

Sukha Vs. Emperor

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Court : Allahabad

Decided On : Jan-02-1918

Reported in : AIR1918All97(2); 43Ind.Cas.827

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Sukha

Respondent : Emperor

Judgement :

1. Sukha has been convicted under Section 302 read with Sections 111 and 114 of the Indian Penal Code. It appears that one Hindwa had had an intrigue with a Berni girl of the name of Patva. A neighbouring Thakur seems to have taken a fancy to the same girl. Hind1 a and Sukha were found travelling with the girl when another Thakur got hold of Hindwa and Sukha, locked them up and sent the girl and her mother away, Sakha and Hindwa were then released and later on arrived at the mother's house and asked for the girl. The mother said that she would fetch her. She apparently had no real intention of giving up the girl, and instead of producing her she brought the chowkidar. Hindwa again demanded the girl. The woman said that if he laid aside the gun that he was carrying she would fetch her. It appears that Hindwa had a gun and Sukha had a sword. Eventually when the girl was not given up, Hindwa fired at the mother. It appears from the medical evidence that Hindwa must have been standing very close to the woman because marks of gun powder were actually on her face. The gun was not loaded with shot;

it was loaded, according to medical evidence, with small piece of hanker. All the wounds if inflicted except three were of a simple nature. Three only were grievous. The woman lived for about a month and eventually died of gangrene in the lungs caused by one or more of the three serious wounds. From the nature of the wounds and the close proximity at which Hindwa must have stood, it would rather seem that there was no intention on the part of Hindwa to kill the woman. Had the gun been loaded in the ordinary way it would undoubtedly have killed the woman on the spot. The only evidence in the case which shows that Sukha made any show of violence has been disbelieved by the learned Judge, for reasons which he has given. We do not know what has become of Hindwa. Probably he is absconding. Undoubtedly Hindwa was the person who fired the shot. The question is whether or not Sukha is guilty, having regard to the provisions of Section 111 of the Indian Penal Code. That section provides that when an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it, provided the act done was a probable consequence of the abetment and was committed under the influence of the instigation or with the aid or in pursuance of the conspiracy which constituted the abetment. The conspiracy in this case was undoubtedly only a conspiracy to get hold of the dancing girl. It is not quite clear whether the gun and the sword were intended to frighten the mother into giving up the girl or as a demonstration against the Thakurs. There certainly does not appear to have been a conspiracy to murder any one. The most that can be said is that there was a conspiracy to obtain possession of the girl with a show of force. Having regard to the peculiar and special facts of this case we find some difficulty in holding that the homicide of Musammat Radhia was a probable consequence of the conspiracy and that it was committed under the influence of the instigation or with the aid or in pursuance of the conspiracy which constituted the abetment. The accused is, of course, entitled to any reasonable doubt which we may have in the matter.

2. We allow the appeal, set aside the conviction and sentence and acquit the accused of the offence with which he is charged and direct his release.