

1930

KING-  
EMPEROR  
v.  
MADHO.

the Indian Railways Act, and I order that both the sentences and convictions be quashed and the fine, if paid, be refunded.

### REVISIONAL CRIMINAL.

Before Mr. Justice E. M. Nanavutty.

1930

March, 20.

BURHMA (ACCUSED-APPLICANT) v. KING-EMPEROR  
(COMPLAINANT-OPPOSITE PARTY)\*

*Indian Penal Code (Act XLV of 1860), section 366—Kidnapping a minor girl when she was away from her lawful guardian, whether an offence under section 366, Indian Penal Code.*

Where the accused found a minor girl at the house of another person away from the lawful guardianship of her mother and was taking her away in the company of others to another place when he was arrested *held*, that he must have known when he took away the girl that she had a lawful guardian from whose custody he was taking her away and so he, in taking away the girl in order to sell her and to pocket the sale proceeds, was guilty of an offence under section 366 of Indian Penal Code. *King-Emperor v. Gokaran (1), Nema Chatteraj v. Q. E. (2), Emperor v. Abdul Rahman (3), Nanak Sahu v. King-Emperor (4), and Idu v. King-Emperor (5)*, referred to.

Mr. *Moti Lal Saksena*, for the applicant.

The Government Advocate (Mr. *H. K. Ghosh*), for the Crown.

NANAVUTTY, J.:—This is an application for revision of an appellate order of the learned Sessions Judge of Fyzabad upholding the conviction and sentence passed upon the applicant Burhma of an offence under section 366 of the Indian Penal Code. The story of the prose-

\*Criminal Revision No. 16 of 1930, against the order of R. J. Yorke, District and Sessions Judge of Fyzabad, dated the 16th of January, 1930, confirming the order of Pandit Krishna Nand Fande, Assistant Sessions Judge of Sultanpur, dated the 28th of October, 1929.

(1) (1920) 24 O.C., 329.

(2) (1900) I.L.R., 27 Cal., 1041.

(3) (1916) I.L.R., 38 All., 664.

(4) (1926) I.L.R., 5 Pat., 536.

(5) (1923) 27 O.C., 32.

cution out of which this application for revision has arisen is briefly as follows :—

One Musammat Nanka, a minor girl of about 12 or 13 years of age is said to have been taken away from her mother's lawful guardianship by Musammat Maharani, on the pretext that she wanted her to grind corn and then made her over to two other persons. The story of the minor girl Musammat Nanka is that she was living in Durjan-ka-purwa with her mother Musammat Lachhna and had been married to one Bhagoti Ahir of village Mau. She stated that 4 or 5 days before her arrest at Dharyanwan she was sleeping in the "usara" of her house when at about three *gharis* before sunrise the accused Musammat Maharani came to her and asked her to go with her to grind corn in her house. Musammat Nanka left her home with Musammat Maharani and did spend some time in grinding corn at the house of Musammat Maharani. Musammat Maharani then got her to the outskirts of the village and made her over to her own son Chhedi and the applicant Burhma. These two persons took her to Baid-ka-purwa and there kept her at the house of one Shambhu. After she had been kept there for some days, four or five persons came with the applicant Burhma and they were taking her to another place when after going a short distance, one Bhagwan intervened and there was a *lathi* fight between Burhma and Bhagwan in which the latter was knocked down and Burhma then ran away. At this juncture a constable and a *chaukidar* arrived on the spot and Musammat Nanka and Badri were arrested and taken to the thana. Musammat Maharani, Chhedi, Musammat Ram Kali, Musammat Bhagana, Shambhu and Sudama were all acquitted, and it follows logically from this that it is not established who took Musammat Nanka away from her mother's lawful guardianship and how she came to be in the unlawful possession of the applicant Burhma.

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Nanacutty, J.

On behalf of the applicant it is strenuously argued that the offence of kidnapping is not a continuous offence and, in support of this contention, reliance is placed upon a ruling of Mr. Justice LINDSAY reported in *King-Emperor v. Gokaran* (1), in which it was held that it was a well-established point of law that kidnapping was not a continuing offence. The same view was taken by a Full Bench of the Calcutta High Court in the case of *Nemai Chatteraj v. Q. E.* (2), in which it was held by a majority of the Full Bench that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offenders in taking the girl to Calcutta and that the petitioner, therefore, could not be convicted under section 363 of the Indian Penal Code, and it was further held that the offence of kidnapping was complete when the minor was actually taken away from her legal guardian. The same view was taken by Mr. Justice SUNDAR LAL in *Emperor v. Abdul Rahman* (3), in which it was held that the offence of kidnapping was completed the moment a girl under 16 years of age was taken out of the custody of her lawful guardian and was not an offence continuing so long as the minor was kept out of such guardianship. Similarly, the Patna High Court in the case of *Nanak Sahu v. King-Emperor* (4), held that the offence of kidnapping was not a continuing offence but was complete the moment the minor was removed from the keeping of the lawful guardian. The question, however, in the present case is when was the act of kidnapping completed. Upon the findings of the trial court, which are accepted as correct by the lower appellate court, Musammât Nanka is not proved to have been kidnapped by Musammât Maharani. She was, however, found in the unlawful possession of the applicant Burhma at a time when she was not under the lawful guardianship of her mother. In the case of *Idu v. King-Emperor* (5), it was held by the late Court

(1) (1920) 24 O.C., 329.

(2) (1900) I.L.R., 27 Cal., 1041.

(3) (1916) I.L.R., 38 All., 664.

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(5) (1923) 27 O.C., 32.

of the Judicial Commissioner of Oudh that it was not necessary for a conviction under section 366 of the Indian Penal Code that the accused should know definitely who the guardian of the minor girl was whom he found wandering about and made use of for his own purposes. Upon the findings of fact arrived at by the lower courts, it is clear that the applicant Burhma found this minor girl at the house of Musammat Maharani away from the lawful guardianship of her mother and was taking her in the company of Badri and others to another place when he had a fight with Bhagwan and the police arrived on the spot and arrested Badri and the minor girl. The applicant when he joined Badri and others in taking the girl away from Musammat Maharani's house must have known that this minor girl had a lawful guardian from whose custody he was taking her away. The question of the offence of kidnapping being a continuous offence does not arise in the present case, because the finding of the trial court is that Musammat Maharani is not proved to have kidnapped Musammat Nanka. That being the case no offence of kidnapping in respect of Musammat Nanka is proved to have taken place before the applicant Burhma came on the scene and he, in taking away this girl in order to sell her to Bishun Dayal and in pocketting half the proceeds of the sale price, was clearly guilty of an offence under section 366 of the Indian Penal Code. The fact that Bishun Dayal, the would-be husband and purchaser of Musammat Nanka was a Brahman whilst Musammat Nanka was an Ahiran, does not affect the question of the guilt of the applicant. The sentence, in my opinion, if anything, errs very much on the side of leniency.

For the reasons given above, I uphold the conviction and sentence passed upon the applicant and dismiss this application for revision.

*Application dismissed.*