

REVISIONAL CRIMINAL.

Before Ross and Kulwant Sahay, J.J.

NANHAK SAO

v.

KING-EMPEROR.*

1926.

March, 10.

Penal Code, 1860 (Act XLV of 1860), section 363—kidnapping, whether a continuing wrong.

The offence of kidnapping is not a continuing offence: it is complete the moment the minor is removed from the keeping of the lawful guardian.

Rakhal Nikari v. Queen-Empress(1), *Nemai Chatteraj v. Queen-Empress*(2), and *Chekutty v. Emperor*(3), followed.

But the question whether the act of kidnapping was complete is a question of fact which must be decided on the evidence of each particular case.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Khurshaid Husnain and *I. Hussain*, for the petitioner.

H. L. Nandkeolyar, Assistant Government Advocate, for the Crown.

KULWANT SAHAY, J.—The petitioner was convicted by a first class Magistrate of Patna for an offence under section 363/114 of the Indian Penal Code and sentenced to nine months' rigorous imprisonment. The conviction and sentence have been upheld by the learned Sessions Judge on appeal.

The only question of law raised in the case is as to whether the accused abetted the commission of the offence or whether he was merely an accessory after

* Criminal Revision no. 143 of 1926, from an order of J. A. Sweeney, Esq., I C.S., Sessions Judge of Patna, dated the 2nd of February, 1926, dismissing an appeal against an order of Babu Mangla Nund Pandey, Magistrate, first class at Patna, dated the 9th of December, 1925.

(1) (1897-98) 2 Cal. W. N. 81. (2) (1900) I. L. R. 27 Cal. 1041, F. B.

(3) (1903) I. L. R. 26 Mad. 454.

the act. The girl Sudamia, a minor of eleven years of age, was kidnapped from the lawful custody of Bazari Sao, who was appointed her guardian by the District Judge, on the 29th of June 1925 at about 5 A.M. The actual kidnapping of the girl was made by Sri Bhagawan, a nephew of Bazari Sao, who took the girl from Bazari's house. Sri Bhagawan was tried for an offence under section 363, Indian Penal Code and convicted and sentenced to one year's rigorous imprisonment. In the course of the trial it appeared from the evidence that the present petitioner Nanhak also took part in the removal of the girl. He was, therefore, placed upon his trial and convicted and sentenced as stated above.

1926.

 NANAK SAO.
 v.
 KING-
 EMPEROR.
 KULWANT
 SAHAY, J.

The evidence as found by the learned Sessions Judge is that Sri Bhagawan, who was a nephew of Bazari Sao, took the girl out of the house of Bazari Sao. They went to a place near the house of the petitioner where an ekka was standing. Nanhak and Sri Bhagawan helped the girl on the ekka and Sri Bhagawan took her away. The petitioner Nanhak followed them some time after on a bicycle. The petitioner was found near the Patna Junction railway station at the time when Sri Bhagawan and the girl were getting down from the ekka. The learned Sessions Judge finds upon the evidence that the ekka was kept at Nanhak's door, that Nanhak was standing near the ekka from before the arrival of Sri Bhagawan and Sudamia, that he helped Sudamia on to the ekka, that he followed on a bicycle, and that he was seen with the eloping party near the Patna Junction railway station. The question is whether the act of kidnapping was complete the moment the girl was brought out of the house of Sri Bhagawan, or, it was continuing when the petitioner helped the girl on to the ekka. A number of cases have been cited by the learned Advocate for the petitioner to show that the offence of kidnapping is not a continuing offence and that it is complete the moment the minor is removed

1926.
 NANAK SAO.
 v.
 KING-
 EMPEROR.
 KULWANT
 SAHAY, J.

from the keeping of the lawful guardian. In *Rakhal Nikari v. Queen-Empress*⁽¹⁾ it was held that the offence of kidnapping a person is complete when he is actually taken out of the custody of the lawful guardian. In *Nemai Chatteraj v. Queen-Empress*⁽²⁾ the Full Bench of the Calcutta High Court held that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from the lawful guardianship. It is not an offence continuing so long as he is kept out of such guardianship. The same view was taken in *Cheekutty v. Emperor*⁽³⁾. There can therefore be no doubt that the act of kidnapping would be complete as soon as the minor was taken out of the keeping of the lawful guardianship. The question is whether the act of taking the girl Sudamia out of the keeping of her lawful guardian was complete before she was taken to the place where the ekka was standing in front of the petitioner's house. In the case of *Nemai Chatteraj*⁽²⁾ just referred to, the learned Chief Justice observed that the question is one of fact and must in each case be decided upon the particular evidence of each particular case. In all the cases cited on behalf of the petitioner there was an interval of time and distance, so far as the place was concerned, between the actual removal of the girl and the abetment by the accused persons, or taking part in the offence by the accused persons in those cases. In the present case the finding is that the accused took part in the actual removal of the girl immediately after she was taken out of the house of her guardian. It appears from the evidence that the place where the ekka was standing was a short distance from the house of Bazari Sao, only a few houses intervening between that place and Bazari's house. As I have said, the question is one of fact; and the learned Sessions Judge as well as the Magistrate have both come to the finding, on a consideration of the evidence, that the act of

(1) (1897-98) 2 Cal. W. N. 81. (2) (1900) I. L. R. 27 Cal. 1041, F. B.

(3) (1903) I. L. R. 26 Mad. 454.

kidnapping was not complete at the time when the petitioner helped the girl on to the ekka. Under these circumstances, the conviction under section 363/114, Indian Penal Code, appears to be correct.

The question, however, remains as to whether a sentence of nine months' rigorous imprisonment is appropriate sentence. The actual culprit, Sri Bhagawan, was given one year's rigorous imprisonment. The present petitioner Nanhak does not appear to have any sinister motive so far as the girl was concerned. It appears from the evidence that Bazari Sao wanted to give the girl in marriage to a certain person which was objected to by the near relations of the girl. Nanhak appears to be one of the party who objected to the marriage proposed by Bazari Sao. Under the circumstances, I think a sentence of three months' rigorous imprisonment would meet the ends of justice.

The conviction is therefore upheld and the sentence passed on the petitioner is reduced to one of three months' rigorous imprisonment.

Ross, J.—I agree.

*Conviction affirmed.
Sentence reduced.*

APPELLATE CIVIL.

Before Das and Ross, JJ.

MUSSAMMAT KHURSAIDI BEGUM

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1925-26.

July, 6, 7,
13, 14, 15,
16; Jan., 4;
Feb., 9.

Muhammadian Law—Shia dying without heirs—estate, in whom vests—escheat, law of—trust in favour of poor Shias, whether exists—Shia community, right of, to have trust declared—trustee, whether can appeal to lapse of time—Limitation Act, 1908 (Act IX of 1908), section 10—Secretary

1926.
NANAK SAO.
v.
KING-
EMPEROR.
KULWANT
SAHAY, J.