

Emperor Vs. Khubi

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Court : Allahabad

Decided On : Mar-16-1923

Reported in : AIR1923All545; 81Ind.Cas.191

Judge : Walsh and ;Ryves, JJ.

Appellant : Emperor

Respondent : Khubi

Judgement :

Walsh, J.

1. This matter has been referred by Mr. Justice Lindsay. It is obviously a difficult question of law in certain circumstances and the learned Judge thought that the matter required further consideration. Having given it the best consideration that I can I come to the conclusion that the difference of opinion in Queen-Empress v. Khandu 15 B. 194 : 8 Ind. Dec. (N.S.) 131 between Mr. Justice Parsons and the majority of the Bench was a difference of fact and not of law. In my opinion no question of law arises in this reference at all. The facts are that Khubi had a young wife of 14 or 15. She was epileptic. That means that she was physically weak, mentally deficient and excitable, certain to meet a premature death, and in a condition of mind and body, which rendered her unable to sustain a severe shock. Khubi must have known, even if he were a savage, and must be taken to have known, that his wife demanded at his hands exceptional care and kindly treatment

and could not stand brutality. For some cause which is not clearly stated except that it appears to have been due to her defective health, she irritated him into a savage beating which inflicted upon her frail body injuries which in the ordinary course of events would not cause death to a healthy person, but in his judgment had caused death. His subsequent conduct indicates that he felt no surprise and showed no remorse. Instead of going to his friends or her friends or any body in authority to explain this accident which he had brought about, if it was an accident--though, in my opinion, he must be taken within the meaning of the Code to have known quite well that what he was doing was likely to cause her death, he surreptitiously by night carried what he thought was her dead body and threw it down a well leaving it there presumably in the hope of covering up the traces of enquiry. I am by no means satisfied with the inference drawn by the learned Judge which I think is too merciful and too improbable that he really thought that she was dead. I think he must have known when he was carrying the body that she was still alive; but in either case, in the peculiar circumstances of his conduct, it seems to me to make no difference. He either beat her till she was dead or he beat her until her chances of recovery were slight and finished her off by throwing her down a dry well 33 feet deep. If I had tried him he would have been convicted under Section 302 of the Indian Penal Code and sentenced to death. But at any rate I see no reason for interfering with the very merciful view which the learned Sessions Judge has taken. To sum up my reason, it is this, that one common intention of inflicting such injuries upon her as he must have known to be likely to cause her death is present throughout the case from the beginning to the end, and if, this is the case I agree with Mr. Justice Parsons in his view of the facts in the Bombay case.

2. Let the record be returned.

3. Ryves, J.--Khubi was convicted under Section 304 of the Indian Penal Code and sentenced to five years' rigorous imprisonment. A learned Judge of this Court on perusing the Sessions statement sent for the record and has sent the case up to a Bench of two Judges for revision, being apparently of opinion that on the facts found by the learned Sessions Judge the conviction under Section 304 is not warranted on the ground that when Khubi threw his wife into the dry well he

already believed that she was dead and, therefore, the throwing into the well was not done with the intention of causing death. I doubt whether the learned Sessions Judge has come to a right conclusion, and I am inclined to agree on this point with my learned brother. Khubi a full grown man beat his child-wife, an invaild and weak girl, so recklessly with a lathi that he at any rate thought that he had killed her and then he threw her down a dry well 33 feet deep, an act which if she was not already dead must inevitably have killed her. As Khubi has been sentenced only to five years rigorous imprisonment and has not appealed, it seems to me unnecessary to consider whether as a matter of law the conviction should not be altered to one under Section 325 of the Indian Penal Code or to some other section of the Indian Penal Code. Under any section the sentence of imprisonment could have been awarded. I agree with the order of my learned brother.

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