

Hari Ram

Vs

State of Rajasthan

Phoola

Vs

State of Rajasthan

Criminal Appeal Nos. 503 and 504 of 1979

(A. M. Ahmadi, V. Ramaswami – II, Smt. M. S. Fathima Beevi JJ)

05.03.1991

ORDER

1. The appellant along with one another, Suraj Karan, were tried for the commission of offences punishable under Sections 342, 343 and 366, IPC, for abducting PW 1, Durga, by deceitful means and for wrongly confining her at different places against her will. The learned Additional Sessions Judge acquitted Suraj Karan, but convicted the present appellants for abduction and sentenced them to suffer rigorous imprisonment for three years and to pay a fine of Rs 500, in default to suffer rigorous imprisonment for three months. In addition, appellant Phoola was convicted under Section 342, IPC and was directed to suffer rigorous imprisonment for one month whereas appellant Hari Ram was convicted under Section 343, IPC, and was directed to suffer rigorous imprisonment for six months. The substantive sentences were to run concurrently. Against the said conviction and sentence, the present appellants preferred two separate appeals to the High Court of Rajasthan which were disposed of by a learned Single Judge of that court by a common judgment. He upheld the conviction of both the appellants for abduction but reduced the sentence to two years rigorous imprisonment and fine of Rs 500, in default three months imprisonment. The conviction of appellant, Hari Ram, under Section 343 was altered to one under Section 342, IPC, and the sentence was reduced to one month's rigorous imprisonment. The conviction and sentence of appellant, Phoola under Section 342, IPC, was maintained. It is against the said order that the convicted persons have approached this Court under Article 136 of the Constitution.

2. We have heard the learned counsel for the appellants as well as the State of Rajasthan. We were taken through the evidence of the prosecutrix, PW 1 Durga. On a reading of her evidence, it becomes clear that the prosecution allegation that she was abducted against her will cannot be accepted. In her deposition she has stated that on the date of incident, February 18, 1977, she was at the house of her father-in-law, PW 3 Moba when the two appellants approached her and told her that her brother was seriously ill at Village Tihari. Thereupon, her father-in-law permitted her to go with the two appellants to see her brother. She took her seat on the carrier of the cycle of appellant-Phoola. The other appellant, Hari Ram, was on another cycle. About 10 or 12 paces from her house the road bifurcated one proceeding to Tihari via Chansey and the other straight to Dhand, which was at a distance of about seven miles. She deposes that when the appellants took the road to Dhand she protested but she was told that her brother was at Dhand. On reaching Dhand, she was taken to the

house of appellant-Hari Ram and when she demanded to see her brother she was told that her brother had expired. She states that thereafter she was locked up in a room with the acquitted accused Suraj Karan. From Dhand she was taken to Deopuri in a bullock cart driven by Chaturbhuj, which is at a distance of about 12 miles. Admittedly, she did not complain to anyone at Dhand or Deopuri where she was kept at the house of one Ramlal Jat. From Deopuri she was taken in the same bullock cart to Kadha to the house of Hari Ram's father-in-law and from there by bus to Ajmer at the house of PW 5, Kailash. Thus, she stayed at the aforesaid places for a total period of about ten days but, admittedly, at no point of time she complained to anyone that she was brought by deceit and was being detained against her will. She did not complain to anyone in the bus even though she was along with the other passengers for eight to nine hours. There was a lady living in the house at Ajmer to whom also she did not make any complaint but instead told her that the accused were her brothers. This would show that she made no complaint to anyone even when she had an opportunity to do so. It would thus appear from the conduct of the prosecutrix that she was a consenting party and her statement that she had been abducted against her will is difficult to accept. It is not possible, therefore, to agree with the view taken by the High Court that she was a helpless victim who had surrendered or resigned to her fate. Once the evidence of the prosecutrix is not found to be free from blemish the conviction of the appellants cannot be sustained. On a plain reading of the evidence of the prosecutrix, we are satisfied that she is not telling the truth and has suppressed material facts. She has been contradicted on material aspects of the case. Her testimony is not natural and it is, therefore, difficult to accept it.

3. In the result, we allow both the appeals, set aside the order of conviction and sentence passed by the courts below and acquit them of all the charges levelled against them. The fine, if paid, will be refunded. The bail bond will stand cancelled.

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