Bhajan Lal vs State on 17 November, 1950

Equivalent citations: AIR1951ALL504, AIR 1951 ALLAHABAD 504

JUDGMENT

Wanchoo, J.

1. This is an appeal by Bhajan Lal against his conviction under Section 341, Penal Code, by the Additional Sessions Judge of Bareilly. The trial was with the aid of a jury which returned a unanimous verdict of guilty against the appellant.

2. The prosecution story was briefly this. One Sm. Majidan was the daughter of one Chhotey of village Sheopuri. She was married sometime in 1947 with Nanhe of village Kurtara. Nazir, who was also an accused in the Court below, is the brother of Nanhe. Nanhe died soon after the marriage and Nazir wanted to marry Sm. Majidan. As, however, he had already a wife, Sm. Majidan and her father were not agreeable to this proposal. This was, therefore, a cause of annoyance to Nazir. On 21-1-1949, the Nikah of Sm. Majidan was performed with one Munshi of village Titauli at village Sheopari. The aforesaid Nazir was present at this nikah and had tried that he should be the bridegroom, but was unsuccessful and returned to his village Kurtara. Sm. Majidan and her new husband, Munshi, and other members of the marriage party left for Titauli on the afternoon of 21-1-1949. They halted for the night at Bareilly junction railway station. In the morning they boarded the lorry which was going to Shahi with a view to get down in village Agras from where village Titauli is only one mile away. The road passes by village Kurtara. When the lorry was on the road near village Kurtara, the appellant, who is Mukhia of that village, stopped the lorry by raising his hand. As soon as the lorry stopped about fifty or sixty persons armed with lathis appeared on the scene and surrounded it. The appellant then ordered these persons to get into the lorry and pull out Sm. Majidan. Thereupon, Nazir and another Munshi got into the lorry and forcibly took Sm. Majidan from there. Munshi, the husband of Sm. Majidan and his two relations, Nazir and Roshan were also brought out of the lorry and given a beating. Thereafter, Sm. Majidan was taken away by Bhajan Lal, Nazir and six other persons to village Kurtara. There Bhajan Lal tried to compel Sm. Majidan to marry Nazir, but she refused. Nazir then took Sm. Majidan to his house and tried to force her to marry him, but she was adamant. He, however, removed certain ornaments which Mt. Majidan was wearing. In the meantime, Munshi, the husband, had proceeded to thana Shahi. and made a report there. The Sub-Inspector was not in the thana. He had come to Bareilly and was returning to Shahi when he got information on the way that a woman had been taken out forcibly from a lorry and taken away to Kurtara. The Sub-Inspector then went straight to Kurtara and met the appellant Bhajan Lal. There, it seems that on the intervention of the Sub-Inspector, Bhajan Lal got Nazir to produce Sm. Majidan who was taken in charge by the Sub-Inspector. On 23-1-1949, the Sub-Inspector again went to the village and this time ornaments which had been taken away by Nazir were handed over to him.

3. Bight persons including Bhajan Lal, appellant, and Nazir were prosecuted in connection with this incident. Seven of them including Nazir were charged under Section 366, Penal Code while Bhajan Lal was charged under Section 366 read with Section 109 of the same Code. Nazir was further charged under Section 379 of that Code for removing ornaments from the person of Sm. Majidan. The jury found the appellant, Nazir and the other six persons guilty under Section 341, Penal Code. They also found Nazir guilty under Section 379.

4. The appellant denied the charger So had Nazir and others. Their story was that Nazir was asking Sm. Majidan to return the ornaments which had been given to her by her first husband, Nanhe. Munshi of Titauli and others offered to settle this controversy in village Kurtara. It was for this purpose that Sm. Majidan, Munshi of Titauli and others came to Kurtara along with Nazir in the same lorry. As for the ornaments, the case of Nazir was that the woman herself gave these ornaments to him. All the accused persons denied that any such incident, as was alleged by the prosecution, took place.

5. The jury apparently disbelieved the story for the defence and accepted the story for the prosecution. It seems, however, that they did not believe that the woman was taken away in order that she might be compelled to marry against her will or be seduced to illicit intercourse and that is why, as directed by the Judge, they found Bhajan Lal and others guilty of wrongful restraint.

6. The first contention, on behalf of the appellant, is that the trial of the appellant jointly with Nazir, who had been charged under Section 379, Penal Code, contravened the provisions of Section 239, Criminal P. C. I am of opinion that there is no force in this contention. Clause (d) of Section 239 provides that persons accused of different offences committed in the course of the same transaction may be charged and tried together. The charge in this case was under Section 366 and Section 366 read with Section 109 and against Nazir only under Section 379, Penal Code. Now Section 366 is a continuing offence. It is true that Sm. Majidan was taken away by force from the lorry and the ornaments were removed in village Kurtara after sometime. But I am of opinion that the taking away of Sm. Majidan and the removal of her ornaments sometime later were clearly parts of the same transaction. Under these circumstances, there was, in my opinion, no illegality in charging Bhajan Lal under Section 366 read with Section 109 and the other seven accused under Section 366 and Nazir alone under Section 379 and trying them all in the same trial.

7. The next point that is urged is that the learned Judge misdirected the jury when he said in the charge that the absence of any interest on the part of Bhajan Lal in Mt. Majidan was a matter of no importance. It is urged that this meant that the jury was told that even if the jury found that Bhajan Lal had no motive for committing this crime, they need not attach any importance to it. It is one of the principles of criminal law that the inability of the prosecution to prove motive for a crime would not lead to an acquittal, if there is reliable evidence to prove that the crime was committed. It is only this principle which the Judge brought to the notice of the jury when he said as follows: "When direct evidence is available and is considered convincing the question of motive has no real importance." I do not think that it can be said that the Judge misdirected the jury when he brought this principle to their notice.

8. The next point taken is that the Judge should not have categorically said to the jury that it was to give little weight to the defence evidence. What the Judge said, while dealing with the defence evidence of the appellant was this: "Evidence of such casual type of witnesses should carry little weight." He had drawn the attention of the jury to the evidence and then expressed his opinion about it. Perhaps the opinion was expressed a little too forcefully. But considering that at the end, the Judge cautioned the jury and told them that they were not bound to accept any expression of opinion which he might have made during the course of the charge, it cannot be said that this rather forceful expression of opinion was a misdirection.

9. The next point urged is that the Judge omitted to tell the jury that Sm. Majidan had admitted in her cross-examination that Ibrahim, a relation of her new husband, had been arrested at the instance of the appellant for breaking telephone wires and that this had fatally prejudiced the appellant. It appears that Sm. Majidan did not say this in cross-examination in the Sessions Court; but she had admitted it in her cross-examination in the Magistrate's Court and this was brought to her notice in the Sessions Court. The case of the appellant that he had been named because he had got Ibrahim prosecuted in 1942 was brought to the notice of the jury. The evidence in this case was so clear that the omission made by the Judge in not mentioning to the jury that Sm. Majidan had admitted in her statement in the Magistrate's Court that this Ibrahim was prosecuted at the instance of Bhajan Lal did not, in my opinion, matter very much and it cannot be said that this non-direction fatally prejudiced the appellant. I am of opinion that this was not a matter of any great importance, particularly when the case put forward on behalf of the appellant and the evidence in support of it were all brought to the notice of the jury.

10. The last point that is urged is that there was no charge under Section 341, Penal Code, and, as such, the appellant could not be convicted under that section, because it was not a minor offence as compared to the offence under Section 366. It has also been urged that the appellant could only be guilty under Section 341 read with Section 109 and this should have been pointed out to the jury.

11. The Judge, in his charge, told the jury that even if they were unable to find that Sm. Majidan was taken away with the intent which is necessary for an offence under Section 366, those who took her away by force would still be guilty under Section 341. This raises the question whether Section 341 implies a minor offence as compared to Section 366. In this connexion, my attention was drawn to the case of Torap Ali v. Emperor, 53 Cal. 599: (A.I.R. (13) 1926 Cal. 1059: 27 Cr. L. J. 1314) in which it was held that offences under Sections 341 and 352, Penal Code, were minor offences which were included in the particulars of the charge under Section 366. Learned counsel for the appellant, however, urges that in this case no reasons are given for the view expressed therein. He further contends that the two offences are entirely different and one cannot be minor to the other. Section 238, Criminal P. C., provides that :

> "When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it."

The question, therefore, that arises is whether the particulars of the offence under Section 366 include the particulars of the offence under Section 341.

12. Section 366 provides punishment for whoever kidnaps or abducts any woman with certain intent. Section 362 defines 'abduction' as follows :

> "Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."

Thus one of the particulars of Section 366 is "compelling by force any person to go from any place." If a person is compelled by force to go from any place, it is obvious that he is obstructed from proceeding in any direction in which he has a right to proceed, though abduction by force involves something more than mere obstruction to a person from proceeding in any direction in which that person has a right to proceed. Now 'wrongful restraint' is defined in Section 339, Penal Code, as follows :

> "Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

It is obvious, therefore, that where there is abduction in which force is used to compel any person to go from any place, the particulars of the offence of wrongful restraint are also involved in such abduction. The view, therefore, that was taken in Torap Ali's case (53 Cal. 599 : A. I. R. (13) 1926 Cal. 1059 : 27 Cr. L. J. 1314), namely, that the offence under Section 366, involves the offence under Section 341 also is, if I may say so with respect, correct though, again speaking with respect, it was expressed too broadly. It is only where the offence under Section 366 consists of abduction by means of compelling by force any person to go from any place that the offence of wrongful restraint is also involved in it. Where, however, the offence under Section 366 is abduction through using deceitful means, the offence of wrongful restraint would not be involved because in such a case, there would be no such obstruction to the person abducted as would prevent him from proceeding in any/ direction in which he had a right to proceed.

13. In the present case, the abduction was by use of force. Sm. Majidan was compelled by force to go from the lorry to village Kurtara. She had a right to proceed in the lorry to wherever she was going and, inasmuch as she was dragged out of the lorry and brought to village Kurtara, she was certainly obstructed and thus prevented from proceeding in the direction in which she had a right to go. Under these circumstances, the offence under Section 341, Penal Code, was involved in the offence under Section 366 in this case. The Judge was, therefore, right in telling the jury that, in this case, they could convict the accused under Section 341, even if the intent necessary for conviction under Section 366 was not proved.

14. As for the argument that Bhajan Lal should have been convicted under Section 341 read with Section 109, it is, in my opinion, a mere technicality. Bhajan Lal was charged under Section 109 and he should have been convicted under Section 341 read with Section 109. But if the jury took the view

that by directing other to take away Sm. Majidan by force, he was actually participating in the crime of wrongful restraint, it cannot be said that they were wrong. He was present on the spot and it was under his direction that Sm. Majidan was forcibly removed from the lorry and taken away to Kurtara. I am, therefore, of opinion that the conviction of the appellant under Section 341, Penal Code, is correct.

15. It was lastly urged that the other persons, who were convicted under Section 341, were only fined Rs. 50 whereas the appellant has been fined Rs. 500. It is obvious that this crime would not have taken place but for the leadership of Bhajan Lal who is a zemindar and mukhia. It is also obvious that Nazir would not have dared to way lay the lorry himself unless he had the support of an influential person like the present appellant. Under these circumstances the lower Court was right in sentencing the appellant to a much higher fine and I see no reason to interfere.

16. The appeal is, hereby, dismissed.