

Jatindra Nath Vs. the State

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Court : Guwahati

Decided On : Feb-23-1951

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : Jatindra Nath

Respondent : The State

Judgement :

Thadani, C.J.

1. This in an appeal by one Jatindranath Bardoloi who was convicted by the learned Sessions Judge, L.A. Districts, under Section 363, I. P.C. and sentenced to 2 years' R. I. at a trial held with the aid of a jury which brought an unanimous verdict of guilty against the appellant Under Section 363 I.P.C.

2. The case for the prosecution was that on 13-6-1949, at about 8 A. M. the kidnapped girl, Musst, Sarumai, said to be some 13 years of age, was going with her mother to a jute field for weeding. On the way, the appellant who was apparently hiding behind a clump of bamboo trees on the road-side, seized Musst. Sarumai and forcibly dragged her away. Musst. Samurai's mother intervened, but she was overpowered. The appellant then disappeared with the girl. They were joined by 3 other persons who have been acquitted by the jury. One Mohiram and Motirara pursued the appellant, but abandoned the pursuit when they were threatened by the appellant. The following day the girl's elder brother, called Maheswar

Bora, lodged a first information report at Nowgong Police station. A flay later the police secured the girl from the house of the appellant. She was taken before a Magistrate to whom she made a statement. On the completion of the investigation, the appellant and his 3 companions were sent up for trial. At the trial, three charges were framed against the appellant - one under Section 363, another under Section 363, and a third under Section 376, I.P.C. The Jury acquitted the appellant of the charges under Sections 366 and 376, I P.C. but convicted him of the charge under Section 363, I.P.C.

3. Mr. Medhi for the appellant has contended that the learned Judge erred in law in framing a charge against the appellant both under Section 363 and Section 366, I. P.C. and misdirected the jury on the law involved in the two offences, - a misdirection which, according to Mr. Medhi, has led to an erroneous verdict. Mr. Medhi further contended that the learned Judge should have directed the jury that if they disbelieved the prosecution evidence as to the use of force, they should bring a verdict of not guilty, even under Section 363, I. P.C. In support of this contention, Mr. Medhi has relied upon a case reported in 'Krishna Chandra v. Emperor, 45 Cal. W. N., 27. But it is plain from the body of the judgment that in that case there was only one charge Under Section 366, I. P.C. framed against the accused. No separate charge had been framed in that case under Section 363, I. P.C. The learned Judges interfered in that case on the ground that the charge to the jury was for a verdict of a charge under Section 366, I.P.C, upon both heads of abduction and kidnapping, i.e., the charge directed the jury to find whether each of the accused was guilty of the offences of both abduction and kidnapping, which, according to the learned Judges, was a complete misunderstanding of the law.

4. In the case before us, a separate charge was framed against the appellant under Section 363, I. P.C. The jury was clearly within its rights, upon proof of taking away a minor girl from lawful guardianship, to hold the appellant guilty under Section 363, I. P.C. Apparently the jury did not accept the prosecution case that the appellant took the girl away with the intention described in Section 366 of the Indian Penal Code. No authority has been cited to us showing that, where two separate charges have been framed against an accused person - one under Section 363, I. P.C. and another under Section 366, I. P.C. and he is acquitted of

the charge under Section 366, I.P.C, he cannot be convicted Under Section 363, I. P.C.

5. We have read the charge to the jury in so far as it relates to the commission of an offence under Section 363, I. P.C. We have been unable to detect any misdirection, whether on facts or on law. There was ample evidence before the Jury to enable it to come to the conclusion that Musst. Sarumai was below the age of 16 years at the date of offence. The Jury had the advantage of seeing the girl, and were in a position to form their own estimate as to her age. Ex. 3 contains an entry as to the age of the girl when she was admitted to the H. E. School on 20-2-47. The girl's age was stated to be 9 years. No objection was taken to the reception of Ex. 3 at the trial. The jury, therefore, had two-fold evidence before it, namely, the evidence of Ex. 3 and the presence of the girl herself in the witness-box. The learned Judge in his summing up brought all the material discrepancies in the evidence as to the age of the girl to the notice of the jury. According to the evidence of the mother of the girl, the girl was about 13 years of age when she was taken away by force by the appellant from her. The jury was entitled to accept this evidence, and apparently they did so. The girl undoubtedly was taken away, whether by force or otherwise, from the lawful guardianship of her mother.

6. The evidence of the mother is corroborated by the evidence of her son who lodged the F.I.R. Musst. Sarumai herself gave evidence as to the circumstances in which she was taken away while she was going to the field with her mother. Witness Tikhai Saikia is an eye-witness to the occurrence. He saw the appellant emerge from a 'bari' catch hold of the girl by force and disappear with her. It was this witness who took the girl's mother home after the offence. P. W. 5 was one of the witnesses who pursued the appellant, but gave up the pursuit on being threatened by the appellant. The prosecution evidence is further corroborated by P. W. 6, officer in charge of the Police station, who secured the girl from the house of the appellant. There was, therefore, ample evidence before the jury to enable it to find the accused guilty Under Section 363, I.P.C.

7. At the conclusion of the appeal, Mr. J. C. Medhi pleaded for a reduction in the sentence on the ground that the appellant was a college student. Mr. D. N. Medhi

who appeared for the prosecution stated that if the appellant was still a college student, he would have no objection if the sentence, in the circumstances of this case, was reduced to the period already undergone. We accordingly directed Mr. J. C. Medhi to produce a certificate from the Principal of the College stating that the appellant was still a College-student. A certificate has been produced before us which, however, shows that the appellant was a college student up to the end of May, 1949. The offence in this case was committed on 13-6-49 when the appellant was not a college student. The appellant was on bail during the trial and was also on bail during the pendency of the appeal. Both during the trial and the appeal, the appellant did not re-join the college. We, therefore, decline to reduce the sentence. The conviction and sentence are maintained and the appeal dismissed.

8. Ram Labhaya, J.: I agree.

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