

(1895) 07 CAL CK 0009
In the Calcutta High Court

Premanundo Shaha and Another

APPELLANT

Vs

Brindabun Chung

RESPONDENT

Date of Decision : 22-07-1895

Acts Referred:

Penal Code, 1860 (IPC) — Section 441, 456, 509

Citation : (1895) ILR (Cal) 994

Hon'ble Judges : Pigot, J; Banerjee, J

Bench : Division Bench

Judgement

Pigot and Banerjee, JJ.—The prisoner has been convicted u/s 456 of the Indian Penal Code, and we are asked, in revision, to set aside the conviction as bad in law.

2. The complainant Brindabun is a labourer living at Musdail. The accused is a shopkeeper belonging to the same place. Brindabun's bari consists of two rooms, a north and south house or room. On the night of the 17th April 1895, Brindabun, his nephew and his brother slept in the south house. His mother, Bidya his wife [or who passes as such], his nephew's wife and his sister-in-law slept in the north house. About 10 or 11 the complainant heard cries from his mother from the women's room; the other women also screamed out. Complainant came out and saw the prisoner jump down from the inside of the north house, ran up, and seized him.

3. It is not necessary to recite the other facts upon which it has been found that the prisoner had got into the women's room on this occasion. His defence was that he had not gone there : that has been disbelieved, and is out of the case.

4. The prisoner's case has, of course, been presented to us without any dispute as to the findings of fact come to by the lower Courts; but it is contended that no offence is proved against him on the findings and on the evidence.

5. The defence made by the prisoner in the lower Courts being simply that he was not in the room at all, there was no attempt to explain his presence there,

as to which there is no doubt.

6. The suggestion made on his behalf before us is that he must have gone to the room to carry on an intrigue with one of the women there; that if the woman he sought was Bidya no offence against the law was contemplated by him, inasmuch as, although she calls herself and passes as complainant's wife, it appears that she is not really his wife, but the widow of one Megha. It must appear to justify the conviction that prisoner entered into the room with intent to commit an offence; that is, something made punishable by the Penal Code; but an intrigue with Bidya would not be an offence, as she is not a wife. Another of the young women, who was in the room, Bidya's sister, is also, it appears, a widow; and if prisoner went there to visit her, that would not be an offence against the law. Therefore, the intent of the prisoner may have been to do that which is not an offence under the law; and that being so, he is not proved to have committed criminal trespass.

7. It is said that there is evidence from which the conclusion must be drawn that the prisoner must have got into the room with the assistance of some of the persons inside; and that this shows that he went there to carry on such an intrigue as is suggested.

8. The women, according to the evidence, went to bed between seven and eight. The old woman says she shut the door. Bidya says they were all "sleeping in the north house after having shut the door with a latch," which,, no doubt, means a bolt. She says "the door was shut from the inside."

9. There was no evidence showing any injury to the door or the fastenings of it, and Lakapati said that, after her son went to the thana, she shut the door again; the inference is, therefore, that it was not injured by having been violently broken open.

10. Now there is no evidence whatever against the character of any of the women, except, no doubt, as to Bidya, that she passes as a wife, without having been actually married.

11. There is no proof that the door was so fastened that it could only have been opened by some one inside the room. There is no evidence as to the structure of the bolt and its fastenings, or whether it could not have been moved or removed from outside by some contrivance, without breaking open the door. Indeed, there is no evidence that Lakapati did securely fasten the door when they all went to bed. There is nothing to show that between that time and 10 or 11 the door may not have been opened for some perfectly innocent purpose by some of the women, while the fact of there being four women in the room would render the supposition that some one of them admitted the accused into it for the purpose suggested in the argument a highly improbable one.

12. The point must be dealt with in some measure in the same manner as it would be were it used in support of the commission of an offence, for it amounts

to trying the character of some one or other of the young women upon such evidence as has been referred to. They are people of humble position, but that cannot make the question of less importance, or change the conditions under which it is to be judged.

13. We think the facts do not justify the conclusion that any of the inmates of the room admitted the prisoner for the purpose suggested, or at all. We are not entitled either to find or to presume that the prisoner went to the room that night to visit a willing mistress.

14. The case, therefore, comes to this that, late at night when the women were in bed (in one bed as is stated), the prisoner, a stranger, though a neighbour, went into the room where they were sleeping; that his position and all the facts preclude any notion of his going there to steal or for any purpose save his own pleasure. We think the facts are good evidence of an intent and of an intrusion on privacy within the meaning of Section 509 of the Indian Penal Code; and that, therefore, the intent to commit an offence within the meaning of Section 441 is made out.

15. We follow the ruling in *Balmakand Ram v. Ghansamram* ILR Cal. 391. We may observe that that ruling exactly coincides with the Criminal Revision Case No. 114 of 1881 before TURNER, C.J., and Kindersley, T. (Weir, 327).

16. We discharge the rule as to the setting aside of the conviction.

17. But we think 3 (three) months' rigorous imprisonment will be a sufficient sentence; and we reduce the sentence to that amount.