

Sheoraj Singh and anr. Vs. the State

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Court : Allahabad

Decided On : Jul-19-1966

Reported in : AIR1967All528

Judge : Gyanendra Kumar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 361, 362 and 365; [Evidence Act, 1872](#) - Sections 9

Appeal No. : Criminal Revn. Nos. 209, 1987 and 1988 of 1964

Appellant : Sheoraj Singh and anr.

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Bhagwat Prasad Gupta, Adv.

Disposition : Application allowed

Judgement :

ORDER

Gyanendra Kumar, J.

1. These are three connected revisions arising out of the same trial and can be disposed of by a single judgment Sheoraj Singh, Sher Singh and Raghunandan

are residents of village Parasari, while Ram Singh and Chandrapal are residents of village Langotia. They have all been convicted under Section 365 I.P.C. Raghunandan, who is a lad of about 14 years, has been sentenced to one year's rigorous imprisonment, while the remaining applicants to two years rigorous imprisonment

2. Briefly stated the prosecution case is that on 8-10-63 at about 4 or 5 P.M. Raghunandan applicant, who was a school fellow of Brijbhan Singh, came to the letter's house and asked him to accompany him to see a partridge fight. Brijbhan Singh admits that he was fond of witnessing such flight and that there were several persons in the village, who used to rear partridges. Brijbhan Singh therefore, readily accompanied Raghunandan, who first took him to a grove of Umrao Singh. As partridges were nowhere near it, so he took him to a nearby bajra field. There were a number of other bajra fields on the spot

From one of them emerged Ram Singh and Chandrapal applicants. Out of them one was armed with a gun. Both of them over-powered Brijbhan Singh and, having blind-folded him, carried him away forcibly. At a short distance, two other applicants, Sher Singh and Sheoraj Singh joined him. All these four persons kept the minor boy concealed in various bajra fields for three days and nights. Some of the prosecution witnesses, who had seen this forcible abduction of Brijbhan Singh informed his father Gajraj Singh complainant, who organised a search for his missing son. During the search the complainant happened to meet Bhagwan Singh accused (since acquitted), who assured the complainant that his son could be returned on a payment of Rs. 500/-. The complainant accordingly paid that amount to Bhagwan Singh who took with him P. W. Saheb Singh to a place near a peepal tree situate to the west of village Langotia. Bhagwan Singh, having left Saheb Singh at that place, entered a bajra field from which emerged Chandrapal and Ram Singh along with Brijbhan Singh minor. They handed over the boy to P. W. Saheb Singh on the night of 11-10-63. The complainant then lodged a report on 12-10-63 at 8-30 A.M.

3. It may be pointed out here that there appears to have been some confusion in the minds of the courts below inasmuch as it was thought that all the accused

were guilty of kidnapping Brijbhan Singh minor out of the lawful custody of his father through the agency of Raghunandan applicant.

4. Section 365. I. P. C. embraces the offence of kidnapping as well as abduction. The relevant portion of Section 361 I P C. so far as it applies to the present case, runs thus: 'Whoever takes or entices any minor under 16 years of age, if a male,.... 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.' It will, therefore, be seen that a charge of kidnapping could only be levelled against Raghunandan applicant and none other; inasmuch as it was he alone, who is alleged to have enticed away Brijbhan Singh minor out of the lawful guardianship of his father. Kidnapping is not a continuing offence

The offence committed by the other applicants, who had appeared on the scene amounts to abduction, which has been defined in Section 362 I P. C as 'Whoever by force compels.. .. any person to go from any place, is said to abduct that person.' It may be seen that for the purposes of abduction it is not necessary that the person abducted must be a minor, nor that he should be removed from the lawful guardianship of anybody. Taking into consideration the difference between 'kidnapping' and 'abduction' it is not possible to say that the applicants other than Raghunandan were guilty of kidnappings Brijbhan minor, for they never removed him from the lawful guardianship of his parents. The boy was already out of such guardianship when they met him at the Bajra field. Nevertheless they would still be guilty of abduction for having forcibly taken him away. It is however noteworthy that Section 365 I P. C prescribes punishment both for kidnapping as well as abduction I shall deal with their case a little later.

5. So far as Raghunandan is concerned, he is said to be guilty of kidnapping Brijbhan Singh on account of his enticing away the latter from home and taking him to the grove on the pretext of witnessing a partridge fight. The allegations of 'enticement' and 'pretext' on the part of Raghunandan necessarily attribute guilty mind or mens rea to him. But I find that it is not possible to necessarily fasten mens rea on him under the circumstances of the case. It has been admitted by Brijbhan himself that he was fond of seeing partridge fight and that several

persons in the village used to rear partridges Therefore when Raghunandan went to bring Brijbhan Singh with him, the, former might well have learnt or even been informed by the Other accused that a partridge fight was going to take place in the grove of Umrao Singh or near the bajra field in question, which Raghunandan could have bona fide believed to be true

In the circumstances it cannot be said that Raghunandan had necessarily a guilty mind and had therefore 'enticed away' Brijbhan when he accompanied the boy from his house to the grove of Umvao Singh. It appears that the other accused-applicants had taken undue advantage of the minority of Raghunandan and his social relations with Brijbhan Singh. who was his school fellow, and had thus prevailed upon him to bring away Brijbhan for witnessing a partridge fight, which did not appear to be an unusual feature in the village. In any event, the matter is not free from doubt. I, therefore, grant the benefit of doubt to Raghunandan applicant

6. Reverting to the case of other applicants, the evidence on record shows that Chandrapal and Ram Singh are the principal actors in the drama. As soon as Raghunandan and Brijbhan Singh reached the bajra field in question, both these applicants suddenly emerged out of the bajra field, over-powered Brijbhan Singh and. having blind-folded him, carried him away by force Chandrapal was also armed with a gun The evidence of Raghunandan and other eye-witnesses shows that it was Chandrapal accused, who had carried the abducted boy on his back. It was again from their possession that Brijbhan Singh minor was recovered on the night of 10-10-63

It has been pointed out by Mr Ramesh Sharma that during the identification proceedings conducted in jail, Brij Bran Singh had Identified only Ram Singh accused and not Ghandrapal accused It may be so, but no hyper importance can be attached to this omission It appears that the minor witness got somehow confused at the time of identification. Apart from the sworn testimony of Brijbhan Singh we have the testimony of P.Ws. Ganga Din, Shiam Singh, Saheb Singh and Bankey Lal, who uniformly state that it was Chandrapal accused, who was carrying away Brijbhan Singh minor on his back. It may be mentioned here that no

enmity or ill-will of these witnesses against the applicants has been shown, nor has it been proved that they were favourably inclined towards the complainant. I, therefore, find that the case of abduction against Chandrapal and Ham Singh has been established beyond all reasonable doubt.

7. This takes us to the cases of the remaining two applicants, namely, Sheoraj Singh and Sher Singh, who are said to have joined Ram Singh and Chandrapal in their nefarious crime. The prosecution witnesses have clearly deposed that before the forcible abduction of Brijbhan Singh from the bajra field in question, these two accused had been seen in the company of Ram Singh and Chandrapal, the principal offenders. P. W. Saheb Singh had gone to the extent of deposing that apart from Chandrapal, Sher Singh was also armed with a gun and that they had both joined in the abduction of the minor. Their conviction was therefore fully justified.

8. In the result I allow the revision of Raghunandan and set aside his conviction and sentence. He is on bail. He need not surrender to his bail bonds, which are hereby discharged. The revision applications of Sheoraj Singh, Sher Singh, Chandrapal and Ram Singh are dismissed. They are on bail. They must immediately surrender to serve out the balance of their sentences. Their bail bonds are hereby cancelled.

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