

Hamid Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/478534

Court : Allahabad

Decided On : Mar-26-1930

Reported in : 129Ind.Cas.731

Judge : Shah Mohammad Sulaiman, J.

Appellant : Hamid

Respondent : Emperor

Judgement :

Shah Mohammad Sulaiman, J.

1. On a report made by this office this appeal was returned by a learned Judge of this Court for presentation to the Sessions Judge. When it was presented before him he also returned it for presentation to the High Court. The appeal is still within time, but even if it had been out of time there would have been good cause for extension of the period of limitation.

2. The appeal is from an order of an Assistant Sessions Judge convicting the accused under Sections 366 and 376 of the Indian Penal Code at one trial and sentencing him to three years' rigorous imprisonment, the sentences to run consecutively.

3. The sentence for each offence is of less than four years but the aggregate of the two exceeds that term. If the two sentences had to run concurrently there would be no doubt that under Section 408, Criminal Procedure Code, the appeal would lie to the Sessions Judge, but as they have to run consecutively the sentence passed by the Assistant Sessions Judge is really for a period exceeding four years and an appeal would, therefore, lie to the High Court under Section 408, Sub-section (b). The point is made still clearer by the provisions of Section 35, Sub-section (3), Criminal Procedure Code, laying down that the aggregate of consecutive sentences passed for several offences at one trial is to be deemed a single sentence. There is, therefore, no doubt that an appeal lies to the High Court.

4. On the facts the appeal has no force. Although the girl denies it, the circumstances pointed out by the learned Judge suggest her consent; but her consent is wholly immaterial as she is found to be under 14 years of age. There can be no doubt that she was kidnapped and that she was kept by Hamid for two days and two nights. There is no reason to doubt her statement that she was ravished by him. She is an unmarried girl. The medical evidence based on her internal examination as well as the chemical examiner's report on the stains found on the clothes of the accused and the girl fully corroborates her testimony. There is plenty of other oral evidence that she was seen in the company of the accused at that time. She was actually discovered inside the house which had been chained from the outside and when found out she promptly made her statement implicating the accused. The learned Judge has considered the entire evidence at considerable length and as I am agreeing with his conclusion, it seems unnecessary to discuss that evidence over again. I accept his finding and uphold the convictions but reduce the sentence under Section 366 from three years to two years. I dismiss the appeal otherwise.