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Court : Allahabad

Decided On : Jan-06-1925

Reported in : AIR1925All769; 87Ind.Cas.842

Appellant : Bahoru and ors.

Respondent : Emperor

Judgement :

Mukerji, J.

1. Three persons, Bahoru, Naharya, and Kehri have applied in revision against their conviction and sentence under Section 363 of the Indian Penal Code, which conviction was had in the Court of a Magistrate of the First Class and was upheld by the learned Sessions Judge on appeal.

2. The story for the prosecution briefly is this : A minor girl of 12 was living with her father-in-law and was removed from her home at the instance of one Mt. Khizani. The appellants and one Sis Bam were waiting for the appearance of the girl and Mt. Khizani had joined their company when they came out. The evidence, if believed, would, no doubt, be sufficient for conviction. But the learned Sessions Judge has found that there were two witnesses on the point, and they were Dhara Singh and Tikam Singh. The learned Judge was not disposed to believe these witnesses because he found that they were relations of Sis Ram and were inclined to shield him. But what to the mind of the Judge clinched the matter was the fact

that a witness for the defence produced by Sis Ram swore that he saw all the three petitioners with Sis Ram and the kidnapped girl in a cart. It is contended, and I think rightly, that the evidence of the defence witness could not be treated as prosecution evidence against the petitioners. If we discard this evidence there is no reliable evidence to connect the petitioners with the kidnapping.

2. I accept the petition, set aside the conviction and sentence, and order that the petitioners be released forthwith.

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