

Haidar Ali Vs. Emperor

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Court : Allahabad

Decided On : Jan-09-1940

Reported in : AIR1940All201

Appellant : Haidar Ali

Respondent : Emperor

Judgement :

ORDER

Rachhpal Singh, J.

1. This is a revision application by one Haider Ali against his conviction under Section 498, I.P.C. The prosecution story was that one Mt. Kundania was the wife of Lachhman and she had been abducted by the accused with the intention of committing rape on her. The prosecution of the accused was started under Sections 366 and 376, I.P.C. The learned trial Magistrate came to the conclusion that these charges were not established. He however held that the accused had committed an offence under Section 498, I.P.C., and therefore convicted him of the same and sentenced him to rigorous imprisonment for a period of one year. The accused preferred an appeal against his conviction and sentence which was unsuccessful. He has now come up in revision to this Court. The question taken up by learned Counsel appearing for the applicant is purely legal. It has been contended that a person who is prosecuted under Sections 366 and 376, I.P.C.,

cannot be held to be guilty of having committed an offence under Section 498, I.P.C., if the offences with which he was charged are not established. On a consideration of this question I am of opinion that the contention of learned Counsel for the applicant is correct and must therefore prevail.

2. There is a string of authorities which are in favour of the applicant's contention. The first case on the point is *Empress of India v. Kallu* (1883) 5 All 233. The next case on the point is a Full Bench ruling of the Calcutta High Court: *Tara Prosad Laha v. Emperor* (1903) 30 Cal 910. Their Lordships held that the word 'complaint' referred to in Section 199, Criminal P.C., means a 'complaint' as defined by Section 4, Clause (h) of the Code. In the case before me there was no complaint by the complainant as defined in the Code of Criminal Procedure. In *Chemon Garo v. Emperor* (1902) 29 Cal 415, it was held that where an accused person was sent up for trial under Section 376, I.P.C., he could not be convicted for adultery because there was no complaint of an offence of adultery against the accused and the mere fact that the husband had appeared as a witness for the prosecution did not alter the matter. The next case to which I wish to refer is *Emperor v. Jagdamba Prasad* : AIR1933 All626 . In this case the learned Judge who decided it has referred to various rulings on the subject and after a consideration he came to the conclusion that where an accused was tried on a charge under Section 366, I.P.C., he could not be convicted of an offence under Section 498 of the Code in the absence of a complaint made by the husband under that Section and that the fact that the husband appeared and gave evidence for the prosecution at the trial under Section 366-A could not take the place of a complaint by the husband which is necessary. The same view was taken by the Madras High Court in *Bangaru Asari v. Emperor* (1904) 27 Mad 61. My view therefore is that the conviction of the accused applicant is bad. The result therefore is that this revision application is allowed, the conviction and sentence of the accused are set aside and he is acquitted. He is on bail. He need not surrender and his bail bonds stand discharged.