

Pyare Lal

Vs

State of U.P.

Criminal Appeal No. 47 of 1978

(S. Natarajan, A. P. Sen JJ)

23.01.1987

JUDGMENT

NATARAJAN, J. -

1. This appeal by special leave by the appellant Pyare Lal is directed against the judgment of the Allahabad High Court in Criminal Appeal No. 3138 of 1972 confirming his conviction under Section 366 read with Section 109 of the Indian Penal Code (for short IPC) by the II Temporary Civil and Sessions Judge, Orai and the sentence of seven years' RI awarded therefor.
2. One Roop Narain (accused 1) and his aunt's son viz. Pyare Lal, the appellant herein were tried along with another accused by name Babu for various offences relating to the abduction, rape and under of Roop Narain's wife, deceased Shri Bai. While Roop Narain and the appellant were charged under Sections 366 and 368 read with Section 109 IPC and Section 120-B IPC, the other accused Babu was tried for offences under Sections 366, 368, 376, 324 and 120-B IPC. Roop Narain and the appellant were convicted under Sections 366 ad 368 read with Section 109 IPC and sentenced to undergo RI for seven years under each count, the sentences to run concurrently. Accused Babu was found guilty under various charges including the charge under Section 302 IPC and sentenced to life imprisonment besides varying terms of imprisonment for the other offences. In the appeals preferred by the three convicted accused to the High Court Babu was acquitted of all the charges and set free. The conviction of Roop Narain and the appellant under Section 368 read with Section 109 IPC was set aside but their conviction under Section 366 read with Section 109 IPC and the sentence therefor were confirmed. While Roop Narain has served out his sentence the appellant has preferred this appeal.
3. The facts of the case are to the following effect. Roop Narain and his wife, deceased Shri Bai were living in village Mudiya. Their married life was not happy and Roop Narain wanted to get rid of Shri Bai and indeed sought for a divorce at a village panchayat held on November 30, 1970. Shri Bai, however, refused to be divorced. Therefore, in order to get rid of her she was sold to Babu so that he could take her away. To enable Roop Narain to sell Shri Bai, the appellant, who is a resident of village Chilla had brought Babu of village Sadupura to Mudiya on the evening of November 30, 1970. When the panchayat talks failed Shri Bai had to been trusted to the custody of Babu without rousing her suspicion. Consequently, on the next morning i.e. December 1, 1970 Shri Bai was given to understand that Roop Narain was taking her to Jhansi for setting up residence there. Believing the statement, Shri Bai left village Mudiya along with her husband as well as the appellant and the stranger Babu. After proceeding some distance Roop Narain turned back saying he would attend to some unfinished work and then join the party but in the meanwhile the others may proceed to Jhansi. Not suspecting anything Shri Bai went along with the appellant and Babu to Jhansi. After

they reached Jhansi the appellant gave the slip and went away leading Shri Bai alone in the custody of Babu. Babu took Shri Bai to Sadupura stating that the appellant and Roop Narain would join them there. At Sadupura Babu kept Shri Bai in solitary confinement in a house for two days. During that period he raped her. When Shri Bai begged him to release her he refused to do so on the ground that he had purchased her and she must, therefore, lead life with him. When Shri Bai protested that she being a Brahmin cannot live with a Kurmi like Babu he became enraged and beat her and then poured kerosene over her and set fire to her clothes. Thereafter, Babu locked the door of the house and went away. Shri Bai managed to put out the fire by pouring over herself the water kept in a pot in the house. In the night Babu returned and carried Shri Bai to a field on the outskirts of the village and abandoned her there. For two days Shri Bai lay unnoticed by anyone in the field. On December 6, 1970 some persons happening to pass the field heard her groans and rescued her. Shri Bai informed them as to how she had been abducted from village Mudiya and brought to Sadupura and as to how she had sustained burns on her body. She was then taken to the police station at Konch and she gave a report (Ex. Ka-6). Later in the evening she also gave a statement (Ex. Ka-18) to the Tehsildar Magistrate. She was admitted in the hospital and treated for her injuries. While in the hospital another statement (Ex. Ka-19) was also recorded under Section 161(3) CrPC. Her brother PW 2 Durga Prasad came and saw her in the hospital and she apprised him of what all had happened. In spite of the medical treatment Shri Bai died on December 19, 1970. The post mortem examination revealed that she had died on account of toxemia and shock resulting from the burn injuries sustained by her. After completion of investigation Roop Narain, Pyare Lal (appellant) and Babu were charged with the respective offences committed by them.

4. In the statements of the accused under Section 313 CrPC the appellant and Babu denied their complicity in the offences complained of. The appellant, however, admitted his relationship with Roop Narain. Roop Narain admitted that he and Shri Bai were not living happily, that panchayat was held on November 30, 1970, that Shri Bai told the Panchayatdars that she did not want a divorce and instead she wanted that Roop Narain should take her to village Chilla and set up residence there. He has further stated that Pyare Lal took Shri Bai with him to village Chilla in order to keep her there for one month for giving advice to her. He denied the rest of the prosecution case.

5. What falls for consideration in this appeal is whether the Sessions Judge and the High Court were justified in convicting the appellant under Section 366 read with Section 109 IPC and sentencing him to seven years' rigorous imprisonment.

6. Before considering the evidence in the case we may set out certain facts and inferences which are incontrovertible. Admittedly, Shri Bai was the wife of Roop Narain and was living with him in village Mudiya till the morning of December 1, 1970. Roop Narain was not happy with her and wanted to get rid of her and had actually convened a panchayat on the evening of November 30, 1970 in order to secure divorce. Shri Bai, however, would not agree to a divorce. Roop Narain had, therefore, to think of some other means to get rid of her. Shri Bai was last seen at village Mudiya on the morning of December 1, 1970 and thereafter no one had seen her in that village. In fact Roop Narain himself has stated before the Sessions Judge that the appellant had taken away Shri Bai with him. As to what happened after Shri Bai left Mudiya and was rescued by some persons on the afternoon of December 6, 1970 we have only the statements of Shri Bai. When she was seen by the villagers on December 6, 1970, she was lying helpless in a field with burn injuries all over her body. Sadupura is about 150 miles away from Mudiya. It is obvious that Shri Bai could not have gone over to Sadupura from Mudiya all by herself and likewise she could not have sustained the burn injuries by her own acts. It, therefore, follows that she must have been taken by someone from village Mudiya to Sadupura on some pretext. It also follows that she must have been set fire to by someone

and made to sustain burn injuries. It is in the light of these premises the prosecution evidence against the appellant has to be considered.

7. Having regard to the close relationship of the appellant with Roop Narain there is nothing strange or improbable in the appellant abetting Roop Narain in getting rid of Shri Bai. For that purpose the appellant is said to have brought Babu from Sadupura and introduced him to Roop Narain. Though the appellant would deny having done so, PW 9 Halke, one of the Panchayatdars has deposed that the appellant and a companion of his were present at the panchayat along with Roop Narain. Roop Narain himself, as already mentioned, has stated that after the panchayat the appellant took away Shri Bai with him. As many as four witnesses viz. PW 1 Sone, PW 3 Ram Das, PW 4 Behari and PW 14 Chotke, all residents of Mudiya have deposed that they saw Shri Bai leaving Mudiya on the morning of December 1, 1970 in the company of Roop Narain and the appellant and another stranger. Insofar as the identity of Roop Narain and the appellant is concerned the witnesses cannot make any mistake because both the persons were known well to them. The Sessions Judge and the High Court have accepted the evidence of PWs 1, 3, 4 and 14 as truthful and we find no justification whatever to differ with the concurrent findings of the two courts.

8. In all her statements, oral as well as written Shri Bai has clearly stated that her husband Roop Narain and his cousin (Jeth) Pyare Lal were responsible for her being taken to Jhansi. She has further stated that after she reached Jhansi Pyare Lal deserted her and Babu had taken her from there to Sadupura on false pretexts. She has then stated as to how Babu kept her confined in the house and violated her person and subsequently caused burn injuries to her and then carried her to a field and left her there. Though PWs 6, 12 and 13 have failed to state that Shri Bai told them as to how she had come by her fate, PW 8 the village chowkidar, PW 18 Jagdish Narain and PW 2 Durga Prasad have clearly stated that Shri Bai informed them as to how her husband and Pyare Lal had played a fraud on her and how the stranger Babu had treated her. Apart from their evidence, there are the dying declarations (Exs. Ka-6, Ka-18 and Ka-19) recorded by the police officers and the Tehsildar Magistrate. Reading these statements there can be no doubt whatever that Roop Narain and the appellant had made Shri Bai leave Mudiya by deceitful means so that she can be taken to Sadupura by the stranger and forced to marry him or to have illicit intercourse with him. The dying declarations of Shri Bai, in spite of their probative content could not be acted upon by the High Court insofar as Babu is concerned because of the inadequacy of evidence to establish his identity. But insofar as Roop Narain and the appellant are concerned, there is no room and indeed there can be no room for any doubt regarding their identity. We are, therefore, fully satisfied that as against Roop Narain and the appellant the evidence is cogent and clinching to justify their convictions under Section 366 read with Section 109 IPC.

9. Mr. Garg, learned counsel for the appellant attempted in the first instance to comment upon the evidence of PWs 1, 3, 4 and 14 but gave up that line of argument, when we indicated that in the absence of compelling factors this Court will not reappraise the evidence of witnesses which has been concurrently accepted by the Sessions Judge and the High Court. Mr Garg then contended that even if the prosecution evidence is accepted in toto the evidence does not establish the guilt of the appellant for the offence charged against him. The submission of the learned counsel was that since Shri Bai has stated in her dying declarations that she went to Jhansi as per the directions of her husband there cannot be any question of the appellant abetting Roop Narain in making Shri Bai leave the village by deceitful means. The argument though ingenious is wholly unsustainable, as it overlooks the fact that it was the appellant who had brought the stranger to Mudiya and made it possible for Roop Narain to strike a deal with him for getting rid of Shri Bai. In fact in one sense the appellant must be deemed the arch-villain in the case because but for him the stranger and Roop

Narain could not have met each other and entered into a deal for Roop Narain getting rid of Shri Bai. The argument that the appellant played no part in Shri Bai leaving the village in the company of the stranger is totally opposed to facts. If the appellant had not accompanied Shri Bai, she would not have left Mudiya and gone to Jhansi in the company of a stranger. Moreover, the appellant's conduct in leaving Shri Bai in the lurch at Jhansi speaks volumes of the role played by him. It is, therefore, futile to contend that the appellant had no hand in the abduction of Shri Bai from Mudiya. On the assumption that the evidence on record does not establish the guilt of the appellant but nevertheless the Sessions court and the High Court have convicted the appellant by wrongly casting the onus on him to prove his innocence, the learned counsel cited certain decisions before us to assail the conviction of the appellant. The cases referred to are : Ng v. Queen (1958 AC 173), Behram Khurshed Pesikaka v. State of Bombay ((1955) 1 SCR 613, 625 and 651 : AIR 1955 SC 123 : 1955 Cri LJ 215), K. M. Nanavati v. State of Maharashtra (1962 Supp 1 SCR 567, 600 : AIR 1962 SC 605 : 1962 (1) Cri LJ 521). These decisions set out propositions of law which are too well known viz. The burden of proving the guilt of an accused is always on the prosecution, that it is not incumbent on the accused to enter upon his defence unless and until the prosecution has discharged its burden and that even if the accused fails to prove the defence set up by him a conviction cannot follow unless the prosecution has succeeded in proving his guilt. These decisions have no relevance this case because the prosecution has not failed to discharge its burden of proof of the offence and the onus has not been cast upon the appellant to prove his innocence.

10. Another argument of Mr Garg was that when Babu had been acquitted of all the charges, the appellant cannot be convicted for an offence under Section 366 read with Section 309 IPC. The argument stems from a fallacy and for that very reason it has to be rejected. By the acquittal of Babu the prosecution case that Shri Bai was abducted for the purpose of being compelled to marry another person or forced to have illicit intercourse with him has not been rendered false. The prosecution case has been found to be true by the High Court but only because Babu's identity was not satisfactorily established the High Court has given him the benefit of doubt and acquitted him. Babu's acquittal cannot, therefore, in any way absolve the appellant and Roop Narain of the offences committed by them. Mr Garg referred to the decision in Umadasi Dassi v. Emperor (ILR 52 Cal 112 : AIR 1924 Cal 1031 : 28 CWN 1046 : 26 Cri LJ 11) to contend that when the principal accused is acquitted the accomplice charged as an abettor must also be acquitted. We need only point out that the acquittal of Babu was for lack of identity and not on the ground that no one had abducted Shri Bai or that no one had been abetted by Roop Narain and the appellant to abduct her.

11. This is a tragic case where the appellant and his cousin Roop Narain had traded Shri Bai with a stranger who had not only violated her person but also poured kerosene and set fire to her without any pangs of conscience. It is regrettable that the perpetrator of the serious offences has escaped punishment for want of adequate proof of identity. But insofar as the appellant and Roop Narain are concerned there is no room for any doubt whatever about their complicity in making Shri Bai leave Mudiya village by deceitful means and go to Jhansi with the stranger so that she could further be taken by him to Sadupura and forced to marry him or have illicit intercourse with him.

12. We find the appeal to be devoid of merit. We sustain the conviction and the sentence awarded to the appellant (which is not excessive) and dismiss the appeal. The bail bonds executed by the appellant will stand cancelled. The appellant shall surrender himself to custody, failing which he will be taken into custody, so as to serve the remaining period of the sentence.

</html