

1969

Present : Weeramantry, J.

J. K. P. JAMIS (*alias* J. Jayasekera) and 3 others, Appellants, and
INSPECTOR OF POLICE, MIDDENIYA, Respondent

S. C. 1167-70/68 — M. C. Walasmulla, 28665

*Criminal law—Offence of abducting a girl to compel her marriage—
Evidence of compulsion as distinct from persuasion.*

The 1st accused-appellant was charged with the offence of abducting a girl in order that she may be compelled to marry him. The evidence established that, at the time of abduction, the girl was unwilling to go with the accused. The defence was that the girl was taken away to be persuaded rather than compelled to marry the accused. The finding of the Magistrate was that, soon after the abduction, the girl was kept in a house in order to attempt to persuade her to get married.

Held, that the material consideration was the intention of the accused at the time of abduction. "The uprooting of a girl from her environment of parental protection and her removal into the area of influence of the accused-appellant is a means of breaking down her resistance . . . Such a situation is charged with all the elements of compulsion though in fact the process resorted to may be described as an attempt at persuasion."

PPEAL from a judgment of the Magistrate's Court,
Walasmulla.

Colvin R. de Silva, with *Ananda Karunatilake*, for the accused-appellants.

Kosala Wijayatilake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 27, 1969. WEERAMANTRY, J.—

The charges against the accused appellants arise from the alleged abduction of a girl named Karunawathie on 11th October 1966 in order that she may be compelled to marry the first accused appellant. After trial the first accused-appellant was convicted of the offence of abduction and the others of certain ancillary offences.

The principal point taken on behalf of the appellants is that the prosecution has failed to prove beyond reasonable doubt the intent with which the girl Karunawathie was abducted. It is the contention of the appellants that the evidence reveals no more than that this girl was abducted, but only with a view to persuade her to marry the first accused-appellant. It is submitted that as abduction *per se* is not a crime under our law without the specified intent, the prosecution must fail by reason of its failure to prove the intent of compelling the girl to marry this appellant.

It would appear that the girl and the first accused-appellant had been on terms of close friendship with each other for some time anterior to this incident. The parties would appear also to have been related, though their precise relationship is not clear.

The accused-appellant had at a certain stage been living in a house immediately adjacent to the house in which the complainant Karunawathie lived and in this way a close affection had developed between them, which was proved by the production at the trial of a series of letters written by the girl to the first accused-appellant indicating very strong affection for him and interest in his welfare and also that she desired to marry him at some time in the future. The letters are undated and it is thus not possible to say whether this affection was still subsisting at the time of this incident, nor do the letters indicate at what time in the future the girl had contemplated marriage.

On 9th October 1966 the accused-appellant had given notice of marriage to the Registrar in respect of an intended marriage with the girl, and according to the Registrar a special licence for this marriage was received by him on October 10th.

On 11th October, according to the prosecution evidence, the girl Karunawathie was on her way to school accompanied by her brother Dharmadasa and another girl also named Karunawathie. When she was thus on her way the accused-appellant

came there in a car and having alighted from it rushed towards her, chased her for a distance of four to five fathoms and caught her by her hair. She fell down and struggled but could not escape. Her brother clung on to the neck of the accused-appellant and is also stated to have bitten this accused-appellant. The girl was forcibly put into the car and taken to the house of the Registrar. The Registrar was apparently away in his office at that time and the accused-appellant remained in the house of the Registrar from the time of their arrival there in the morning till the Registrar returned from his office at 2.30 p.m.

It is not suggested that at any time during the several hours spent by the parties in the house of the Registrar, any force was used on the girl to compel her to agree to the suggested marriage. Indeed, the girl's own evidence is that she spoke to the Registrar's wife, assisted her in the kitchen, and even partook of some coffee during this period, all this while the accused-appellant remained in a different part of the Registrar's house.

It is upon the basis of conduct at that stage indicating a total lack of compulsion that the defence urged a failure by the prosecution to prove an intention to compel the girl to marry the accused-appellant against her will. In this connection the appellants place reliance in particular on the finding of the learned Magistrate that in his view Karunawathie was kept in the house of the Registrar in order to attempt to persuade her to get married. They rely also on a statement by the accused made promptly to the Inspector of Police, that he took the girl under the impression that she would agree to marry him.

It seems to me that this contention on behalf of the accused-appellants cannot be sustained, in the light of the very positive evidence in this case, of the girl's conduct at the time of abduction. This conduct quite clearly demonstrates that she was not, at the time of abduction, agreeable to such a marriage. Had there been such a willingness on her part at that time, it is difficult to conceive of her having put up the resistance that she is shown to have offered, or to have run away from the accused-appellant or to have put him under the necessity of dragging her by her hair into the car. There is moreover her evidence that in the course of the struggle she received injuries and there is the evidence of the Doctor who states that the girl upon examination by him the following day was found to have

a scrape mark on the right side of the neck which could have been caused during the course of a struggle. This corroborates the evidence of the girl who herself has stated in evidence that she received injuries on her neck.

The girl has also stated that she raised cries and that her mouth was closed by the accused and those who assisted him. Furthermore, the complainant states that she asked the other girl Karunawathie to inform her parents about this matter and there is the fact that the other girl Karunawathie had in fact made a prompt complaint of this incident to the father of the complainant.

Another important item of evidence indicating that the girl did offer resistance is the circumstance that her clothes were found by the police to be mudstained, which tallies with the girl's version that she fell down in her attempt to escape. All these items spoken to by the girl are also substantially corroborated by the other girl Karunawathie and also by the girl's brother Dharmadasa.

In the light of all this evidence I find it impossible to take any view other than that the girl at the time of abduction was unwilling to go with the accused-appellant.

What then was the intention of the accused-appellant at that moment, for that is the point of time with reference to which his intention must be considered?

We have on this matter the uncontroverted circumstance that the accused had on the 9th given notice of marriage and that a special licence had been received on the 10th. There could have been no intention on the part of the accused when he acted in this way on the 11th other than the intention to marry the complainant and that was clearly his object in so abducting her.

If the object was marriage, if the girl was so manifestly unwilling, and if force had to be employed to take her away, one can come to no other conclusion than that the intention of the accused-appellant was to compel her to marry him.

One can, of course, conceive of cases where a girl is taken away in these circumstances, but the only object of the abductor is to attempt to persuade rather than to compel. However, the very

fact that a girl is forcibly taken away against her will, viewed against an admitted background of marriage contemplated and prepared for, is suggestive of pressure being brought to bear upon the girl to obtain her consent. Compulsion is a matter of degree and conduct may still be compulsion though it contains no element of force. The uprooting of a girl from her environment of parental protection and her removal into the area of influence of the accused-appellant is a means of breaking down her resistance. The end result of such a procedure is the obtaining of her consent through the application upon her will of the pressure of her changed situation, which in that new environment she is ill equipped to resist. Such a situation is charged with all the elements of compulsion though in fact the process resorted to may be described as an attempt at persuasion. Resistance often crumbles under the pressure of an unaccustomed environment, and all the more where the subject is a girl of tender years. Even the employment in such an environment of all manner of blandishments without any show of force may none the less be a process of compulsion.

Even giving therefore to the accused-appellant the full benefit of the learned Magistrate's finding that the complainant was kept in the Registrar's house in order to attempt to persuade her to get married, I still consider that it was the intention of the accused-appellant at the time of abduction to use compulsion on her to obtain her consent for he was by his act withdrawing her from the area in which her free will had full play.

It is true that the learned Magistrate has discounted the evidence of the girl to a large extent as after an incident of this nature the female party often goes back upon her lover and gives evidence against him. It is my view however that quite apart from her evidence and discounting it altogether there is independent evidence in this case proving her conduct and her attitude of resistance, and I do not think that it would be fair to her to conclude, nor indeed was it seriously suggested in appeal that this conduct was mere pretence on her part.

One more matter to which I should advert is that had the girl been agreeable to this marriage, one fails to see, as the learned Magistrate has remarked, any need for the parties to spend six hours, that is from 8.30 a.m. to 2.30 p.m. at the house of the Registrar awaiting his return from the office. Had the girl been

a consenting party it would have been very simple for the accused-appellant to drive her straight to the Registrar's office where the special licence had already arrived.

I would finally wish to observe that the obtaining of a special licence for marriage is an act done only after the most careful deliberation and is a step which when decided on is ordinarily taken with a view to its being carried through to completion. Furthermore, the determination of the accused-appellant to carry this objective through to completion is shown by the circumstance of his having come in a car to the spot and taken the very serious step of forcibly putting the girl into the car. Against this background of determined conduct, it is difficult to say that the intention at the time of abduction was mere persuasion as opposed to compulsion.

For all these reasons, I consider that the contention urged on behalf of the appellants must fail. In the result the appeals are dismissed.

Appeals dismissed.