

Emperor Vs. Mt. Kesar

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SooperKanoon Citation : sooperkanoon.com/474179

Court : Allahabad

Decided On : Nov-18-1925

Reported in : AIR1926All226

Appellant : Emperor

Respondent : Mt. Kesar

Judgement :

ORDER

Daniels, J.

1. In the case King-Emperor v. Mt. Kesar, under Section 309, of the Penal Code, the Magistrate convicting the accused has dealt with the case under the provisions of Section 562, Criminal P.C., and taken security from her for her appearance if called on within one year.

2. It is proved that the accused jumped into a well merely in consequence of a quarrel with a woman neighbour in which abuse only was exchanged. The Magistrate considers that her object was to cast ignominy on the person she had quarrelled with.

3. I consider that no adequate punishment has been awarded and that the law has not been vindicated.

4. There is an increasing tendency among Magistrates to avoid punishing attempts of suicide. The law is clear; but it is rapidly becoming a dead letter. If Section 309 is to be retained it must be enforced, and I feel that if it is to be enforced a pronouncement is required from higher authority than mine.

5. I therefore refer this case to the Honourable High Court for orders. I have selected it for reference because there can be no plea for the accused that she acted in desperation induced by suffering or shame.

6. The Magistrate will make such representation in support of his judgment as he may wish.

7. For the reasons given by the District Magistrate, I accept this reference and substitute a sentence of fourteen days' simple imprisonment for the order under Section 562 of the Code of Criminal Procedure passed by the Court below. Dr. Vaish for the applicant has referred me to a ruling of the year 1914, *Emperor v. Ghasite* AIR 1914 All 543, in which it was held that the only procedure open to the High Court in such a case was to order a re-trial. The law has since been amended, and Section 562, Sub-section (3), empowers the High Court in the exercise of its power of revision to set aside an order under Section 562 and substitute a sentence of imprisonment.