
(1925) 05 AHC CK 0058
In the Allahabad High Court

Darbari Lal

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 30-05-1925

Acts Referred:

Penal Code, 1860 (IPC) — Section 354, 454
Whipping Act, 1909 — Section 3(d)

Citation : 89 Ind. Cas. 146

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This Reference must be accepted. The explanation added to Section 435 of the Order P.C. by Act XVIII of 1923 makes a District Magistrate exercising original or appellate jurisdiction inferior to the Sessions Judge. The latter has, therefore, jurisdiction to call for the record and make a reference to the High Court.

2. Both the Trying Magistrate and the District Magistrate found the accused guilty of entering a house in order to outrage the modesty of a woman. The First Court convicted him u/s 451 of the Indian Penal Code and sentenced him to undergo a sentence of three months' rigorous imprisonment and to pay a fine of Rs. 50, and in default one month, more [of rigorous imprisonment. The Appellate Court took the view that as the accused had used violence in effecting his escape he was guilty of house breaking as defined in Section 445(5) of the Indian Penal Code, and, therefore, altered the conviction from one u/s 451 to one u/s 454 of the Indian Penal Code, and also altered the sentence to 15 stripes under the Whipping Act, Section 3(d).

3. Leaving aside the question whether the alteration of a sentence of imprisonment and fine to one of whipping amounts to an enhancement of the sentence, I think the sentence of whipping was illegal.

4. Section 3(d) of Act IV of 1909 does not make every house-trespass or house-breaking punishable with whipping, but only when the commission of the offence is "in order to committing of any offence punishable with whipping under this section." It is obvious that the offence of outraging a woman's modesty (Section 354 of the Indian Penal Code) is not punishable with whipping at all, and, therefore, house-breaking in order to commit that offence cannot be punishable.

5. The facts of the case just fell short of an attempt to commit rape otherwise the accused if convicted of the attempt could have been sentenced to whipping u/s 4. But even if it be assumed that the house-breaking was with the object of attempting to commit rape, Section 3 would be inapplicable as such offence is not punishable, under that section.

6. The sentence of whipping being illegal, I set it aside and restore the sentence passed by the Trying Magistrate.