

Prem Narain Vs. Emperor

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Court : Allahabad

Decided On : Oct-27-1928

Reported in : AIR1929All82; 113Ind.Cas.765

Appellant : Prem Narain

Respondent : Emperor

Judgement :

Sulaiman, J.

1. There can be no doubt as to the facts of this case. The statement of Captain Tobit alone fixes the complicity of the accused. The evidence fully establishes that the accused brought over Mt. Jugia and kept her in his quarters, alleging that she was his wife. The medical evidence, coupled with the statement of the girl's father, establishes that she is under 16 years of age. There is no reason to suppose that the accused believed that she was over 16. Even if he did, that would be no valid defence to the charge. If it now turns out that she was under 16 years of age, the accused, even if he honestly believed her to be over 16, cannot protect himself as he must be deemed to have acted at his peril.

2. The learned Sessions Judge has quoted the opinion of a living commentator to the effect that where a man had illicit connexion with a girl before she was kidnapped, it would not be said that he kidnapped her with intent to seduce her to illicit intercourse. The learned Judge has rightly dissented from such a startling

view. Illicit intercourse does not cease to be one, merely because it is repeated. If the intention is to kidnap the girl in order to seduce her to illicit intercourse, the fact of previous intimacy with her is wholly immaterial. The circumstances show that Mt. Jugia went over to live with the accused of her own free will, but no question of consent arises with regard to the offence under Section 366. I.P.C. I, therefore, dismiss the appeal.

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