

**Sultan and ors. Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/483233](http://sooperkanoon.com/483233)

**Court :** Allahabad

**Decided On :** Aug-30-1929

**Reported in :** AIR1930All19a

**Appellant :** Sultan and ors.

**Respondent :** Emperor

**Judgement :**

1. Sultan, Mohammad Baksh, Allah Baksh, Ismail, and Kala were committed to take their trial before the learned Sessions Judge of Muzaffarnagar under Section 366, I.P.C. Bundu was committed under Section 368 of the said Code. The learned Sessions Judge has convicted all of them and sentenced them to four years' rigorous imprisonment each.

2. The first five accused persons were charged with the offence of kidnapping, Mt. Jamila, a girl, alleged to be under 16 years of age from the lawful guardianship of her father Mohammad Qazim with intent that she might be seduced to illicit intercourse. The offence is said to have been committed in mauza Khudda in the district of Muzaffarnagar on or about 5th May 1928.

3. Bundu was charged with the offence of wrongfully concealing Mt. Jamila in his house at village Dadheru for nearly two months from 5th May 1928 with the knowledge that Mt. Jamila was a kidnapped girl.

4. There was considerable social disparity between Mohammad Qazim and the accused, the former being a Sheikhzada and the latter being Garhas by caste.
5. The case for the prosecution was that Mt. Jamila was an unmarried girl below 16 years of age, that she had twice eloped with Sultan during the temporary absence of her father from home; that the final elopement took place on 5th May 1928 with Sultan and that the four other accused excepting Bundu were associated with Sultan in kidnapping the girl.
6. Sultan is the nephew of Mohammad Baksh. Allah Baksh and Mohammad Baksh's sisters are married in the same family. Bundu's uncle's daughter is married to Siddiq, the own brother of Sultan. Ismail alias Billi and Allah Baksh are close friends.
7. Qazim's household consisted of himself, his daughter Jamila and a step-daughter Mt. Mahfuzan, aged 10 or 11 years, who was given in marriage to Qazim's son Nawab. Qazim appears to have been a man with a religious turn of mind whose time was mostly spent in prayers and meditations and who did not take much interest in mundane affairs. The result was that there was no discipline in his household and Mt. Jamila was practically left free to sport as she pleased.
8. Sultan is a young man aged about 21 years. He lived in a house with an enclosure, next door to Qazim's. He had access to Qazim's house without any let or hindrance. No parda was observed with him. Mt. Jamila and Sultan came to know each other about a year or six months before the alleged occurrence. They fell in love and their love grew into an infatuation.
9. One of the neighbours told Qazim about Sultan' visits. Qazim said: 'It does not matter.' The voice of scandal was not silent but:  
  
Qazim did not care for the talk in the village.
10. While Qazim was away at Saharanpur, Sultan took away Mt. Jamila with him to Meerut and returned after three days. Mt. Jamila was dressed in male attire. The next day, Ghasita, brother-in-law of Qazim attempted to take Mt. Jamila to his house in Chhappar. He put her into a bullock cart but Sultan and Kala arrived on

the scene. Kala caught hold of Ghasita and Sultan dragged Mt. Jamila away. She returned, however, at about 8 p.m. When this matter was brought to the notice of Qazim, he abused Mt. Jamila and took her to task. He also threatened to get her seducer and his confederates condignly punished.

11. It is remarkable, however, that Qazim lodged no report to the police nor instituted any complaint about either of these two incidents.

12. The last elopement took place the same day, namely 5th May 1928, after Qazim had left his house to say his Isha prayers. This infuriated Qazim. It is true that he did not make any report at the police station but a formal complaint was instituted in the Court of a Magistrate against the first five accused persons under Section 366, I.P. C, on 12th May 1928. Qazim backed his complaint by his deposition, which was recorded on 14th May 1928.

13. Qazim died under very tragic circumstances on 7th July 1928 and the question as to how he met his death is the subject of enquiry in the connected appeal.

14. The defence was that Mt. Jamila had been given in marriage to Sultan by Qazim himself, that she was over 16 years of age on 5th May 1928 and that the offence of kidnapping under Section 366, I.P. C, had not been committed. Bundu denied having concealed Mt. Jamila in his house.

15. Mt. Jamila was examined in the case as a witness for the defence on 4th April 1929. She says she is the lawful wife of Sultan and that her age is between 17 and 18 years.

16. The judgment of the Court below is a document of portentous length, teeming with repetitions, irrelevant matters and-with many deductions, which are either illogical or are non sequitor. Now and again, ingenious attempts have been made either to explain away or to water down points which tell against the prosecution. This was absolutely unjustified and this minimises the value of a judgment which is otherwise a monument of industry. What appears to have happened is that upon a consideration of certain features of the case, the learned Judge was morally convinced of the guilt of the accused; and this moral conviction warped his judicial

vision to such an extent that he failed to view the evidence in its true perspective.

17. The learned Sessions Judge found that Mt. Jamila was not the wedded wife of Sultan, that she was below 16 years of age on 5th May 1928, and that all the accused persons were guilty of the offence of which they stood charged.

18. It may be observed here that Section 366, I.P.C., is an aggravated form of Section 363, I.P.C. The consent of the girl does not exonerate the seducer. The underlying policy of the section is (1) to uphold the lawful authority of parents or guardians over their minor wards; (2) to throw a ring of protection round the girls themselves and (3) to penalise sexual commerce on the part of persons, who corrupt, or attempt to corrupt, the morals of the minor girls by taking improper advantage of their youth and inexperience.

19. The learned Sessions Judge has given excellent reasons for holding that Mt. Jamila was not married to Sultan. This finding is supported by the evidence of witnesses, who were in a position to know; and also by the probabilities of the case.

20. Mohammad Qazim, belonging as he did to the old school of thought, could never have dreamt to give his daughter in marriage to a Garha. It is difficult to conceive the idea of his officiating as Qazi on the occasion of his daughter's marriage.

21. Certain Qazi's registers have been produced, but they contain no entry in support of this marriage. Defendants' witnesses have told a farrago of lies and have been rightly disbelieved by the Court below. We endorse the finding of the trial Court on this point and hold that there was no marriage.

22. There is no direct evidence on the record that Sultan or any of his four associates kidnapped Mt. Jamila, At the time of the alleged kidnapping, Qazim was away from home. Mt. Mahfuzan, the only other inmate of the house was in another part of the house easing herself. Mt. Mahfuzan heard certain whispers. We do not know what these whispers were about. We do not know whose whispers they were. When she came inside the house, she discovered that Mt.

Jamila was gone.

23. That Mt. Jamila eloped with Sultan is a settled fact. It is not unlikely that Mt. Jamila, in response to her own passion for Sultan singed her wings. It is equally probable that Sultan allured her with his seducer's voice. What part the other accused persons played cannot be predicated with certainty, the evidence on the point being vague and cloudy, It has been suggested that all these persons had conspired with Sultan. It is said that on a particular date as Qazim and his party were returning from the Court of the Magistrate in Muzaffarnagar, Qazim demanded the restitution of his daughter to him. He held out the threat that if the daughter was not restored, the case against the accused persons' will be prosecuted to the bitter end.' Ismail is said to have retorted that he did not care, as he would wipe Qazim out and install Mt. Jamila and Sultan in Qazim's house. Sometimes before Mt Jamila's elopement, Nawab son of Qazim had run away with one Mt. Khatoon, daughter of Lala Garha. Ismail and Allah Bakhsh are said to have remarked at the village panchayat, which was held over Mt, Jamila's elopement that Mt. Jamila had been kidnapped by the Garhas by way of retributive justice.

24. The story seems plausible but it is unsafe to accept the statement of Ghulam Muhammad Mukhia who has told a string of lies and is not a disinterested witness. (After considering the evidence and holding that the other four accused were not proved to have joined Sultan in kidnapping Mt. Jamila and that Mt. Jamila was not proved to have been below 16 years on 5th May 1928, their Lordships proceeded.) The charge, therefore, fails against all the accused persons including Bundu. The evidence discloses that Mt. Jamila lived in the house of Bundu without the least attempt to conceal the fact. Mt. Jamila being over 16 years of age, there could be no offence of kidnapping with reference to her. The lease under Section 368, I.P.C., against Bundu therefore fails.

25. In the result we allow the appeal, set aside the convictions and sentences and direct that Kala be immediately released and the other five accused persons be released unless they are wanted in some other case.

