

Balaram Kundu Vs. Emperor

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Court : Kolkata

Decided On : Apr-03-1924

Reported in : AIR1925Cal160

Appellant : Balaram Kundu

Respondent : Emperor

Judgement :

1. This is an open Rule which was granted at the instance of the accused who had been convicted of an offence under Section 457 of the Indian Penal Code. Two points were urged before us on behalf of the petitioner. First, it is said that the conviction cannot stand having regard to the frame of the charge. The charge was in this form. That the accused on a certain date ' committed house-breaking by night by entering into the hut of Purna Pal through a window and quitting the same through the eastern door between the hours of sunset and sunrise in order to the Committing of adultery with Purna Pal's wife or any other offence punishable with imprisonment '...and it is stated that having regard to these words ' or any other offence punishable with imprisonment' the charge is vague and bad and that the accused has been prejudiced thereby. There is no doubt that the charge in this form ' or any other offence punishable with imprisonment' is an improper form in which to frame a charge for it is elementary that the accused should know the specific offence with which he is charged. But he was charged with a specific offence of house-breaking by night in order to commit adultery with Purna Pal's wife and no other evidence was laid by the prosecution except with regard to this

charge.

2. Under the circumstances, therefore, we think that the defect in the charge is cured by the provisions of Section 537 of the Code of Criminal Procedure. The first point, therefore, fails.

3. Secondly, it is urged that the conviction cannot stand because there is no evidence that the lady's husband did not consent to or connive at the act and it is said that having regard to the provisions of Section 497 of the Indian Penal Code, no conviction under 457 can follow unless there is evidence that the husband did not consent or connive if the charge under Section 457 is one of house trespass with intent to commit adultery. As against this it is urged that the real offence under Section 457 is the committing of lurking house trespass but having regard to the provisions of Section 441. of the Indian Penal Code we think this is not so.

4. Accordingly, it seems to us, that the Court has got to be satisfied before convicting a person of offence under Section 457 when the offence charged is of house trespass with intent to commit adultery that there is no consent or connivance by the husband. The husband was not in this case the complainant as he was absent at the time of the commission of the alleged offence and the actual complaint was lodged by a constable to whom the complaint had been made. The husband, however, was examined in the course of the trial as a Court witness and he answered one question put to him by the Court in these terms: 'I want redress for the wrong done to me and to my wife: 'Moreover, it does appear that the entry of the accused into the house was a forcible entry and not through an open door or window as was suggested by the defence. In the circumstances we think that there is evidence on the record that the husband did not consent or connive at the attempt of the accused to commit adultery on his wife. We do not think that it is necessary that the husband should have been specifically asked whether he actually consented or connived at the accused's attempt to commit adultery if there is otherwise evidence on the record that there is no such consent or connivance.

5. In the circumstances, the Rule is discharged.

6. The petitioner must surrender to his bail-bond and serve out the rest of the sentence.

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