Abdur Rahman Vs. Emperor

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Court : Allahabad

Decided On : May-31-1916

Reported in : AIR1916All210; 36Ind.Cas.466

Judge : Sunder Lal, J.

Appellant : Abdur Rahman

Respondent : Emperor

Judgement :

Sunder Lal, J.

1. This is an appeal against the conviction and sentence passed on the appellant under Section 366/109 of the Indian Penal Code by the Sessions Judge of Saharanpur. Along with the appellant two other persons, viz., Yusuf and Haidar Baksh 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 judgment. 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 Dohra Dun instigated Haidar and Yusuf accused to kidnap Musammat Khatun in order that she may be forced or seducod 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.

2. Musammat Khatun, whose age has been found to have been under 16 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(sic)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 enquiries 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.

3. A little while after Abdur Rahman the accused, came in, whereupon she went into the house as he was a 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 without 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.

4. 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 Chattoraj v. Queen-Empress 27 C. 104 : 4 C.W.N. 645 (F.B.) 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 Beg. v. Samia Kaundan 1 M. 173 : 1 Weir

353, in which the accused was charged with the offence on kidnapping a minor out of India. In that case the offence was not completed until the minor crossed the limits of British India. The case was referred to in two cases of this Court, viz., Queen-Empress v. Sam Dei 18 A. 350 A.W.N. (1896) 96 and Queen-Empress v. Ram Sundar 19 A. 109 : A.W.N. (1886) 191 and not followed. The judgment of this Court is on the same lines as the judgment of the Pull Bench of the Calcutta Court already referred to. In a later case in the Madras Court Chekutty v. Emperor 26 M. 454 : 2 Weir 296, 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 Chattoraj v. Queen-Empress 27 C. 104 : 4 C.W.N. 645 (F.B.) 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 of Reg. v. Samia Kaundan 1 m. 173 : 1 Weir 353 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 to the custody of some person not entitled to 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: Chandn v. Queen-Empress 6 P.R. 1894 Cr. We have now to see whether on the evidence it has been proved that Abdur Rahman instigated the kidnapping of Musammat Khatun.

5. There is no direct evidence that before the girl was actually brought to the house of Haidar, Abdur Rahman had any thing to do with the matter. The first mention we have of Abdur Rahman is when the girl had actually been kidnapped

and brought to the house of Haidar, and the only evidence of what then happened is that he had some conversation with Imaman and Azizan. We have no evidence of what that conversation was about, Abdur Rahman had asked Azizan to come over to his house to see his wife who was very ill and as she did not go as promised, he came again a little while afterwards. According to the evidence of Musamrnat Khatun, she and Azizan then accompanied him back to his house. Mr. Sital Prasad Ghosh has argued that although there is no direct evidence, it must be inferred from the circumstances that it was at the instance of Abdur Rahman that the girl was kidnapped. We have no evidence upon that point. The only evidence that we have is that of the woman Khatun, who says that Abdur Rahman refused to let her go as he had spent a lot of money to obtain possession of her and that until she refunded the money he would not let her go. We have no other evidence upon the point. I cannot upon this evidence alone hold that Abdur Rahman had some concern with the kidnapping. The offence had been completed long before Abdur Rahman came on the scene, and on the authorities of this Court as well as of other Courts cited by me above there is nothing to show that he was concerned in any way in abetting the kidnapping by Yusuf and Haidar.

6. 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 have held 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.