

Rashid vs The State on 8 December, 1952

Equivalent citations: AIR1953ALL412, AIR 1953 ALLAHABAD 412

JUDGMENT

Harish Chandra, J.

1. The appellant Rashid has been convicted under Section 366, Penal Code, and sentenced to rigorous imprisonment for three years and a fine of Rs. 100. in default of payment of fine he has been ordered to undergo rigorous imprisonment for a further period of six months. The victim was one Sm. Anwari, the daughter of one Sharif who was employed in the Loco Shed at Mau railway station in the district of Azamgarh as a sweeper. He lived in one of the railway quarters at the station. One Khalil, who was employed as a painter in the Loco Shed, occupied another quarter in the same neighbourhood. The appellant is the brother-in-law of Khalil and at the time of the occurrence which took place in the night of August 10-11-1949, was staying temporarily with Khalil. During that night Anwari disappeared from her father's house. A search was made and ultimately a report was lodged at the police station on the following evening at 7.10 O'clock.

In the meanwhile the girl had been taken away by the appellant to Ghazipur and left at the house of one Abdul Rahman. When Abdul Rahman came to know the facts from the girl, he put her in a lorry and sent her back to Mau. On arrival at Mau the girl went into the house of Khalil. She was seen going there by some neighbours and thereafter she was brought back from Khalil's house by her father. It is unnecessary to recount the facts as stated by the girl. The learned Sessions Judge has found that her statement is not quite reliable in certain particulars. But the appellant has admitted that while he was staying with Khalil, he contacted intimacy with the girl who told him that she was about to be taken away to her sasural and that he should take her somewhere and threatened to commit suicide if he did not. In the evening of August, 10 she came to Khalil's quarters and asked the appellant to take her away by train. He then took her to Ghazipur and left her at the house of Abdul Rahman. It will appear that Khalil and his wife Nabuat were also sent up for trial under Section 366 read with Section 109, Penal Code, but the learned Sessions Judge acquitted them. On the facts admitted by the appellant and established by the prosecution evidence he convicted him under Section 366, Penal Code.

2. Learned counsel for the appellant argues that inasmuch as the girl was a willing party and had left her parents' house of her own accord and come to the house of Khalil from where she was taken away by the appellant, no offence was committed by the latter. It will be noted that according to the medical and other evidence which has been believed by the Court below the age of the girl was about 15 or 16 years on the date of the occurrence. No doubt on the facts as found by the Court below there

was no abduction. According to Section 362 a person is said to abduct another when he "by force compels, or by any deceitful means induces" that person to go from any place. In this case the girl was willing party and the facts do not constitute an offence of abduction.

3. The question is whether the facts as found by the Court below would constitute an offence of kidnapping. According to Section 366 :

"Whoever kidnaps or abducts any woman with intent or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished....."

Anwari was a married woman and if she was kidnapped by the appellant with the object that she may marry him an offence under Section 366 must be deemed to have been committed. Kidnapping is of two kinds. But we are concerned only with kidnapping from lawful guardianship. Section 361 runs as follows :

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female or any person of unsound mind out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

The contention of learned counsel for the appellant is that as the girl had left her father's house of her own free will, the appellant cannot be said to have taken her out of the keeping of her lawful guardian.

In the case of *Emperor v. Ramchander*, A. I. R. 1914 ALL. 376 (1) (A) a young woman under 16 years of age had run away from her father-in-law's house. She was met by the accused and stayed with him for sometime. Afterwards the girl became dissatisfied and made complaints which led to the arrest of the accused. A Bench of this Court held that in the circumstances it could not be said that the girl had been taken by the accused out of the keeping of her lawful guardian inasmuch as "the leaving" and the removal out of the keeping of the lawful guardian was the act of the girl herself long before she met the accused. They further pointed out that "the case would be very different" if the girl had been going on a visit or message or any such like occasion. They accordingly acquitted him.

In another case *Ewaz Ali v. Emperor*, A. i. R. 1915 ALL. 390 (B), a Judge of this Court acquitted the accused person in somewhat similar circumstances. In this case a minor married girl had run away more than once from her home and had on that occasion "got clean away, and was making her way along the public road to Agra when she was met by the appellant, Ewaz Ali, who was a road chaukidar." It was held that inasmuch as the girl had voluntarily left the keeping of the guardian with the intention of remaining out of that keeping the appellant was not guilty. On a perusal of these cases it seems to me that if it is found that the minor has abandoned her guardian with no intention of returning she cannot be held to continue in the guardian's keeping and if a person takes her away he cannot be held to be guilty of an offence of kidnapping.

In the present case I do not think it is possible to say that Anwari had abandoned her guardian. She had left her parents' house only with the object of going away with the appellant and if the appellant had refused to take her away, there can be no doubt that she would have gone back to her parents' house. In other words she had left her father's house for a particular purpose and cannot be said to have abandoned her guardian. In the case of *Nag Te Hla v. Emperor*, 7 cri. l. J. 210 (upp.Bur.) (c), decided by the Judicial Commissioner of Upper Burma it was held that where a female minor by preconcerted arrangement with the accused left the house of her parents of her own accord intending not to return and met the accused at a place appointed and eloped with him willingly, an offence of kidnapping from lawful guardian had been committed. In a Madras case *Abdul Saihar v. Emperor*, A. I. R. 1928 Mad. 585 (D), it was found that the girl alleged to have been kidnapped by the accused had written letters in which she was desperately calling him to come and take her away and she was soon after discovered to be with the accused or under his control. It was held that from these two facts it is legitimately open to a Court of law to assume that the accused yielded to the girl's solicitations and made it possible for her to get away from her guardian's house and that that was sufficient 'taking' in law for the purposes of Section 361, Penal Code.

In the case of *Nura v. Rex*, A. I. R. 1949 ALL. 710 (E), however, a Judge of this Court in the circumstances somewhat similar to those of the present case held that no offence of kidnapping from lawful guardianship had been committed. But in my opinion this view is somewhat contrary to the view taken by a Bench of this Court in A. I. R. 1914 ALL. 376 (1) (A). Moreover the learned Judge seems to have been under the impression that kidnapping from lawful guardianship means taking possession of her from the house of the lawful guardian, as would appear from the following observation's occurring in the judgment :

"It is rather curious that on the evidence led by the prosecution, the learned Judge, while acquitting both Najmuddin and Saedan, should have held Azimuddin guilty of kidnapping Mt. Hajra from the house of her father. As I have already pointed out, Azimuddin had absolutely no concern in the matter of the girl leaving her father's place, and, indeed, it was after a fairly long interval that the two had got together after Najmuddin had left them on the way leading to Jasoi."

In my view it cannot be said in the circumstances of the present case that Anwari had abandoned her guardian when she was admittedly taken away by Rashid to Ghazipur. I am, therefore, of opinion that the appellant has been rightly convicted. The learned Sessions Judge has awarded a fairly lenient sentence and has taken into consideration the fact that the girl was a consenting party.

4. I accordingly dismiss the appeal. The appellant was granted bail. But I am informed by the learned counsel for the appellant, Shri Majid Uddin, that he has been unable to furnish the necessary security and is still in jail.