

In Re: Rudalph Gregory

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Court : Karnataka

Decided On : Jul-18-1968

Reported in : 1970CriLJ1318

Judge : H. Hombe Gowda, C.J.

Appellant : In Re: Rudalph Gregory

Judgement :

H. Hombe Gowda, C.J.

1. This appeal is directed against the Judgment of the Sessions Judge, Kolar in Sessions Case No. 9 of 1966 convicting the appellant Budalph Gregory for an offence under Section 366 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for two years.

2. The charge against the appellant is that on the night of 20.7.1964 between 9-40 p. m. and 1 a.m. he kidnapped Miss Gane Royle aged 15 years from the lawful guardianship of her father V. M. Boyle of Champion Reefs, K.G. P. in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. There was another charge against the appellant under Section 876 of the Indian Penal Code on the allegation that he committed rape on Miss Gene Boyle on 2.4.1964 near Orogaum Dairy within the limits of Champion Beefs Police Station, K. G. F. The learned Sessions Judge acquitted the appellant of this charge and the State has not preferred any

appeal. Hence, I am not concerned with the said charge in the present appeal.

3. The facts which are either admitted or satisfactorily established and do not admit of any controversy briefly stated are as follows : Vivian Moss Boyle was working as a Banksman in the Champion Beefs Mines, K. G. F. and was living at Door No. 149, Top Lines, Champion Beefs, K. G. F. along with his two daughters, namely, Oriana, Gene Boyle and a son James, aged about 11 years. Miss Gene Boyle was born on 11.12-1949. The mother of the girl namely Mrs. Doris Boyle was nurse in a Hospital attached to the K.G. F. Mines and was living with her husband at the relevant point of time. The appellant Budalph Gregory, was living with his parents in a house opposite to that of Mr. V. M, Boyle. The children of V. M. Boyle used to spend much of their time in the house of the appellant during the absence of their parents. The appellant and Miss Gene Boyle had become good friends during this period. The appellant and Miss Gene Boyle used to carry on conversation with each other from their respective houses even in the presence of Mr. V. M. Royle.

On 2.4-1964 Mrs. Boyle, who came from the Hospital, found the appellant and her daughter Miss Gene Royle engaged in conversation in the backyard of the house of the appellant. She rebuked Miss Gene -Boyle saying that she would report the matter to Mr. Y. M. Boyle and took her to her house. On the night of 2-4-64 Miss Gane Royle was found missing from her house, Mrs. Royle suspected that the appellant must have a hand in her disappearance and had probably taken her away. Mr. and Mrs. Royle made enquiries with the parents of the appellant and did not get any useful information. They instituted a search but to no effect. They lodged a complaint in the police station at Champion Reefs stating that their daughter Miss Gane Royle was missing and that she may be traced. The officer in charge of the Police Station searched for the girl, but he could not find her. It is stated that the appellant and Mias Gene Royle sat talking till about 10 P.M. in Orogam 'Dairy and went to the house of Edgar Vincant Gregory (P. W. 16) situated in R. A. T. A. Block in Champion Reefs at K. G. F. and stayed there for some time. On the morning of 3-4-1934 information to the effect that Miss Gene Royle and the appellant were in the house of P. W. 16 Edgar Vincent Gregory was known. The parents of the girl took the girl to their custody. They made an

application to the Police Officer not to proceed with any investigation as the girl had been traced and recovered. After reaching their house, the parents of Miss Gene Royle requested the parents of the appellant to send away the appellant to some distant place, so that the girl and the boy may not continue to engage themselves in such activities. Eventually on 4-4-1964 the appellant was sent away to Salem by his parents as the maternal uncle of the appellant was running a workshop. The boy was employed therein. The appellant came back to K.G.F. on 15-7-1964 and was staying with his parents for some days.

On the night of 20-7-1964 as Mr. Royle had gone to attend to night duty, Orisna, Miss Gene Royle and James were the only three inmates of the house. Mr. Boyle had looked the front door of the house from outside before he left from the Mines. At about 9-30 p. m. Miss Gene Royle opened the bolt of the back door of her house and went out of the house with the two suit-cases in which she had packed all her belongings. The appellant was waiting for her on the road and both of them went to 'Hotel Gold Fields' at E. G. F. and spent the night in the hotel along with P. W. 17 Frank Rowe, a friend of the appellant. On the morning of 21-7-1964 the appellant and Miss Gene Royle went to Robertsonpet Bus Stand and boarded the bus H. M. S. Noor Express bound for Bangalore. Frank Rowe, who had accompanied these two persons stayed away at the bus stand itself. The appellant and Miss Gene Royle alighted from the bus near Lingarajapuram near Bangalore, and went to the house of one Mrs. Myrtle Division where they stayed till the next day evening. Thereafter the appellant and the girl went to the Cantonment Railway Station and spent that night on the platform itself. On the morning of 23-7-1964 the appellant and Miss Gene Royle went to Richards Park and stayed there till the evening. In the evening, they went back to the Railway Station at about dusk time and picked up their suit-cases for going back to the house of Mrs. Myrtle Davidson. While they were so going two constables and Mrs. Royle who had come to Lingarajapuram in search of them, apprehended the appellant and the girl and took them to Champion Reefs Police Station. In the men while Mr. Royle had lodged a complaint as per Exhibit P. 16. On the basis of the said complaint the police took up investigation. The appellant was arrested and after completing the investigation placed a charge-sheet against the appellant for offences under Sections 363 and 376 of the Penal Code in the Court of the Special First Class

Magistrate, K. G. F. The learned Magistrate committed the appellant to take his trial in the Court of Session for the said two offences. The learned Sessions Judge, who received the committal order and the connected papers, perused them and framed charges for offences punishable under Sections 376 and 866 of the Penal Code. As already stated, the learned Sessions Judge found the appellant guilty of the charge, punishable under Section 866 of the Penal Code and convicted, and sentenced him as stated above. He acquitted him of the charge under Section 876 of the Penal Code.

4. The only point of controversy is whether the version of the prosecution that the appellant kidnapped Miss Gene Royle from the lawful guardianship of her father Mr. Royle on the night of 20-7-1964 is true or the version of the appellant that the girl forced herself on him and she abandoned the guardianship of her father and came with him and that he simply took her from place to place at her desire, is true.

5. Taking or enticing a minor girl out of the keeping of the lawful guardianship is an essential ingredient of the offence of kidnapping. The mere fact that the appellant and Miss Gene Royle went away together or found in the company of one another in Lingarajapuram in the house of Mrs. Myrtle Davidson or in the Railway Station after leaving K.G.F., on the night of 20-7-1964 is by itself insufficient to find the appellant guilty of the offence. It must be established by the prosecution that the appellant was a person who by allurement or persuasion induced a minor girl to abandon her parents and run away with him. The expression 'takes...out of the keeping of the lawful guardian of such minor' in Section 861, Penal Code has been interpreted by the Courts and the points that emerge from these cases are ; (i) 'Taking' referred to in Section 861, Penal Code need not necessarily be physical removal by an accused person from the guardianship, ii) The person, who inspires or aids the decision of the minor girl to abandon her home, as much takes her out of the keeping of her guardian as one who removes or allures her out of such guardianship, (iii) A person who does not influence the will of the minor girl, is under no legal obligation to restore her to her guardian when the girl who forces herself upon him, but his act in preventing the penitent girl to go back to her guardian subsequently constitutes 'taking' her out, out of the keeping of her

guardian. (iv) If on the other hand the evidence adduced by the prosecution establishes that it is the girl herself who left the house of her guardian and went to the accused person and induced him to accompany her and in consequence, she does not return to her guardian there being no conduct on the part of the man such as would amount to taking, no offence is committed under Section 861, Penal Code. This principle was first enunciated in *Beg. v. Christian Olifir* (1866) 10 Cox CO 402. In that case Baron Bramwell stated 'the law as follows in the course of the charge to the jury ; -

I am of opinion that if a young woman leaves her father's house without any persuasion, inducement or blandishment held out to her by a man, BO that she has got fairly away from home, and then goes to him, although it may be his moral duty to return her to her parent's custody, yet his not doing so is no infringement of this Act of Parliament (24 and 25 Vict. C. 100, S. 58) for the Act does not say he shall restore her, but only that he shall not take her away.

Again in *Rex. v. James Jarvis* (1908) 20 Cox CC 249, Jelf, J. stated the law to the Jury thus:

Although there must be a taking, yet it is quite clear that an actual physical taking away of the girl is not necessary to render the prisoner liable to conviction; it is sufficient if he persuaded her to leave her home or go away with him by persuasion or blandishments. The question for you is whether the active part in the going away together was the act of the prisoner or the girl; unless it was that of the prisoner, he is entitled to your verdict. And even if you do not believe that he did what he was morally bound to do-namely tell her to return home-that fact is not by itself sufficient to warrant a conviction; for if she was determined to leave her home and showed prisoner that, that was her determination and insisted on leaving with him-or even if she was so forward as to write and suggest to the prisoner that he should go away with her and he yielded to her suggestion, taking no active part in the matter, you must acquit him. If however prisoner's conduct was such as to persuade the girl, by blandishments or otherwise to leave her home either then or some future time, he ought to be found guilty of the offence of abduction.

The law as enunciated above was approved by their Lordships of the Supreme Court in *Varadarajan v. State of Madras* AIR 1985 SC 942. Their Lordships observed in the course of their judgment as follows:

It must, however, be borne in mind that there is a distinction between 'taking' and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Section 861, Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

Their Lordships' further observed in the course of the same Judgment as under:

It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip, out of the keeping of her lawful guardian and is, therefore, not tantamount to taking.

6. I will now proceed to examine the evidence on record in the light of the principles enunciated above. [After examining evidence His Lordship proceeded.- Ed,]

7-12. It is clear from the above that the girl had been wound up to such a pitch of hatred of her mother Mrs. Royle and of her surroundings and' was making all out efforts to prevail upon the appellant to take her out of her parents' (house) and marry her. It is in these circumstances that she was found in the company of the appellant from the night of 20-7-1964 till she was taken away by her mother and police constables on the afternoon of 23.7.1964. I am, therefore, of the opinion that unless there is clear and cogent evidence to show that she did not leave her father's house voluntarily by herself and that her leaving was brought about by the appellant there can be no conviction against him for an offence under Section 866 of the Indian Penal Code.

13. In the state of evidence on record it is idle for any one to contend that it is the appellant that actually made her to abandon her parental house by inducement or promise or blandishment and took her away from her house on the night of 20-7-1964. On the other hand the letters of the girl speak eloquently of the fact that she was determined to leave her home and insisted on leaving with him. The mere fact that the appellant yielded to her request and took her away with him, taking no active part in the matter, does not make him liable to answer a charge punishable under S. 866 of the Indian Penal Code.

14. I have carefully, examined the entire evidence placed on record. I am of the opinion that in the state of evidence on record the learned Sessions Judge is not at all justified in finding the appellant guilty of the offence punishable under Section 866 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for two years. The judgment of the learned trial Judge cannot be justified.

15. In the result, therefore, for the reasons stated above this appeal is allowed and the conviction and sentence passed against the appellant are set aside. The bail bonus are ordered to be cancelled.

