

REVISIONAL CRIMINAL.*Before Mr. Justice Scott-Smith.***BAZ AND MAWAZ—Petitioners,***versus***THE CROWN—Respondent.**

Criminal Revision No. 91 of 1922.

1922.

March 18.

Indian Penal Code, sections 361 and 366—Kidnapping a minor girl while in charge of a third person for a limited purpose and for a limited time only—whether consent of such person affects the offence.

Mst. S. P., a girl under 16 years of age, living under the guardianship of her mother, was sent by the latter with one *Mst. H. B.* on a visit to her sister at Dalepur and on the way there the two petitioners B. and M. kidnapped her and took her to their own village and there she was married to B, without the consent of her mother. B. and M. were convicted of an offence under section 366 of the Penal Code.

Held, that it was immaterial whether the girl was kidnapped with the consent of *Mst. H. B.*, as she had no authority to give such consent. The mere fact that the mother allowed the girl to be in the custody of *Mst. H. B.* for a limited purpose and for a limited time only did not determine the mother's rights as guardian or her legal possession of the minor for the purpose of the criminal law.

Jagannadho Rao v. Kamaraju (1), followed.

Revision from the order of W. deM. Malan, Esquire, Sessions Judge, Jhelum, dated the 22nd December 1921, affirming that of Sardar Balwant Singh, Gawarewal, Magistrate, 1st Class, Pind Dadan Khan, District Jhelum, dated the 16th November 1921, convicting the petitioners.

KANWAR NARAIN, for MUHAMMAD IQBAL, for Petitioners.

NAZ ALI, for the Government Advocate, for Respondent.

SCOTT-SMITH J.—This is an application for revision of the order of the Sessions Judge of Jhelum, dismissing the appeal of Baz and Mawaz, who were convicted of kidnapping *Mussammât Sardar Bi*, a minor girl, under section 366, Indian Penal Code. *Mussammât Sardar Bi* has been held to be less than 16 years of age, and was living under the guardianship of her mother, *Mussammât Nekan*. The latter sent her with *Mussam-*

1922
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BAZ
v.
THE CROWN.

mat Hussain Bi and *Ahmed* on a visit to her sister at *Dalelpur*, and while on the way there *Baz* and *Mawaz* are said to have kidnapped her. *Baz* and *Mawaz*, after taking her from the possession of *Mussammat Hussain Bi*, took her to *Chandna*, their own village, and there she was married to *Baz*, without the consent of her mother.

The Judge in Chambers ordered that notice should issue, because the judgment of the learned Sessions Judge was not clear as to whether the girl was taken away without the consent of *Mussammat Hussain Bi*. In my opinion it is immaterial whether *Mussammat Hussain Bi* gave her consent or not. The girl was only in her temporary charge and the guardianship of *Mussammat Nekan*, her mother, still subsisted. As pointed out by the learned Sessions Judge, *Mussammat Hussain Bi* could not legally make her over to *Baz* and *Mawaz*. She had no authority to do so. The girl had been made over to her merely in order that she might take her to her sister at *Dalelpur*. As pointed out in *Jagannadho Rao v. Kamaraju* (1) the word "include" in the explanation to section 361 of the Indian Penal Code is not intended to limit the protection which the section gives to parents and minors, but rather to extend that protection by including in the term "lawful guardian" any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time, does not determine the father's rights as guardian or his legal possession for the purposes of the criminal law. Applying these remarks to the present case, I am quite clear that the mere fact that *Mussammat Nekan* allowed *Mussammat Sardar Bi* to be in the custody of *Mussammat Hussain Bi* for a limited purpose and for a limited time only did not determine *Mussammat Nekan's* rights as guardian or her legal possession of the minor for the purposes of the criminal law. I, therefore, see no reason to interfere on revision and reject the petition. The petitioners should surrender to their bail to the District Magistrate of *Jhelum* in order that they may be re-committed to jail.

Revision rejected