

APPELLATE CRIMINAL.

Before Cunliffe and Henderson J.J.

JATEENDRA MOHAN DAS

1937

Jan. 13, 26.

v.

EMPEROR.*

Possession—“*Obtaining possession*”, *Meaning of*—“*Possession*”, *what it signifies*—*Indian Penal Code (XLV of 1860), ss. 372, 373.*

Sections 372 and 373 of the Indian Penal Code are correlative of each other. The phrase “otherwise obtains possession” in s. 373 corresponds to “otherwise disposes of” in s. 372 and is *ejusdem generis* with “buying” and “hiring.”

Section 373 of the Indian Penal Code has no application to a case where the accused obtains possession of a girl with the intention of having illicit intercourse with her himself.

Queen v. Shaik Ali (1) followed.

Bhagchand Jasraj Marwadi v. Emperor (2) dissented from.

The word “possession” implies some sort of control. When a girl elopes with another of her own accord and there is nothing to show that she cannot leave him at any moment the man cannot be said to have possession of the girl.

CRIMINAL APPEAL.

The accused in this case was tried under ss. 366, 498 and 373 of the Indian Penal Code by the Sessions Judge of Khulna with the aid of a jury. He was convicted of the charge under s. 373 and acquitted of the other two charges. The case for the prosecution was that the accused, who was a clerk in the income-tax office at Khulna, used to take his meals at the house of the complainant Bidhu Bhooshan Das who was a peon of that office. The accused became acquainted with the wife of Bidhu Bhooshan named Parul Bala, aged below 18 years,

*Criminal Appeal, No. 774 of 1936, against the order of B. N. Chakrabarti, Sessions Judge of Khulna, dated Sep. 25, 1936.

(1) (1870) 5 Mad. H. C. R. 473.

(2) (1934) I. L. R. 53 Bom. 498.

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and on his transfer to Barisal he proposed to the girl that she should run away with him. It was agreed between them that on May 10, 1936, they would go away. It was also arranged that she would leave a letter in her box to the effect that she was leaving her home of her own accord. On that day they were discovered sitting on the same bed on the Barisal steamer and the girl was taken back. Later the accused again managed to take the girl away on that steamer. Their behaviour having roused the suspicion of the clerk of the steamer and other people, a sub-inspector of the D. I. B. questioned them and the girl was ultimately produced before the Barisal police. She was kept with the Assistant Secretary of the Women Protection League, Barisal Branch. After investigation, the present case was started. The case for the defence was that the girl had been permitted by her people to go with the accused to take her to her uncle-in-law who was living at Chandpur. From the aforesaid conviction the accused preferred the present appeal.

Prabodh Chandra Chatterji and *Beereshwar Chatterji* for the appellant.

The Deputy Legal Remembrancer, Khundkar, and *Anil Chandra Ray Chaudhuri* for the Crown.

Our adv. vult.

HENDERSON J. The appellant has been convicted of an offence punishable under s. 373 of the Indian Penal Code by the unanimous verdict of a jury. Charges were also framed against him under ss. 366 and 498 of the Indian Penal Code but he was found not guilty. Two points have been taken on his behalf before us : (i) That the learned Judge should have directed the jury to return a verdict of not guilty on this charge. (ii) That there is no evidence that the appellant obtained possession of the girl within the meaning of the section. I may note that

the foreman of the jury indicated that, in their opinion, the girl in question was above sixteen but below eighteen years of age.

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In order to understand the arguments addressed to us certain facts alleged by the prosecution require to be stated. The appellant is a clerk in the Income-tax Department and was attached to the office in Khulna. The girl Parul Bala is the wife of one Bidhu Bhooshan Das, son of Maheendra Das, who were both peons attached to the office. The appellant used to have his food in their house served by Parul Bala. The appellant made overtures to her and it appears that they fell in love with each other. At any rate, when the appellant was transferred to Barisal, he asked her to run away with him and she agreed. Accordingly, she left a letter to say that she had run away of her own accord and they went together to the steamer. However, before the steamer left, she was taken home by her father-in-law. But she ran away again and the couple eventually reached Barisal.

Now the prosecution never suggested that the intention of the appellant was other than to have intercourse with the girl himself. Nor is it alleged that he obtained possession of her from a third person. It has, accordingly, been contended by Mr. Chatterji that s. 373 of the Indian Penal Code has no application to such a case. He has strongly relied upon the old decision of the Madras High Court in the case the *Queen v. Shaik Ali* (1). I am bound to say that, as I understand that decision, he is supported by the opinion of the majority of the Judges. On the other hand, the learned Deputy Legal Remembrancer has relied upon a recent decision in the case of *Bhagchand Jasraj Marwadi v. Emperor* (2) which, following an earlier decision of the Court, dissents from the Madras view.

(1) (1870) 5 Mad. H. C. R. 473.

(2) (1934) I. L. R. 58 Bom. 498.

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In my opinion it would be perfectly idle to contend that s. 373 is to be read as a self-contained whole without any reference to its immediate predecessor. It seems to me that they are correlative of each other, being aimed against what may be broadly described as trafficking in girls under the age of eighteen. On this view the words "otherwise obtains possession" must be construed *ejusdem generis* with "buying," and "hiring". The wording of the two sections is extremely close. Clearly "sells" in s. 372 corresponds with "buys" in s. 373: similarly "lets to hire" corresponds with "hires". In my opinion it would be a strained interpretation of s. 373 to hold that "otherwise obtains possession" does not correspond with "otherwise disposes of". It is not difficult to find examples. If the mother of an illegitimate girl, whom she is unable or unwilling to maintain, made her over to the keeper of a brothel with the intent that she may be used for purposes of prostitution, the mother is guilty under s. 372 and the keeper of the brothel under s. 373.

It has been suggested that the effect of the Madras decision has been nullified by the amendment of the section in 1924. I can find no foundation for that suggestion. The effect of the amendment is merely to enlarge the scope of the "intent"; it has in no way enlarged the meaning of the words "otherwise obtains possession". In my opinion, if the Madras decision was good law before the amendment, it is good law now. I respectfully agree with it and must therefore hold that the learned Judge should have directed the jury to return a verdict of not guilty on this charge.

I am further of opinion that the word "possession" implies some sort of control. In the present case there is no evidence that the appellant exercised any sort of control over the girl. Indeed it is difficult to appreciate on what view of the evidence a jury could find the appellant not guilty under s. 498 but guilty under s. 373. The girl ran away with him of her own accord. In spite of the fact that she was taken

home by her father-in-law she ran away again and rejoined the appellant. In fact there is nothing to show that he had possession of her in any sense of the term or that he attempted to control her movements in any way; as far as one can see, there was nothing to prevent her from leaving him at any moment she chose.

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For these reasons I am of opinion that this appeal must be allowed, the conviction and sentence set aside and the appellant discharged from his bail.

CUNLIFFE J. I agree and have nothing to add.

Appeal allowed.

A. C. R. C.