

Jodha Singh Vs. Emperor

Jodha Singh Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/471487

Court : Allahabad

Decided On : Jan-19-1923

Reported in : AIR1923All285; 81Ind.Cas.80

Judge : Walsh, J.

Appellant : Jodha Singh

Respondent : Emperor

Judgement :

Walsh, J.

1. This is an appeal from a conviction of one Jodha Singh under the sections of the Indian Penal Code for abetting an abduction, selling for prostitution and cheating. As regards the main delinquents it is a bad case, and the Judge evidently took a grave view of it and sentenced them and the present appellant to five years' rigorous imprisonment each. The Judge has written a very clear and admirable judgment and an accurate judgment in fact reviewing the whole circumstances. The defect of it, if it has one, is just in regard to the decision against this appellant, because he differs from the Assessors, but fails to put at all clearly under what section he really finds the accused guilty. I think he means that the accused was a party to a previous association which of course, if it was an association for an unlawful object, would be a conspiracy to palm off this girl as Dharam. Das' cousin to Biday the actual complainant. Biday, is the real

complainant because he has been the victim. He is a Brahman living in a certain village, with strong matrimonial inclinations which, have certainly led him into most unfortunate and regrettable pecuniary losses. On a previous occasion while in search of a wife he paid Rs. 100 for a lady who failed to put in an appearance, and whether or not this was known, to the main actors Jai Singh and Dip-Singh, he fell a comparatively easy victim to the second experiment which was made upon his matrimonial inclinations. But he had grown wiser by his past experience and he was resolved not to be done a second time. When, therefore, two gentlemen whom he had never seen in his life before, came to him and smoked and promised him a Brahman girl for Rs. 300, he insisted on a personal reference. The result has been even more disastrous than his previous experience, and to that extent he has a definite grievance against Jodha Singh who encouraged him to go on with the business, even going so far as to give him an indemnity against loss over the marriage contract. It is unusual, to say the least of it, to find a cheat or a thief giving an indemnity in writing against any loss suffered by the person he is intending to cheat. I have not myself ever met with, such a case, and the Judge has overlooked this feature of the case, though he may have thought, what he has not said, that the indemnity was a pure bluff. But the usual method of the rogue who indulges in bluff of this kind, is to promise every sort of indemnity but not to give it in the end. All that is proved against Jodha o Singh is that when, the careful Biday required a reference, Jodha Singh was fetched from a village three miles away to testify to his knowledge of Dharam Das and his belief that the girl was Dharam Das' cousin. This and the part he took in the marriage contract is all that there is against him. The Judge has found him guilty of playing the part of the confidence man. But in a Criminal Court it has to be shown that the man who plays the part of the confidence man js putting forward what he knows to be untrue, and (I am qualifying this element) is in most cases sharing the proceeds. There is no evidence against Jodha Singh of either of these things, and the learned Judge has failed to realise that they are really essential to a charge of cheating. He has also overlooked the bearing of the fact that Jodha Singh was fetched to be a reference, which is somewhat inconsistent, sufficiently at any rate to make it doubtful, with the suggestion that he had already engaged and prepared to carry out this conspiracy.

2. As the Judge's work is in other respects so admirable, I think it desirable to warn him against a method of procedure which, at any rate unless an accused person is represented, may become very, unfair. I will assume that the learned Judge told Jodha Singh that he was charged under Section 420 and that the meaning of that was that he had fraudulently, which means knowingly and wilfully, represented to Biday that the girl was Dharam Das' cousin and under his guardianship, so as to induce Biday to part with the Rs. 300 and to produce some gain or advantage to him, Jodha Singh.' The judgment says the charge was read out in Court and explained to all the accused. I should have liked to have heard the explanation. I very much doubt whether I should have understood it, and I am fairly certain that it was impossible for the accused to have done so. In a case like this when a question whether there was kidnapping either with or without persuasion, and a question as to how long the kidnapping has continued, and as to whether at some stage a fresh kidnapping has been carried out, and whether there was a previous conspiracy or conduct amounting to abetment, or whether, as I believe the Judge meant in the case of this accused, there was no kidnapping or share in the kidnapping at all but merely a confidence trick undertaken to cheat Biday of his Rs. 300, it is more than ever the duty of the Judge, even though Counsel may be engaged, to clear the ground, and to be quite sure that each accused -or his Counsel clearly understand what case they have to meet. Alternative charges may be properly run against an accused person on the same set of facts, but alternative, charges which include offences which do not arise out of the, same set of facts as those with which they are linked, even though tried in the same proceedings, ought to be made clear to the accused before the trial and clearly dealt with in the Judge's final decision. In the case of Jai Singh and Dip Singh it is quite clear what the Judge meant, but in the case of Jodha Singh whose guilt, as he quite clearly says depended upon the inference to be drawn from his admitted conduct, it is not so certain to my mind that the learned Judge had made up his mind how Jodha Singh's conduct could be brought under each of the sections which by his judgment he has applied to Jodha Singh. The appeal must be allowed and the conviction set aside and the accused discharged.

3. Nothing that I have said must be taken in any way to prejudice the issue as to whether Jodha Singh is liable civilly under his covenant of indemnity.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com