

**Emperor Vs. Abdur Rahman**

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**Court :** Allahabad

**Decided On :** May-31-1916

**Reported in :** (1916)ILR38All664

**Judge :** Sundar Lal, J.

**Appellant :** Emperor

**Respondent :** Abdur Rahman

**Judgement :**

**Sundar Lal, J.**

1. This is an appeal against the conviction and sentence passed on the appellant under Section 366, read with Section 109, of the Indian Penal Code, by the Sessions Judge of Saharanpur. Along with the appellant two other persons, viz., Yusuf and Haidar Bakhsh, were put on their trial under Section 366 of the Indian Penal Code; but have been acquitted by the learned Sessions Judge for reasons given in his judgement. The charge framed against the appellant by the committing Magistrate ran in the following terms, viz.

That you on or about the 21st day of October, 1915, at Dehra Dun, instigated Haidar and Yusuf, accused, to kidnap Musammat Khatun in order that she may be forced or seduced to illicit intercourse, which offence was committed in consequence of your abetment and thereby committed an offence punishable

under Section 366/109 of the Indian Penal Code and within the cognizance of the Court of Session.

3. Musammat Khatun, whose age has been found to have been under sixteen years was, as found by the learned Sessions Judge, the wife of one Sharif Ahmad and, at the time the offence has been said to have been committed, was living with her husband at Dehra Dun. The other two accused persons, viz., Haidar and Yusuf, are related to Sharif Ahmad who has stated that they are the sons of the foster-brother of his father. Musammat Azizan, whose name figures in the evidence, is the wife of Haidar. Sharif Ahmad about this time was out of employment and was maintaining himself by bringing fuel or wood from the jungle for sale in the town. On the day following the Bakr Id, Sharif Ahmad left his house as usual in the morning for the jungle, and on returning home found that the outer door of his house was looked up and his wife away from the house. He made inquiries about her from the neighbours, but could find no trace of her for several days. I will leave Sharif Ahmad's story here and come at once to the account given by Musammat Khatun of the circumstances under which she left her husband's house. The day after the Bakr Id, at about 1 p.m. when she was alone in the house, Haidar and Yusuf came to her and told her that her brother-in-law (namely, her sister's husband) had come and had called her as her sister was very ill. Abdur Rahman is the name of the brother-in-law. He is, however, a person other than Abdur Rahman the accused, who is a stranger, and not related to the family of Musammat Khatun in any way. She demurred to going before the return of her husband, but on being pressed to do so by Haidar and Yusuf, she left with them after locking the outer door of her house and followed them to their house. There she did not find her sister's husband who, she was told, was coming by the evening train, she asked them to escort her back to her husband's house. They said they had then to go to the bungalow of the person in whose service they were, and that they would convey her back in the evening to her house and they left her in the house.

4. A little while after Abdur Rahman, the accused, came in, whereupon she went into the house as he was stranger. Abdur Rahman entered into conversation with Azizan and Imaman (who is the mother-in-law of Haidar), and he left them shortly

afterwards, telling Azizan to come to his house as his wife was very ill. Azizan did not go and Abdur Rahman came back to summon her to go to his wife. At his request Azizan decided to go. She also induced Musammat Khatun to go with her, after she had promised to take her from there to her husband's house. The two women followed Abdur Rahman to his house and sat there for some time, when Azizan went out on some pretence and Khatun and Abdur Rahman were left alone in the place. Abdur Rahman locked the doors from inside and according to Musammat Khatun, had sexual intercourse with her by force. He refused to let her go back, and according to Musammat Khatun, is said to have told her that he had paid a lot of money to Azizan and Haidar and that he would let her go back if she gave back the money. She was found a few days later by the police in the house of Abdur Rahman, concealed inside a box, over which were placed a couple of other boxes in a room in the house. Upon these facts the three accused persons were put on their trial. I am not concerned with the reasons given for the acquittal of the other two accused persons, for there is no appeal against their acquittal by the Local Government. The only question in appeal before me is whether the appellant has been rightly convicted of the offence charged, viz., abetment of the offence described in Section 366 of the Indian Penal Code. Under Section 361 of the Indian Penal Code 'whoever takes or entices any minor...if a female under sixteen years of age...out of the keeping of the lawful guardian of such minor...without the consent of such guardian is said to kidnap such minor...from lawful guardianship.' Where such kidnapping of any woman is with the intent 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, the offence comes within the purview of Section 366 of the Indian Penal Code.

5. The question whether the offence of kidnapping is completed the moment the girl is taken out of the custody of her lawful guardian, or is a continuing offence until she returns back to her guardian has been the subject of consideration in several recent cases. In *Nemai Chatteraj v. Queen-Empress* (1900) I.L.R. 27 Calc. 1041, a Full Bench of the Calcutta High Court (Rampini, J., dissenting) held that the offence was not a continuing one, but became complete the moment the girl was taken, or enticed out of the custody of her lawful guardian. The only case in support of the contrary view is that of *Begina v. Samia Kaundan* (1876) I.L.R. 1

Mad. 173, in which the accused was charged with the offence of kidnapping a minor out of British India. In that case the offence was not completed until the minor crossed the limits of British India. This case was referred to in two cases of this Court, viz., *Queen-Empress v. Ram Dei* (1896) I.L.R. 18 All. 350 and *Queen-Empress v. Ram Sundar* (1896) I.L.R. 19 All. 109 and not followed. The Judgment of this Court is on the same lines as the Judgment of the Full Bench of the Calcutta Court already referred to. In a later case in the Madras Court, *Chekutty v. Emperor* (1902) I.L.R. 26 Mad. 454, the Chief Justice Sir Arnold White observed as follows: 'In support of the conviction it was argued that the offence of kidnapping was continuous and that the assault on the mother having been committed during the continuance of the kidnapping the two offences were committed in one series of acts so connected together as to form the same transaction. It has recently been held by a Full Bench of the Calcutta High Court in *Nemai Chatteraj v. Queen-Empress* (1900) I.L.R. 27 Calc. 1041, that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful, guardianship and that it is not an offence continuing as long as the minor is kept out of such guardianship'. The case in I.L.R. 1 Mad. 173, was distinguished on the ground I have already indicated. In a very similar case which came up before the Punjab Chief Court, Sir Meredyth Plowden and Mr. Justice Roe held that 'speaking generally, the keeping of the guardian came to an end when the person of the minor had been transferred from the custody of the guardian, or some person on his behalf, in the custody of some person not entitled to the custody of the minor.' They further observed, at page 21: 'But there can be no abetment of taking by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian, and the guardian's keeping of the minor is completely at an end. Whether the taking was or was not complete is a question for determination with reference to the circumstances proved in the particular case'; *Chanda v. Queen-Empress* Punj. Rec. 1904 Cr. J. 19.

6. I have now to see whether on the evidence it has been proved that Abdur Rahman instigated the kidnapping of Musammatt Khatun.

7. His Lordship then dealt with the evidence.

8. Upon the evidence on the record therefore abetment of kidnapping has not been proved against the appellant, and the conviction therefore must be set aside. Whether the appellant is guilty of any other offence for which he has not been charged is not a matter for me to consider here. All that I have to see is whether the offence of abetment of kidnapping has been proved. I hold that there is no evidence to prove the offence charged. I accordingly allow the appeal, set aside the conviction and the sentence and direct that the appellant be released at once.

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