(1923) 04 AHC CK 0042

Allahabad High Court

Case No: None

Emperor		APPELLANT
	Vs	
Maqsud Husain and Another		RESPONDENT

Date of Decision: April 11, 1923

Citation: (1923) ILR (All) 529

Hon'ble Judges: Ryves, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ryves, J.

Maqsud Husain and Musammat Allahbandi were convicted by a Magistrate of the first class, u/s 297 of the Indian Penal Code. Their appeal was rejected by the learned. Sessions Judge and they have come here in revision. The facts found are as follows:

2. In muhalla Kal, in the town of Sambhal, there is a mosque, now somewhat dilapidated, which was built by the father of Khan Bahadur Khan, the chief witness in the case. On the night of the 11th of October last, which was the chehlum, there were illuminations in this muhalla. Khan Bahadur Khan was one of the persons who had organized these illuminations, and at about 11 o''clock that night he was about to enter the mosque to say his evening prayers when, in consequence of information given to him by some boys, he went back to the illuminations and fetched three other Muhammadans and entered the mosque. There they found Maqsud Husain and Musammat Allahbandi lying on a cot, having sexual connection. The witnesses ran up and seized them both and dragged them outside. A number of Muhammadans at once came up and were so horrified at the desecration of the mosque that they handled the accused somewhat roughly. These are the facts found, and they are amply borne out by the evidence. The learned Counsel for the applicants raises two points: (1) That no trespass has been proved against the accused within the meaning of the section. He argues that the word "trespass" in

that section must have the same meaning as criminal trespass in other parts of the Code. As long ago as 1896 it was held by a learned Judge of this Court in Queen-Empress v. Subhan ILR (1896) All. 395 that the word trespass in the section must be taken in its original meaning and as a word which covered any injury or offence done and to couple it with entry upon property. That decision has remained unchallenged for 27 years. It was quoted with approval in Emperor v. Ram Prasad ILR (1911) All. 773 by a Divisional Bench of this Court and the same view seems to have been taken by a Bench of the Madras High Court in In re Ratna Mudali ILR (1886) Mad. 126. In my opinion this argument, therefore, fails.

3. The second argument put forward is that what really happened was that the accused and the woman had gone into the mosque solely with the intention of looking at the illuminations and had taken the cot with them merely to sit on it; when, under a moment of impulse, they misconducted themselves, and that, therefore, there was no intent within the meaning of the section. I do not propose even to consider this argument because it is based only on the ingenuity of counsel and is not supported by any evidence and is, in fact, flatly contradicted by the statements of the accused themselves and their evidence. According to them they were not inside the mosque at all. There was no cot and there was no misconduct. The conviction, therefore, in my opinion, was right and the sentence appropriate. I reject the application.