
(1925) 05 AHC CK 0024
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, 451, 454

Citation : AIR 1925 All 591

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Judgement

Sulaiman, J.—This is an application in revision against an order of the District Magistrate who, sitting as a Court of appeal, has altered the conviction of the applicant from Section 451 to Section 454 of the Penal Code, and has converted his sentence from three months imprisonment and Rs. 50 fine to a sentence of whipping. It is contended on behalf of the applicant that this sentence is illegal, and the contention appears to me to be good. The Magistrate who tried the case charged the applicant with having committed an act of house-trespass with a view to outrage the modesty of Musammat Rampa. The District Magistrate has apparently concurred with the finding of the trial Court that the applicant's object was to outrage Musammat Rampa's modesty. There is, therefore, a common finding of both Courts that the applicant entered the house in order to commit an offence punishable u/s 354 of the Penal Code. This offence is not punishable with Whipping and therefore Section 3(d) of the whipping Act does not apply. This being so, the sentence of whipping inflicted by the District Magistrate appears to be illegal, and I direct that the proceedings be referred to the High Court with a recommendation that the sentence of whipping be set aside and that either the original sentence be restored or such other sentence be inflicted as the Hon''ble Court may think proper.

2. Another point arises and has been argued before me and that is, that the District Magistrate's order amounts to an enhancement of sentence. In a Madras case in 1897 (reported at page 487 of Weir's Law of Offences and Criminal

Procedure) it was held that where the lower Court reduced a sentence of imprisonment and inflicted a sentence of whipping, the effect was an enhancement. The present case is of course different inasmuch as the original sentences of imprisonment and fine have been set aside altogether and in their place a sentence of whipping has been substituted. In the circumstances, therefore, I do not think it can be said the sentence has been enhanced but I should be glad to have a ruling on this point.

3. Before the record is submitted to the High Court an opportunity will be given to the learned District Magistrate to state his point of view in regard to the two questions raised in this revision.

4. The parties were not represented.

JUDGMENT

1. This reference must be accepted. The explanation added to Section 435, C.P.C. by Act XVIII of 1933 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), I.P.C. and therefore altered the conviction from one u/s 451 to one u/s 454 of the Indian P.C. 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 the committing of any offence punishable with whipping under this Section." It is obvious that the offence of outraging a woman's modesty (Section 354, I.P.C.) is not punishable with whipping at all, and therefore house-breaking in order to commit that offence cannot be so 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.