

Abdul and anr. Vs. Emperor

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Court : Allahabad

Decided On : Feb-22-1932

Reported in : AIR1932All580

Appellant : Abdul and anr.

Respondent : Emperor

Judgement :

Pullan, J.

1. Mt. Buddo, a chamar girl, who is said to be between 14 and 16-years of age, went to a police station on 19th January 1931 and made a report which is taken to be one under Section 354, I.P.C., against four persons, two of whom, Abdul Karim and Abdul Hasan, are now appellants in this Court. There is very little in the report and the girl's father Jagna was not satisfied with the fact that no investigation was made. He made a further complaint to the Superintendent of Police and investigation followed in which the following facts came to be known : The girl used to go to the house of these Mahomedans to do work. She knew them well and was on friendly terms with them. One day they called her into a sugarcane field and had sexual intercourse with her. They also dressed her up in some Mahomedan clothes which they subsequently removed. She never left the village and she was found shortly afterwards by her father on whose instigation she seems to have made the report on the following day. An attempt was made to

show that these Mahomedans and others were in a conspiracy to abduct this girl to Simla for immoral purposes, but no such case is established by the evidence. It is however proved that the girl was seen with these men, that she went into a sugarcane field with them, and that she exchanged her clothes for Mahomedan clothes.

2. Medical examination disclosed the fact that she was not a virgin, but no question was asked to the doctor as to whether she had been recently deflowered or was habituated to sexual intercourse. As she has never suggested that any violence was used to her, it is probable that she had submitted to these men on previous occasions. Both the appellants have been convicted of an offence under Section 366, I.P.C. In order that this offence may be proved, it is necessary to show that, the girl or woman has been kidnapped or abducted from lawful guardianship. This girl was in the guardianship of her father as her gauna ceremony had not been performed, but I am unable to hold that she has ever left the guardianship of her father. She never appears to have gone more than a very short distance from her own home and there is nothing to suggest to my mind that the accused had any intention of taking her away. No doubt they amused themselves with her and dressed her up in some fine clothes in order to please her, but this does not prove that they intended to take her away from home or to do anything more than have sexual intercourse with her.

3. A man who commits sexual intercourse with a girl in a field near her own home without having any intention of taking her away with him is not guilty of an offence under Section 366, I.P.C. but a man who has intercourse with a minor girl even with her consent is guilty of the offence of rape. In the present case the accused were not separately charged with rape, but they were both asked whether they had intercourse with the girl and they both said that they had not. Sexual intercourse in fact forms the principal part of the allegations made by the girl and there is no doubt that technical rape was committed. Although no specific charge of this offence was made a conviction for rape may be passed by this Court under the provisions of Section 237, Criminal P.C. In my opinion the offence is not one which calls for heavy punishment. Already the accused have been put to considerable expense and they have spent some days in jail. I consider that they

have been sufficiently punished. I alter the conviction from one under Section 366 to one under Section 376, I.P.C., and sentence them to so much rigorous imprisonment as they have already undergone and I maintain the order of fine. If the fine has already been paid they need not surrender to their bail. I confirm the order by which the amount of fine was paid to the girl by way of compensation.

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