

Chemon Garo Vs. Emperor

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Court : Kolkata

Decided On : Feb-05-1902

Reported in : (1902)ILR29Cal415

Judge : Prinsep and ;Stephen, JJ.

Appellant : Chemon Garo

Respondent : Emperor

Judgement :

Prinsep and Stephen, JJ.

1. The appellant was accused by a husband of rape of his wife, and at the Sessions trial he has been convicted of adultery. The two offences are obviously different. Section 199 of the Code of Criminal Procedure declares that no Court shall take cognizance of an offence under Section 427 of the Indian Penal Code, that is, of adultery, except on the complaint of the husband of the woman, &c.; The husband is no doubt a witness, but he has never made such complaint. The conviction is therefore without jurisdiction. The case is on all fours with that of *Empress v. Kallu* (1882) I. L. R. 5 All. 233., in which Straight J. expressed himself in the following terms:

I do not think that the circumstances of his (the husband's) appearing as a witness in the prosecution of that offence can be regarded as amounting to the institution

of a complaint for adultery in the sense of Section 478 (now Section 199 of the Code of 1898). The expression 'complaint' is a perfectly well-understood one, and Section 142 of the Criminal Procedure Code (of 1872) in terms prohibits a Magistrate from taking cognizance of a case without complaint when it falls under Chapter XX of the Penal Code within which is included Section 497. It by no means follows, as a necessary consequence, that because a husband may wish to punish a person, who has committed a rape upon his wife, that is, who has had connection with her against her consent, he will desire to continue proceedings when it turns out she has been a willing and consenting party to the act. At any rate, if a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted in the manner provided by law, and if it is not, Section 478 (Section 199 of the Code of 1898) will not have been satisfied. I may mention here that Section 238 of the new Criminal Procedure Code leaves no doubt as to the course the Courts should adopt in cases of the kind now before me.

2. We entirely agree with and adopt the view of the law thus expressed, and on these grounds we set aside the conviction and sentence as without jurisdiction. The appellant must be released.