

Faiyas Ahmed and Others

Vs

State of Bihar

Criminal Appeal No. 440 of 1978

(P. B. Sawant, K. Ramaswamy JJ)

10.08.1990

ORDER

1. The only point which was urged in support of this appeal was that since there is no evidence on record of show that the woman - Maya Devi was abducted to compel her either to marry against her wish or to submit to sexual intercourse against her wish, the conviction of the accused under Section 366 of the Indian Penal Code was not warranted by law.

2. We, however, find that there is sufficient evidence on record to show that Maya Devi was abducted from her house when accused 1 and 2 had taken her against her wish and under threat up to Patna Railway Station and accused 3 and 4 had thereafter carried her similarly under threat from Patna Railway Station to village Ajaipur in Bihar Sharif. She was also confined in a house at Ajaipur village till she was recovered by the police after some hours. That will squarely bring the accused within the clutches of Sections 365 and 368 of IPC. The offences under these two sections are lesser offences compared to offence under Section 366 and, therefore, on the evidence before the court, they are liable to be convicted for the said offences.

3. The trial court had sentenced the accused 1 to 3 to four years rigorous imprisonment and accused 4 to four years simple imprisonment for the offence under Section 366 read with Section 34. The High Court had reduced the sentences of all the accused to two years rigorous imprisonment and simple imprisonment respectively for accused 1 to 3 and 4.

4. For the reasons stated earlier, we find that the accused were not liable to be convicted for the offence under Section 366 IPC but of a lesser offence under Sections 365 and 368 IPC. We are also informed that accused 1 has undergone rigorous imprisonment for nine months and accused 2 and 3 have undergone rigorous imprisonment for two months and one and a half months respectively. Accused 4 has died during the pendency of this appeal.

5. Taking into consideration all the facts and circumstances we modify the sentences of the accused as follows :

(a) Accused 1 is sentenced to rigorous imprisonment for the period which he has already undergone and is further sentenced to pay a fine of Rs. 2000 and in default to undergo imprisonment for two months.

(b) Accused 2 and 3 are similarly sentenced to undergo imprisonment for the period already undergone and to pay each a fine of Rs. 5000 and in default to undergo imprisonment for five months.

6. The accused-appellants are given three months' time to deposit the fine in the court of 5th Additional Sessions Judge, Patna in G.R. Case No. 764/70 (Trial No. 420/71). The fine, if recovered, will be paid to the father of the lady - Maya Devi.

7. The appeal is disposed of accordingly.

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