

**Nek Ram and ors. Vs. Emperor**

**Nek Ram and ors. Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/480621](http://sooperkanoon.com/480621)

**Court :** Allahabad

**Decided On :** Apr-08-1935

**Reported in :** AIR1935All920

**Appellant :** Nek Ram and ors.

**Respondent :** Emperor

**Judgement :**

**Allsop, J.**

1. There are five appellants in this case. Two of them Nek Ram and Nathu Ram have been sentenced to a fine of Rs. 500, a third Grend Singh to a fine of Rs. 100 and the two remaining ones Tej Singh and Harnarain to rigorous imprisonment for a period of two years and three years respectively. Nek Ram, Grend Singh and Tej Singh have been sentenced under Section 366, Penal Code, and Nathu Ram and Harnarain under Section 366, read with Section 109 Penal Code. The charge, framed was one of abduction with the intent that the woman or girl concerned should be married against her will. This girl Mst. Gulkandi is the sister of the appellant Tej Singh and the daughter of one Mst. Chandrawalli who was left a widow 14 years before the alleged occurrence. Harnarain appellant is Mst. Chandrawalli's brother. The allegation was that the five appellants entered' into a conspiracy in order to marry, this girl Mst. Gulkandi to Nek Ram. The defence was that she had already-been married to Nek Ram sometime before.

2. The prosecution originated from a report made by a chaukidar at the police station. This man is the chaukidar of the village in which Nek Ram and his brother Grend Singh lived. He reported that a marriage was taking place in his village, that the girl was about 12 years of age and that he had information that she had been taken away from some other village without the consent of her guardian. The police went to the village next day and made some arrests.

3. The conspiracy, if there was one, began much earlier, because in May of the year 1934, Nek Ram made a complaint that his wife, Mst. Gulkandi, had been enticed away from him and instituted a case under Section 498, Penal Code. On the 11th of May he asked for a warrant for the arrest of Mt. Gulkandi and she was arrested that night in the house of Jhamman Thakur who is alleged to be Mt. Chandrawalli's paramour. On the 12th of May the Magistrate delivered the girl to the custody of the appellant Harnarain who is her maternal uncle. According to some of the appellants, the girl remained with Harnarain from the 12th to the 20th of May and was then taken by him to Nek Ram's house on the occasion of Nek Ram's nephew's marriage. She is alleged to have stayed in Nek Ram's house from the 20th of May till the 4th of June. Harnarain himself said that he did not keep the girl in his custody, but took her to the house of Nathu Ram, another appellant who is also a relation of hers and is mukhia of his village. He said that this man sent her to Nek Ram's house on the 4th of June, the day when she was arrested, so that he could be married to her. Nathu Ram said that he had nothing to do with the matter.

4. The main point is that under the Hindu law the appellant Tej Singh who is the girl's eldest brother and who is now 21 years of age was the person who had the right to arrange for her marriage. A brother has a right superior to that of a mother. It is to be noticed that the case was not originated by any report or complaint made by the mother although she has given evidence since for the prosecution. The girl was about 16 years of age. It has been suggested on behalf of the prosecution that even a brother could not marry her against her will. But it is surely not right that a brother who is entitled under the Hindu law to arrange for his sister's marriage should be sentenced to imprisonment for a criminal offence merely because the girl afterwards says that she was not at consenting party. The learned

Sessions' Judge who saw the appellants and the witnesses has given it as his opinion that the marriage between the girl and Nek Ram, was entirely suitable. Nek Ram was about 30 years of age and was apparently quite well off. There does not appear to have been anything improper about the marriage. Doubtless there may have been some dispute between Tej Singh on the one side and Mt. Chandrawalli on the other about the affairs of the family because of the alleged relations between Mt. Chandrawalli and Jhamman Singh, or as Mt. Chandrawalli says, because Tej Singh had taken to evil courses.

5. There does not however appear to have been any abduction or kidnapping in this particular case. The girl was, not physically removed from the custody of Mt. Chahdrawalli because she had already been taken out of that woman's custody by the Court. The marriage itself could not be treated as a constructive form of kidnapping because Tej Singh was the person who was entitled to give the girl away in marriage.

6. I do not consider that in the circumstances there can be said to have been any abduction. There is no real evidence of any abduction. The relations were between an elder brother and a girl of 15. The learned Sessions Judge seems to have been influenced in some measure by his feeling that Tej Singh, should have, applied to be made the guardian of the girl under the Guardians and Wards Act and should then have applied for permission to get her married. Tej Singh had however already the right under the Hindu law to arrange for the marriage and I can see no reason why he should have been compelled to make an application to the Court. I am clearly of opinion that no criminal offence was committed in this case.

7. I allow the appeal and setting aside the sentences and convictions direct that the fines or any part of them? which may have been paid shall be refunded and that the bail bonds of the appellants shall be cancelled.