

**Mst. Kamli Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/759237](http://sooperkanoon.com/759237)

**Court :** Rajasthan

**Decided On :** Mar-31-1975

**Reported in :** 1975WLN(UC)113

**Judge :** K.D. Sharma, J.

**Appeal No. :** S.B. Criminal Jail Appeal No. 677 of 1974

**Appellant :** Mst. Kamli

**Respondent :** The State

**Disposition :** Appeal dismissed

**Judgement :**

**K.D. Sharma, J.**

1. This is a jail appeal filed by Mst. Kamli convict against the judgment of the Sessions Judge, Partabgarh, holding Camp at Chittorgarh, dated 10-10-1974, by which the appellant was convicted for the offence punishable under Section 363, I.P.C. and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500/-, in default of payment of fine to further suffer imprisonment for three months.

2. The prosecution case against the appellant was that Chain Kanwar, aged about 12 or 13 years was sleeping along with her elder sister and mother in one of the

rooms of her parents' quarter in the night between 1.1.1973 and 5.1.1973. At about 11 p.m. she was found missing from the room. Her brother Amer Singh was informed about her disappearance by her mother. Upon search, it came to the notice of the inmates of the house that a box containing clothes and ornaments was also missing. The brother of Mst. Chain Kanwar tried to find out her whereabouts but despite thorough search Chain Kanwar was not found. An empty box, no doubt, was seen lying outside the quarter of Mangi Lal Harijan on the next day in the morning. Amar Singh lodged a written report with the Station House Officer, Chittorogarh, about the said incident. On the basis of the written report, a criminal case under Sections 363 and 366, I.P.C. was registered. The police made usual investigation into the case and recovered the kidnapped girl from the house of Rajmal co-accused. The police arrested Rajmal and recovered some ornaments vide memo of recovery Ex. P. 11 from the house of Rajmal at the latter's instance and in consequence of his information recorded under Section 27 of the Evidence Act, Mst. Chain Kanwar was sent for medical examination as to her age. Upon medical examination she was found below 18 years of age at time of her examination. From her mouth the police came to know that on the day of occurrence at about 6.10 p.m. Mst. Kamli asked her to go with the former to village Seti for seeing a dance. Mst. Chain Kanwar refused to accompany her to village Seti, because her mother would not permit her to do so, Thereupon, Kamli advised her not to seek permission from her mother. Mst. Kamli asked Chain Kanwar to take clothes with her for the purpose of giving them to dancers for wearing them on their bodies. Mst. Chain Kanwar acted accordingly and first of all handed over the box containing the clothes and the ornaments to Kamli in the evening and thereafter at about 10.30 in the night she left her house from the back door thereof leaving her mother and brother sleeping in the room. After leaving her house, Mst. Chain Kanwar approached Mst. Kamli who took her to village Seti. While they were going to the village Seti, they met Babu Lal and Rajmal co-accused in the way. These two accused were coming on a bicycle. On seeing Mst. Chain Kanwar, Babu Lal caught hold of her hands and Rajmal pressed her mouth with his hands. Mst. Chain Kanwar raised an outcry, but there was no person to save her. Rajmal asked Chain Kanwar to sit on the rod of the bicycle and threatened her to kill with a dagger in case she refused to obey his command. From there she

was taken to village Bhadsora and was confined in a room of the house of Rajmal Mst. Kamli and some other 1 dies told Chain Kanwar that she would be married with Rajmal at Gandhi Dham. Mst. Chain Kanwar refused to marry Rajmal. The accused persons took away 'Kanthi' and 'Payjab' from the possession of Chain Kanwar. Thereafter the police reached village Bhadsora and recovered Mst. Chain Kanwar from the house of Rajmal co-accused. The police then collected other necessary evidence against all the accused and eventually submitted a charge-sheet against them in the court of the Munsiff-Magistrate, Chittorgarh, under Sections 366 and 379, I.P.C.

3. The learned Magistrate held an inquiry, preparatory to commitment, and, after finding a prima facie case against Babu Lal, Rajmal and Mst. Kamli under Sections 366 and 379, I.P.C committed them to the court of Sessions for trial according to law but later on the case came back to his court of the Assistant Sessions Judge, Chittorgarh, for trial accord no to law but latter on the case came back to his court upon with drawal of powers of Assistant Sessions Judge from Civil Judges.

4. The Sessions Judge, Partabgarh, tried Babu Lal, Rajmal and Kamli appellant and arrived at a conclusion upon evidence in the case that no case was made out against Babu Lal and Rajmal co accused. He consequently acquitted them of the offence punishable under Section 336,I.P.C. and convict and sentenced Mst. Kamli for the offence of kidnapping as stated above.

5. Aggrieved by her conviction and sentence, Mst. Kamli has come up in appeal to this Court through the Superintendent, Central Jail, Jaipur Notice of the date, time and place at which appeal would be heard was given to Mst. Kamli as well as to the Public Prosecutor. Mst. Kamli did not appear in the court despite service of notice on here.

6. I have carefully gone through the record and heard Mr. G.A. Khan, appearing on behalf of the State. One of the essential ingredients of the offence of kidnapping punishable under Section 363. I.P.C. is that the age of the minor must be less than 18 years, if the minor is a female In the instant case, it is proved that the girl kidnapped was under 18 years of age at the time when she was taken out of the lawful guardianship. Chain Kanwar's father Pratap Singh has clearly deposed to

this effect in the trial court. His evidence is that his daughter Chain Kanwar's age was 15 years at the time of her removal. His evidence is corroborated by the testimony of his wife Mst. Kishan Kanwar, P.W. 1, who stated in her cross-examination that her eldest daughter is about 35 years of age and her second third and fourth daughter are aged about 32, 29 and 26 years respectively. Younger to her fourth daughter Kailash is her son Bhagwat Singh whose age is about 23 years. Thereafter Amar Singh was born to her who is younger to him Bhagwat Singh by three years. After three years of the birth of Amar Singh, she gave birth to one female child who has died. Thereafter Chain Kanwar was born. Mst. Kishan Kanwar P.W 1 further stated that Chain Kanwar was admitted to a school at village Save and thereafter to a school at Agra and then to another school at Meeran Nagari for education. The evidence of Kishan Kanwar and Pratap Singh is further corroborated by the testimony of Dr. Ravi Bhargava whose statement was recorded by the Committing Court in the presence of the accused persons who had an opportunity of cross examining the witness The statement of Dr. Ravi Bhargava recorded by the Committing Court in the presence of the accused and attested by the Committing Magistrate was admissible in evidence at the trial under Section 509.I.P.C. although the deponent was not called as a witness in the sessions court. Dr. Ravi Bhargava estimated the age of Mst. Chain Kanwar below 18 years on the basis of her physical development and ossification test. He has produced his report Ex. P. 1, and the skiagram Ex. 1, and the skiagram Ex. P 3 which reveal the following characteristics:

Weight 52 kg.Height 5'.11'Breasts Developed.Axilla hair PresentPublic hair PresentEvidence of rape : No mark of injury is seen.Hymen is ruptured.No blood or semen stains in surrounding areasMild tenderness present.On cervical smear no spermatozoa seen.Total teeth 28 in number.X-ray No. 60 dated 8.1.73 shows evidence of:(1) fusion of epiphysis at elbow joint.(2) Non-fusion of epiphysis at lower end of radius and ulna.

The Sessions Judge has relied upon the evidence of age as furnished by the girl's mother and the ossification test. Finding as regards the age ca be based on the evidence of the mother of kidnapped girl and on the evidence regarding the state of ossification, especially when the evidence of the mother and the Doctor is found

trust-worthy on merits. Mst. Kamli denied any knowledge about the age of girl in her statement taken down under Section 342, old Criminal Procedure Code. Consequently, I have no hesitation in holding that the Sessions Judge rightly held upon the evidence that Mst. Chain Kanwar was below 18 years of age at the time when she was kidnapped by the appellant.

7. The second essential ingredient of the offence of kidnapping is that the minor should be taken or enticed away out of the keeping of her lawful guardian without the latter's consent. The prosecution has led independent evidence to prove this essential ingredient also. There is the evidence of Mst. Chain Kanwar on the record from which it is fully proved that Mst. Kamli appellant persuaded Mst. Chain Kanwar to leave her parents' house on the pretext of taking her to village Seti for the purpose of seeing a dance. Chain Kanwar refused to accompany Kamli to village Seti for the aforesaid purpose without the permission of her mother but Mst. Kamli asked the minor girl not to disclose to her mother that she would go with the appellant to village Seti for seeing a dance. The appellant further asked the minor girl to take clothes with her for the purpose of giving them to the dancers for wearing on their bodies. As a result of the persuasions, Mst. Chain Kanwar gave her box containing ornaments and clothes to Mst. Kamli in the evening and then left her father's house from back door in the night at about 10.30 After leaving the house Mst. Chain Kanwar approached Mst. Kamli who took her towards village Seti. In the way Mst. Kamli persuaded Chain Kanwar to stand by the side of Babu Lal and Raj Mal co-accused and in this manner provided an opportunity to the said co-accused to take the minor girl forcibly to village Seti for the purpose of compelling her to marry Raj Mal against her will. There is further evidence on the record that Mst. Chain Kanwar was recovered from the house of Raj Mal of village Bhadsora and that some ornaments were also recovered from the house of Raj Mal at the latter's instance and in consequence of his information which he gave to the Station House Officer while being under police custody. The evidence of Chain Kanwar has not been shaken in cross-examination. It was rightly believed by the Sessions Judge, Partabgarh. I see absolutely no reason to take a different view.

8. Apart from this, there is testimony of Chain Kanwar's mother Mst. Kishan Kanwar, P.W. 1, who clearly stated in her deposition that Chain Kanwar had left

her house without her consent when she was sleeping. Chain Kanwar's father Pratap Singh was not in his house on the date of the occurrence. He had gone to Jaipur from where he returned to his house on 6.1.1973 and hence no question of his permission or consent to the removal of her daughter could possibly arise. The offence of kidnapping Chain Kanwar from lawful guardianship of her father and mother was complete when the minor girl was actually taken by Kamli appellant from the house of Pratap Singh towards village Seti. Consequently, no interference with the finding of the lower court as to the guilt of the appellant is called for.

9. As regards the sentence, it may be observed that it is not severe in the circumstances of the case. There are no mitigating circumstances to justify reduction in sentence.

10. The result is that this jail appeal filed by Mst. Kamli fails and is hereby dismissed. The appellant may be informed accordingly, The period during which the appellant remained in detention during investigation, inquiry or trial of the case i.e. from 6.1.1973 the date of her arrest to 13.1.1973. the date of release on bail and 19.2.1974 to 25.2.1974 shall be set off against the term of imprisonment imposed on her by the trial court on her conviction and her liability to undergo imprisonment shall be restricted to the remainder of the term of imprisonment imposed upon her.