

Ahmed Bepari Vs. Emperor

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Court : Kolkata

Decided On : Feb-20-1924

Reported in : AIR1925Cal578,84Ind.Cas.434

Appellant : Ahmed Bepari

Respondent : Emperor

Judgement :

1. The accused Ahmed Bepari has been convicted of an offence under Section 36G of the Indian Penal Code and sentenced to six months rigorous imprisonment. Two charges were originally framed against him, one under Section 363 that is to Bay of having kidnapped Hazra a minor girl from the lawful guardianship of her mother, and the other of the offence in respect of which the accused was convicted. He was acquitted of having kidnapped Hazra from the lawful guardianship of her mother and the Jury have accepted the fact that Hazra's mother consented to handing her over and ultimately to the accused marrying her. Now, Hazra, the girl in respect of whom the offence is said to have been committed, is or was at the time of the offence some 10 or 11 years of age. Her father was dead and her mother accordingly was the guardian of her person according to the Muhammadan Law but for the purposes of her marriage during her minority, her guardian was her brother who certainly never consented to the marriage of the minor. Now what is said is that no offence has been committed under Section 366 as Hazra was not kidnapped or abducted with the intent that she might be compelled or knowing that it would be likely that she would be

compelled to marry any person against her will because it is said that according to the Muhammadan Law a minor has no will for the purposes of marriage, that is to say, it is said that it is for her marriage-guardian to decide for her whether or not a certain marriage is to be contracted and that the guardian's will is the minor's will for this purpose. It is further said that this is borne out by the fact that a minor girl, contracted in marriage by some body other than her father or grandfather, can on attaining puberty repudiate the marriage. Now, it seems to us that it is not necessary for us to decide whether a minor Muhammadan girl can under the circumstances of this case exercise her own will. The Jury in fact have found that the marriage was against the will of the minor for what the Judge expressly put to them is this: 'It is for you to judge whether she has attained an age of forming and expressing a will of her own so far as her marriage is concerned.' And the Jury when questioned stated that the mother consented to the removal of the girl. But as I have already stated, we do not think that it is necessary for us to decide in this case whether it is open to a minor to exercise or express her own will for the purposes stated in Section 366 and it seems to us that the offence provided for by the section has clearly been committed. There was no consent to the marriage of the girl's brother and in the absence of such consent, even if the girl herself cannot express her will there is no expression of consent by the person who can express his will on her behalf. This being so, we think that the conviction under Section 366 was correct and that there was no such misdirection to the Jury as has been urged by the learned Vakil appearing on behalf of the accused.

2. We think that the conviction is correct but we think that the punishment inflicted was unduly severe and having regard to the circumstances of the case we reduce the sentence passed upon the accused to the period already served.