

Lal Chand  
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 Mahajan, J.

view on the correct interpretation of the agreement, the same rule will apply to this case. I am not prepared to accept the contention of the learned counsel for Lal Chand that the arbitration agreement had exhausted itself when the first award was given. I cannot accept this argument for the simple reason that it would be contrary to the intention of the parties to the arbitration of agreement as expressed in the agreement itself. For the reasons given above, I dismiss F.A.O. 104 of 1959 and allow Civil Revision No. 453 of 1962.

In view of the fact that the parties are closely related I will not make any order as to costs.

B.R.T.

APPELLATE CRIMINAL

*Before D. Falshaw, C.J. and Jindra Lal, J.*

THE STATE,—Appellant.

*versus*

SULEKH CHAND,—Respondent.

**Criminal Appeal No. 799 of 1962.**

1963  
 \_\_\_\_\_  
 May, 8th.

*Penal Code (XLV of 1860)—Ss. 361, 363 and 366—Kidnapping—Essentials of—Accused taking a girl of less than 18 years with her consent—Whether commits an offence.*

*Held* that in section 361 which defines the offence of kidnapping from lawful guardianship all that is required is that a minor, under 16 in the case of a male or under 18 in the case of a female, must be “taken or enticed” from the keeping of the lawful guardian. “Taking” implies neither force nor misrepresentation and if a girl of less than 18 is taken away from the keeping of her lawful guardian, even at her own wish, the offence of kidnapping is established. The offence of kidnapping under section 363 consists solely of taking a minor from the keeping of her lawful guardian, and no intention needs to be established. Section 366 applies whether the offence is kidnapping or

abduction, the additional ingredient being required that such kidnapping or abduction is with the object of marriage or seduction.

*Held* that the word 'take' in this context means no more than the sense in which one would use the word if one said one was 'taking' one's sister to the cinema. The extent to which the girl is a consenting party is a matter for consideration under the question of sentence, and does not affect the commission of the offence.

*Bhajna alias Bhajan Singh v. The State* (1) *disapproved.*

*State Appeal from the order of Shri Sant Ram Garg, Sessions Judge, Ambala; dated the 30th April, 1962, acquitting the respondent.*

K. S. KWATRA, ASSISTANT ADVOCATE-GENERAL, for the Appellant.

JAGJIT SINGH CHAWLA, ADVOCATE, for the Respondent.

#### JUDGMENT

FALSHAW, C. J.—Sulekh Chand was committed for trial on charge under section 366 Indian Penal Code, but was acquitted. The State has filed this appeal against the order of acquittal. Falshaw, C. J.

The prosecution story is that Tilak Ram, a native of a village in Muzafarnagar district, U.P., was employed by Messrs Ram Parkash Uppal & Co. as a labour contractor in connection with the construction of a large building in Sector 17-B, Chandigarh. He was living in a hut near the site of the construction with his daughter Balbiri aged about 14 and his younger son called Balbir. Sulekh Chand respondent, whose age was recorded in the committing Court as 22 and at the trial as 24, was also employed by the same company as the driver of a mortar mixing machine and he was living in a hut close by and was on friendly

(1) 1961 P.L.R. 625.

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terms with Tilak Ram at whose hut he sometimes used to take his food.

Falshaw, C. J. It is alleged that on the afternoon of the 30th of October, 1961 when Tilak Ram was away from his hut Sulekh Chand went there and persuaded Balbiri to accompany him telling her that her father wanted to make some purchases in the bazar. For this purpose she took with her Rs. 70/- in currency notes. However, instead of taking her to the bazar, Sulekh Chand took her outside the town and told her that he wanted to marry her and then took her to the bus-stand from where they travelled to Ambala by a bus. From Ambala they travelled to Delhi, also by bus, and then Sulekh Chand took her by a scooter-rickshaw to Okhla and eventually to his house in a village called Khanpur. The girl has alleged that she was compelled to accompany Sulekh Chand because he threatened to kill her and she alleged that he had sexual intercourse with her on various occasions against her will.

In the meantime Tilak Ram returned to his hut in the evening and found his daughter missing. Som Nath P.W. 5 who is also employed on the site and others told Tilak Ram that they had seen his daughter going away with Sulekh Chand. Tilak Ram continued searching for them throughout the night, but could not find any trace of them and his report was recorded at Chandigarh Police Station at 10.55 a.m. on the 31st of October 1961.

The police were able to trace the home address of Sulekh Chand through a postal money order form found in his hut. S.I. Gian Chand P.W. 10 went to Delhi on the 3rd of November and accompanied by Amar Singh P.W. 6, Pardhan of Devli, and Makan Singh, P.W. 7 of Khanpur went to the house of Sulekh Chand at Khanpur on the 4th of November. They

found the door fastened from inside, but the police forced an entry and found Sulekh Chand present there with the missing girl. He was arrested and the girl was taken to the Irwin Hospital at New Delhi where she was examined by Dr. Miss P. Hingorani P.W. 1 who found her age to be 13 or 14. She found that the hymen of the girl was very much stretched, but not actually ruptured. She was of the opinion that there had been an attempt to rape without penetration. The girl was also examined by a Radiologist Dr. C. P. Sethi at the hospital at Chandigarh who found her age to be between 14 and 15½. H. C. Mauji Ram P.W. 11 went to Reta Nangal, Muzafarnagar district, U. P., and obtained a copy of the entry in a register regarding the date of birth of Balbiri. The certified copy of the entry, Ex. P. G., shows the date of her birth to be the 7th of April 1942 and according to that her age at the time of the occurrence was about 13½.

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The accused denied his guilt. He denied having taken the girl away and denied even that she was found at his house when the police went there. He alleged that a false case had been brought against him because Tilak Ram had borrowed Rs. 200/- from one Ram Nehor, ostensibly on account of the accused, and had also borrowed Rs. 100/- from the accused who wanted the return of the money because he had to perform the marriage of his son. For that purpose he has gone to Khanpur on the 29th of October, 1961. He alleged that Tilak Ram had threatened that he would settle accounts with him and on this account had brought this false charge of abduction. He also alleged that the other witnesses were his enemies for various reasons.

He produced one witness in defence, Ram Parkash, the proprietor of the firm Ram Parkash Uppal & Co. This witness stated that Sulekh Chand and

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Tilak Ram were living in a single room. He even contradicted the statement of the accused that there was any partition between their sections. He also contradicted the allegation of the accused that Som Nath P. W. had given evidence against him because they had quarrelled on account of the fact that Som Nath wanted to replace him as a driver. Ram Parkash denied that there was any quarrel between Som Nath and Sulekh Chand and denied that Som Nath had ever asked him to turn out Sulekh Chand and take him on as a driver.

The reasons given by the learned Sessions Judge for acquitting the accused are not at all satisfactory. He found that the age of the girl was definitely below 18, and that if her story was true the action of the accused amounted to taking her out of the keeping of her lawful guardian within the meaning of section 361 Indian Penal Code in which the offence of kidnapping from lawful guardianship is defined. However he apparently did not feel it safe to rely on the evidence of the girl alone, as if that were the only evidence in the case.

It seems quite probable that the story told by the girl is not entirely true, and it is probable that when she took Rs. 70/- out of her father's money and went from the hut with the accused she was not under a mistaken impression that she was being taken shopping, but understood that the accused was taking her away with him somewhere. She is almost certainly not telling the truth when she says that she accompanied the accused under threats of being killed, and she must in fact have accompanied him quite willingly. She herself admitted that when they were at the bus stand at Ambala changing buses to go to Delhi there was a constable standing only a few paces away, whose attention she could obviously have attracted very easily if she had wished to do so. It is, however, only to be expected that a girl who has been taken

away by a man even willingly must, when she gives evidence as a complainant, allege that she was either tricked or forced into accompanying him. This is the natural effect of both parental and police pressure, both for the sake of the prosecution and her own reputation, but it does not mean that her story as a whole is not true.

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In the present case there is absolutely no reason for disbelieving the evidence of Som Nath that he actually saw the accused taking the girl away and equally no doubt that four or five days latter she was found with the accused in his house in his village Khanpur on the other side of Delhi. To my mind the suggestion of the accused that he had gone alone to his village, and that the police brought the girl there with them and pretended to have recovered her from his house is merely fantastic. In the first place it implies that the girl's father is a party to this, and that he deliberately made a false report that his daughter had been taken away by the accused for the object of marrying her or having sexual intercourse, and that he is a party to a false story that the girl was recovered after four or five days in the company of the accused. No father could possibly damage his daughter's reputation in this manner. In my opinion there can be no doubt whatever that the accused took the girl away with him to his village either for the purpose of marrying her or seducing her, and that although he did make some attempt to have sexual intercourse with her he fortunately did not carry it to extremes.

The learned counsel for the respondent attempted to argue that as the girl went with the accused willingly he did not 'take' her within the meaning of section 361 Indian Penal Code, and he relied on the decision in *Bhajna alias Bhajan Singh v. The State*

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(1), in which Shamsher Bahadur J. held that the mere proof of the minority of the girl in the absence of evidence regarding another essential ingredient of taking the girl by the accused by enticement or misrepresentation does not constitute an offence under section 366 and where a married girl is shown to be a minor, but it is proved from her evidence that she was a willing party throughout and there is no evidence that she was taken away against her will or under any misrepresentation, the accused cannot be convicted. With due respect I consider that this is not a correct pronouncement of the law on the point. In section 361 which defines the offence of kidnapping from lawful guardianship all that is required is that a minor, under 16 in the case of a male or under 18 in the case of a female, must be "taken or enticed" from the keeping of the lawful guardian. 'Taking' implies neither force nor misrepresentation and in my opinion if a girl of less than 18 is taken away from the keeping of her lawful guardian, even at her own wish, the offence of kidnapping is established. The word 'take' in this context means no more than the sense in which one would use the word if one said one was 'taking' one's sister to the cinema. The extent to which the girl is a consenting party is a matter for consideration under the question of sentence, and does not effect the commission of the offence.

The offence of kidnapping under section 363 consists solely of taking a minor from the keeping of her lawful guardian, and no intention needs to be established. Section 366 applies whether the offence is kidnapping or abduction, the additional ingredient being required that such kidnapping or abduction is with the object of marriage or seduction. In the present case I have no doubt that this was the object with which

the accused kidnapped the girl although, as I have said, he did not press the matter to extremes.

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I am therefore of the opinion that the accused Falshaw, C. J. was wrongly acquitted and that he was guilty of an offence under section 366 Indian Penal Code. In view of the fact that it will appear that the girl was a consenting party and the accused did not persist very resolutely in his object of sexual intercourse although he had every opportunity, I consider that a heavy sentence is not called for. The accused was arrested about four months ago and has been in jail pending the appeal since then and I would sentence him to six months rigorous imprisonment.

JINDRA LAL, J.—I agree.  
R. S.

Jindra Lal

CIVIL MISCELLANEOUS

*Before S. B. Kapoor and Prem Chand Pandit; JJ.*

ATMA SINGH;—*Petitioner*

*versus*

THE CHIEF SETTLEMENT COMMISSIONER AND  
OTHERS,—*Respondents.*

Civil Writ No. 598 of 1961. ...

*Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 30—Whether applies in a case where more than one are in occupation of acquired evacuee property; only one of whom holds verified claim—Such occupant—Whether entitled to the transfer of the property.*

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*Held* that explanation to rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, makes the provisions of the Rule applicable to a case in which more than one person are in occupation of the acquired evacuee property and only one of them holds a verified claim. In such case the occupant; who has a verified claim; being entitled to compensation; will have a better claim to the transfer of the property as against