Hajari Sonar Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/868304

Court : Kolkata

Decided On : Nov-08-1921

Reported in : 71Ind.Cas.247

Judge : Newbould and ;Ghose, JJ.

Appellant : Hajari Sonar

Respondent : Emperor

Judgement :

1. The accused petitioner was tried on a charge of breaking open the khirki door of one Ram Lakhan Sonar to commit theft of property to the value of Rs. 30-4-0 when caught red-handed and thereby of committing an offence punishable under Section 457, Indian Penal Code. The finding of the Trial Magistrate and also of the Appellate Court is that the prosecution has failed to establish that theft was the object with which the accused entered into the complainant's house. They have both held that he came to the complainant's house to carry on an intrigue with his wife, and, following the decisions of this Court in the casts of Koilash Chandra Chakrabarty v. Queen-Empress 16 C. 657 : 8 Ind. Dec. (N.S.) 434, Balmakand Ram v. Ghansumram 22 C. 291 : 11 Ind. Dec. (N.S.) 262 and Premanundo Shaha v. Brindaban Chung 22 C. 994 11 Ind. Dec. (N.S.) 660, they have convicted the accused of the offence punishable under Section 456, Indian Penal Code.

2. Though it cannot be laid down as a general rule that in all cases a prosecution for house trespass with the alleged object of theft must fail if that object is not proved, we think, as was held by a Bench of this Court in the cases of Jharu Sheikh v. Empetor 11 Ind. Cas. 320 : 16 C.W.N. 696 : 13 Cr.L.J. 224 and Mahomed Hossein v. Emperor 22 Ind. Cas. 766 : 41 C. 743 : 15 Cr.L.J. 190 : 18 C.W.N. 1247 that when a charge has been definitely framed in which theft is alleged the accused cannot be convicted of house trespass with some other object without an amendment of the original charge unless the Court is satisfied that he has not been in any way prejudiced in his defence by the omission to amend the charge. In the present case had the petitioner been called upon to answer the charge of the offence of which he has been convicted he might have been able to establish his innocence. If an amended charge had been framed an important point which would have to be decided, it would be whether the accused came to the complainants house at the invitation of his wife or not. That is a point to which no enquiry appears to have been directed and there is no distinct finding on this point by either of the Courts.

3. We, therefore, hold that the Rule succeeds on the first ground on which it was issued and we accordingly make this Rule absolute. We do not think it necessary to direct a retrial and the accused is accordingly acquitted. His fine, if paid, will be refunded and the bail-bond discharged.