

**Pramod Kumar Vs. State**

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**Court** : Allahabad

**Decided On** : Apr-20-1979

**Reported in** : 1979CriLJ1094

**Judge** : V.N. Varma, J.

**Appellant** : Pramod Kumar

**Respondent** : State

**Judgement**

:

ORDER

V.N. Varma, J.

1. This Revision is directed against an order dated 5-2-77 passed by Sessions Judge, Dehradun, confirming the conviction and sentence recorded against the applicant (Pramod Kumar) under Section 363, I.P.C.

2. The person alleged to have been kidnapped in this case was a boy named Anil Kumar. He lived with his father (Tara Chand) in Mohalla Khurburra, Dehradun. The applicant worked as a driver of one Lakshmi Chand Garg who was a neighbour of Tara Chand. He, therefore, knew Anil Kumar very well. Co-accused Netrapal often visited the applicant and, therefore, he also came to know Anil Kumar. At the relevant time (Jan. 1974) Anil Kumar was a student, but he was not well off in his studies. In his spare time, which he had enough at his disposal, he often met the applicant and co-accused Netrapal. It is said that both these persons often persuaded Anil Kumar to leave his house with cash and ornaments and enter into a business partnership with Netrapal's maternal uncle in District Etah. He succumbed to their persuasion and it is said that on 19-1-74 he left his house with some ornaments of his mother and went to the shop of co-accused Netrapal. There he found the applicant also. It is further said that the applicant took the ornaments from Anil Kumar and asked him to come again after about 2 or 3 hours. Accordingly, he returned to the shop of Netrapal at about 6 p.m. It appears that at that time he was carrying his books with him. The applicant and Netrapal asked him to go to his house and keep his books there so that nobody could suspect that he had disappeared. Anil Kumar agreed to this thing and allegedly left for his house in the company of the applicant. The applicant did not go with him to his house but stayed in the way. Anil Kumar left his books at his house and then proceeded towards Hanuman Chowk. Near Hanuman Chowk he found the applicant and co-accused Netrapal. It is alleged that both of them took Anil Kumar to Saharanpur by taxi. The applicant left co-accused Netrapal and Anil Kumar at Saharanpur and he himself returned to Dehradun. From Saharanpur Netrapal took Anil Kumar to Moradabad by train and from there to Atrauli in District Etah by bus.

They reached Atrauli on the night of 24-1-74 and stayed there with a relation of Netrapal. It is averred that at Atrauli Netrapal sold some ornaments brought by Anil Kumar and out of the sale proceeds of those ornaments opened a Bank Account there. Anil Kumar inquired from Netrapal about the partnership business in regard to which he had spoken to him earlier, but Netrapal gave no satisfactory reply to him about it. When Anil Kumar again inquired from him about it, he threatened him with serious consequences. Netrapal kept Anil Kumar at Atrauli for about 2 months and then took him to Secunderabad. From Secunderabad he took him to Delhi. The applicant met both of them at Delhi. After some time Netrapal brought Anil Kumar to Dehradun and kept him at his house for a few days. At Dehradun Netrapal was said to have asked Anil Kumar to bring more money and ornaments from his relations as there was shortage of funds. He refused to oblige him whereupon, it is averred that both Netrapal and the applicant again took him to Atrauli. The applicant left them there and returned to Dehradun. At Atrauli, Anil Kumar again raised the question of business partnership, but Netrapal as usual tried to put him off on one pretext or the other. Anil Kumar felt suspicious about the conduct of Netrapal and left for Dehradun. The matter was then reported to the police and eventually the applicant as also Netrapal were sent up to stand their trial under Section 363, I.P.C.

3. Both the accused of the case pleaded not guilty and repudiated the truth of the allegations made against them. They attributed their false implication due to enmity,

4. The trial Court found the prosecution case to be true and it, therefore, convicted the applicant as also Netrapal under Section 363, I.P.C. and sentenced them to 3 years' R. I. each and a fine of Rs. 1,000/-. Both of them felt aggrieved with the order passed by the trial Court and filed separate appeals against their conviction and sentences. The Appellate Court found no force in their appeals and accordingly dismissed them. Netrapal submitted to the judgment of the Appellate Court, but feeling dissatisfied the applicant came up in revision to this Court.

5. I have heard the learned Counsel for the applicant at sufficient length and after doing so I am firmly of the view that this revision must be allowed. I find that the Court below has not approached this case in a proper manner with the result that it fell in error and passed a wholly wrong order of conviction against the applicant. The charge against the applicant was that in Jan. 1974 he had kidnapped Anil Kumar who was under 16 years of age at that time. The offence of 'Kidnapping from lawful guardianship' is defined thus in the first paragraph of Section 361 of the Indian Penal Code.

Whoever takes or entices any minor under 16 years of age if a male, or under 18 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.

It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. The Courts below have found that Anil Kumar had been born on 26-2-1958 and as such was a minor under 16 years of age in Jan. 1974, when he was allegedly kidnapped. In Jan. 1974 he may have been a minor under 16 years of age, but in Feb. 1974 he would have crossed the age of 16 years. At the age of round about 16 years a boy generally becomes mature enough to know what is good and what is bad for him. If, therefore, at such an age a boy leaves the roof of his father's house and voluntarily goes away

with someone, the latter cannot be said to have taken him away from the keeping of his lawful guardian. In this case there is nothing to show that the applicant had offered any inducement to Anil Kumar at the time when he left his father's house. The only thing that has been said against the applicant is that as Anil Kumar did not take interest in his studies, he asked him to take up business in the partnership of Netrapal's maternal uncle at Etah. It appears that this advice of the applicant appealed to Anil Kumar and he left his father's house for taking up business at Etah, may be that when he left his father's house, he carried some money and ornaments also with him, but all this he did of his own accord. Probably he felt that he would need money for business and he, therefore, carried with him some money and ornaments for that purpose. Obviously, whatever he did in this case, he did of his own accord. He was mature enough to know the import of what he was doing. I am certain that but for giving advice to Anil Kumar, the applicant had done nothing in the matter. In any event he had certainly not taken or enticed him away out of the keeping of his lawful guardian. The conviction of the applicant under Section 363, I.P.C. was, therefore, totally unwarranted and he deserves to be acquitted.

6. In the result, I allow this revision and set aside the conviction and sentence passed against the applicant. He is on bail, his bail-bonds are discharged and he need not surrender to the same.

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