as above.

3. The evidence against the appellant consisted of her having given the sweet to Chameli, her having accompanied Chameli for a walk and her having returned back to her house leaving Chameli with the accused Babu Ram, Niranjan and Prahlad. The charge which was framed against her was under S. 366, Penal Code, for kidnapping or abducting Chameli in order that she may be forced or seduced to illicit intercourse. But the trial proceeded only on the footing that she had kidnapped Chameli from lawful guardianship for purpose of illicit intercourse and that charge was held proved against her by the learned Assistant Sessions Judge, Hardoi. The High Court in appeal also came to the same conclusion and her conviction and the sentence passed upon her by the Sessions Court were therefore confirmed.

4. This charge required that Chameli should be proved by the prosecution to have been at the date of the offence below 16 years of age. In the then state of the law S. 361, Penal Code, required that she should be under 16 years of age, the offence having been allegedly committed on 30-4-1949. The learned Assistant Sessions Judge came to the conclusion on the evidence of the doctor that Chameli was about 15 years of age and therefore convicted the appellant of the offence under S. 366, Penal Code.

The High Court however did not accept that finding and observed: "I am hesitant in holding that the age of the girl was under 16 though I find affirmatively that she was under 18 years of age". The High Court evidently did not notice that the amendment of S. 361, Penal Code, which prescribed the outside limit of the age of a minor girl for purposes of that section to be 18 years came into force from 15-7-1949 and the offence in his case was alleged to have been committed on 30-4-1949 on which date the outside limit of age was 16 years. If that was the correct position the appellant could not have been convicted under S. 366, Penal Code.

5. Realising this position, Shri K. B. Asthana or the respondent tried to argue that even if the appellant could not be convicted under S. 366, Penal Code, by reason of her having kidnapped Chameli from lawful guardianship, she could certainly be convicted under that section for having abducted her for the purpose of illicit intercourse. Apart from the fact that that was not the charge sought to be proved against the appellant, the evidence on the record did not warrant the conclusion that Chameli was either compelled by force or reduced by any deceitful means to go from her father's place by the appellant, nor was any question put to the appellant in her examination under S. 342, Criminal P. C. in regard to her giving of the sweet to Chameli or otherwise compelling or inducing her to leave her father's place. This contention therefore could not avail the Respondent.

6. We are therefore of the opinion that both the Courts below were in error in convicting the appellant of the offence under S. 366, Penal Code. We accordingly set aside her conviction and the sentence passed upon her and order that she be acquitted and discharged.

Accused acquitted.

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