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Court : Allahabad

Decided On : Nov-20-1923

Reported in : AIR1924All454; 81Ind.Cas.40

Judge : Staurt, J.

Appellant : Badlu Shah and ors.

Respondent : Emperor

Judgement :

Staurt, J.

1. This appeal has presented considerable difficulty owing to the fact that the Sessions Judge did not apply his mind to the question whether he had jurisdiction in respect of certain persons who were tried by him and owing to his having not considered with care the evidence in the certain instances. The following facts are clear. Musammat Dulari, a girl of under sixteen years of age, was kidnapped from the lawful guardianship in the village at Rumasu, in the Budaun District, by two men, Dungar and Badlu Shah. These men took her by train to Kasganj, Etah District, where they met two other men called Hari Singh and Ahsan, and the four men took the girl to Karnal District in the Punjab to the house of a woman called Dallu. The Sessions Judge convicted Dungar of an offence under Section 366 on his plea of guilty. He convicted Badlu Shah of an offence under the same section. He convicted Badlu Shah, Hari Singh, Ahsan, Musammat Dallu and Ghafur of an

offence under Section 368 of the Indian Penal Code. He did not consider the point that whereas Dungar's and Badlu Shah's offence had clearly been committed in the Budaun District within his jurisdiction, the offence of Hari Singh and Ahsan was committed in the Etah District over which he ordinarily had no jurisdiction, and the offence of Musammat Dallu and Ghafur in the Punjab where neither he nor the High Court of this Province had any jurisdiction. I am not clear as to whether he had in his mind the provisions of Section 181 (4) of the Criminal Procedure Code of 1898. He makes no reference to it. It is doubtful and more than doubtful whether it is possible to read into the words 'the offence of kidnapping or abduction' the words 'wrongfully concealing or keeping in confinement a kidnapped person', and although the punishment under Section 368 is the same as that under Section 366, the offences are not the same. If the procedure had been strict and exact, Dungar and Badlu Shah would have been tried in Budaun, Etah or Karnal, Hari Singh and Ahsan would ordinarily have been tried in Etah and Ghafur and Musammat Dallu would have been tried in Karnal. Section 531, however, operates clearly in support of the convictions of Hari Singh and Ahsan if the error has not occasioned the failure of justice. I am satisfied upon the evidence that Dungar, who has not appealed, and Badlu Shah kidnapped the girl and that Hari Singh and Ahsan, knowing that she had been kidnapped, were privy to restraining her movements while she was in Kasganj. I do not consider that the error of trying Hari Singh and Ahsan in Budaun has occasioned a failure of justice as against them. I do not find the sentences excessive and I dismiss the appeals of Badlu Shah, Hari Singh and Ahsan. I need not go into the question as to whether the provisions of Section 531 or of 181(4) could be utilised to support the conviction of Ghafur and Musammat Dallu for I find the evidence absolutely insufficient to justify the conviction of either, apart from the irregularity of the trial. I, therefore, allow the appeals of Ghafur and Musammat Dallu, set aside their conviction and sentences and direct that they be at once released from custody.