
(1937) 08 AHC CK 0032
In the Allahabad High Court

Munshi Ram

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 24-08-1937

Acts Referred:

Penal Code, 1860 (IPC) — Section 511

Citation : AIR 1938 All 16

Hon'ble Judges : Ganga Nath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ganga Nath, J.—This revision has been admitted on the ground of sentence. The applicant Munshi Ram has been convicted u/s 377 read with Section 511, I.P.C. He has been sentenced to two years" rigorous imprisonment and to undergo 20 stripes or six months" further rigorous imprisonment. These sentences were confirmed on appeal by the learned Sessions Judge. The facts of the case have been given in the judgment of the learned Sessions Judge and they need not be repeated as they are not necessary for the purpose of the consideration of the question as to whether the sentence of whipping is legal or not. It has been urged and I think rightly that the sentence of whipping cannot be inflicted in the case of an attempt to commit an offence, under Clause (b) of Section 4, Whipping Act. Section 4, Whipping Act, lays down:

Whoever (a) abets, commits or attempts to commit rape as defined in Section 875, I.P.C., Act 45 of 1860; (b) oompels or induces any person by fear of bodily injury, to submit to an unnatural offenoee as defined in Section 377 of the said Code; (c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in Section 390 of the said Code; (d) commits dacoity as defined in Section 891 of 4ha said. Code, may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment, or attempt, be liable under the said Code.

2. Clause (b) clearly shows that in the case of an offence u/s 377 the offence should have been completed, as the words "compels or induces any person...to submit, to an unnatural offence" indicate. There is no mention of any attempt in Clause (b) while there is a mention of attempt in Clauses (a) and (c). Section 4, Clause (b) does not apply to convictions u/s 377 read with Section 511, I.P.C. The sentence therefore of whipping was illegal and it is set aside. The sentence of only two years" rigorous imprisonment is confirmed.