

Before C. C. Ghose and Cuming JJ.

. 1923

June 26.

KUSHAI MALLIK

v.

EMPEROR.\*

*Joint Trial—Offences committed in the same transaction—Abduction on one date by certain persons and concealment, on another date, by the same and another—Criminal Procedure Code (Act V of 1898), ss. 235, 239, and *Illust. (b)*.*

Where four persons abducted *N*, a married woman, on the 25th June, and kept her at various places, and then took her, on the 7th July, in a boat to a *ghat* near the house of *M* a prostitute, who was brought to the boat and requested to make the abducted woman a prostitute on payment of money, and *M*, and one of the original abductors thereupon took *N* in the boat to another place where they were met by another man who took the two women to his house, in which the abducted woman was kept for two days after which she was removed to the house of another prostitute, and rescued :—

*Held*, that, as abduction was a continuing offence, and there was community of purpose between the abductors and *M*, all of them could be tried together for the offences committed on the 7th July and thereafter.

*Held*, further, that they could all be tried together for the offences committed on the 25th June under the provisions of *Illust. (b)* to s. 239.

THE four appellants, with one Makhoda *alias* Kuti Peshakar, a prostitute, were tried before the Sessions Judge of Faridpur and a jury, the former on charges under ss. 366, 368 and 498 of the Penal Code, and the latter on charges under ss. 366 and 368. They were found guilty and sentenced to various terms of imprisonment. The facts were as follows. On the night of the 25th June 1922, one Najibunnessa, the

Criminal Appeal, No. 177 of 1923, against the order of Rajendra Lal Saini, Additional Sessions Judge of Faridpur, dated Feb. 22, 1923.

*nika* wife of Mahomed Jonab Ali, came out of her room to attend to a call of nature. The appellant, Khuda Bux, seized and gagged her, and the other three appellants took her to the house of Tarakhan where she was kept under detention for two days. She was thereafter carried by the appellants to other places, and brought back to Tarakhan's house. The husband went there on the 7th July, and tried to rescue her but was driven away. On the same night the four appellants took her in a boat to the *ghat*, adjoining Mokhoda's house. Mokhoda was brought to the boat and offered money to make Najibunnessa a prostitute. She agreed and remained on the boat with Khuda Bux and the abducted woman, the others having left. The boat proceeded to Kanchanpur where one Gadadhur met them, and took the two women to his house. Najibunnessa was detained there for two days. She was then taken to the house of Jamini Peshakar, and was rescued by her husband.

The five accused were, after a preliminary inquiry, committed to the Court of Session, at Faridpur, and tried, convicted and sentenced as stated above. Khuda Bux and his three male companions appealed to the High Court.

*Babu Manmatha Nath Mookerjee* (with him *Babu Jyotish Chandra Guha*), for the appellants. The offences committed by the four appellants were completed on the 25th June before Kutli appeared. The acts of the former on that date were not parts of the transaction consisting of the acts of the appellants and of Kutli on the 7th July. In order to make the series of acts committed on the two dates parts of the same transaction the five accused would have to be associated together from the beginning. Re

1923  
 KUSHAI  
 MALLIK  
 v.  
 EMPEROR.

mainly on *Ashutosh Das Gupta v. Purna Chandra Ghosh* (1), *Hira Lal Thakur v. Emperor* (2), and *Nikunja Behari Roy v. Queen Empress* (3).

*The Deputy Legal Remembrancer (Mr. Orr)* and *Mr. B. M. Sen*, for the Crown. The series of acts alleged in the case form parts of one transaction. Abduction is a continuing offence: *Ganga Dei v. King Emperor* (4). There was community of purpose: the men wanted to make the abducted woman a prostitute and Kutti agreed. The joint trial is legal: *Emperor v. Sherufalli Allibhoy* (5) and *Emperor v. Punya Naidu* (6).

GHOSE AND CUMING JJ. The appellants before us are four in number, and they were tried before the learned Sessions Judge of Faridpur and a jury, along with one Mokhoda *alias* Kutti Peshakar, on charges under sections 366, 368 and 498 of the Indian Penal Code. The jury found the four appellants guilty of offences punishable under sections 366 and 498 of the Indian Penal Code, and they found the accused, Mokhoda *alias* Kutti, guilty of offences punishable under sections 366 and 368 of the Indian Penal Code. The learned Sessions Judge, agreeing with the verdict of the jury, has sentenced the four appellants to undergo rigorous imprisonment for three years under section 366 of the Indian Penal Code, and rigorous imprisonment for one year under section 498 of the Indian Penal Code; the sentences to run concurrently.

The case for the prosecution was as follows. One Mahomed Jonab Ali married one Najibunnessa in the *nika* form at Dacca about 18 months ago. They lived together at Doyarampur. On the 25th June 1922, the

(1) (1922) I. L. R. 50 Cal. 159.

(4) (1914) 12 A. L. J. R. 91.

(2) (1904) I. L. R. 31 Cal. 1053.

(5) (1902) 1. L. R. 27 Bom. 135.

(3) (1900) 5 C. W. N. 294.

(6) (1902) 4 Bom. L. R. 789.

husband was not at home, and on the night of that date, at about 12 P.M., Najibunnessa came out of her room to answer a call of nature. The appellant, Khuda Bux, caught her and gagged her mouth from behind. The remaining three appellants dragged her to the house of one Tarakhan, and kept her there for two days. Then she was taken to two different places and was kept for several days. Afterwards she was again taken to the house of Tarakhan and kept there. On receipt of certain information, the husband came to Tarakhan's house on the 7th July, and met the four appellants there. He requested Tarakhan to release his wife, whereupon an altercation ensued. The wife was within a hut and she screamed out and requested her husband to rescue her. The husband was driven away. On the night of the 7th July the four appellants and Tarakhan took Najibunnessa to Kutī Peshakar's *ghat*, and Najibunnessa was kept in a boat. Kutī Peshakar was requested by the four appellants to make Najibunnessa a prostitute, and to have her name registered in the register of prostitutes, on payment of a reward of Rs. 50. Khuda Bux and Kutī remained in the boat and the other persons went away. The boat went on and reached Kanchanpur on the other side of the river Padma, where one Gadadhar met the girl and Kutī. They were taken to his house, where the girl was kept for two days. She was removed to the house of Jamini Peshakar where her husband came and rescued her. She was then taken to the house of the local zemindar, one Harendra Babu, and she made a statement there regarding her abduction and confinement, and she mentioned the names of the four appellants. She filed a petition of complaint at Faridpur.

On behalf of the appellants it has been argued that the trial has been vitiated by misjoinder of

1923

---

KUSHAI  
MALLIK  
v.  
EMPEROR.

1923  
 KESHAV  
 MAULIK  
 v.  
 EMPEROR.

charges, and joint trial of offences and of offenders which are not sanctioned by law. It is argued that, inasmuch as the offences committed by the four appellants were complete on the 25th June, long before the 5th accused, Mokhoda *alias* Kuti Peshakar, came on the scene, the series of acts on the 25th June and on the 7th July 1922, were not so connected together as to form the same transaction, nor were they committed in the same transaction within the meaning of sections 235 and 239 of the Code of Criminal Procedure, and that, therefore, the trial of the five persons, *i.e.*, the four appellants and the said Mokhoda *alias* Kuti, was bad.

The expression "same transaction", used in sections 235 and 239 of the Criminal Procedure Code, has been the subject of discussion in numerous cases. It has been held in some cases that, if a series of acts are so connected together by proximity of time, community of criminal intention and continuity of action and purpose, or from the relation of cause and effect, as to constitute, in the opinion of the Court, one transaction, then the accused may be charged with and tried at one trial for every offence committed in such series of acts, and if more persons than one are accused of different offences in a series of acts so connected, they may be tried together. In other cases it has been held that the word "transaction" suggests not necessarily proximity in time so much as continuity of action and purpose, *i.e.*, it is not necessary that the acts should have been committed all on the same occasion, but it is sufficient that, though separated by a distinct interval of time, they are closely connected by continuity of purpose or progressive action towards a single object. In accordance with the last mentioned view it has been held that, where the accusation against all the accused persons is that they carried

out a single scheme by successive acts done at intervals, and there was a complete unity of project, and the whole series of acts were so linked together by one motive and design as to constitute one transaction within the meaning of section 239, a joint trial is not only legal but is demanded in the interest of public time and convenience. In all these cases, however, the foundation for the procedure is the association of two or more persons concurring from start to finish to attain the same end.

Now, in this case it is argued that, while there can be no objection to the trial of the four appellants for offences under sections 366 and 498 of the Indian Penal Code committed on the 25th June 1922, there is, however, grave objection to the joint trial of the four appellants along with the 5th accused in respect of the offences committed on the 25th June and on the 7th July 1922, seeing that the 5th accused did not at all appear on the scene till the 7th July 1922. In other words, the contention is that all the five persons did not start together for the same goal; the four appellants before us no doubt started for the same goal, but the association of the 5th accused with the four appellants did not take place till the 7th July 1922. It is, therefore, argued that this case is not covered by the provisions of sections 235 and 239 of the Code of Criminal Procedure.

On the facts of this particular case there can be no doubt that, inasmuch as the offence of abduction is a continuing offence, the four appellants and the 5th accused could have been tried together in respect of offences committed on the 7th July 1922, and on all subsequent dates thereafter. The four appellants wanted that Najibunnesa should be made a prostitute and the 5th accused also wanted that Najibunnesa should be made a prostitute.

1923  
KUSHAI  
MALLIK  
v.  
EMPEBOR

1923  
KUSHAI  
MALLIK  
v.  
EMPEROR.

should be made a prostitute; therefore they were rightly tried together for offences committed on the 7th July 1922, and on all subsequent dates thereafter. The question is whether the trial has been vitiated by reason of the four appellants being tried together with the 5th accused in respect of the occurrences before the 7th July 1922. Now, Illustration (b) to section 239 of the Criminal Procedure Code shows that such a trial is permitted by the provisions of the law. We do not think, therefore, that the trial in this case is bad, and, therefore, we must negative the contention urged on behalf of the appellants.

A small point has been taken, viz., that there was no proper cognizance of the offence under section 498 of the Indian Penal Code. Now, it is unnecessary to deal with this matter at length, because, for the reasons given by the learned Sessions Judge in his charge to the jury, we are of opinion that there is no substance in this contention, and this must fail also. The result, therefore, is that this appeal must be dismissed.

E. H. M.

*Appeal dismissed.*

---