

1926

KHAZAN CHAND

v.

THE CROWN.

HARRISON J.

ing water from such a public well. Fifteen defence witnesses, all Hindus of the upper classes, appeared and stated that the majority of the population did not object. It is clear, therefore, that the objectors form a section, large or small, of the population of this town but do not constitute the whole and, even if they did, it would not affect the question materially. So long as these *Chamars* are doing a lawful act, there can be no reason for putting them on security and it would appear to be more reasonable to take proceedings against those who are expected to commit the breach of the peace and offer violence to law-abiding citizens.

I accept the application for revision and set aside the order demanding security.

A. N. C.

Revision accepted.

APPELLATE CRIMINAL.

Before Mr. Justice Broadway.

GHULAM MUHAMMAD, Appellant

versus

THE CROWN, Respondent.

Criminal Appeal No. 364 of 1926.

Indian Penal Code, 1860, sections 366 and 376—Abduction with intent—Rape—section 71—whether parts of one offence — Same transaction — Separate sentences — whether legal.

A charge under section 366 of the Indian Penal Code involves elements and questions of facts different from a charge under section 376. Where, therefore, the appellant had forcibly carried away the complainant and had subsequently raped her—

Held, that he had brought himself within the purview of section 366 the moment he forcibly carried her away with the intention required by that section, and the infliction of

1926

June 1.

a separate additional sentence under section 376 was not contrary to the provisions of section 71 of the Code.

Emperor v. Sakharan Ganu (1), followed.

Labh Singh v. Emperor (2), referred to.

Appeal from the order of C. C. Garbett, Esquire, District Magistrate, Attock, at Campbellpur, dated the 20th March 1920, convicting the appellant.

SLEEM, for Appellant.

RAM LAL, Assistant Legal Remembrancer, for Respondent.

JUDGMENT.

BROADWAY J.—Ghulam Muhammad, son of Subedar Dost Muhammad Khan, was tried along with three others on charges under sections 366 and 376, Indian Penal Code, for having kidnapped and raped *Mussamat Lal Devi*, a married girl of 13 years of age. Ghulam Muhammad was convicted under both the sections, his companions being discharged. He was sentenced to seven years' rigorous imprisonment under 366 and four years' rigorous imprisonment under 376, Indian Penal Code, the sentences to run consecutively.

BROADWAY J.

(His Lordship having discussed the facts proceeded as follows :)

It was next urged by Mr. Sleem that although the District Magistrate was legally entitled to convict the appellant under sections 366 and 376, Indian Penal Code, he acted illegally, and against the provisions of section 71, Indian Penal Code, in passing separate sentences. He also urged that the sentences passed were excessive. As to the latter point I am of opinion that the sentences are by no means excessive. On the former question Mr. Sleem urged that inasmuch as the offence under section 366 contemplates kidnapping

(1) (1905) 8 Bom. L. R. 120.

(2) (1922) 75 I. C. 77.

1926

GHULAM MU-
HAMMAD

v.

THE CROWN.

BROADWAY J.

or abduction with the intention of subjecting, the person abducted to illicit intercourse, the commission of illicit intercourse must be regarded as a part of the same transaction, and therefore for purposes of punishment must be treated as one offence. On the other hand Mr. Ram Lal referred to the case of *Labh Singh v. Emperor* (1) a decision of Moti Sagar J., in which it was held that the offences under sections 458 and 376 were separately punishable. After careful consideration it seems to me that the offence of kidnapping was complete as soon as the girl had been carried away. That the offences are separate was pointed out in the case of *Emperor v. Sakharan Gattu* (2), where it was held that it was not competent to a Judge in appeal to alter a charge under section 376 to one under section 366, Indian Penal Code, because a charge under this section involves different elements and different questions of fact from a charge under 376. It appears to me that Ghulam Muhammad had brought himself within the purview of section 366 the moment he forcibly carried away *Mussammatt Lal Devi* with the intention provided by that section, and he has therefore rightly been convicted and sentenced under section 366, Indian Penal Code.

As to the question of rape it has been strenuously urged by Mr. Sleen that the evidence in support of this charge consists only of the girl's statement unsupported by any medical evidence or by any other direct testimony. Now, the story told by the girl is a straight forward one. She says that she was taken from the pond to the house of a barber and locked into a room with the appellant, that he threatened her with death, closed her mouth and after the search party had been sent away by the barber she was un-

(1) (1922) 75 I. C. 77. (2) (1905) 8 Bom. L. R. 120.

addressed by the appellant and subjected to sexual intercourse. She then goes on to say that she was taken at night to another *dhok* and placed with the appellant in another house, and there the appellant again undressed her and himself and on four separate occasions subjected her to sexual intercourse. Mr. Sleem has urged that on this point her evidence should not be accepted inasmuch as she had denied to the Inspector that any rape had been committed. Her denial in the circumstances is not surprising. She is a high caste Hindu girl, recently married, of good position and to admit that she had been raped would involve her in very serious consequences. The statement of the Deputy Superintendent of Police is perfectly clear and is to the effect that she did definitely state that she had been raped when she appeared before him at Basal on the 28th October, and he ascribes her later denial of the fact to the circumstance that her relatives expressed their unwillingness to press this charge of rape. In this aspect of the case the Deputy Superintendent of Police has shown himself grossly ignorant of the law and to my mind incompetent as a controlling investigating officer. How far his action was influenced by the position of the appellant's father it is impossible to say. But after giving careful consideration to the evidence of the girl I find it impossible to take a view different from that taken by the learned District Magistrate, and must, therefore, hold that *Mussamat Lal Devi's* statement that she was raped by the appellant is correct.

The offence is a very serious one and I must therefore dismiss the appeal.

N. F. E.

Appeal dismissed.

1926

GHULAM MU-
HAMMAD

THE CROWN.

BROADWAY J.