

In Re: Abdul Khader

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Court : Chennai

Decided On : Sep-23-1969

Reported in : 1970CriLJ1321; (1970)1MLJ410

Appellant : In Re: Abdul Khader

Judgement :

B.S. Somasundaram, J.

1. Abdul Khadar, the appellant herein, stands convicted and sentenced by the Sessions Judge, Dharmapuri Division, at Krishnagiri, to suffer rigorous imprisonment for two years for an offence under Section 493 of the Indian Penal Code. Section 493 of the Indian Penal Code punishes persons who cohabit with a woman after deceitfully making a belief in her that she was legally married to him. The prosecution case was that on 16th January, 1967, the appellant by deceit, made P.W. 1 believe, that she was married to him and after creating such a belief in her mind, he made her cohabit with him. The defence of the appellant was one of denial. The learned Sessions Judge found that the appellant went through a form of marriage knowing that it was not the proper form and thereby deceived P.W. 1 and made her have sexual intercourse with him. The appellant is not a stranger to P.W. 1 because he is her cousin. He had given a new saree and ear ornaments to her. There was also an exchange of garlands in the presence of P.Ws. 3, 4 and one Lal Batcha. They lived together as husband and wife for a few days. The appellant had taken P.W. 1 to his house, and after two days, his sister,

brother-in-law and father had pushed P.W. 1 out. The appellant had asked her to remain with her grandmother stating that he would fix up a house and then take her. The appellant had also admitted to P.W. 5 that he had married P.W. 1. These circumstances establish that he never practised any deception on her. The section is not intended to punish one for contracting a marriage which turns out to be illegal. But it only punishes a man for obtaining the body of the woman by deceitfully assuring her that he had acquired that right by jus mariti. P.W. 1 in this case was lawfully married to the petitioner. Further, there has been no deceitful assurance or act on his part so as to attract Section 493 of the Indian Penal Code. The conviction is not correct. Both the conviction and sentence are set aside. The appellant is acquitted of the offence under which he stands convicted. The bail bond will stand cancelled. The appeal is allowed.

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