

**iman Ali and ors. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/134306](http://sooperkanoon.com/134306)

**Court :** Guwahati

**Decided On :** May-19-1952

**Judge :** Thadani, C.J. and Ram Labhaya, J.

**Appellant :** iman Ali and ors.

**Respondent :** The State

**Judgement :**

Thadani, C.J.

1. This is a revision application arising out of a case in which three persons Iman Ali, Samed Ali and Shamser Ali were convicted by the learned Additional Assistant Sessions Judge L.A.D. under Section 366, Penal Code, and each sentenced to four years rigorous imprisonment at a trial held with the aid of a Jury. On appeal to the learned Sessions Judge, their convictions and sentences were confirmed. They have now come before us in revision.

2. The facts of the case are not in dispute. On the night in question viz. 29.5.49, the wife of one Padma Bahadur Chetri, P.W. 1 was forcibly taken away from the room in which she and her husband were sleeping by some intruders. In due course a First Information Report was lodged and on completion of the investigation the police sent up the three applicants for trial. The only point argued before us was the identity of the applicants with the crime.

3. Before we can interfere with the conviction and sentence of any of the applicants we have to be satisfied that the learned Addl. Assistant Sessions Judge has misdirected the Jury on a point of law or fact. So far as the applicants Iman Ali and Shamser Ali are concerned we find nothing in the summing up of the learned Addl. Assistant Sessions Judge to warrant the conclusion that there has been misdirection' on any question of law or fact.

4. Mr. Sen for the petitioners contended that there was non direction in the summing up in the sense that though the first informant, the abducted woman, knew the names of Iman Ali and Shamser Ali before the occurrence, she did not mention their names in the F.I.R. It is, however, clear from her evidence that she came to know the names of Iman and Shamser only at the time of the identification parade and not before. There is, therefore, nothing in the F.I.R. to suggest that the abducted woman had said anything different in her evidence to what she had said in the F.I.R.

5. So far as the applicant Samed Ali is concerned we find that the learned Addl. Assistant Sessions Judge has not drawn the attention of the Jury to the fact that none of the witnesses in the case identified this applicant in Court. It is true that this applicant was said to have been identified in the identification parade but that is not substantive evidence. The evidence given at the trial was that none of the witnesses viz., the abducted woman and her husband identified Samed Ali. It was the duty of the Addl. Assistant Sessions Judge, therefore, pointedly to draw the attention of the Jury to this fact and as he has omitted to do so, the omission amounts to misdirection in law, - misdirection which has led to an erroneous verdict by the Jury so far as Samed Ali is concerned.

6. The conviction and sentence passed upon the applicant Samed Ali are set aside, he will be set at liberty forthwith. The application of Iman Ali and Shamser Ali is dismissed.

**Ram Labhaya, J.**

7. I agree.

