APPELLATE CRIMINAL

HARMEL SINGH,—*Appellant.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Appeal No. 1105 of 1969

August 5, 1971.

Indian Penal Code (XLV of 1860)—Section 361—Mnior girl leaving guardian's house of her own wish—Act of the accused in giving some kind of inducement or taking active part in the formation of such wish—Whether amounts to "taking" as mentioned in the section.

Held, that even if a minor girl leaves the house of her guardian of her own wish, it is still to be found as to how this wish is brought about. If it is established that the accused gives some kind of inducement or takes active part in formation of the intention of the minor to leave the house of her guardian, the act of the accused will amount to "taking" as mentioned in section 361 of Indian Penal Code, even if the girl herself leaves the house. In other words the manner in which the desire of the minor has come to be formed is relevant for the purpose of finding as to whether the act of the accused amounts to "taking" or not and it is not sufficient to show that she willingly goes with the accused. (Para4)

Harbhagwan Singh, Advocate, *for the appellant.*

H. N. Mehtani, Assistant Advocate-General, Haryana, *for the respondent.*

JUDGMENT

GUJRAL, J.—(1) Harmel Singh, a teacher under suspension, and Harbans Lal have been convicted under sections 363 and 366 of the Indian Penal Code by the order of the Additional Sessions Judge, Hissar, dated 23rd August, 1969 and whereas Harmel Singh was sentenced to one year's regorous imprisonment under both the counts Harbans Lal was sentenced to six months' rigorous imprisonment under each count. The convicts have filed separate appeals being Criminal Appeals Nos. 1015 and 1017 of 1969. This judgment will dispose of both the appeals as they arise out of the same order.

(2) The case of the porsecution is that Gela Ram's family used to live in Mandi Dabwali, while Gela Ram, himself was employed as a Patwari and was posted at Gobindgarh. Both the appellants, Harmel Singh and Habans Lal, used to reside in the neighbourhood of the house of Gela Ram in Mandi Dabwali and it appears that they were on visiting terms with Gela Ram. The case of the prosecution is that a month before the occurrence Gela Ram's wife and only child Asha Rani, the prosecutrix in this case, shifted to Fatehabad to meet the grandparents. It is further alleged that on 22nd July, 1968 Asha Rani, P.W., who was a minor at that time left her house to go to the house of her maternal uncle when the two accused met her on the way and told her that her father had met with a serious accident and they had been sent to escort her to Dabwali. Without verifying this fact she accompanied both the accused and they all went to the bus-stand from where they boarded a bus for Sirsa. At Sirsa Harmel Singh disclosed to her that she had been brought there because he wanted to get married with her and threatened that in case she divulged this to anybody she would be killed. She was also threatened that she would be killed in case she refused to get married. The threat was given by showing a big knife, which Harmel Singh was carrying at that time. Asha Rani was then taken to the railway station from where they caught a train and reached Bhatinda and went to the house of one Jagdish Rai Advocate. The two accused and Asha Rani stayed at the house of Jagdish Rai and during this period Harmel Singh accused committed sexual intercourse with Asha Rani and also took her to the gurdawara on 24th July, 1968, and performed the marriage ceremony. On 25th July, 1968, the police accompanied by Asha Rani's father arrived in Bhatinda and arrested Harmel Singh while he was in the company of Asha Rani. Earlier than that Gela Ram had lodged a report at Police Station, Fatehabad, on 24th July, 1968, and it was on that account that the police had arrived at Bhatinda and had arrested the accused. After the completion of the investigation the accused were challaned and convicted and sentenced as above.

(3) It is not disputed on behalf of the State that the evidence of Asha Rani, that she had been threatened and forced to accompany the accused or had been duped into accompanying them was not true. It has been admitted by Asha Rani, that at no stage did she seek the help of any person though she had met a large number of persons. It is further in her statement that even at the house of Jagdish Rai, she did not disclose it either to Jagdish Rai or to his

family that she had been brought there by deception and force and was being kept there against her will. Asha Rani has further admitted that even at the Gurdawara, while the marriage ceremony was being performed and a large number of persons were present the fact that she had been brought there against her will was not brought to the notice of either the granthi, who was performing the ceremony or other respectables who were present in the gurdwara. She has also admitted that photographs were taken at the time of the ceremony and she was forced to put up a happy face to show that everything with her was all right. All this leaves no manner of doubt that Asha Rani was a consenting party and that the story that she had been made to accompany the accused on the false representation that her father had met with an accident was false and that she had willingly accompanied the appellants first to Sirsa and then to Bhatinda.

(4) There is clear evidence on the record that Asha Rani was born on 28th April, 1952 and though above sixteen years of age was below eighteen years of age at the time of the occurrence. Having regard to the age of the prosecutrix the learned counsel for Harmel Singh pointed out that Harmel Singh appellant had taken no part in taking Asha Rani to Bhatinda and that she had herself left the guardianship of her father and had accompanied the accused. It was also contended that the circumstances brought on the record showed that the act of the accused did not amount to taking away or enticing Asha Rani as they were not responsible for Asha Rani leaving the house of her parents. In support of this argument, reliance is placed on the following observations made by Gopal Singh, J., in *Jai Narain* v. *State of Haryana* (1):—

> "The word "take" as used in section 361 of the Penal Code 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, the accused cannot be held to have either taken or seduced the girl. According to the term "abduction" as given in section 362 of the Penal Code, a person commits the act of abduction if by force he compels or by any deceitful means he entices any person to go from place to place. Where the accused never compelled by force the prosecutrix nor he

(1) 1965 R.L.R. 688.

adopted any deceitful means to entice her to go from her father's house and she herself desired to leave the house and did leave it, the accused could not be said to have abducted her."

The above observations in *Jai Narain's case* do support the contention of the learned counsel for the appellant that if once it is found that the girl has voluntarily and of her own wish gone along with the accused, the accused cannot be held to have taken or enticed the girl. It may, however, be noticed that the view taken by the Supreme Court in *S. Varadarajan* v. *State of Madras* (2), was not brought to the notice of Gopal Singh, J., while deciding *Jai Narain's case. In Varadarajan's* case, the expression 'taking' occurring in section 361 of the Indian Penal Code had came up for interpretation before the Supreme Court and it was observed as follows:—

"There is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though it cannot be laid down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361. Where the minor leaves her father's protection knowing and having capacity to know the full import of what she is doing, voluntarily joins the accused person, the accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her

(2) A.I.R. 1965 S. C. 942.

> design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. But that part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking"."

The above observations of the Supreme Court would clearly show that even if the girl had left the house of her guardian of her own wish it is still to be found as to how this wish was brought about. If it is established that the accused had given some kind of inducement or had taken active part in the formation of the intention of the minor to leave the house of her guardian, the act of the accused would amount to 'taking' even if the girl had herself left the house. In other words, the manner in which the desire of the minor has come to be formed is relevant for the purpose of finding whether the act of the accused amounts to 'taking' or not and it is not sufficient to show that she had willingly gone with the accused.

(5) Coming to the facts of the present case, the circumstances show that Harmel Singh and Asha Rani lived in neighbourhood at Dabwali and that Harmel Singh used to visit the house of the prosecutrix. Gela Ram has stated that their families used to meet and were known to each other. It is futher in evidence that Asha Rani and her mother shifted to Fatehabad and the suggestion made was that this was done to persuade Asha Rani to get married to some other person and not Harmel Singh. From this it can be safely inferred that there was some sort of liaison between Harmel Singh and Asha Rani before Asha Rani was brought to Fatehabad. The medical evidence also shows that Asha Rani was used to sexual intercourse before her elopment. It is further in the prosecution evidence that Harmel Singh and Harbans Lal followed Asha Rani to Fatehabad and there they met her in the bazar and took her to Sirsa and from there to Bhatinda. Having regard to the circumstances, it is clear that Harmel Singh accused must have taken some part in the formation of the intention of Asha Rani to leave her father's house as otherwise Harmel Singh—would not have followed Asha Rani to Fatehabad in order to meet her and take her away. This circumstance leaves no manner of doubt that Harmel Singh had taken active part in inducing Asha Rani to leave her father's house which would bring the

act of the acused within the ambit of section 361 of the Indian Penal Code. As Asha Rani was below eighteen years of age even though she was a consenting party, Harmel Singh would be liable under sections 363 and 366 of the Indian Penal Code and, I, therefore, find that he was rightly convicted for these offences.

(6) The case of Harbans Lal, however, stands on a different footing. From the evidence of Asha Rani, it emerges that excepting accompanying the couple he had taken no part in inducing Asha Rani either to leave her father's house or to marry Harmel Singh. Even otherwise, he could not have taken any active part and whatever was done must have been done only by Harmel Singh who wanted to marry Asha Rani. Leaving this aside, there is no convincing evidence that Harbans Lal accompanied Asha Rani from Fatehabad to Bhatinda. The uncorroborated testimony of Asha Rani in this respect cannot be accepted as she had made contradictory statements in respect of the manner in which they reached Bhatinda from Fatehabad. When the police reached Bhatinda and arrested Harmel Singh, Harbans Lal was not in her company and only Harmel Singh was with her. I, therefore, find that the case against Harbans Lal is not established beyond doubt. I consequently accept his appeal and set aisde his conviction and sentence.

(7) Lastly it was urged that the sentence awarded to Harmel Singh was excessive and in this respect the following observations of the Supreme Court in *Brij Lal Sud and another* v. *The State of Punjab* (3), are relevant:—

> "The girl was under the age of 18 and, therefore, an offence under section 366 was in fact committed. She was very near that age. Indeed she herself gave the age as 18 years. The medical evidence showed that this girl was fully developed and used to sexual intercourse and her physical appearance showed that she had been perhaps indulging in it for quite sometime. It was not, therefore, the only occasion when she was in the company of men. This reflects on the question of her consent, but consent is immaterial because she was below age. All the same in the case of a woman of this character the offence is a just little more than a technical offence. Because of this it is not necessary to insist on the full sentence of six months.

(3) 1970 PLR 999.

There are good reasons to think that the girl was probably consenting."

Keeping the above observations of the Supreme Court in view, I reduce the sentence of Harmel Singh to four months' rigorous imprisonment under each count. The sentences are ordered to run concurrently.

(8) With the modification indicated above, the appeal of Harmel Singh fails and is dismissed.

B. S. G.

ORIGINAL CIVIL

Before R. S. Narula, J.

In Re: Industrial Cables (India) Limited Industrial Area, Rajpura, Punjab,

Civil Original 37 of 1971

August 26, 1971. ....

Companies Act (1 of 1956)—Section 17(1) (d)—Special resolution of a company amending the objects clause of its Memorandum of Association, by adding new business—When to be confirmed or not by the Court—Principles as to—Stated.

Held, that the principles, on which a special resolution amending the objects clause of the Memorandum of Association of a company adding new business may or may not be confirmed by the Court under section 17(1) (d) of the Companies Act, 1956, are as under :—(1) A company is normally free to alter its objects clause as it is for its memebers to decide as to what business the company should carry on from time to time. The Court cannot embark on an enquiry into the question whether the opinion of the members of the company is or is not justified or well-founded. This is particularly so when the resolution of the company is unanimous and there is no objection to the proposed alteration by any creditor or any other person interested in the company. The Court will not lightly interfere with the unanimous decision of the share-holders subject to the restrictions contained in section 17; (2) It is not necessary that the proposed new business must be ancillary or similar to the existing business or businesses of the company. "Some business" in section 17(1) means and implies some new business not already