

idol; and on this ground their Lordships held that the suit was barred by limitation.

The view which we have taken of the various cases decided by their Lordships of the Privy Council is the view which was recently taken by their Lordships of the Patna High Court in a case reported in *Badri Narain Singh v. Mahant Kailash Gir* (1), decided by MULLICK and KULWANT SAHAY, JJ. We, therefore, hold that the possession which was taken by the defendant's predecessor-in-title, Mahant Sur Das, during the time that Mahant Dharam Das was the mahant of Birakt Asthan was adverse not only to the said mahant but to the Asthan itself, and that the Courts below have correctly decided that the plaintiff's suit is barred by limitation.

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Mohammad Raza.

BANNU MAL (PRISONER) (APPELLANT) *v.* KING-EMPEROR
(COMPLAINANT-RESPONDENT).*

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May, 26.

*Indian Penal Code (XLV of 1860), sections 366 and 368—
Wrongfully keeping in confinement a kidnapped person—
Kidnapper's conviction under section 368 of the Indian
Penal Code, legality of.*

Held, that section 368 of the Indian Penal Code refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnappers.

* Criminal Appeal No. 183 of 1926, against the order of Aprukash Chandra Bose, Additional Sessions Judge of Kheri (at Lakhimpur), dated the 13th of April, 1926, convicting the accused appellant under sections 366 and 368 of the Indian Penal Code.

(1) (1926) 93 I.C., p. 303.

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A kidnapper who has been convicted under section 366 of the Indian Penal Code cannot, therefore, be convicted also under section 368 of the Indian Penal Code of the offence of wrongfully concealing or keeping in confinement a kidnapped person. [*Queen-Empress v. Sheikh Oozeer* (1), followed.]

Mr. *Har Narayan Das*, for the appellant.

*Misra and
Raza, JJ.*

Government Advocate (Mr. *G. H. Thomas*), for the Crown.

RAZA, J. :—The appellant Bannu Mal has been convicted under sections 366 and 368 of the Indian Penal Code. He has been sentenced to 3 years' rigorous imprisonment under section 366 and to 2 years' rigorous imprisonment under section 368. The sentences are to run consecutively.

Musammat Jagrani, who is a married girl, was kidnapped and abducted on or about the 29th of October, 1925. She was taken from Lakhimpur to Saharanpur and kept in confinement there. It has been found by the learned Sessions Judge that the girl was under 15 years of age at the time the offence was committed. Musammat Rukmin and Jagnu induced the girl to leave the house of her husband at about 9 p.m. when her mother-in-law was asleep and her husband absent from home. The girl was taken to Rukmin's house and there she met the accused Bannu Mal and Girdhar. Bannu Mal accused was the person who was principally responsible for all this. It was he who was working behind the scene. The girl was then taken to Saharanpur and confined in a kothri in the house of one Jaduram. Bannu Mal had sexual intercourse forcibly with the girl there. The next day the girl broke and threw out her bangles and also raised cries to attract the attention of the passers by. This had the desired effect. The police eventually arrived there and the girl was rescued by the thanadar. It has been found

that it was Bannu Mal who met the girl just after she was taken away from her house, that it was he who took her to Saharanpur, that it was he who remained with her after others went away, that it was he who had sexual intercourse with her by force, and that it was he who guarded the door of the room in which the girl was confined. Thus he was the principal person who kidnapped the girl and Jagnu and Musammatt Rukmin, who actually induced the girl to leave her home, had the same common intention and acted according to his wishes.

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Raza, J.

Bannu Mal's learned Counsel has confined his argument to two points only:—

- (1) The age of the girl, and
- (2) The conviction and sentences under sections 366 and 368 of the Indian Penal Code.

The learned counsel for the accused Bannu Mal contends that the girl is more than 15 years of age. I am not prepared to agree with him on this point. It is satisfactorily established by the medical evidence and the evidence of the uncle of the girl, who brought her up after the death of her parents, that she is in her 15th year. The evidence on this point is quite sufficient and the learned Sessions Judge was perfectly right in holding on that evidence that the girl was under 15 years at the time she was kidnapped.

On the next point the contention of the learned Counsel for Bannu Mal should, I think, be accepted. Bannu Mal has rightly been convicted and punished under section 366 of the Indian Penal Code. He has, however, at the same time been convicted and punished under section 368 of the Indian Penal Code also; but this section refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnappers. The ruling in the case

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of *Queen-Empress v. Sheikh Oozeer* (1) is clear on this point. The charge under section 366 of the Indian Penal Code is satisfactorily made out against the appellant.

Raza, J. The result is that Bannu Mal's conviction under section 368 of the Indian Penal Code should be set aside. I allow Bannu Mal's appeal to this extent only. I set aside his conviction and sentence under section 368 of the Indian Penal Code, but uphold his conviction and sentence under section 366, Indian Penal Code. He will now undergo only 3 years' rigorous imprisonment under section 366, Indian Penal Code.

I have just now received the appeal of Jagnu accused through jail. In my opinion the charge is satisfactorily made out against him also. The case is clear. He has been rightly convicted and punished under section 366, Indian Penal Code. I dismiss his appeal.

Appeal dismissed.