

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

CHEKUTTY AND TWO OTHERS (ACCUSED), PETITIONERS,

v.

EMPEROR, RESPONDENT.*

1902.
September
17, 25.

Criminal Procedure Code—Act V of 1898, s. 235—“Same transaction”—Kidnapping of child and assault, at a later date, on mother—Conviction—Validity.

An accused was charged and tried at one trial with the offences of kidnapping, wrongful confinement and assault, and convicted. The case for the prosecution was that the accused had kidnapped and wrongfully confined a boy, and that when the boy's mother, a day or two afterwards, went to the house of the accused and asked that the boy might be allowed to return to her, the accused assaulted the mother. The conviction was upheld by the Sessions Court. On a revision petition being preferred in the High Court:

Held, that the charge of assault ought to have been brought separately and tried separately. The kidnapping and the assault were not committed in one series of acts so connected together as to form one transaction. The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. Even assuming that on the facts of this case the process of “taking” or “enticing” was going on at the time of the alleged assault on the mother, it was doubtful whether the assault was one of a series of acts so connected together as to form the same transaction, and the charge of assault should have been brought and tried separately.

CHARGES against first accused, of kidnapping, wrongful confinement and assault, under sections 363, 343 and 352 of the Indian Penal Code; against second and third accused of abetment of wrongful confinement and assault. The charge against first accused was that he kidnapped and wrongfully confined a boy who was in his service, and that when the boy's mother came, a day or two afterwards, and asked that the boy might be allowed to return to her, first accused assaulted her. The Special Assistant Magistrate of Malabar convicted first accused of all the three offences with which he was charged. He also convicted the other two accused. The

* Criminal Revision Case No. 204 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of N. S. Brodie, Sessions Judge of South Malabar, in Criminal Appeal No. 34 of 1902, confirming the finding and sentences passed on the petitioners by A. R. L. Tottenham, Special Assistant Magistrate of Malabar, in Criminal Case No. 6 of 1902.

accused appealed to the acting Sessions Judge, who upheld the convictions and sentences. The accused now preferred this revision petition.

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Dr. *Swaminatha* for petitioner.

The Acting Public Prosecutor in support of the conviction.

SIR ARNOLD WHITE, C.J.—In this case the first accused was charged with kidnapping (section 363, Indian Penal Code), wrongful confinement (section 348) and assault (section 352) and the second and third accused were charged with abetment of wrongful confinement and abetment of assault. The case against the first accused was that he kidnapped and wrongfully confined a boy who was in his service as a cowherd, and that, on the boy's mother, a day or two afterwards, coming to the house of the first accused and asking that the boy should be allowed to return to her, he assaulted the mother. The first accused was charged with three distinct offences and tried at one trial for the three offences. The question is, were the three offences committed in one series of acts so connected together as to form the same transaction within the meaning of section 235 of the Code of Criminal Procedure. If they were not, the charge was bad and the trial was bad. No question arises with regard to the charges of kidnapping and wrongful confinement. The question is, were the kidnapping of the boy and the assault on the mother committed in one series of acts so connected together as to form the same transaction. In my opinion they were not. In support of the conviction it was argued that the offence of kidnapping was continuous and that the assault on the mother having been committed during the continuance of the kidnapping the two offences were committed in one series of acts so connected together as to form the same transaction. It has recently been held by a Full Bench of the Calcutta High Court in *Nemai Chatteroj v. Queen-Empress*(1) that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship and that it is not an offence continuing as long as the minor is kept out of such guardianship. The Madras case (*Regina v. Samia Kaundun*(2)) as the Chief Justice of the Calcutta High Court points out in the case just referred to, was a case of kidnapping out of British India and as, when the accused intervened, the boy had not been actually taken out of British

(1) I.L.R., 27 Cal., 1041.

(2) I.L.R., 1 Mad., 173.

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India the process of taking was regarded as continuing. I agree with the view of the Calcutta High Court, but even assuming that, on the facts of the present case, the right view is that the process of "taking" or "enticing" the boy was going on at the time of the alleged assault on the mother, I should feel considerable doubt as to whether the assault on the mother was one of a series of acts so connected together as to form the same transaction.

I think the charge of assault ought to have been brought separately and tried separately. The Magistrate, in general terms, finds the three accused guilty of the offences with which they were charged and sentences the first accused to two years' rigorous imprisonment and the second and third accused to nine months' rigorous imprisonment each, and the Sessions Judge finds that the three charges are supported by the facts and dismisses the appeal.

In this state of things it seems to me that the proper order for us to make is to set aside the convictions and to order the retrial of the three accused.

MOORE, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

ZEMINDARNI OF NIDALAVOLE (PLAINTIFF),

APPELLANT,

v.

SAGIRAZU KRISHNAM RAZU AND ANOTHER (DEFENDANTS),

RESPONDENTS.*

Rent Recovery Act—VIII of 1865, s. 11, cl. 4—Sanction by Deputy Collector of enhanced rent—Cancellation of sanction by Collector—Validity—Regulation II of 1803, s. 9—Regulation VII of 1828, s. 3—Powers of supervision vested in Collector—Tender of patta within fashi—Order sanctioning enhanced rent passed after termination of fashi—Effect on patta.

The general powers of supervision given to a Collector by section 9 of Regulation II of 1803, and section 3 of Regulation VII of 1828, include the power to act

* Second Appeal No. 142 of 1901, presented against the decree of J. H. Munro, District Judge of Godavari, in Appeal Suit No. 360 of 1899, presented against the decision of N. S. Somasundaram, Deputy Collector, General Duties, Narasapur, in Summary Suit No. 6 of 1898 (*vide* Second Appeal Nos. 143 to 457 of 1901).