

Arun Kumar and Another

Vs

State of U. P.

Criminal Appeal No. 35 of 1979

(S. Natarajan, Kuldip Singh JJ)

13.04.1989

JUDGEMENT

NATARAJAN, J. –

1. The appellants Arun Kumar and Narain Singh and one Bal Bahadur were acquitted by the Sessions Judge, Tehri Garwal of offences punishable under Sections 366, 376, 302 and 201 IPC. In the appeal preferred by the State against their acquittal, the High Court had split up the case against Bal Bahadur because notice of appeal could not be served on him. On reappraising the evidence, the High Court confirmed the acquittal of the appellants for the offences punishable under Sections 375, 302 and 201 IPC, but however found them guilty for the offence under Section 366 IPC and accordingly convicted them and sentenced them to undergo RI for 10 years. Hence the present appeal by the appellants.

2. Appellants 1 and 2 were employed as Overseer and driver respectively and the third accused Bal Bahadur was employed as a dak-runner, in a para-military organisation under the command of the Director General of Border Roads. The appellants and their companion came to be charged for the various offences mentioned above in the following circumstances.

3. The first informant PW 14 Nain Singh was a 70 year old man who had lost all his five sons. He was living with his youngest widowed daughter-in-law Jamuna Devi, aged about 25 years. In the second week of August 1968 he went on a pilgrimage to Badrinath along with Jamuna Devi and stayed there for three days with PW 23 Bhag Singh, a brother of Jamuna Devi. On the morning of August 16, 1968 PW 14 and Jamuna Devi left Badrinath for going back to their village. They went walking along the road leading to Pipalkoti and reached Joshi Math at about 4.00 p.m. Proceeding onwards they reached Annimath and there PW 14 noticed the two appellants and their companion taking tea at the house of PW 1 Madhwanand. One of them was in uniform and the other two were in civilian dress. After passing Annimath PW 14 and Jamuna Devi reached the junction of the footpath with the motorable road. PW 14 sat down there to have a smoke and the appellants and their companion came near him and enquired him as to where from he was coming and where he was going. On PW 14 giving them the details of himself and the place of his destination, one of them suggested that he and Jamuna Devi could halt for the night at Helang in the tea shop of one Gopal Singh. After making the suggestion, the appellants and their companion left the place. PW 14 and Jamuna Devi resumed their walk but soon PW 14 noticed the three persons to be keeping track of him and Jamuna Devi by alternately following them and going ahead of them. The movements of the three persons aroused the suspicion of PW 14 and he suspected that they were having some evil designs on Jamuna Devi. When PW 14 and Jamuna Devi reached the outskirts of Helang it was about sunset time. PW 14 noticed the three persons to be waiting near a bridge at the entrance of

Helang. As the hour was not very late and as the place appeared to be crowded PW 14 thought of going to the next place called Balakuchi and finding a halting place there.

4. After PW 14 and Jamuna Devi had walked a distance of about one or one and half kilometers, they came to a lonely place where there were no houses nearby. It had also become dark by then. At that time PW 14 saw the three persons coming from behind and one of them to be having a torchlight. Suddenly appellant 1 Arun Kumar caught hold of PW 14 walking behind Jamuna Devi and pushed him down to the ground and sat on his chest. Seeing this Jamuna Devi started running but the other two persons chased and caught hold of her and dragged her to a bushy place, below the road level. Appellant 1 who sat on PW 14's chest tried to gag his mouth with his right hand but accidentally he placed his right middle finger inside the mouth of PW 14 and the latter gave him a sharp bite. Appellant 1 cried out in pain and got up from the chest of PW 14 and went to the bushy place to join his companions who had taken Jamuna Devi there. PW 14 managed to get up and went near the bushy place. He heard the cries of Jamuna Devi that she was being dishonoured by the assailants. He picked up some stones and threw them in the direction wherefrom Jamuna Devi's cries for help came. One of her assailants uttered a threat that if PW 14 did not run away from the place he would be killed. PW 14 therefore, felt afraid to remain there and ran back and reached a hamlet known as Gulabkoti. He informed some of the inhabitants of that place as to what had happened and sought their help but could not persuade them to go to the scene of occurrence to search for Jamuna Devi as they felt afraid to go out in the night in search of the assailants who were employees of the Directorate of Border Roads. PW 14 therefore spent the night at Gulabkoti and on the next morning, he and some others went and made a search but there was no trace of Jamuna Devi anywhere. PW 14 then went to Helang and informed the people there of the misery that had befallen him. Some of the people there, who had noticed the suspicious movements of the appellants and their companion the previous evening told PW 14 who those persons were and gave him their names. Thereafter PW 14 appeared before the Sub-Divisional Magistrate, Joshimath and gave a report against the three persons. The Sub-Divisional Magistrate sent the report to the police station at Joshimath and a case was registered against the appellants and Bal Bahadur. Two constables went along with PW 14 and again a search was made but Jamuna Devi was not to be found. On August 22, 1968, the investigating officer was able to find a saree lying in the bushes at a place about one furlong away from where she had been last seen by PW 14. The saree was identified by PW 14 and PW 23 as that of Jamuna Devi.

5. A requisition was given to the military authorities for arresting the appellants and Bal Bahadur and they were taken into custody on August 22, 1968. On August 23, 1968 appellant 1 was got examined by PW 7 Dr. O. P. Mehrotra for his injuries. On September 12, 1968 a Test Identification Parade was held by a Magistrate and in the said parade, the appellants and Bal Bahadur were correctly identified by PW 14 and three other witnesses Suryamani, Baswanand and Balwant Singh.

6. On September 17, 1968, the appellants and Bal Bahadur made confessional statements to Shri H. B. Sharma, Magistrate, 1st Class, Chamoli but they retracted from those statements during the trial. Since Jamuna Devi's dead body could not be traced in spite of diligent search, the investigating officer concluded that she must have been murdered and her body thrown into the Alaknanda river flowing nearby. After completing the investigation, the investigating officer laid charge-sheet against the appellants and Bal Bahadur under Sections 366, 376, 302 and 201 IPC.

7. To prove the case against the appellants and Bal Bahadur, the prosecution examined 24 witnesses including PW 14. PW 1 Madhwanand, PW 2 Jayanand and PW 3 Baswanand are residents of the hamlet Annimath. The appellants and Bal Bahadur were known to all of them. PWs 1 and 2 stated

that on August 16, 1968 the appellants and Bal Bahadur came to the house of PW 1 at about 6 p.m. and had tea there. About five minutes after they had left the place, PW 2 noticed PW 14 and Jamuna Devi going along the road towards Helang. PW 3 whose house is situated near the footpath at Annimath saw the appellants and their companion going along the footpath towards the motorable road. A little later, he saw PW 14 and Jamuna Devi coming along the footpath and he made enquiries and learnt from PW 14 as to who he was and where he and Jamuna Devi were proceeding. PW 3 also noticed that after PW 14 and Jamuna Devi had gone near the motorable road, PW 14 sat near a timla tree and the appellants and their companion tarried near him for some minutes and then left the place.

8. PW 14 Gopal Singh, a tea shop owner, PW 5 Buddhi Singh, a shopkeeper and PW 6 Bahgwant Singh belong to Helang. According to PWs 4 and 6 the appellants and their companion came to the tea shop of PW 4 at about 6 p.m. On August 16, 1968 and enquired of him whether he had seen an old man and a young woman going along the road and on PW 4 telling them that he had seen the two persons going towards Balakuchi only a short while ago, the three persons proceeded in that direction. PW 5 gave evidence to the effect that at about 7.30 p.m. On August 16, 1968 he had seen PW 14 and a young woman going towards Peepalkoti and the appellants and their companion going fast in the same direction a little while thereafter.

9. PW 7 Dr. O. P. Mehrotra examined appellant 1 on August 23, 1968 and found an abrasion on his right middle finger and another abrasion on the right forearm. PW 7 gave his opinion that the injury on the right middle finger could have been caused due to a human bite some days earlier.

10. The appellants and Bal Bahadur denied their complicity in the offences complained of and put forth a plea that because of a quarrel between them on the one hand and the shopkeepers and the police of Helang on the other about the use of the latrines of the para-military establishment by the latter, PW 5 Buddhi Singh and the local police have conspired together and falsely foisted a case on them.

11. The Sessions Judge did not consider the prosecution evidence worthy of acceptance to convict the accused persons under any of the charges. The High Court, however, found the evidence to be conclusive against the appellants insofar as the charge under Section 366 IPC is concerned and convicted and sentenced them after splitting up the case against Bal Bahadur as he could not be served notice in the appeal against acquittal filed by the State. In awarding the conviction to the appellants, the High Court has eschewed from consideration the retracted confessions of the appellants and also the evidence of PW 6 as it suffered from several contradictions.

12. Mr. O. P. Sharma, learned counsel for the appellants, after taking us through the records of the case and the judgments of the Sessions Judge and the High Court, strenuously contended that the High Court ought not to have differed from the Sessions Judge, who has rendered a well reasoned judgment, and convicted the appellants under Section 366 IPC. The learned counsel stated that the prosecution case suffered from numerous infirmities viz. the alleged abduction of Jamuna Devi is said to have taken place at night time and as such PW 14 who was an old man of 70 years, could not have noticed the identity of the culprits; the injury found on the right middle finger of appellant 1 has not been satisfactorily proved to be on account of human bite; the witnesses who are said to have noticed the movements of the appellants and PW 14 and Jamuna Devi on August 16, 1968 could not in fact have done so as there was no special reason for them to have singled them out and watched their movements from out of the numerous persons who should have gone along the road on that day; that there was enmity between the appellants and PW 5 Buddhi Singh because of the

quarrel over the use of the latrines put up by the Border Road Force. It was further urged that since the Sessions Judge had taken a plausible view of the evidence to acquit the accused persons, the High Court ought not to have interfered with their acquittal merely because it felt that the evidence of the prosecution witnesses should have been construed differently.

13. We have given our careful consideration to the various contentions put forth by Mr. Sharma. We however, find that the High Court was fully justified in convicting the appellants under Section 366 IPC. The fact of PW 14 going to Badrinath with his daughter-in-law Jamuna Devi and spending three days there and thereafter proceeding along the road via Joshimath, Annimath and Helang on August 16, 1968 is incontrovertibly proved by the evidence of PWs 14, 23 and 1 to 5. Likewise, the fact of Jamuna Devi missing from about 8 or 9 p.m. On August 16, 1968 does not also admit of any doubt. Immediately after the occurrence, PW 14 had gone back to Helang and informed PWs 4, 5 and others that his daughter-in-law had been abducted and sexually assaulted. No search could be made for her on that night itself because of the lateness of the hour and the witnesses being afraid of the appellants and their companion as they belonged to a para-military organisation. However, the witnesses, to whom the appellants and their companions are known and who had seen their movements earlier that evening had apprised PW 14 as to who the culprits were. On the morning of August 17, 1968, a search was made for Jamuna Devi but it proved of no avail. Hence PW 14 had gone to the Sub-Divisional Magistrate Joshimath and given a report. Therein he had not only referred to the details of the occurrence but had made specific mention of his inflicting a bite injury on the finger of the person who had sat on his chest and tried to gag him. The presence of a bite injury on the right middle finger on appellant 1 is one of the strongest pieces of evidence in the case to prove the guilt of the appellants. The appellant 1 was sent for medical examination on the 23rd and PW 7 found an injury on his right middle finger. Because of lapse of time, the teeth mark could not be found on the finger but even so PW 7 has stated that the healing injury could have been caused by human bite on the 16th instant Appellant 1 has tried to explain the injury by saying that his finger had come into contact with a stone but the explanation is too unnatural a story to merit acceptance. The recovery of Jamuna Devi's saree from near the scene of occurrence is yet another piece of evidence to lend credence to the prosecution case. There was absolutely no reason for PWs 1 to 5 to depose falsely against the appellants. The reason why they were able to notice the movements if the appellants had behaved. Moreover PW 14 had gone and told them soon after the occurrence as to what had happened to him and Jamuna Devi, and therefore they would have remembered the movements of the appellants very clearly. The story of the appellants that they were at logger-heads with PW 5 and other shopkeepers at Helang on account of their refusal to permit the shopkeepers and the local police to use the latrines belonging to the Border Road Force and on account of enmity the case has been falsely foisted on them is too slender a story to be believed. Some reliance was placed by appellants on the testimony of PW 8 Surya Prakash, Assistant Executive Engineer, DGBR and PW 22 Major P. N. Karir, DGBR to prove the existence of a quarrel between PW 5 and other shopkeepers of Helang on the one hand appellant 1 of the DGBR on the other regarding the use of the latrines but the High Court has rightly held that the evidence of PWs 8 and 22 was only of a hearsay nature. Moreover it is inconceivable that PW 14 would leave out the real culprits and foist a case on the appellants in order to oblige PW 5 and others to settle scores with the appellants for the latter refusing the shopkeepers to make use of the latrines belonging to the Border Road Force. So far as the argument that PW 14 could not have noticed the identity of the culprits is concerned, it has to be remembered that there must have been sufficient starlight as otherwise PW 14 would not have ventured to go along a lonely road with his daughter-in-law at that part of the hour. As PW 14 had been seeing the appellants and their companion right from Annimath onwards, he would have had no difficulty in noticing their identity. There is also the fact that PW

14, along with PWs 3, 6 and another witness had correctly identified the appellants at the test identification parade.

14. As regards the contention that the High Court ought not to have convicted the appellants because the High Court felt that the Sessions Judge should have construed the evidence differently, we need only state that when the view taken by the Sessions Judge was found by the High Court to be manifestly wrong and that it had led to miscarriage of justice, the High Court was entitled to set aside the acquittal of the appellants and convict them under Section 366 IPC.

15. For all the aforesaid reasons, we find no merit in the appeal. Learned counsel for the appellants lastly submitted that in any event a sentence of 10 years RI is unduly harsh and excessive. We see no merit in this contention either. The appellants have committed a heinous offence by abducting a helpless widow for the sake of their carnal pleasure and therefore the offence committed by them has to be viewed very seriously.

16. In the result, the appeal fails and is accordingly dismissed. The appellants who are on bail shall surrender themselves to custody to serve out the remaining sentence failing with they shall be arrested and placed in custody.

17. Since the appeal against Bal Bahadur has been split up, we make it clear that neither the dismissal of the appeal nor the reasons given therefor shall be taken into consideration by the High Court while considering the appeal by the State against the acquittal of Bal Bahadur.

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