

dismissed for default, even though such appeal has been preferred under section 109A, sub-section (2) in a suit under section 106 of the Bengal Tenancy Act.

As regards the merits, we are of opinion that this appeal should be allowed and the appeal preferred under section 109A, which was dismissed for default, restored. This order, however, is made on terms. The appellant will pay to the respondent two gold mohurs as costs here and in the Court below. This sum must be deposited within one month of the arrival of the record in that Court. If the deposit is made, as directed, the appeal will stand restored and heard on the merits. If it is not so deposited, this appeal will stand dismissed with costs.

L. R.

Appeal allowed.

APPELLATE CRIMINAL.

Before Chitty and Richardson JJ.

TAHER KHAN AND OTHERS

v.

EMPEROR.*

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Aug. 14.

Abduction—Abduction of married woman with intent to compel her to marry another—“Marry,” meaning of—Penal Code (Act XLV of 1860), s. 366—Valid Marriage.

Section 366 of the Penal Code applies to the case of abduction of a married woman with intent to compel her to marry. The word “marry” therein implies, as in s. 494, going through a form of marriage, whether the same is in fact valid or not.

ONE* Wajidunnessa Bibi, after the death of her husband at Dhubri, went to live with her mother at Paikandi village. Daliladdi, an influential neighbour

* Criminal Appeal No. 421 of 1917, against the order of B. Ghatak, Sessions Judge of Faridpur, dated June 29, 1917.

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of theirs, offered her marriage, but she refused him. A marriage was, however, arranged between her and one Piziruddin by her maternal uncle, and she went through a *nika* ceremony with the latter on the 18th April 1917. The next day Daliladdi, accompanied by the four appellants, entered her premises and carried her off forcibly to the house of the appellant, Mobarak Ali. It appeared that while detained there she received another proposal of marriage from Daliladdi. Her husband, Piziruddin, failing to rescue her, went to the Balikandi police-station and laid a charge against Daliladdi and the appellants under section 366 of the Penal Code. The Sub-Inspector thereupon proceeded to the place of occurrence, released Wajidunnessa at about 4 P.M., and took up the investigation. He thereafter sent up the four appellants for trial. The Subdivisional Officer of Goalundo, after a preliminary inquiry, committed the appellants to the Court of Session at Faridpur. They were tried before the Sessions Judge and two assessors under section 366, the intent laid in the charge being to compel her to marry Daliladdi against her will. The assessors were in favour of acquittal on the ground that the criminal intent charged had not been established. The Judge, disagreeing with the assessors, convicted and sentenced the appellants, under the abovementioned section, to two years' rigorous imprisonment each. They appealed to the High Court.

Babu Manmatha Nath Mukherjee, Babu Amarendra Nath Bose and Babu Pankaj Kumar Ganguli, for the appellants.

The Deputy Legal Remembrancer (Mr. Orr) and Mr. Camell, for the Crown.

RICHARDSON J. The four appellants were tried before the Sessions Judge of Faridpur sitting with

two assessors on a charge framed under section 366 of the Indian Penal Code. The assessors were for acquitting the appellants. The learned Sessions Judge has convicted them and sentenced them each to rigorous imprisonment for two years.

The actual facts are simple enough. The abducted woman, Wajidunnessa, had been living with her husband at Dhubri. On her husband's death she returned as a widow to live with her mother, Abidunnessa, at Paikandi in the Faridpur district. While there she received a proposal of marriage from one Daliladdi. The proposal was distasteful to her, Daliladdi being an old man with wife and children, and she, therefore, refused. She and her mother, however, came to the conclusion that it was desirable that she should marry a man who would reside with them and also maintain the mother. She, accordingly, on the 18th April last, entered into a marriage in *nika* form with one Piziruddin. On the following day the four appellants with Daliladdi came to her house and took her away by force to the house of the appellant, Mobarak Ali. There is evidence that, while she was at that house, she received another proposal of marriage from Daliladdi.

The abduction took place in broad daylight and does not seem to have been accompanied with much force or violence, but there is no reason to suppose that the woman, Wajidunnessa, went with the appellants willingly. Both the learned Sessions Judge and the assessors appear to have agreed as to the facts proved in their main outline. The assessors, however, felt some difficulty in finding that the intention charged, namely, that the woman should be compelled to marry Daliladdi against her will, had been sufficiently established by the evidence. We have been taken through the depositions of the

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witnesses, and having considered those depositions we are satisfied that the learned Sessions Judge was right in the conclusion that the accused abducted the woman with the criminal intent necessary to an offence under section 366 of the Indian Penal Code.

In this Court it is suggested that section 366 does not apply to the case of the abduction of a married woman. It is suggested that that might be an offence under some other section of the Code, for instance, section 498. We see no reason to doubt, however, that the word "marry" in section 366 has the same meaning as the same word in section 494. What it means is the going through a form of marriage, whether the marriage should prove in fact legal and valid or illegal and invalid. If the facts and the law applicable to them are as we have stated, the question in this case narrows down simply to the question of sentence.

The appellants, as we have said, have been sentenced each to two years' rigorous imprisonment. In the circumstances that sentence seems to us to be excessive. If we reduce it, however, it is in the hope that the appellants will not molest either Wajid-unnessa or her mother or husband again. If they do so they may find themselves in a worse position than they are now. On the whole, we are of opinion that the ends of justice will be met by reducing the sentence passed on each of the accused to a sentence of rigorous imprisonment for six months; and we order accordingly.

CHITTY J. concurred.

E. H. M.