

**E.G. Hunter Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/482584](http://sooperkanoon.com/482584)

**Court :** Allahabad

**Decided On :** Dec-15-1920

**Reported in :** 61Ind.Cas.238

**Judge :** Tudball, J.

**Appellant :** E.G. Hunter

**Respondent :** Emperor

**Judgement :**

**Tudball, J.**

1. The appellant has been convicted of the offense of adultery under Section 497, Indian Penal Code, in that he had sexual intercourse with one Mrs. Chalmers, the wife of the complainant, M.H. Chalmers. He has been sentenced to three months simple imprisonment and a fine of Rs. 250, or in default to three months further simple imprisonment. The evidence against the accused to prove the Act of adultery consists of the statements of Mr. Chalmers, the sweeper, Ram Dayal, the khansama, Abdul Rahim, a boy named Rewland Chalmers, the son of the complainant, and Musnmmat Bashiran, the ayah. There is other evidence more or less corroborative of the complaint, but it is only to the effect that the accused and Mrs. Chalmers were on very intimate terms. The evidence slave no doubt whatsoever that, when the petitioner left for Mesopotamia he made ample provision for his wife, an allowance of Rs. 333 a month and a house. It is farther

satisfactorily established that, after his departure, the accused became exceedingly familiar with Mrs. Chalmers and, although there was absolutely no necessity for it, he took up his abode in her house although his parents, with whom he resided, were living in another house not far off. Further, there can be very little doubt that Mrs. Chalmers subsequently went down to Calcutta and that she was living in the same house, a boarding-house kept by her own sister, in which the accused also was living. Mrs. Chalmers was examined as a witness by the Court after the conclusion of the evidence for the defence, In the light of the rest of the evidence in the case, her statement appears to me to be a mass of falsehoods including foul charges against her husband to substantiate which no attempt was made whatsoever. It is not that I hold the accused responsible for her statement in any way. He did not call her as a witness though he could, if he had liked, have asked the Court to take further evidence to corroborate her statement, especially in respect to the charge which she made against her husband of having given her a foul disease. The learned Magistrate drew up a charge under which he charged the accused with having committed the offense of adultery between December 1918 and April 1920 at Moradabad and Calcutta. In so far as any Acts of adultery committed in Calcutta are concerned, the Magistrate clearly had no jurisdiction whatsoever to try the accused, but most of the evidence is devoted to acts of alleged adultery committed at Moradabad and it is in respect to that that the conviction really has been made. The evidence of the ayah, Musammat Bashiran, combined with the evidence of the child and the other witnesses, Ram Dayal and Abdul, shows that the accused took up his abode in Mrs. Chalmers' house and that he lived with her for several weeks and, moreover, for 15 days he and she slept in the same bed. The ayah made no secret of what she saw. She conveyed her information to the other servants. It is urged that it is insufficient evidence on which to convict a man of having had sexual intercourse with a woman. The accused, it must be remembered, was a person without any employment, living at his father's house. The excuse that has been given for his living in Mrs. Chalmers' house is that he was ill, a statement I utterly disbelieve as the Magistrate clearly disbelieved it. We have it that the woman also left the home provided by her husband and went to Calcutta; that the accused also went to Calcutta and lived in the same house there. It is shown on the woman's own statement that a

considerable sum of money was left to her by her husband and that she had spent every farthing of it, There is abundant evidence of considerable attachment between her and the accused and the fact that they slept in the same bed for 15 nights running is, in my opinion, amply sufficient evidence on which to hold that sexual intercourse took place between them. The Act of sexual intercourse is not omitted in public or in the presence of witnesses. The evidence, no doubt, is circumstantial only, but, in my opinion, amply sufficient to prove the act. It is not alleged that the accused is impotent and, therefore, unable to do the deed. I, therefore, cannot case to the argument. There remains the question of sentence. It is true that Section 497, Indian Penal Code, was enacted for certain reasons and that the Act of adultery is not a criminal offense outside India. The section may have been intended primarily for other classes of persona than that to which the accused belongs, but the Code itself does not restrict the section and it applies just as much in the case of the accused as in the case of any low class Hindu. The law is there as it stands and the Court has merely to administer it and not to consider the question whether it is good or bad. If it is bad law, it is for the Legislature to alter it and not for the Court to nullify it. It is urged that a sentence of fine will be amply sufficient in a case like this, inasmuch as in other countries the act of adultery can only lead to a decree for divorce and damages. At the same time, I must point out that the imprisonment awarded by the Court below is simple and not rigorous and, in the circumstances of this case, I think the sentence of simple imprisonment was well merited. It is far less a punishment than would be awarded in other countries where harsher laws exist and where a man's life frequently pays the penalty for such Acts. In my opinion, the accused fully deserved the imprisonment that he has got and I decline to interfere with it. I, therefore, maintain the conviction and sentence and dismiss the appeal. If the accused is still on bail he must surrender and serve the rest of his sentence.