

CALCUTTA HIGH COURT

Bipad Bhanjan Sarkar

Vs

Emperor

(Henderson ,J.)

20.03.1940

JUDGMENT

Henderson, J.

1. This is a rule calling upon the District Magistrate of Dacca to show cause why the conviction of the petitioner under Section 498, I.P.C., should not be set aside. The prosecution case was that the petitioner and three other persons enticed the woman in question from her husband's house and a charge was framed on evidence supporting that case. The Magistrate convicted the petitioner and acquitted the other accused persons. On appeal, the Additional District Magistrate was not satisfied with the evidence about the alleged enticement from the house of the husband. He was however satisfied that the petitioner found the girl in a brothel at Narayangange and took her to live with him in a rented house there. On this evidence, he upheld the conviction. Two points have been taken in support of the rule : (1) that the words "such woman" in Section 498 apply to a woman who has been taken or enticed away from her husband's house and (2) that there is no evidence to support any detention by the petitioner in the house at Narayangange. In support of the first proposition, there is a decision of a Division Bench of the Allahabad High Court in *Empress of India v. Tika Singh*¹ This decision was dissented from by a single Judge in a later case *Empress v. Niadar*²

2. No reasons are given for the former decision. In our judgment, the only possible (grammatical interpretation of the Section is that the words "any such woman" refer to a woman "who is and whom he knows or has reason to believe to be the wife of any other man." The words "whoever takes or entices away" cannot possibly be interpreted as an adjective describing the woman in question. We therefore agree with the later decision. On the second point, the difficulty in the way of the learned Magistrate's decision is that the casa that he has found was not really the case made by the prosecution and was never charged against the petitioner. He accordingly had no real opportunity to meet it. The prosecution case was that the petitioner enticed the woman away from her husband's house. It was not their case that she left her husband's house of her own accord, went to a brothel and was there picked up by the petitioner. It would obviously be extremely (difficult to prove that a man who picks a woman up in a brothel and takes her to his house can be said to have detained her in any sense of the term. We have been through the evidence and there is absolutely nothing to show that the petitioner did anything which could be called detention. There might, of course, be such evidence. Inasmuch as the prosecution was not

directed to this aspect of the case, no attempt was made to procure it. We accordingly make the rule absolute. The conviction and sentence are set aside and the petitioner will be discharged from his bail.

Khundkar, J.

3. I agree. On the question of the meaning of the language of Section 498, I.P.C., the position is, in my judgment, correctly stated in *Emperor v. Mahiji Fula* ³The observations of Broomfield, J. in that case, with which I respectfully agree, express what I consider to be the real meaning of the words contained in the Section: The word "detains" means "by derivation and Recording to the ordinary use of language "keeps back." But there may be various ways of keeping back. It need not necessarily be by physical force; it may be by persuasion, or, as the Court said in this particular case, by allurements and blandishment. But the use of the word does, in my opinion, require that there should be something in the nature of control or influence which can properly [be described as a keeping back of the woman.

4. As my learned brother has pointed out, there is no evidence in the present case that the woman was detained by the petitioner in the house of Narayangange to which he is said to have taken her from the brothel. To this, I may add that the Courts below have entirely failed to consider the bearing of the actual evidence upon any theory of such detention. The accused has been convicted on the finding that he detained the woman at the house in Narayangange. The evidence is that he took her to that house from a brothel. In my judgment, it would be unsafe to hold that the accused's association with the woman in the house at Narayangange under such circumstances and in the absence of any evidence beyond that of the woman could establish detention within the meaning of the Section.

Cases Referred.

1(1881) 3 All 251

2(1888) 10 All 580

3(1933) 20 A.I.R. Bom. 489