

BOMBAY HIGH COURT

Lakshman Bala

Vs

Emperor

(Divatia, J.)

28.11.1934

JUDGMENT

Divatia, J.

1. 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.

2. 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 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.

3. 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, faliture 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 : *Prajullakumar Basu v. The Emperor*³, *Krishna Maharana v. King-Emperor*⁴ *Suppiah 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.

4. 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.

5. The English case of *Rex v. Moon* 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.

6. 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.

Cases Referred.

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

2(1933) 35 Cr. L. J. 1386

3(1929) I.L.R. 57 Cal. 1074

4(1929) I.L.R. 9 Pat. 647

5[1930] A. I. R. Mad. 980, s.c. [1930] M. W. N. 905

6(1904) 10 Burma L.R. 196

7[1910] 1 K. B. 818