Supreme Court of India
State Of Haryana vs Raja Ram on 27 October, 1972
Equivalent citations: 1973 AIR 819, 1973 SCR (2) 728
Author: I Dua
Bench: Dua, I.D.

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
RAJA RAM

DATE OF JUDGMENT27/10/1972

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SHELAT, J.M.
CHANDRACHUD, Y.V.

CITATION:
1973 AIR 819 1973 SCR (2) 728
1973 SCC (1) 544
CITATOR INFO :
R 1973 SC2313 (9)

ACT:
Indian Penal Code (Act 45 of 1860), Ss. 361 and 366--Scope of.

HEADNOTE:
One J, the coaccused in the case, had tried to become intimate with the prosecutrix, a girl of fourteen, and to seduce her to go and live with him. When her father forbade J to visit his house, J started sending messages to the prosecutrix through the respondent. On the day of the occurrence, the respondent went to see the prosecutrix and asked her to visit his house, and later, on the same day, sent his daughter to fetch the prosecutrix. When she came the respondent informed her that she should come to his house at about midnight when she would be taken to J. That night, when the prosecutrix came to his house, the respondent took her with him and handed her over to J.
On the question, whether the respondent was guilty under S. 361, I.P.C., of the offence of kidnaping from lawful guardianship, the trial Court convicted him, but the High Court set aside the conviction,

In appeal to this Court,

HELD : The acquittal of the respondent by the High Court was clearly erroneous both on facts and in law and considering the nature of the offence there was clear failure of justice justifying interference by this Court under Art. 136. [737 A-B]

The object of S. 361, I.P.C., is to protect minor children from being seduced for improper purposes and to protect the rights and privileges of guardians having lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in the section, out of the keeping of the lawful guardian without the consent of such guardian. The use of the word 'keeping' connotes the idea of charge, protection, maintenance and control; further, the guardian's charge and control are compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. The consent of the minor who is taken or enticed is wholly immaterial; it is only the guardian's consent, that would take a case out of the purview of the section. It is not necessary that the taking or enticing must be- shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. [734D-E]

In the present case, the respondent's action was the proximate cause, of the prosecutrix going out of the keeping of her father, and, but for his persuasive offer to take her to J, the prosecutrix would not have gone out of the keeping of her father who was her lawful guardian, as she actually did. The respondent actively participated in the formation of the intention of the prosecutrix to leave her father's house, and the facts that the respondent did not go to her house to 'bring her and that she was easily persuaded to go with him would not prevent the respondent from

729

being guilty of the offence. Her consent or willingness to accompany the, respondent would be immaterial and it would be equally so even if the proposal to go with the respondent had emanated from her. There is a distinction between taking and allowing a minor to accompany a person, but the instant case is not one of the prosecutrix herself leaving her father's house without any inducement by the respondent who merely allowed her to accompany him. [734E-H; 735A-G]

Reg. v. Job Timming; 169 E. R. 1260, Reg. v. Handley & anr., 175 E.R. 890, Reg. v. Robb. 176 E.R. 466, Reg. v. Manketeloy, 6 Cox Crim, Cases 143 and Shantiranjan Majumdar v. Abhoyandanda Brahamachari & Ors. Cr. A. No. 21 of 1960 decided on the 14th September 1964, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Cr. A. No. 21.4 of 1969. Appeal by special leave from the judgment and order dated March 18. 1969 of the Punjab & Haryana High Court at Chandi- garh in Criminal Appeal No. 951 of 1968.

Harbans Singh and R. N. Sachthey, for the appellant. Ram Sarup and J. C. Talwar, for the respondent. The Judgment of the Court was delivered by DUA, J.-In this appeal by special leave the State of Haryana has assailed the judgment of a learned single Judge of the High, Court of Punjab & Haryana at Chandigarh acquitting the respondent Raja Ram on appeal from his conviction by the Additional Sessions Judge, Karnal, under S. 366, I.P.C. and sentence of' rigorous imprisonment of 1-1/2 years with fine of Rs. 500/- and in default rigorous imprisonment for two months.

Santosh Rani, the prosecutrix, aged about 14 years, daughter of one Narain Dass, a resident of village Jor Majra, in the district of Karnal was the victim of the offence. According to the prosecution story one Jai Narain, a resident of village Muradgarh, close to the village Jor Majra, once visited the house of Narain Dass for treating his ailing sons, Subhas Chander and Jagjit Singh. When the two boys were cured by Jai Narain, Narain Dass began to have great faith in him and indeed started treating him as his Guru. Jai Narain started paying frequent visits to Narain Dass's house and apparently began to cast an evil eye on the prosecutrix. He persuaded her to accompany him by inducing her to believe that though she was made to work in her parents' house she was not even given proper food and clothes by her parents who were poor. He promised to keep her like a queen, having nice clothes to wear, good food to eat and also a servant at her disposal. On one occasion Narain Dass happened to see Jai Narain talking to the prosecutrix and felt suspicious with the result that he requested Jai Narain not to visit his house any more. He also reprimanded his daughter and directed her not to be free with Jai Narain. Having been prohibited from visiting Narain Dass's house, Jai Narain started sending messages to the prosecutrix through Raja Ram, respondent, who is a jheewar and has his house about 5 or 6 karams away from that of Narain Dass. As desired by Jai Narain, Raja Ram persuaded the prosecutrix to go with him to the house of Jai Narain. On April 4, 1968 Raja Ram contacted the prosecutrix for the purpose of accompanying him to Jai Narain's house. Raja Ram's daughter Sona by name, who apparently was somewhat friendly with the prosecutrix went to the latter's house and conveyed a message that she (prosecutrix) should come to the house of Raja Ram at midnight. The prosecutrix as desired, went to Raja Ram's house on the night between April 4 and 5, 1968, when Raja Ram took her to Bhishamwala well. Jai Narain was not present at the well at that time. Leaving the prosecutrix there, Raja Ram went to bring Jai Narain, whom he brought after some time, and handing over the prosecutrix to Jai Narain, Raja Ram returned to his own house. On the fateful night it appears that Narain Das was not in the village, having gone to Karnal and his wife was sleeping in the kitchen. The prosecutrix, along with her two younger sisters was sleeping in the court-yard, her elder brother (who was the eldest child) was in the field. It was in these circumstances that the prosecutrix had gone to the house of Raja Ram from where she was taken to Bhishamwala well.

On the following morning, when Abinash Kumar, who is also sometimes described as Abinash Chander Singh, brother of the prosecutrix, returned from the field to feed the cattle, the prosecutrix

was found missing from her bed. Abinash had returned to the house at about 4 a.m. He woke up his mother and enquired about Santosh Rani's whereabouts. The mother replied that the prosecutrix might have gone to ease herself. After waiting for about half an hour Abinash Kumar went to his grandfather who used to reside in a separate adjoining house and informed him about this fact. After having searched for her unsuccessfully, Abinash went to Karnal to inform his father about it. The father and the son returned from Karnal by about 10 a.m. The search went on till afternoon but the prosecutrix was not found. The father, after having failed in his search for the missing daughter, lodged the first information report (Ex. PW 1/3) with the officer in charge of the Police Station, Indri. "Confirmed suspicion" was cast in this report on Jai Narain Bawa Moti Ram, resident of Sambli, who was stated to be a bad character and absent from the village. It was added in the F.I.R. that about 5 or 6 months earlier Narain Dass had prevented Jai Narain from visiting the former's house as a result of which the latter had held out a threat to the former. On April 13, 1968 at about 7 a.m. Ram Shah, S.H.O., Police Station Indri, along with three other persons and Narain Dass, saw Jai Narain and Santosh Rani coming from the side of Dera Waswa Ram. As they reached near Dera Ganga Singh, Narain Dass identified his daughter and Jai Narain, accused, was taken into custody. The prosecutrix had a jhola (ex. P-16) which contained one suit. and a shawl and two chunis which were taken into possession. The salwar of the, prosecutrix appeared to have on it stains of semen.

After investigation Jai Narain, aged 32 years and Raja Ram,,. the respondent, were both sent up for trial, the former under ss. 366 and 376 I.P.C. and the latter under ss. 366 and 376/109, I.P.C. They were both committed to the court of Sessions. The learned Second Additional Sessions Judge, Karnal, who tried them, convicted Jai Narain alias Bawa under s. 378, I.P.C. and sentenced him to rigorous imprisonment for six years and fine of Rs. 500/- or in default to further rigorous imprisonment for six months. The respondent was convicted under s. 366, I.P.C. and sentenced to rigorous imprisonment for 1-1/2 years and fine of Rs. 501' or in default to rigorous imprisonment for two months. Jai Narain was acquitted of the charge under s. 366, I.P.C. and the respondent of the charge under ss. 376/109, I.P.C.

Both the convicts appealed to the High Court of Punjab & Haryana. A learned single Judge of that Court dismissed the appeal of Jai Narain maintaining his conviction and sentence but acquitted the respondent Raja Ram of the charge under s.

366. I.P.C. It is against the order of the respondent's acquittals that the State of Haryana has appealed to this Court.

It appears that the respondent had not entered appearance in this Court within 30 days of the service on him of the notice of lodgement of the petition of appeal. He applied for condonation of the delay though according to him no such application was necessary. The permission to enter appearance was granted' by this Court at the time of the hearing.

In the High Court Shri K. S. Keer, the learned counsel appearing for Raja Ram contended that even if the case of the prosecution as made out from the evidence of the prosecutrix herself and supported by the testimony of her father Narain Dass her mother Tara Wanti and her brother Abinash Kumar is admitted to be correct, no offence could be said to have been committed by Raja Ram under s.

366, I.P.C. Apparently it was this argument which prevailed with the High Court. The learned single Judge, after briefly stating the facts on which the prosecution charge was founded accepted the only contention raised before him, expressing himself thus :

> "The question which arises, is whether in the face of these facts stated by the prosecutrix Raja Ram could be held to be guilty of offence under section 366, Indian Penal Code. In order that an accused person may be guilty of offence under section 366, Indian Penal Code, prosecution has to show that the woman was kidnaped or abducted in order that she might be forced or seduced to illicit intercourse or knowing it to be likely that she would be so forced or seduced. In other words, the prosecution must show that there was either kidnaping or abduction. Section 361, Indian Penal Code, which defines 'kidnaping' says that when any person takes or entices any minor under the age of 18 if a female out of the keeping of law guardianship of such minor without the consent of such guardian, commits kidnaping. The girl left the house of her father at midnight of her free will. Raja Ram, appellant, did not go to her house to persuade her and to bring her from there. She chose the dead of night when other members of the family were, according to her own state- ment fast asleep. Soon after reaching the house of Raja Ram, who she says was waiting for her and that suggests that she had on her visit during the day so settled with him, that she agreed to accompany him to Bhishamwala well. These facts leave no doubt that she was neither enticed nor taken by Raja Ram from the lawful guardianship of her parents. She has herself chosen to accompany Raja Ram and to be with Jai Narain, appellant. It could not be said that the girl went with Raja Ram either by use of force or on account of any kind of persuasion on the part of Raja Ram. Under the circumstances', it could not be held that the girl had been taken or seduced from the cus- tody of her parents. The girl reached at that odd hour to carry into effect her own wish of being in the company of Jai Narain, appellant. In view of these facts, it could not be held that Raja Ram was guilty of the act of either taking away the girl or seducing her out of the 'keeping of her parents. The word 'take' implies want of wish and absence of desire of the person taken. Once the act of going on the part of the girl is voluntary and conformable to her own wishes and the conduct of the :girl leaves no doubt that it is so, Raja Ram appellant could not be held to have either taken or seduced the girl".

The learned single Judge also excluded the offence of abduction by observing that Raja Ram had neither compelled the prosecutrix by force nor had he adopted any deceitful means to entice her to go from her house to that of Jai Narain.

The approach and reasoning of the learned single Judge is quite manifestly insupportable both on facts and in law. It clearly ignores important evidence on the record which establishes beyond doubt that the prosecutrix had been solicited and persuaded by Raja Ram to leave her father's house for being taken to the Bhishamwala well. Indeed, earlier in his judgment the learned single Judge has himself observed that according to the statement of the prosecutrix, on receipt of Raja Ram's message as conveyed through his daughter Sona, she contacted Raja Ram during day time in his

house and agreed with him that she (the prosecutrix would accompany him (Raja Ram) to go to Bhishamwala well at midnight to meet Jai Narain, as the other members of her family would be sleeping at that time. If, according to the learned single Judge, it was in this background that the prosecutrix had left her father's house at midnight and had gone to the house of Raja Ram from where she accompanied Raja Ram to the Bhishamwala well, it is difficult to appreciate how Raja Ram could be absolved of his complicity in taking the prosecutrix out of the keeping of her father, her lawful guardian, without his consent. It was in our opinion, not at all necessary for Raja Ram, himself to go to the house of the prosecutrix at midnight to bring her from there. Nor does the fact that the prosecutrix had agreed to accompany Raja Ram to Bhishamwala well take the case out of the purview of the offence of kidnaping from lawful guardianship as contemplated by s. 361, I.P.C. This is not a case of merely allowing the prosecutrix to accompany Raja Ram without any inducement whatsoever on his part from her house to Bhishamwala well. Section 361, I.P.C. reads:

> "361. Kidnaping from lawful guardianship: 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. Explanation.--The words 'lawful guardian' in this section include any 'person lawfully entrusted with the care or custody of such minor or other person.
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> Exception.-This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor out of the keeping of the lawful, guardian of such minor" in s. 361, are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control, further the guardian's charge and control-appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial : it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have, been by means of force, or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. In the present case the evidence of the prosecutrix as corroborated by the evidence of Narain Das, P.W. 1 (her father) Abinash Chander P.W. 3 (her brother) and Smt. Tarawanti P.W 4 (her mother) convincingly establishes beyond reasonable doubt : (1) that Jai Narain had tried to become intimate with the prosecutrix and to seduce her to go and live with him and on objection having been raised by her father who asked Jai

Narain not to visit his house, Jai Narain started sending messages to the prosecutrix through Raja Ram, respondent; (2) that Raja Ram, respondent, had been asking the prosecutrix to be ready to accompany Jai Narain; (3) that at about 12 noon on April 4, Raja Ram went to see the prosecutrix at her house and asked her to visit his house when he would convey Jai Narain's message to her; (4) that on the same day after some time Sona was sent by her father to the house of the prosecutrix to fetch her to his house where the prosecutrix was informed that Jai Narain would come that night and would take the prosecutrix away; 'and (5) that Raja Ram accordingly asked the prosecutrix to visit his house at about midnight so that she may be entrusted to Jai Narain. This evidence was believed by the learned Additional Sessions Judge who convicted the respondent, as already noticed. The learned single Judge also did not disbelieve her statement. Indeed, in the High Court the learned counsel for Raja Ram had proceeded on the assumption that the evidence, of the prosecutrix is acceptable, the argument being that even accepting her statement to be correct no offence was made out against Raja Ram. Once the evidence of the prosecutrix is accepted, in our opinion, Raja Ram cannot escape conviction for the offence of kidnapping her from her father's lawful guardianship. It was not at all necessary for Raja Ram to have himself gone to the house of the prosecutrix to bring her from there on the midnight in question. It was sufficient if he had earlier been soliciting or persuading her to leave her father's house to go with him to Jai Narain. It is fully established on the record that he had been conveying me& sages from Jai Narain to the prosecutrix and had himself been persuading her to accompany him to Jai Narain's Place where he would hand her over to him. Indisputably the last message was conveyed by him to the prosecutrix when she was brought by his daughter Sona from her own house to his and it was pursuant to this message that the prosecutrix decided to leave her father's house on the midnight in question for going to Raja Ram's house for the purpose of being taken to Jai Narain's place. On these facts it is difficult to hold that Raja Ram was not guilty of taking or enticing the prosecutrix out of the keeping of her father's lawful guardianship. Raja Ram's action was the proximate cause of the prosecutrix going out of the keeping of her father and indeed but for Raja Ram's persuasive offer to take her to Jai Narain the prosecutrix would not have gone out of the keeping of her father who was her lawful guardian, as she actually did. Raja Ram actively participated in the formation of the intention of the prosecutrix to leave her father's house. The fact that the prosecutrix was easily persuaded to go with Raja Ram would not prevent him from being guilty of the offence of kidnapping her. Her consent or willingness to accompany Raja Ram would be immaterial and it would be equally so even if the proposal to go with Raja Ram had emanated from her. There is no doubt a distinction between taking and allowing a minor to accompany a person. But the present is not a case of the prosecutrix herself leaving her father's house without any inducement by Raja Ram who merely allowed her to accompany him. On behalf of the appellant State our attention was drawn to some of the English decisions for the purpose of illustrating the scope of the protection of minor children and of the sacred right of their parents and guardians to the possession of minor children under the English law. The learned counsel cited Reg. v. Job 12-L499Sup.C. I./73 Timmins(1); Reg. v. Handley & Anr.(2) and Reg v. Robb(3). In the first case Job Timmins was convicted of an indictment framed upon 9 Geo. IV, c. 31, s. 20 for taking an unmarried girl under sixteen out of the possession of her father, and against his will. It was observed by Erle C.J. that the Statute was passed for the protection of parents and for preventing unmarried girls from being taken out of possession of their parents against their will. Limiting the judgment to the facts of that case it was said that no deception or forwardness on the part of the girl in such cases could prevent the person taking her

away from being guilty of the offence in question. The second decision is authority for the view that in order to constitute an offence under 9 Geo. IV, c. 3 1, s. 20 it is sufficient if by moral force a willingness on the part of the girl to go away with the prisoner is created- but if her going away with the-prisoner is entirely voluntary, no offence is committed. The last case was of a conviction under the Statute (24 & 25 Vict. c. 100, s. 55). There inducement by previous promise or persuasion was held sufficient to bring the case within the mischief of the Statute. In the English Statutes the expression used was "take out of the possession" and not "out of the keeping" as used in s. 361, I.P.C. But that expression was construed in the English decisions not to require actual manual possession. It was enough if at the time of the taking the girl continued under the care, charge and control of the parent : see Reg. v. Manketelow.(4) These decisions only serve to confirm our view that s. 361 is designed also to protect the sacred right of the guardians with respect to their minor-wards. On behalf of the respondent it was contended as a last- resort that this Court should be slow to interfere with the conclusions of the High Court on appeal from an order of acquittal and drew our attention to an unreported decision of this Court in Shantiranjan Majumdar v. A bhoyananda Brahmachari & Ors. (5). The decision cited was given by this Court on appeal by the complainant. In any event it was observed there that the complainant appellant had not been able to satisfy the court that any grave miscarriage of justice had been caused with the result that he could not be permitted to urge grounds other than those which are fit to be urged at this time of obtaining special leave to appeal. 'Me decision of the High Court there could not "even remotely be characterized as unreasonably", to use the language of this Court, though it might have been possible to take the view that the circumstances found by the High Court were not adequate for (1) 169English Reports 1260.

(2) 175 English Reports 890.

(3) 176 English Reports 466.

(4) 6 Cox. Crim. cases 143.

(5)Crl. A. No. 21 of 1960 decided on 14th September, 1964.

enabling it to set aside the verdict of the jury and examine the evidence for itself. In the present case the, acquittal by the High Court is clearly erroneous both on facts and in law and keeping in view the nature of the offence committed we consider that there is clearly failure of justice justifying interference by this Court under Art. 136 of the Constitution. The result is that the appeal is allowed and setting aside the order of the High Court acquitting Raja Ram, respondent, we restore the order of the Second Addi- tional Sessions Judge affirming both the conviction and sentence as imposed by the trial court. Raja Ram, respondent should surrender to his bail bond to serve out the sentence.

V.P.S. Appeal allowed.