

In Re: V. Abdul Azeez and anr.

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Court : Chennai

Decided On : Nov-20-1951

Reported in : AIR1954Mad62; (1952)IMLJ536

Judge : Ramaswami, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 361 and 363

Appeal No. : Cri. Revn. Case No. 74 of 1951 and Cri. Revn. Petn. No. 73 of 1951

Appellant : In Re: V. Abdul Azeez and anr.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : N. Suryanarayana, Adv. for ;C.R. Krishna Rao, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Ramaswami, J.

1. This is a criminal revision petition filed against the convictions and sentences of the learned Sessions Judge of Chittoor division in C. A. No. 49 of 1950 confirming the convictions and modifying the sentences of the learned District Magistrate of Chittoor in C. C. No. 216 of 1950.

2. The established facts are: The accused are Muslims. They have been living near the house of a Muslim girl P. W. 1 who was under the lawful guardianship of her father P. W. 2. The girl was unmarried at the time of the occurrence and her age was 15 and was living with her father P. W. 2 and brother P. W. 3 in Mangasamudram, a suburb of Chittoor. On account of these accused being Muslims and neighbours they have been frequenting the house of P. W. 2 and have been on friendly terms with P. Ws. 1 to 3. On the evening of 13-7-1950 at about 5 p.m. accused 2 came to the girl P. W. 1 while her parents had gone to another village and gave her a bit of paper. On seeing P. W. 3 enter the house, P. W. 1 tore off the paper into bits and threw them away. Subsequently these bits have been collected and handed over to the Sub Inspector and have been pieced together and exhibited as P-I. Accused 2 then went away. Subsequently at about 7 p.m. both the accused went to P. W. 1 again taking advantage of the absence of P. W. 3 from the house, and gave her another bit of paper Ex. P-2 inviting her to go with them, P. W. 1 read the paper threw it down and accused 2 had taken it and it has been subsequently recovered from him by the Sub Inspector. These people have then gone to the village of Yadamarri, six miles away and halted there for the night. I may point out here that when the girl left the place with these accused she had gone with her clothes, jewellery, etc. On the next morning the girl and the two accused got into a bus and went to Paradarami which is 4 or 5 miles away. There they stayed in the house of accused 2's grand-mother. Then P. W. 1 and accused 1 stayed behind and accused 2 came back to Chittoor. In the meanwhile P. W. 3 who returned to the house at 2 a.m. on the night of this girl's departure from the house with the accused, finding her absent contacted his parents and all of them searched for her. Then on information from P. W. 4 who was returning from Gudiyattam to Chittoor that he saw P. W. 1 in the company of both the accused near Yadamarri. P. W. 2 gave a complaint at the police station. Accused 2 was arrested and on information given by him P. W. 7 a Muslim gentleman engaged a car and went to Paradarami and found P. W. 1 and accused 1 sitting in a mango tope and brought them to Chittoor. Both the accused, were charge-sheeted for an offence under Section 363, Penal Code.

3. The case for the accused persons was a complete denial of the prosecution story. They denied the papers Exs. P-1 and P-2, the elopement, their journeys and

accused 1 and the girl being brought back by P. W. 7 from Paradarami. In addition accused 2 set up an alibi that on the night in question he was working in the Beedi factory and alleged enmity between himself and P. W. 4 whereas accused 1 stated that he could not give any reason why the P. Ws. should falsely depose against him.

4. The accused examined two defence witnesses. D. W. 1 Sundaramma is the grandmother of accused 2 who denied that P. W. 1 and accused 1 came to her house at Paradarami and halted for the night. D. W. 2 is a potter at Santhapet and lives next door to accused 1's house and he testified that on the night in question he and accused 1 attended the film 'Gunasundari' in the Premala talkies in the second show which lasted from 10 p.m. to 1 a.m. and that next morning accused 1 was fetched by P. W. 3 from his house and that they came to the bridge and that they were talking to a spectacled gentleman and that they left together to Chittoor and that in the evening he learnt that accused 1 was arrested by the Police and was in remand.

5. Both the lower Courts have found both the-accused guilty of an offence under Section 363, Penal Code and whereas the learned District Magistrate-sentenced these accused to one year's rigorous imprisonment each, on appeal the learned Sessions Judge our present learned brother Sri Ramaswami Goundar reduced the punishment to three months each.

6. The short point for determination before us is whether in this case the offence of kidnapping the girl from lawful guardianship has been brought home beyond reasonable doubt to both these accused persons.

7. In order to support a conviction for kidnapping a girl from lawful guardianship the ingredients to be fulfilled are: (i) that the girl was under 18 years of age, (ii) such minor was in the keeping of a lawful guardian, and (in) the accused took or induced such person to leave out of such keeping and such taking was done without the consent of the lawful guardian.

8. There is no dispute that on the date in question the girl was under .18 years of age.

9. There is also no dispute that this minor girl was then in the keeping of her lawful guardian, viz., her father P. W. 2.

10. About the question whether the accused took the girl out of the keeping of the lawful guardian we have to construe what the word 'taking' as used in this section means. The word. 'take' a girl under 18 'out of the possession and against the will of her father or mother, etc.' does not imply force, actual or constructive; it means being a party to the father, etc., being deprived of the possession of the girl, her willingness being immaterial 'R. v. Mankletow' (1853) 22 LJ MC 115 (A); -- 'R. v. Timmins', (1861) 30 L J M C 45 (B). Secondly the 'taking' which constitutes an offence is completed as soon as the girl is removed from the keeping of the lawful guardian, it does not mean continuing or continuous act; see --'Nemani Chatteraj v. Queen Empress', 27 Cal 1041 (C); -- 'Rekha Rai v. Emperor'; : AIR1928 Pat159 (D) and -- 'Emperor v. Tika', 26 All 197 (E). Thirdly, the mere fact that a minor leaves the protection of her guardian does not put her out of the guardian's keeping, If, however, it is proved that a minor had abandoned her guardian with no intention of returning back, she cannot thereafter be deemed to continue in the keeping of the guardian. What will be deemed to be sufficient to constitute an abandonment of a guardian by a minor girl depends upon the facts of a particular case.

The following relevant circumstances have been laid down by a long line of decisions and may be usefully borne in mind in considering the particular facts of each case. It is not necessary that the prisoner should be present when the minor quits its home with the intention of abandoning it; -- 'R V. Robb', (1864) 4 F & F 59 (F). It is only necessary that the influence of the prisoner must instigate or co-operate with the inclination of the minor at the time the final step is taken, for the purpose of causing it to be taken. This has been laid down in -- 'Hossaini Methor v. Emperor' : AIR1937 Cal460 (G) by Henderson and Biswas JJ. and which definition was accepted and followed in -- 'Mahadev v. Emperor', AIR 1943 Bom 119 (H), by Beaumont C. J. sitting with Sen J. Where the defendant went in the night to the house of the girl's father and placed a ladder against the window by which she descended and eloped with him, this was held to be a taking of her out of the possession of her father, though she had herself prepared the plan; -- 'R. v.

Robbins', (1843) 1 C & K 456 CD. And so it was held where the girl left her home alone by a preconcerted arrangement with the prisoner and went to a place appointed, where she was met by him, and that they then went off together without the Intention of returning; since upto the moment of her meeting with the defendant she had not absolutely renounced her father's protection: --'(1853) 22 L J M C 115 (A)'. And it makes no difference that the girl has left her home before the prisoner wished her to do so, if, finding that she has left, he avails himself of her position to induce her to continue away from the lawful custody, provided she left her home under the influence of his previous persuasion. If it is shown that such conduct is due to a mere petulant outburst in consequence either of a quarrel with her relations or because of the guardian reprimanding her for her conduct, that will be a relevant question to be considered for deciding whether her conduct was sufficient to put an end to the ties of guardianship: -- 'Valliant v. Eleazer', : AIR1926 Cal467 (J). Even when there is some evidence that the girl at the time when she left the protection of her guardian did not intend to come back to her father's place but the evidence further discloses that but for something which the accused consented to do and did ultimately do the minor would not have, in the natural course of events, left the house of her father then there would be a sufficient taking by the accused in the eye of law for attracting the provisions of Section 363, Penal Code:

-- 'Abdul Sathar v. Emperor', AIR 1928 Mad 585 (K). It is only in cases where the girl leaves her home without any persuasion or inducement held out to her by the prisoner and leaves the guardian's house with the mental reservation that he or she will not be returning back to be under that guardian so that she has got fairly away from home and then goes to him, although it may be his moral duty to restore her to her home, yet his not doing so is no Infringement of the law, for the statute does not say he shall restore her but only that he shall not take her away. Thus, to sum up. this section has been passed for the protection of parental rights and it is perfectly clear that any disposition of the girl like being over-sexed or animated by a desire to have a good time or any consent or forwardness on her part are immaterial on the question of the prisoner's liability under this section and the only point to be decided is whether he took or induced her coming away from her lawful guardian for the time being.

11. We have now to apply these principles to the facts of the present case. And applying these principles the Offence under Section 363, Penal Code, as concluded by both the Courts has been brought home beyond reasonable doubt to these accused persons. The victim in this case was a young, illiterate and apparently over-sexed Muslim girl obviously out for a good time with young men and unversed in wordly matters, and without adequately realising the consequences of such conduct. The two accused persons are found to be grown up unmarried lusty young men who were equally out to have a good time with a girl of that description. On account of their being neighbours the accused have managed to worm themselves into the good graces of this young girl. It is obvious that the accused wanted this friendship to ripen into an intimacy. It is easy to deduce from the evidence on record that there was a preconcerted arrangement between P. W. 1 and the accused to leave the house, elope and have a good time. So on 13-7-1950 this Muslim girl has been contacted by these accused persons on two occasions and the girl had left the house with her clothing, jewels etc. There can be no doubt that this girl has been taken from her house by these accused persons because it stands to common sense and it is in the probable course of human conduct that such a young girl would not have thought of going to Yadamarri and Paradarami with all her belongings but for the instigation, co-operation and accompaniment of the accused. There is no reason to disbelieve the testimony of this girl about her staying in the house of the grandmother of accused 2 who naturally comes forward and perjures herself in order to support her grandson. There can also be equally no doubt that P. W. 4 saw this girl with the accused near Paradarami. There can also be no doubt that P. W. 7 who engaged a car and went to Paradarami found P. W. 1 and accused 1 sitting in a mango tope and brought them to Chittoor in the car, it is seen that the girl was traced to Paradarami on account of the information given by accused 2 who had come back to Chittoor to scout and find out how things were developing. The alibis put forward were found to be hopelessly false. It is quite true that the girl wants to put a gloss over this escapade by making herself out as the innocent victim who had been taken round to Yadamarri and Paradarami, against her will whereas when she started from her house the idea was to go to a cinema and the girl also does not speak to intimacy during the escapade. This is natural because any

admission of this nature would seriously jeopardise her future and naturally her parents and relatives must be anxious to hush all that portion of this unsavoury episode. This does not mean that the prosecution story spoken to by respectable persons and against whom no motive has been alleged by the accused excepting in the case of P. W. 4 by accused 2 is false.

12. In the result both the lower Courts have rightly found these accused guilty of the serious offence under Section 363, Penal Code and the sentences of imprisonment have been reduced to the minimum possible. There are no grounds to interfere and this revision petition is dismissed and the revision petitioners must serve out the rest of the sentence of imprisonment Imposed on them by the lower appellate Court.

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