Nafe Singh and Another

Vs

The State of Haryana

Criminal Appeal No. 125 of 1968

(Dua, J.)

16.03.1970

JUDGMENT

DUA, J. -

1. In this appeal special leave was granted by this Court only in regard to the question of sentence. Nafe Singh and Jai Karan were convicted by the learned Additional Sessions Judge, Sangrur for offences under Sections 366 and 376, I.P.C. and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 100/- and in default to undergo further rigorous imprisonment for six months. Nafe Singh further convicted for an offence under Section 302 and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 100/-; and in default of payment of fine to suffer further rigorous imprisonment for six months. The substantive sentences in his case were directed to be concurrent. Smt. Ginna, wife of Jai Karan, tried for abetment of the offences was acquitted.

2. According to the prosecution both the appellants on February 17, 1965, at about 7 p.m. caught hold of Smt. Phuli, a young married girl, when she was going from her house to her Gitwar carrying cow dung. It was dark and the streets were deserted. They took her to Jai Karan's house after gagging her. There both of them committed rape on her and after criminally assaulting her Nafe Singh went further and feloniously relieved her of her gold and silver ornaments against her will.

3. Shri D. K. Kapur, the learned advocate for the appellants, submitted that Smt. Ginna, wife of Jai Karan, appellant, having been acquitted by the Trial Court, the case against the appellants must be held not to have been established beyond the possibility of reasonable doubt. In our opinion this argument which challenges the appellants' conviction is not open to the learned advocate because special leave was granted only on the question of sentence. Once challenge to the appellants' conviction is held to be outside the purview of this appeal the question of the offence having not been established beyond the possibility of a reasonable doubt can by no means be open for consideration. The counsel then contended that according to the medical evidence there was no injury on the private parts of the prosecutrix and this would show that the sexual intercourse with her was not against her consent. This argument again covers the prohibited field in the appeal. The learned advocate explaining his submission said that no physical violence was used against the prosecutrix as there were no serious injuries found on her person and, therefore, the sentence imposed should be held to be excessive. We are not impressed by this argument. Merely because the helpless victim of the offence was frightened into resignation and non-resistance in the face of inevitable compulsion, cannot be considered as a mitigating circumstance particularly on the facts of the present case. Finally it was argued that the sentence of 7 years rigorous imprisonment is the maximum sentence prescribed and is in the circumstances of this case excessive. The submission

again is not well-founded. The offence under Section 365, I.P.C. is punishable with imprisonment for 7 years but the charges in the present case are more serious. They are under Sections 366 and 376. Under both of them the maximum punishment prescribed is rigorous imprisonment for ten years and imposition of fine. The offence under Section 366, I.P.C. was complete the moment the prosecutrix was forcibly removed from the street with the requisite intention provided in the section. The commission of rape was an offence under Section 376, I.P.C. The two appellants were liable to be convicted for both the offences. After the amendment of Section 35, Cr. P.C. in 1923 a person convicted of two or more offences (which may not be distinct) at one trial is liable to be sentenced to the several punishments prescribed therefore subject of course to the provisions of Section 71, I.P.C. This aspect may, therefore, legitimately be kept in view when considering whether the sentence imposed in this case is excessive. The two appellants before us, we are informed, are uncle and nephew and it is not denied that they are both married. In view of all these circumstances the offences must be considered to be not only very serious but also of extremely anti-social character. That Nafe Singh, after the criminal assault also deprived the prosecutrix of her ornaments further aggravates his conduct. Lastly it has to be borne in mind that the question of sentence is normally a matter of judicial discretion of the Trial Court and this Court on appeal by special leave does not, as a rule, interfere with the exercise of such discretion. The sentence, in our opinion, is by no means too severe and indeed, if anything, it is somewhat lenient. The appeal accordingly fails and is dismissed.

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