ALLAHABAD HIGH COURT

Baijnath

Vs

Emperor

(Boys, J.)

16.03.1932

JUDGMENT

Boys, J.

1. This is a case of some importance in reference to the application of Section 366, I.P.C., and that is unfortunately a section which comes before the Courts possibly more often than any other particular section in the Code, except those of riot and hurt. The question turns upon what is the meaning of "seduced to illicit intercourse" in Section 366 of the Code.

2. A young man of 25 has been found, subsequent to a course of intrigue with a girl of 14, to have taken her away out of the possession and control of her father, and he so took her away, or rather went away with her, because his intrigue was beginning to suffer, interruption. We state the facts in ordinary language because it is the legal language which we have to interpret. The Magistrate convicted the accused under Section 363, I.P.C. that is to say, of simple kidnapping. The accused appealed, and the learned Judge, while he has expressed his views on some of the merits of the case, did not finally decide the appeal but "set aside the conviction and sentence" and sent the case back to the Magistrate with a direction to him to commit the accused for trial on a charge under Section 366, I.P.C. after giving the parties a further opportunity to produce additional evidence, if they so wished, on the question of the girl's age.

3. We have had an application made to this Court on the revisional side by the father of the girl. We are not limited in this Court to motions made by any particular person, and in this case if anybody was to move the Court on behalf of the girl, the father may be well considered to be the proper person. The father, then, asks us to hold that the order of the learned Judge, which was presumably passed under Section 423(1)(b)(2), Criminal P.C. should be set aside and that the Judge should be directed to hear the appeal in the ordinary course under Section 423, and if he considered further evidence necessary he might be directed to act under Section 428, Criminal P.C. This application is supported by the Assistant Government Advocate. On the other hand we have also heard counsel for the accused, and he invites us to maintain the order of the learned

Judge. For a clearer appreciation of the case we may briefly state the motives, though they do not of course affect the question of law. The father avowedly does not want further disturbance and scandal in the matter, at any rate more than is necessary. The accused naturally hopes for a further chance of getting a clean acquittal. We concern ourselves of course only with the question of law.

4. The learned Judge has held that the term "seduction" does not apply only to what leads to the first act of illicit intercourse but is applicable in regard to any-subsequent acts of illicit intercourse, and. on this basis he holds that Section 366 is applicable to a case where though the accused may have seduced the girl and been indulging in illicit intercourse before he went away with the girl, he has further the intention of continuing the illicit intercourse subsequent to going away with the girl. This is we understand from his judgment a fair statement of his views. We have only to say whether we agree with him. An examination of the section suggests the statement of three propositions. Before stating these we may note that we have had a number of cases cited to us : *Pessumal v. Valoo*[1] *Emperor v. Saran*[2] *Krishna Maharana v. Emperor*[3] *Prem Narain v. Emperor*[4] frafulla Kumar *Bose v. Emperor*[5] and *Suppiah v. Emperor*[6]

5. In the first place we note that the very phrase "seduced to illicit intercourse" implies two distinct stages in the acts of the accused, the seduction and the illicit intercourse. These must be two distinct acts, though they may follow in immediate sequence. The words or actions of the accused which induced the girl to submit to the illicit intercourse must precede the actual, act. This does not appear to have been borne in mind in some of the cases which we have men-, tioned above. The reason for this is possibly that sometimes the word "seduction" is used by itself to include comprehensively the "seducing" and the "intercourse," but where both words are used "seduced to" can only refer to the preliminary act of persuasion.

6. The more important question is whether the term "seduced to" can properly be applied only to that which leads to-the first act of illicit intercourse, or whether it can be properly applied to that, which precedes each subsequent act of illicit intercourse. The Oxford Dictionary defines "seduction" in this connexion as-"to induce a woman to surrender her chastity," which suggests at the outset that-the term "seduction" can only apply properly to the first act of illicit intercourse, for once that act has been completed, the girl has surrendered her chastity. We would therefore hold that the term seduction" can only properly be held applicable to the first act of illicit intercourse, unless there be proof of a return to chastity on the part of the girl meanwhile, or unless possibly there is an intention on the accused's part that the girl should be seduced by some different man. Neither of these conditions apply to the present case. We have the simple case of a man carrying on an intrigue with a girl, finding his intrigue meeting, with obstacles, and deciding in conjunction with the girl that they would go away together, the girl of course being under 16. Next we note that the act of seduction alleged must be subsequent to the kidnapping in order to make Section 366 applicable. The section says "kidnaps" any woman in order that she may be "seduced to illicit intercourse." This is manifestly wholly different from "kidnaps" any woman

whom he has "seduced. to illicit intercourse."

7. It follows from the views we have expressed above that Section 366 cannot be applied to a case where the accused is said to have been carrying on an intrigue with a girl under 16 while she is in the custody of her lawful guardian, and goes away with her because obstacles are thrown in the way of that -intrigue, even though when he so goes away with her it is with the intention of carrying on that intrigue or in other words, with the intention of continuing illicit intercourse. We do not think it necessary to examine in detail the cases to which we have referred, for, if we may say so with respect, they do not appear to have approached Section 366 from the points of view that we have expressed.

8. For the accused it has been contended that he has been "acquitted" of the charge under Section 363, I. P.C. That is not so. The Judge set aside the order of the Magistrate and that he had to do before he could order a commitment but he did not "acquit." Even had he used the word, we should have been prepared to hold that it was merely an error and did not in law amount to an "acquittal."

9. The result is that we hold that the order of the learned Sessions Judge should be set aside, and it, is set aside. The case will be restored as an appeal pending in the Sessions Court for disposal in the ordinary course. In view however of the fact that the learned Sessions Judge has expressed views adverse to what we may describe as the complainant's side of the case, we think it desirable that upon the appeal being reheard it should be reheard by another Judge. We therefore send the case to the Additional Sessions Judge of Allahabad. If he in the exercise of his own independent discretion considers further evidence necessary, the provisions of Section 428 are of course open to him.

Cases Referred.

1A.I.R. 1927 Sind 197
2A.I.R. 1927 Sind 104
3A.I.R. 1929 Pat. 651
4A.I.R. 1929 All. 82
5A.I.R. 1930 Cal. 209
6A.I.R. 1930 Mad. 980