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Court : Allahabad

Decided On : Mar-18-1918

Reported in : (1918)ILR40All507

Judge : George Knox, J.

Appellant : Emperor

Respondent : Harkesh and anr.

Judgement :

Knox, J.

1. Harkesh and Bhullan have been convicted of offences under Sections 366 and 368 of the Indian Penal Code. The charge sheet to which they were called upon to plead, as regards Harkesh, is:--'That you about the month of April forcibly took Musammat Hardai, a minor girl of about 15 years, from the lawful guardianship of her parents, with intent that she may be seduced to illicit intercourse and be sold in marriage to some one.' As regards Bhullan the charge runs:--'That you about the month of June, July and as part of August kept Musammat Hardai, hiding her identity that she was a girl, with the intention of giving her in marriage and raising money from the transaction knowing that she was a minor girl kidnapped by Harkesh.' The case was tried with two assessors. Both assessors gave it as their opinion that Harkesh and Bhullan were guilty of the offence specified in the charge. The learned Judge agreed with the assessors. Harkesh and Bhullan are

described as Jats. The girl, respecting whom they have been charged, is also a Jat girl, Both the accused have been represented in this Court by learned Counsel. Great stress has been laid on the improbability of the story given by the girl. The medical evidence shows that she is a girl under 16 years of age, and in considering whether the offence charged has been committed. by the accused or not, the evidence to which we should first turned is not the evidence of the girl but the evidence of her father Niadar. The offence is primarily an offence against him. I have carefully considered his evidence and see no reason to doubt it, He tells-us that at the time when, the girl Hardai disappeared he was ill with fever. The girl was sent one evening to take food to the bullocks. The husband and wife returned shortly after and found the girl had not gone home and had not fed the bullocks. He made inquiries from his neighbours, but no one had seen the girl. He was laid up with fever for several days, but as soon as he could, he went and searched in the neighbouring villages but could find no trace of his daughter. He tells us that this was Dot the only occasion upon which he searched for his daughter. He admits that he made no report at the thana. Stress is laid upon this as being improbable conduct and not in harmony with the rest of his deposition. But he gives his explanation. He was afraid that if inquiry was made the girl might be spirited off further, and he adds that he did fear that the chance of her marrying would be spoilt if the news got about. Anyone who is aware of a Jat's difficulties and prejudices can easily understand this, and I see nothing at all improbable in it. The medical evidence places beyond doubt that the girl at the time the occurrence took place was under 16 years of age. Niadar is supported in his statement by the witness Bija. I have examined his evidence also with much care, and it fully supports what Niadar has said. If their statements can be believed-- I see no reason why they 'should not-be believed and they have been believed by both the Judge and, the assessors who heard the evidence--there is no .room for supposing that Niadar was in any way privy to the removal of the girl or that he took no interest in her welfare.

2. When the girl was found first to the knowledge of Niadar she had been discovered in a village not far distant from the village in which Niadar resides. There is not one word in the cross-examination which supports that either Niadar or Bija or any of the Jats of Kutta had any cause for quarrel or grudge against

either of the accused.

3. It is admitted by both the accused that the girl Hardai was in their company at or about the time when she disappeared, and it undoubtedly rests with Harkesh and Bhullan to explain how the girl under these circumstances came into their company. The girl was a female under 16 years of age her lawful guardian had not consented to her being removed out of his guardianship. As regards the matter of time the story is here taken up by the girl. I agree that what she says cannot be believed. Her account is that she met Harkesh, was assaulted by him, dressed in male clothes, taken and shut up and her hair cut. This is only one of the stories told by her and it entirely disagrees in important points with the second story which she told. I discard her evidence and put it out of consideration. What I have to see is how the girl passed from the guardianship of Niadar to the keeping of Harkesh. It is quite possible that Harkesh came upon her as she was on her way home to do her father's bidding and that she was persuaded by him to accompany him and afterwards to put on male clothes and to work for him. There is evidence put forward for the defence that the girl came wandering dressed in boy's clothes. That she asked for work and was engaged by Harkesh. I agree with the learned Judge and assessors in not believing this story. It is in the first place improbable, and in the second place the evidence given is so vague, just when it ought to be definite.

4. Bearing all this in mind I am satisfied that an offence under Section 366 of the Indian Penal Code has been fully proved against Harkesh and I dismiss his appeal.

5. With reference to Bhullan there is the evidence of his witness Shera which is of great importance. No reason has been shown why Shera's evidence should not be believed. He tells us that he had seen this girl living at Bhora first with Harkesh and then with Bhullan. She was dressed as a boy. People began to suspect she was not a boy but a girl. On his making inquiry as to her sex, Harkesh said she was a girl, Next morning both the accused and the girl had disappeared. Lohari, who is a chaukidar, says that as he was going to his field, about the time mentioned, with other people, he saw the girl dressed in boy's clothes and crying. Bhullan and Harkesh were quarrelling close by. Each was saying that he would

take away the girl; he asked the girl thinking she was a boy, but the reply was--'I am not a boy, but a girl.' She also said they were taking (sic)her about and she feared they would kill her, Upon this Bhullan began to make off, but the witness ran after him and arrested him. There is nothing in the cross-examination to show that this witness has any malice against Bhullan. I hold this evidence is enough to show that at the time the girl was being by force compelled to go about with these two accused and their act amounted to abduction. On behalf of the accused I was referred to the case of Emperor v. Ewaz Ali (1915) I. L. R., 37 All., 624. That, however, was a different case. The girl in that case was one who was found to have left the guardianship of her husband with intention to remain out of that keeping. It so far differs from the present case and I am not prepared to follow it, I was also referred to the case of Empress of India v. Sri Lal (1880) I. L. R., 2 All., 694. That was an absolutely different case and in no way a guide in the present case. The case of King-Emperor v. Ram Chander (1914) 12 A. L. J., 265 is also quite different, but I need only refer to the concluding words of that judgment to show that the circumstances of that case and of this case do not agree. The learned Judges say:--'We need hardly point out that the case would be very different if the girl had been going on a visit or message or any such like occasion.' The evidence in the present case satisfies me that the girl was going on a message when she disappeared. The case of Emperor v. Jetha Nathoo (1904) B Bom., L. R., 786 is in my opinion a case exactly in point. As the learned Judges there point out that what have to be considered are the broad features of the case. I hold that a case of abduction with intent that the girl might be compelled to marry against her will or forced or induced to illicit intercourse has been abundantly proved against Bhullan and I dismiss his appeal.

6. My attention has been called to the case of Emperor v. Abdur Rahman (1916) I. L. R., 38 All., 664. With great respect to the learned Judge who decided that case I hold that in that case the evidence showed that Abdur Rahman, if he did any act at all, did an act subsequent to the alleged offence of kidnapping, The Indian Penal Code does not recognize abetment after the main act, and the arguments, therefore, really amount to an obiter dictum.

7. There remains the question of sentence, Looking at all the features of the case I think the sentences have been unnecessarily severe.

8. I allow the appeal so far that I reduce the sentences passed to a sentence of three years' rigorous imprisonment, both in the case of Harkesh and Bhullan; the sentences served by them will be considered part of this sentence. So far and no further I allow their appeals.

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