

SHAMPETA AND ANOTHER v THE PEOPLE (1979) ZR 168 (HC)

HIGH COURT

RAMSAY J

24th NOVEMBER 1967

Flynote and Headnote

[1] Criminal procedure - Guilty plea - Requirements for.

For a plea of guilty to be effective, the accused must appreciate the nature of the charge, he must intend to plead guilty, and he must admit sufficient facts to enable him to be convicted of the offence charged.

[2] Criminal law - Abduction - Elements - Of the essence that the abductor should intend to wrongfully confine person abducted.

An essential ingredient of the offence of abduction is proof of the abductor's intention to secretly and wrongfully confine the person abducted.

Cases cited:

- (1) *R v Siwakwi* (1939) 2 NRLR 73.
- (2) *Kamene v The People* (1966) ZR 33.

Statute construed:

Penal Code (1965, Cap. 6), s. 228.

Daley, Director of Legal Aid, for the appellants

Chandran, State Advocate, for the respondent

Judgment

Ramsay J: The appellants, John Shampeta and Samson Changa, were convicted on their own pleas of the felony of abduction, contrary to section 228 of the Penal Code. The particulars averred were that they, on the 27th May, 1967, at Chikankata, jointly and whilst acting together with other persons, did abduct Otilia Makamba with intent to cause her to be secretly and wrongly confined. They were each sentenced to six months' I.H.L., and they have appealed against the conviction and sentence. They have been represented at the hearing of the appeal by the learned Director of Legal Aid, and I heard both appeals together.

[1] The main ground of appeal was as follows:

"The facts of the case as related by the prosecutor do not disclose the offence charged, and the learned resident magistrate erred in treating the plea of the accused as a plea of guilty."

Archbold, *Criminal Pleading, Evidence and Practice*, 36th ed., paragraph 926, contains the following passage:

"A plea of guilty having been recorded, the court can only entertain an appeal against conviction if it appears: -

- (i) that the appellant did not appreciate the nature of the charge, or did not intend to admit that he was guilty of it; or
- (ii) that upon the admitted facts he could not in law have been convicted of the offence charged."

[2] One of the ingredients of the offence is that the abduction must be with the intent that the person abducted be secretly and wrongfully confined, and the importance of the proof of this intent was emphasised in *R v Siwakwi* [1] and *Kamene v The People* [2]. The gravamen of the appeal is that this matter of intent was not dealt with at the trial.

The record shows that when the appellants appeared in court on 15th September the charge was fully explained to them. When called on to plead, Shampeta said:

"I understand. I plead guilty. We stole her away for another man. He is Moonga. He said he was going to marry her."

Changa said:

"I understand. I also plead guilty. I was with this gang who stole Miss Makamba from Chikankata."

A plea of guilty was recorded, and the hearing was adjourned to 29th September. On that date, the charge was again explained and the appellants confirmed that they had pleaded guilty. The public prosecutor then outlined the facts. Briefly, they are as follows:

At about 8.30 p.m. on the day in question the complainant left her dormitory at Chikankata Hospital to go for work at the leprosy dispensary. She saw a Land - Rover hidden amongst trees. One of the accused persons asked her the way to the main hospital and, when she turned round to show him, he grabbed her from behind and hurled her into the Land - Rover. One held his hand over her mouth so that she could not shout; others held her legs, and she was held down by the accused and other persons as they travelled to a village in Chief Mwanachingwala's area some five miles away. All along this journey the complainant cried and tried to free herself, but she could not do so as she was held firmly and was overpowered by the two accused and other persons. On arrival at the village, they hid her in a certain house.

The sequel, as described in the outline, was that one of the men who had taken part in the incident was suspicious that she had not consented to be taken to the village. He asked the two accused and other persons if there was an arrangement. They all agreed there was, but she denied it. The man then reported to the headman who went to investigate. He found the complainant crying and the two accused and other persons in the house. He was surprised at her distressed appearance and he took her to his own house.

When this outline was completed, both appellants said that they agreed that these facts were correct, and when questioned further by the magistrate, Shampeta said, "Yes, she was taken away. Nobody knew where we were taking her to. She was held down and hidden in the house." Changa said, "Yes. The facts are correct. We stole her and held her in a house in Hachingala's village."

There is thus no doubt that the complainant was abducted and that she was secretly and wrongly confined. The question is whether the appellants admitted that, when they took part in the abduction, they did so with the intent that she be secretly and wrongfully confined.

As the learned state advocate has pointed out, in *Siwakwi's* case, the charge itself was wrongly drawn. In this case, the charge was correctly drawn to include the necessary intent. It was explained to the appellants on two occasions. They pleaded guilty. The facts as outlined demonstrated that the immediate purpose of the abduction was that the complainant be secretly and wrongfully confined. The appellants had every opportunity of saying that it was not their intentions that this should happen, but they did not do so. If they had not intended the subsequent confinement, their suspicions would have been aroused in the same way as those of the man who reported to the village headman.

I am satisfied from the record that both appellants appreciated the nature of the charge, that they intended to plead guilty and that on the admitted facts they could in law be convicted of the offence. The magistrate was therefore correct in recording a plea of guilty. The sentences were appropriate.

Appeals dismissed.