# State vs Bhugawan And Anr. on 1 September, 1954

## Equivalent citations: AIR1955ALL78, 1955CRILJ252, AIR 1955 ALLAHABAD 78

JUDGMENT

Beg, J.

1. This is a reference by the learned Assistant Sessions Judge of Fyzabad under Section 307, Criminal P. C. Two young boys, namely, Bujhawan and Bhaggal were prosecuted under Section 366, Penal Code. They were sent up for trial. The trial was conducted with the aid of a jury. At the end of the trial the jury returned a unanimous verdict of guilty. The trial Judge, however, disagreed with the said verdict and has made this reference to the High Court under the aforesaid section Bujhawan and Bhaggal are alleged to have kidnapped a minor girl named Sushila on the night of 12-6-1951.

2. The prosecution case in respect of the occurrence is that Sushila daughter of Rajman Das, was living with her father on the date of the incident. The father used to maintain her and look after her. Bujhawan and Bhaggal lived at a distance of about 100 paces from her house. Bujhawan is a Bari by caste, and Bhaggal is a Bhar. The girl was a Brahman by caste. The two boys used to come to the house of the girl. Five or six days prior to the date of occurrence Bujhawan asked her to accompany him to Delhi. He came to her house on the night of the incident and she accompanied him , at 9 p.m. Bhaggal was also with Bujhawan at that time.

They went to Akbarpur on a tonga. They entrained at Akbarpur for Delhi. At Delhi they stayed at Kashmirigate. Bhaggal and Eujhawan were with her there. On 27-7-1951, Roshan Lal, Sub-Inspector of Police Station Kashmirigate, Delhi, came to know that Bujhawan had brought a girl with him and was staying within his circle. He went to Bujhawan and made inquiries from him about it. Bujhawan represented to him that they were brother and sister. On their statements having been taken separately, it turned out that the girl was a Brahman and the accused was a servant of her house and had brought her. He accordingly arrested both of them. Having come to know that the case appertained to police station Bhaskari in Fyzabad, he sent information of it to the said police station.

3. A first information report of the incident had already been made on 15-6-1951, at 9-30 a.m. at police station Bhaskari by Rajdeo, the uncle of the girl. In this report Rajdeo had stated that his brother Rajman Das was a Mahant of Lakhanpur Kuti and his daughter Sushila aged fifteen years had been living with him at Lakhan-pur. She disappeared with a number of ornaments which were in her possession. Since the time of her disappearance Bujhawan and Bhaggal, who were residents of the same village, had not been seen in the village. For that reason he had suspected both of them of having kidnapped Sushila. He also stated in this report that his brother Rajman Das was unsound in mind, and the mother of the girl was dead.

4. The girl was subsequently examined by the Medical Officer of Sadar Hospital, Fyzabad, who was of opinion that she was about fifteen years of age. The memo prepared by the doctor at the time of his examination is Ex. P-5. It gives the grounds which enabled the doctor to come to the aforesaid conclusion.

5. Both Bujhawan and Bhaggal pleaded not guilty. Bhaggal stated that he had been implicated in the case as he was working at Rajman's place. Bujhawan admitted having been arrested by the police on 27-7-1951, along with Sushila. He, however, alleged that the case was brought against him due to enmity.

6. In support of the prosecution case a number of witnesses were examined. The actual eyewitnesses, however, are only two, namely, Smt. Sushila P. W. 8 and Smt. Rajdei P. W. 2. Smt. Sushila P. W. 8 narrated the prosecution story mentioned above in detail. She further admitted in cross-examination that she had gone to Delhi of her own will. She also stated that her father used to beat her and hence she was fed up with the life at home and she left for Delhi. The main facts of the incident as narrated by Sushiia, the victim of the offence, Were corroborated by Smt. Rajdei P. W. 2, who stated that her house was about 2 or 3 bighas away from the house of Sushila. On the night in question Sushila had come to her house in the evening and had asked her to sleep with her at her house. She accompanied Sushila and slept in her house. While she was sleeping at the house a knock at the door was heard at about midnight and both of them were awakened, Sushila opened the door. She saw two persons Bhaggal and Bujhawan there. Suthila went away with them. When she tried to intervene Bujhawan threatened her.

7. So far as Bujhawan is concerned, the evidence of the two witnesses mentioned above finds corroboration from the fact that he was actually arrested along with the girl subsequently at Delhi. This fact is admitted by Bujhawan himself.

8. The evidence of the above-mentioned eyewitnesses finds further corroboration from the circumstantial evidence provided by two witnesses, namely, Har Prasad P. W. 3 and Shyam Deo Singh P. W. 4. Har Prasad stated that he knew the accused Bujhawan and Bhaggal and he also knew Sushila the daughter of Rajman Das, Sushila used to live with her father. About fifteen days before the occurrence he had seen Sushila, Bhaggal and Eujhawan having a talk in the jungle. He rebuked the boys for that and made a complaint of it to the father of Bujhawan and the father of Bhaggal. Shyam Deo Singh P. W. 4 stated that Har Prasad had mentioned this incident to him. Thereafter he had called both the accused and reprimanded them.

9. On the question of age also there is ample prosecution evidence. Rajdeo (P. W. 1), the uncle of the girl, stated that she was about fifteen years of age. His statement was corroborated by an entry from the Birth Register kept in the Collectorate. This entry is Ex. P-4. The expert evidence of the doctor points to the same conclusion, namely, that the girl was about fifteen years of age.

10. The entire evidence mentioned above was placed before the jury and the jury having believed it gave a unanimous verdict of guilty. The trial Judge, however, differed from the jury in the appraisal of evidence. We find ourselves unable to endorse the opinion of the trial Court in this regard. If in

view of the above evidence, the jury gave a verdict of guilty, the conclusion arrived at by it cannot, in our opinion, be characterized as unreasonable or improper. Before the trial Court makes a reference under Section 307, Criminal P. C., the law requires that it must be clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court.

Where two possible views can reasonably be taken of the evidence, the mere fact that the Court itself prefers to take a view which does not happen to be ill consonance with the view of the jury would not provide a sufficient ground for a reference under Section 307, Criminal P. C. A mere disagreement by the Judge with the view of the jury is not enough in law to justify a reference. The Judge must further be clearly of opinion that imperative requirements of justice constrain him to take a contrary view and must record the" grounds in support of the course taken by him to enable the High Court to judge the correctness of such grounds. The ground stated by the Judge should be such as to persuade the High Court reviewing the evidence and faced with the choice between the two, to consider that "no reasonable body of men could have reached the conclusion arrived at by the jury." This is the test that was laid down by their Lordships of the Privy Council ill -- 'Ramanugrah Singh v. Emperor', AIR 1946 PC 151 (A). Applying the above test, we are of opinion that the reference by the trial Judge so far as the questions of fact are concerned is misconceived and must be rejected.

11. The learned Judge has also stated a legal ground in support of the reference. In this case the evidence is that the father of the minor had become insane. In the opinion of the learned Judge once a Hindu father becomes insane he forfeits his right to be the guardian of the minor. In such a case according to his view, the minor having been left without a guardian, it will be no offence for anyone to kidnap the minor from the custody of the erstwhile guardian. This proposition of law on the face of it appears startling; and if accepted, would lead to dangerous consequences. We would be loathe to subscribe to a view capable of producing such mischievous results unless supported by high authority. No such authority Is cited in support of it.

By virtue of his position, the father in a Hindu family acts as a 'patria potestas1 and is the natural guardian of his children. This right of guardianship is his inherent right as father, and he cannot be divested of it except for reasons that are strong and weighty. In Gour's Hindu Code (Fourth edition) paragraph 772 it is observed that the mere fact that the father is indigent, diseased or immoral would not suffice to vacate his authority. Further it is to be observed that in order to sustain the tie of guardianship between the lawful guardian and ward, it is enough under Section 361, Penal Code, if the minor is in the 'keeping' of the guardian. The word 'keeping' is a word of wide import and would cover a case where a minor is merely within the protection or care of the said guardian or depends upon him for his or her maintenance, support or sustenance whenever necessity arises. The tie cannot, therefore, be dissolved suddenly on the guardian having been struck with some infirmity or disease.

In the present case the girl has herself stated that her father used to look after her. Her father was the Mahant of a temple and also owned some cultivatory plots in the management of which Sushila helped him. Under the above circumstances, we are of opinion that her father continued to be her guardian and she was in his keeping at the time when she was kidnapped. We, accordingly, hold that the view of law taken by the learned trial Judge is incorrect. The reference cannot, therefore, be

sustained on this ground.

12. The trial court has also observed that there is no evidence of guilty intention. It is difficult to adduce direct evidence of intention in most of such cases. Intention can only be inferred from circumstances. The circumstances here are that the girl was a minor; she had no will of her own. She was enticed away by the two young boys to a far away place. One of them used to be a servant at her house. They did not give any information of it to the father or to any of the relations of the girl. One of the boys who was arrested with the girl gave a false explanation.

The accused were also seen with the girl a few days prior to the incident in a lonely jungle and their conduct was objected to by some respectable persons who saw them in this situation. The father of the girl happened to be an insane person, and obviously the accused took advantage of the unsound condition of mind of the insane protector and guardian of the girl. Their conduct cannot be considered to be that of an innocent person. Even after the case came to Court they expressed no remorse. On the other hand, they pleaded not guilty and took refuge under the technicalities of law. We have no doubt that the guilt of both Bujhawan and Bhaggal has been established and they should be convicted under Section 366, Penal Code.

13. The learned counsel for the accused has, however, invited our attention to some extenuating circumstances in this case. He has stated that Bujhawan and Bhaggal are young in age. It is stated that they are near about 17 years of age. It is further stated that the girl was a willing party; that she was dissatisfied and disgusted with the beating administered to her by father; and that she did not make any grievance against the conduct of either of the accused when she was arrested. He has further invited our attention to the fact that both those persons have remained as undertrials for a period of about eighteen months.

14. Bearing in mind the above-mentioned circumstances we are of opinion that a sentence of six months' rigorous imprisonment on each of them would meet the ends of justice. We accordingly reject the reference, convict Bujhawan and Bhaggal under Section 366. Penal Code, and sentence each of them to six months' rigorous imprisonment under the aforesaid section.