

1934

BAI UJANBAI
v.
HARAKCHAND
GOVINDJI

Kania J.

Testamentary Registrar. The caveat of Harakchand is dismissed with costs. The caveat of Bai Jaya is dismissed. She is to bear her own costs. The petitioner's costs taxed as between attorney and client, except such as are recovered from Harakchand, to come out of the estate recovered or to be recovered by the petitioner.

Attorneys for plaintiff: Messrs. *Mulla & Mulla*.

Attorneys for caveators: Messrs. *Motichand & Devidas; Malvi, Ranchhoddas & Co.*

Petition granted.

B. K. D.

ORIGINAL CRIMINAL.

Before Mr. Justice Divatia and a common Jury.

EMPEROR v. LAXMAN BALA KAVLYA.*

1934
November 28

Indian Penal Code (Act XLV of 1860), section 366—Kidnapping—Seduced to illicit intercourse—Meaning of “seduce”—Not limited to committing first act of illicit intercourse.

The term “seduce” in section 366 of the Indian Penal Code, 1860, is used in the general sense of “enticing or tempting”, and not in the limited sense of committing the first act of illicit intercourse. The substantial offence under the section is the act of kidnapping or abduction. The illicit nature of the intercourse for which the kidnapping or abduction takes place constitutes an aggravation of the offence.² Hence a person can be guilty of an offence under this section even where the girl kidnapped had illicit intercourse with him before the kidnapping took place.

Prasfullakumar Busu v. The Emperor,⁽¹⁾ *Krishna Maharana v. King-Emperor,*⁽²⁾ *Suppiak v. Emperor,*⁽³⁾ and *King-Emperor v. Nga Ni Ta,*⁽⁴⁾ followed.

Emperor v. Baijnath⁽⁵⁾ and *Nura v. Emperor,*⁽⁶⁾ dissented from.

Ree v. Frederick Moon,⁽⁷⁾ distinguished.

*Case No. 20; V Criminal Sessions, 1934.

⁽¹⁾ (1920) 57 Cal. 1074.

⁽⁴⁾ (1904) 10 Burma L. R. 196.

⁽²⁾ (1920) 9 Pat. 647.

⁽⁵⁾ (1932) 33 Cr. L. J. 669, s. c. [1932] A. L. J. 483.

⁽³⁾ [1930] A. I. R. Mad. 980

s. c. [1930] Mad. W. N. 905.

⁽⁶⁾ (1933) 35 Cr. L. J. 1286.

⁽⁷⁾ [1910] 1 K. B. 818.

THE accused was charged with the offence of kidnapping Bhima, a girl under sixteen years of age, with intent that she may be forced or seduced to illicit intercourse, an offence punishable under section 366 of the Indian Penal Code. He was also charged in the alternative, with the offence of kidnapping the said girl from the lawful guardianship of her father, an offence punishable under section 363 of the Indian Penal Code. The trial took place before Divatia J. and a common Jury.

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It appeared from the evidence recorded by the committing Magistrate, and from the admission of the girl Bhima, that she had sexual intercourse with the accused before the alleged kidnapping took place.

At the trial counsel for the accused applied that the charge under section 366 of the Indian Penal Code should be omitted on the ground that the term "seduce" under the section only applied to the first act of illicit intercourse, and as according to the evidence on the record such an act had taken place before the alleged abduction, the charge under that section was not maintainable in law.

G. A. Sabnis, for the Crown.

N. H. Jhabvala, for the accused.

DIVATIA J. The accused in this case is charged under section 366, Indian Penal Code, with the offence of kidnapping a girl under sixteen years of age from the lawful guardianship of her father in order that she may be seduced to illicit intercourse. In the alternative, he is charged with the simple offence of kidnapping from lawful guardianship under section 363, Indian Penal Code.

It is common ground—and it is admitted by the girl—that she used to have illicit intercourse with the accused before the alleged offence took place, and it is contended

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on behalf of the defence that the term "seduce" in section 366, Indian Penal Code, applies only to the first act of seduction, that is, inducing a woman to surrender her chastity for the first time, and that, therefore, where, as in the present case, a minor girl had illicit intercourse with the accused before the alleged kidnapping took place, there is no offence under that section, although the offence of kidnapping under section 363 might be established.

The decision of this question rests on the meaning of the word "seduce" as used in this section. According to its dictionary meaning, it is used in two senses, one, a general and the other, a specific sense, that is, generally, to entice, allure or corrupt, and specifically, to induce a woman to surrender her virtue or chastity implying thereby only the first act of illicit intercourse. In which of these two senses is that term used in section 366, Indian Penal Code? On this point, there is a conflict of opinion among the Indian Courts. The Allahabad and the Lahore High Courts have held that it is used in the latter sense: *Emperor v. Baijnath*,⁽¹⁾ *Nura v. Emperor*⁽²⁾; while the Calcutta, Patna and Madras High Courts and the Chief Court of Lower Burma have held that it is used in the former sense: *Prasfullakumar Basu v. The Emperor*,⁽³⁾ *Krishna Maharana v. King-Emperor*,⁽⁴⁾ *Suppiak v. Emperor*,⁽⁵⁾ *King-Emperor v. Nga Ni Ta*.⁽⁶⁾ There does not appear to be any reported ruling of our High Court. For the restricted sense, reliance is also placed on the English case of *Rex v. Frederick Moon*. *Rex v. Emily Moon*,⁽⁷⁾ where the words used are "seduction or prostitution" in section 17 of the Children's Act of 1908, and it is held that seduction there meant surrender or loss of chastity for the first time.

⁽¹⁾ (1932) 33 Cr. L. J. 669, s. c. [1932] A. L. J. 483.

⁽²⁾ (1933) 35 Cr. L. J. 1386

⁽³⁾ (1929) 57 Cal. 1074.

⁽⁴⁾ (1929) 9 Pat. 647.

⁽⁵⁾ [1930] A. I.R. Mad. 980.

⁽⁶⁾ (1904) 10 Burma L. R. 190

⁽⁷⁾ [1910] 1 K. B. 818

In my opinion, the term "seduce" is used in this section in the general sense of enticing or tempting, and not in the limited sense of committing the first act of illicit intercourse. The substantial offence in the section is the act of kidnapping or abduction, and the intention or knowledge that the girl may be forced or seduced to illicit intercourse raises it to an aggravated form of the main offence of kidnapping or abduction and punishable with greater severity. I do not think that the Legislature had in mind, while enacting this section, that it was only when a girl was kidnapped with the intention or knowledge that she should surrender her chastity for the first time that kidnapping would become a more serious offence, while an act of kidnapping a girl even though avowedly for the purpose of having illicit intercourse with her would only amount to the simple offence of kidnapping, if there was previous intimacy with the girl. I think the material words in the section are "illicit intercourse" rather than "forced or seduced". It is the illicit nature of the intercourse for which the kidnapping or abduction takes place that constitutes the aggravation of the offence and not the priority in point of time of such intercourse.

The English case of *Rex v. Frederick Moon*⁽¹⁾ is not, in my opinion, a useful guide to the interpretation of this section. There, "seduction or prostitution" was itself a substantial offence made punishable as such, and the expression is used in a context which is different from the one in the present section.

I, therefore, hold that section 366, Indian Penal Code, applies to the allegations relied upon by the prosecution and that the charge under that section is properly framed.

Order accordingly.

B. K. D.

⁽¹⁾ [1910] 1 K. B. 818.