CRIMINAL REVISION.

Before Cunliffe and Henderson JJ.

1936

April 28 ; *May* 8.

PRITHI MISSIR

v.

HARAK NATH SINGH.*

Detention—Detention, Meaning of—Indian Penal Code (Act XLV of 1860), s. 498.

The word "detention" in s. 498 of the Indian Penal Code is *ejusdem generis* with enticement and concealment. It does not imply that the woman is being kept against her will but there must be evidence to show that the accused did something, which had the effect of preventing the woman from returning to her husband.

Atar Hosain v. *Dharani Dhar Lait* (1) distinguished.

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The material facts appear from the judgment.

Sudhangshu Shekhar Mukherji for the petitioner. There is no evidence in this case to show that the woman was detained. She and the accused left the village about four years ago and was seen to come back recently. She says that she was working only a few days as a maid-servant in the house of the father of the accused. Detention is something more than keeping. It means forcibly preventing the woman against her will from going to her husband's house. *Atar Hosain* v. *Dharani Dhar Lait* (1).

The Deputy Legal Remembrancer, Khundkar, and *Anil Chandra Ray Chaudhuri* for the Crown. The word "detention" in s. 498 of the Indian Penal Code does not mean forcible restraint. It has been repeatedly held that for an offence under that

*Criminal Revision, No. 14 of 1936, against the order of N. N. Sen, Deputy Magistrate of the First Class at Alipur, dated Nov. 30, 1935, confirming the order of Hari Charan Banerji, Sub-Deputy Magistrate, Second Class, of Barrackpore, dated Oct. 28, 1935.

(1) (1935) Cr. Rev. 618 of 1935, decided by Lort-Williams and Cunliffe JJ. on 13th Nov.

section, the consent of the woman is wholly immaterial. *Jnanendra Nath Dey* v. *Khitish Chandra Dey* (1) and other cases cited. If the accused renders any assistance, monetary or otherwise, or, by exerting his influence or even by pursuation, prevents the woman from going back to her husband, he detains her within the meaning of the section. The cases are all collected in Ratanlal's Law of Crimes, 13th Ed., p. 1218.

HENDERSON J. This is a Rule calling upon the District Magistrate of the 24-*Parganâs* to show cause why the conviction of the petitioner of an offence punishable under s. 498 of the Indian Penal Code should not be set aside.

The case made by the complainant was one of enticement. But the Magistrate, who tried the case, was not satisfied that this had been made out: he, however, found the petitioner guilty of "detaining" the complainant's wife. This decision was affirmed on appeal by Mr. N. N. Sen, a Magistrate of the first class vested with appellate powers under s. 407(*2*) of the Code of Criminal Procedure.

The question that has been argued before us is the meaning of the word "detain" in s. 498 of the Indian Penal Code.

In support of this Rule, Mr. Mukherji contended that detention implies that the woman is being kept against her will and, in support of that proposition, relied upon the judgment of Lort-Williams J. in *Atar Hosain* v. *Dharani Dhar Lait* (2). I cannot find that this decision goes to such a length. On the other hand, it is clear that some definite meaning must be attached to the word, and, in my opinion, it is *ejusdem generis* with enticement and concealment. There must be evidence to show that the accused did something, which had the effect of preventing the woman from returning to her husband.

(1) (1935) 39 C. W. N. 1280.

(2) (1935) C. Rev. 618 of 1935, decided by Lort-Williams and Cunliffe JJ. on 13th Nov.

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Henderson J.

The evidence in the present case is extremely scanty. In dealing with it, the learned Magistrate in the Court below has not come to any definite findings of fact. Had he done so, it would have been possible for us to determine whether on those findings the conviction is sustainable. There is, however, no finding whether the petitioner was keeping the complainant's wife as his mistress, whether they were living together or whether they were having merely casual intercourse.

In these circumstances, it becomes necessary to examine the evidence in order to see whether the conviction can be supported.

The only evidence bearing on the point relates to the incident when the complainant went with his father and some other persons to the house of the petitioner's father. The witnesses are unanimous that the woman ran out of the room, as soon as she saw her husband : it is clear that the petitioner was in no way responsible for this. The only other fact proved is that the petitioner expressed a hope that there would be no disturbance and asked the husband to go to Court. The most that could be inferred from this is that he was unwilling to use force to compel the woman to return to her husband against her will. In my opinion, such conduct would not amount to "detention" within the meaning of the section.

The Rule must, accordingly, be made absolute and the conviction and sentence are set aside.

The petitioner is discharged from his bail and the fine, if paid, will be refunded.

CUNLIFFE J. I agree.

Rule absolute.

A. C. R. C.