

Abdullah Vs. Emperor

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Court : Allahabad

Decided On : Jan-11-1919

Reported in : AIR1919All307(1); 49Ind.Cas.776

Judge : Lindsay, J.

Appellant : Abdullah

Respondent : Emperor

Judgement :

Lindsay, J.

1. The applicant, Abdullah, has been convicted in the Court of a, Magistrate of an offence under Section 153 of the Indian Penal Code and sentenced to six months' rigorous imprisonment. The conviction and sentence have been upheld in appeal by the Sessions Judge. The facts alleged against the accused are that on the 18th of August last he killed a cow in a village some little distance from Allahabad, sometime before sunrise. The act was observed apparently by one or two Muhammadans who live in the village. They sent a chaukidar who made a report at the Police Station in the Allahabad city. The report was to the effect that the accused killed this cow and there was some apprehension that the village would get a bad name owing to this act of the accused. which would be taken as an offence by the Hindus. The Police took cognizance of the complaint and the accused was sent up for trial under Section 298 of the Indian Penal Code. The

Court, however, found that no offence under this particular section was proved. It came to the conclusion that there was an offence under Section 153. The fact of the killing of the cow was admitted by the accused. His story was that he was driving it along in order to take it to a slaughter house, that on the way it fell and broke its leg and he was, therefore, obliged to put it to death. Both the Courts below have discussed the various facts which are involved, but so far as I can see no attention has been paid to the particular words 'malignantly' or 'wantonly' which are given in the definition of the offence under Section 153, Clearly no conviction under this section can be had unless it is proved, inter alia, that the act of the accused was done either malignantly or wantonly. I have not been referred to any evidence on the record from which an inference imputing-malice or wantonness to the accused could properly be drawn. I may also remark that I find it difficult to understand the reasoning of the Court below on the question of what amounts to the giving of provocation. It is an admitted fact that this killing of the cow was not done in the presence of any Hindu whose religious feelings would be wounded. One or two Hindus were called as witnesses in the case. All that their evidence amounts to is that on hearing sometime afterwards that this act had been done their religious feelings were wounded. I am not prepared to take the same view of the law as was adopted by the learned Sessions Judge. It is not necessary for me to discuss the matter any further. It is sufficient for the purpose of disposing of this application to say that there being no evidence of malice or wantonness on the part of the accused the conviction is bad in law. I allow the application, set aside the conviction and sentence and direct that the accused be acquitted and released. The bail bond will be discharged.