

ALLAHABAD HIGH COURT

Shiam Sunder

Vs

Emperor

(Ryves. J.)

22.06.1922

JUDGMENT

Ryves, J.

1. This is at application in revision by Shiam Sunder who has been convicted under Section 498 of the Indian Penal Code and sentenced to 18 months' rigorous imprisonment and to pay a fine of Rs. 200. It appears that Musammat Ganga Dei, wife of the complainant, Sita Ram, left his house and that on the 6th of April 1921 Sita Ram made a report to this effect saying that he suspected two persons of having abducted her. Subsequently, Gendan Lal, a constable of thana Saurikh, brought this woman Ganga Dei and Musammat Khilia, another of the accused, to the thana having reason to believe that she had run away from her home. He made a report at the thana and there Musammat Ganga Dei's statement was also taken down. In consequence of that statement information was given to the husband, Sita Ram, and the woman was restored to him. Sita Ram afterwards brought this case against Shiam Sunder and others. The case was first thrown out by a Tahsildar Magistrate, and then on further enquiry ended in the conviction of the accused by a Magistrate of the First Class. All the convicts appealed. Musammat Ganga Dei was a witness in the case and she deposed then against Shiam Sunder, stating that she was taken to his house and there ravished by him against her consent. The learned Judge in his judgment writes as follows: "Musammat Ganga Dei's statement was taken down as part of the report. According to that statement the three appellants have been rightly convicted." A little later on he says "It is argued that Musammat Ganga Dei's statement recorded at the thana on the 26th of April 1921, is inadmissible. I fail to see why. In my opinion it is obviously admissible. Moreover, it is strong evidence, as at that time Musammat Ganga Dei was still under the influence of Musammat Khilia and had not come back into her husband's possession and under his influence. I believe that statement to be true." In revision, it is argued that Musammat Ganga Dei's statement to the Police was inadmissible in evidence. I quite agree. It was, a statement made not on oath, nor in presence of the accused, and of course they had no opportunity of cross-examining her on it. It is quite inadmissible as evidence for any purpose against the accused. It is admissible in evidence to contradict the sworn testimony of Musammat Ganga Dei, and I use it as such. Musammat

Ganga Dei has stated in Court that Shiam Sunder got her into his possession and then ravished her. I disbelieve entirely that he ravished her, but I do believe that he had sexual intercourse with her; and that, together with other reliable evidence that he had her in his custody, is quite enough to convict him of this offence. I cannot understand what the learned Sessions Judge means by saying that that statement (i.e., to the Police) is obviously admissible and, moreover, is strong evidence. If he meant to say that it is very likely, indeed most probable, that that statement represents the truth, I would agree with him, but the statement is not evidence. It is no more evidence in itself against an accused, than an ordinary First Information Report. When the person who made the previous statement is examined in Court, that statement can be used, as provided for in the Indian Evidence Act, to contradict and sometimes to corroborate the witness; but it is not substantive evidence by itself, and a conviction cannot be based on it. In my opinion the conviction was right, though not for the reasons given by the Courts below. The sentence is an extremely heavy one and is based largely on the assumption that it was possible that the accused meant to sell the girl in the Punjab. This is pure assumption and there is no evidence whatsoever to support it. Under these circumstances, I think a sentence of six months' rigorous imprisonment amply meets the justice of the case. The fine in the case of Shiam Sunder will be maintained. I, therefore, accept this revision in so far as I reduce the sentence on Shiam Sunder to one of six months' rigorous imprisonment from the date of his original conviction. The fine of Rs. 200 will stand.

2. I take up in revision the case of Ganga Ram and Musammat Khilia as the record of whose case is before me. They have not filed revisions. I think that, having reduced the sentence on Shiam Sunder, I must reduce the sentence on them to the same extent. The sentence on Musammat Khilia and Ganga Ram is reduced to six months' rigorous imprisonment from the date of their original conviction.

