

Brij Lal Sud and Another

Vs

The State of Punjab

Criminal Appeal No. 127 of 1968

(M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

18.03.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. In this appeal by special leave Brij Lal Sud and Roshan Lal Sud, two brothers, sons of Amar Nath Sud, shopkeepers, Sirhind, District Patiala, appeal against their conviction under Section 366 of the Indian Penal Code and sentence of six months rigorous imprisonment and Rs. 100. - fine each with further imprisonment for one month in default of payment of fine. The facts of the case are that the prosecutor Balbiro (P.W. 2) was living with her mother at Faridkot. The father of Balbiro had died when she was a child. About a year and a half before the occurrence, she was working as a maid at the house of Smt. Sham Kaur (P.W. 11) at Faridkot, Later, Sham Kaur went to Manimajra and Balbiro also went with her. There she began attending a sewing class and came to know the third accused in the case, Swaran Kaur, who was also going to the center to learn sewing. Swaran Kaur was also convicted with the other two accused and received a sentence of three months' rigorous imprisonment. She has not appealed.

2. The long and short of the case is that Balbiro was taken away by Swaran Kaur, ostensible at the instance of the two brothers. She remained away for a period of 16 hours. This occurrence took place on 24th March, 1965. The prosecution examined witnesses who established that Balbiro was kidnapped any that story has been accepted by the two Courts below. We see no reason to differ from the concurrent findings of the High Court and the Court of sessions.

3. However one question arises in this case. The girl was under the age of 18 and therefore an offence under Section 366 was in fact committed. She was very near that age. Indeed she herself gave the age as 18 years. The medical evidence showed that this girl was fully developed and used to sexual intercourse and her physical appearance should that she had been perhaps indulging in the for quite sometime. It was not, therefore, the only occasion when show was in the company of men. This reflects on the question of her consent, but consent is material because she was below age. All the same in the case of woman of this character the offence is a just little more than a technical offence. Because of this we think it is not necessary to insist on the full sentence of six months. The accused were released on bail as far back as 1968 when they had undergone a substantial part of their sentence. After such a lapse of time it is hardly necessary to send them back to jail to serve out the balance. There are good reasons to think that the girl was probable consenting. Another odd feature is that tow brothers have been charged with the offence and surely both of them could not be coveting the same girl. We therefore think that the ends of justice will be served by treating the period of imprisonment already undergone by them as sufficient for this case. The sentence of fine and the imprisonment in default will however stand. With these modifications, the appeal fails and

is dismissed. The bail bonds are cancelled.

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