Supreme Court of India
Alamgir & Another vs The State Of Bihar on 14 November, 1958
Equivalent citations: 1959 AIR 436, 1959 SCR Supl. (1) 464
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
ALAMGIR & ANOTHER

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT:
14/11/1958

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SARKAR, A.K.

CITATION:
1959 AIR 436 1959 SCR Supl. (1) 464
CITATOR INFO :
R 1972 SC1823 (10)

ACT:
Criminal Trial-Detaining married woman with criminal intent -Detaining, if must be against will of woman-Sentence, enhancement of-Indian Penal Code, 1860 (XLV of 1860), s. 498-Code of Criminal Procedure, 1898 (V of 1898), s. 439.

HEADNOTE:
One R, the wife of S, disappeared from her husband's house. She was traced to the house of the appellants, A and his brother B. When S went there and asked A to let his wife go with him A told him that he had married her and B threatened S and asked him to go away. The appellants were charged under s. 498 Indian Penal Code for detaining R when they knew or had reason to believe that she was the wedded wife of S, with intent to have illict intercourse with her. The appellants pleaded that R was not validly married to S and that she had not been detained by them inasmuch as she was tired of living with S and had voluntarily and of her free will come to stay with them. The Magistrate found the appellants guilty, convicted them and sentenced them to undergo simple imprisonment for two months each. On appeal the Sessions Judge confirmed the conviction but reduced the

sentence to a fine of Rs. 50/- each. The appellants filed a revision before the High Court. The High Court issued a notice of enhancement and after hearing the appellants dismissed the revision and enhanced the sentence to rigorous imprisonment for six months each.

Held, that detention in s. 498 means keeping back a wife from her husband or any other person having the care of her on behalf of her husband. Such keeping back may be by force; but it need not be by force. It can be the result of persuasion, allurement or blandishments which may have either caused the willingness of the woman, or may have encouraged, or co-operated with, her initial inclination to leave her husband. The object of the section is to protect the rights of the husband and it cannot be any defence to the charge to say that, though the husband has been deprived of his rights, the wife is willing to injure the said rights and so the person who is responsible for the willingness has not detained her. A was rightly convicted as the charge of detention was proved against him on the findings of the Courts below that he had offered to marry R and had thereby either persuaded or encouraged her to leave her husband's house. But the charge was not made out against B as it was not proved that he had offered any inducement, blandishment or allurement to R for leaving the protection of her husband and for refusing to return to him.

465

Sundara Dass Teva, (1868) IV Mad. H. C. R. 20; Ramaswamy Udayar v. Raju Udayar, A. 1. R. (1953) Mad. 333 ; Emperor v. Jan Mohomed, (1902) IV Bom. L.R. 435; Broomfield, J., in Emperor v.Mahiji Fula, (1933) I.L.R. 58 Bom. 88, Emperor v. Ram Narayan Baburao Kapur, (1937) 39 Bom. L.R. 61; Mahadeo Rama v. Emperor, A.I.R. (1943) Bom. 179; Prithi Missir v. Harak Nath Singh, I.L.R. (1937) 1 Cal. 166; Bipad Bhanjan Sarkar v. Emperor, I.L.R. (1940) 2 Cal. 93; Banarsi Raut v. Emperor, A.I.R. (1938) Pat. 432 and Bansi Lal v. The Crown, (19I3) Punj. L.R. 1066, approved.

Divatia, J., in Emperor v. Mahiji Fula, (1933) I.L.R. 58 Bom. 88, Mabarak Sheikh v.-Ahmed Newaz, (1939) 43 C.W.N. 980 and Harnam Singh v. Emperor , A.I.R. (1939) Lah. 295, disapproved.

Held further, that the High Court was not justified in enhancing the sentence to six months rigorous imprisonment, and it should have only restored the sentence passed by the trial Court. The question of sentence is normally in the discretion of the trial Court and the High Court can enhance the sentence only if it is satisfied that the sentence imposed by the trial Court is unduly lenient, or, that in passing the order of sentence, the trial Court had manifestly failed to consider the relevant facts. The sentence of two months simple imprisonment imposed by the trial Court was not so unduly or manifestly lenient as not to meet the ends of justice.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 187 of 1956.

Appeal by special leave from the judgment and order dated December 7, 1955, of the Patna High Court in Criminal Revision No. 875 of 1954, arising out of the judgment and order dated May 31, 1954, of the Court of the Additional Sessions Judge at Arrah in Criminal Appeal No. 293 of 1953. B. K. Saran and K. L. Mehta, for the appellants. B. H. Dhebar and T. M. Sen, for the respondent. 1958. November 14. The Judgment of the Court was delivered by GAJENDERAGADKAR, J.-This criminal appeal raises a short question about the construction of the word " detains " occurring in a. 498 of the Indian Penal Code. It arises in' this way. The two appellants were charged before the trial magistrate under s. 498 of the Code in that on or about October 27, 1952, at the village Mohania they wrongfully detained Mst.

Rahmatia, the legally married wife of the complainant Saklu Mian, when they knew or had reason to believe that she was the wedded wife of the, complainant and was under his protection, with intent to have illicit intercourse with her. The prosecution case was that Mst. Rahmatia had disappeared from her husband's house on October 21, 1952; the complainant made J. search for her for several days but was not able to trace her whereabouts. Ultimately he filed a complaint at the police station after he was informed by Shakoor Mian (P. W. 4) that he had seen the complainant's wife at the house of the two appellants. The complainant then went to the house of the appellants along with Shakoor Mian (P. W. 4), Musa Mian (P. W. 2) and Suleman Mian (P. W. 3); they saw the woman in the house of the appellants whereupon the complainant asked appellant No. I Alamgir to let his wife go with him but appellant No. I told him that he had married her and appellant No. 2 warned him to get away and said that, if he persisted, he would be driven out. This story is corroborated by the three companions of the complainant.

The appellants denied the charge. They pleaded that the complainant had not validly married -the woman and that she had not been detained by them. According to them, the woman was tired of living with the complainant and that she had voluntarily and of her free will come to stay with the appellants.

The learned trial magistrate believed the prosecution evidence, rejected the pleas raised by the defence, con- victed the appellants of the charge framed and sentenced them to undergo simple imprisonment for two months each. This older of conviction and sentence was challenged by the appellants by their appeal before the court of sessions. The appellate court confirmed the conviction of the appellants but reduced their sentence from simple imprisonment for two months to a fine of Rs. 50 or in default simple imprisonment for one month each. The appellants then moved the High Court at Patna in its revisional jurisdiction. When the revisional application came to be heard before Choudhary, J., the learned judge thought that the appellate court should not have reduced the sentence imposed on the appellants by the trial magistrate and so he issued a notice against the appellants calling upon them to show cause why their sentence should not be enhanced. This notice and the main revisional application were ultimately heard by Ramaswamy and Imam, JJ., who

confirmed the order of conviction and enhanced the sentence against both the appellants by ordering that each of them should suffer six months' rigorous imprisonment. An application made by the appellants to the High Court for a certificate to appeal to this Court was rejected. The appellants then applied for and obtained special leave to appeal to this Court. That is how this appeal has come before us for final disposal.

On behalf of the appellants, Mr. B. K. Saran has urged that the evidence in the case clearly shows that the woman was dissatisfied with her husband and had left his house and protection voluntarily and of her free will. If having thus left the house she came to stay with the appellants and they allowed her to stay with them, it cannot be said that they have detained her within the meaning of s. 498. According to him, the word " details " used in s. 498 must necessarily imply that the woman detained is unwilling to stay with the accused and has been compelled so to stay with him against her will, and desire. It is difficult to imagine that, if a woman is willing to stay with a person, it can be said that the person has detained her. That is not the plain grammatical meaning of the word " detains ". It is this argument which calls for our consideration in the present appeal.

At the outset it would be relevant to remember that s. 498 'occurs in Ch. XX of the Indian Penal Code which deals with offences. relating to marriage. The provisions of s. 498, like those of s. 497, are intended to protect the rights of the husband and not those of the wife. The gist of the offence under s. 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her. In this connection it would be material to compare and contrast the provisions of s. 498 with those of s. 366 of the Code. Section 366 deals with cases where the woman kidnapped or abducted is an unwilling party and does not respond to the criminal intention of the accused. In these cases the accused intends to compel the victim afterwards to marry any person against her will or to force or seduce her to illicit intercourse. In other words s. 366 is intended to protect women from such abduction or kidnapping. If it is shown that the woman who is alleged to have been abducted or kidnapped is a major and gave her free consent to such abduction or kidnapping, it may prima facie be a good defence to a charge under s. 366. On the other hand s. 498 is intended to protect not the rights of the wife but those of her husband; and so prima facie the consent of the wife to deprive her husband of his proper control over her would not be material. It is the infringement of the rights of the husband coupled with the intention of illicit intercourse that is the essential ingredient of the offence under a. 498. Incidentally it may be pointed out that the offence under s. 498 is a minor offence as compared with the offence under s. 366.

The policy underlying the provisions of s. 498 may no doubt sound inconsistent with the modern notions of the status of women and of the mutual rights and obligations under marriage. Indeed Mr. Saran vehemently argued before us that it was time that ss. 497 and 498 were deleted from the Penal Code. That, however, is a question of policy with which courts are not concerned. It is no doubt true that if the words used in a criminal statute are reasonably capable of two constructions, the construction which is favourable to the accused should be preferred; but in construing the relevant words, it is obviously necessary to have due regard to the context in which they have been used; and, as we will presently point out, it is the context in which the word" detains " has been used in s. 498 that is substantially against the construction for which the appellant contends. Section 498

provides:

" Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment, of either description for a term which may extend to' two years, or with fine, or with both. It would be noticed that there are three ingredients of the section. The offender must take or entice away or conceal or detain the wife of another person from such person or from any other person having the care of her on behalf of the said person. He must know or has reason to believe that the woman is the wife of another person; and the taking, enticing, concealing or detaining of the woman must be with intent that she may have illicit intercourse with any person. It is clear that if the intention of illicit intercourse is not proved the presence of the first two ingredients would not be enough to sustain the charge tinder s. 498. It is only if the said intention is proved that it becomes necessary to consider whether the two other ingredients are proved or not.

It is plain that four different kinds of cases are con- templated by the section. A woman may be taken away or enticed away or concealed or detained. There is no doubt that when the latter part of the section refers to any such woman, it does not mean any woman who is taken or enticed away as described in the first part, but it refers to any woman who is and whom the offender knows or has reason to believe to be the wife of any other man. It is not seriously disputed that in the first three classes of cases the consent of the woman would not matter if it is shown that the said consent is induced or encouraged by the offender by words or acts or otherwise. Whether or not any influence proceeding from the offender has operated on the mind of the woman or has co-operated with or encouraged her inclimations would always be a question of fact. If, on evidence, the court is satisfied that the act of the woman in leaving her husband was caused either by the influence of allurement or blandishments proceeding from the offender, that may be enough to bring his case within either of the three classes of cases mentioned by s. 498. In this connection, when the consent or the free will of the woman is relied upon in defence, it is necessary to examine whether such alleged consent or free will was not due to allurement or blandishments or encouragement proceeding from the offender.

It is, however, urged that, when the latter part of the section speaks of detention, it must prima facie refer to the detention of a woman against her will. It may be conceded that the word " detains" may denote detention of a person against his or her will ; but in the context of the section it is impossible to give this meaning to the said word. If the object of the section had been to protect the wife such a construction would obviously have been appropriate; but, since the object of the section is to protect the rights of the husband, it cannot be any defence to the charge to say that, though the husband has been deprived of his rights, the wife is willing to injure the said rights and so the person who is responsible for her willingness has not detained her. Detention in the context must mean keeping back a wife from her husband or any other person having the care of her on behalf of her husband with the requisite intention. Such keeping back may be by force; but it need not be by force. It can be the result of persuasion, allurement or blandishments which may either leave caused the willingness of the woman, or may have encouraged, or co-operated with, her initial inclination, to leave her

husband. It seems to us that if the willingness of the wife is immaterial and it cannot be a defence in cases falling tinder the first three categories mentioned in s. 498, it cannot be treated as material factor in dealing with the last category of case of detention mentioned in the said section. Therefore, we are satisfied that the High Court was right in holding that the charge of detention has been proved against appellant No. I inasmuch as both the courts of facts have found that he had offered to marry Mst. Rahmatia and thereby either persuaded or encouraged her to leave her husband's house. It may be that Rahmatia was dissatisfied with her husband and wanted voluntarily to leave her husband; but, on the evidence, it has been held that she must have been encouraged or induced not to go back to her husband because she knew that she would find ready shelter and protection with appellant No. 1 and she must have looked forward to marry him. In fact appellant No. 1 claims to have married her. Thus there can be no doubt that he intended to have illicit sexual intercourse with her. That is the effect of concurrent findings of fact recorded against appellant No. I ; and it would not be open to him to challenge their correctness or propriety in the present appeal. This section has been the subject-matter of several judicial decisions and it appears that, except for a few notes of dissent, there is a fair amount of unanimity of judicial opinion in favour of the construction which we feel inclined to place on the word " detains " in s. 498. It is, however, true that the relevant decisions, to some of which we would presently refer disclose a striking difference of approach in dealing with questions of fact. It would appear that though the relevant portion of the section has received the same construction in dealing with same or similar facts, the learned judges have differed in their conclusion as to whether the accused person had been guilty of conduct which would bring his case within s. 498. This, however, is a difference in the method of approaching evidence and assessing its effects. It would be futile and even improper to consider whether a particular conclusion drawn from the specific evidence adduced in the case was right or not. What is important in such cases is to see how the section has been construed and, as we have just indicated, in the matter of construction there appears a fair amount of unanimity. Let us now refer to some of the decisions cited before us.

In 1868, the Madras High Court held in Sundara Dass Tevan (1) that depriving the husband of his
(1) (1868) IV Mad. H.C.R. 20.

proper control of his wife for the purpose of illicit inter- course is the gist of the offence just as it is the offence of taking away a wife under the same section; and a detention occasioning such deprivation may be brought about simply by the influence of allurement and blandishment. On the facts of the case, however, the court was not satisfied that the accused bad offered any such allurement or blandishment and so the order of conviction passed against the appellant was quashed. It appears that the construction put by the Madras High Court on s. 498 in this case has been generally accepted in the said High Court (Vide: Ramaswamy Udayar v. Raju Udayar (1) ).

The Bombay High Court has taken the same view in Emperor v. Jan Mahomed (2). It was held by the High Court that the offence contemplated by & 498 is complete if it appears that the accused went away with the woman in such a manner as to deprive her husband of the control of his wife; the fact that the woman accompanied the accused of her own free will does not diminish the criminality of the act. Even in this case, the court was unable to discover any evidence, direct or indirect, about the intention of the accused or any allurement or blandishment offered by him and

so the order of conviction passed against the accused was set aside. This question came to be considered by the said High Court again in Emperor v. Mahiji Fula (3). Mr. Justice Broomfield who delivered the main judgment of the Bench has expressed the view that " the word I detains ' means, by deprivation, and according to the ordinary use of the language I keeps back"'; and he adds that ,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 " (Madras High Court) " has observed in this particular case" (Sundara Dass Thevan (4)) " by allurement or blandishment ". On the facts, however, it appeared to the trial court that the conduct of the accused did not bring his case within the mischief of s.

498. The wife of the complainant had been taken (1) A.I.R. (1953) Mad. 333.

(3) (1933) I.L.R. 58 Bom. 88, 92.

(2) (1902) IV Bom. L. R. 435.

(4) (1868) IV Mad. H. C. R. 20.

away by her brother and she was subsequently married by natra marriage to the accused. The complainant learnt about this incident and went to the accused to ask him to allow his wife to go back to him. On seeing the complainant and his friends the accused came out with a dharia and threatened the complainant and his companions who then re- turned to their village. The conduct of the accused' when the complainant approached him, it was said, cannot necessarily indicate that the accused had detained the woman. This was the' view taken by the trial court who acquitted the accused ; on appeal the High Court saw no reason to differ and so the order of acquittal was confirmed by it. Divatia, J., who delivered the concurring judgment apparently differed from Broomfield, J., in regard to the construction of the word " detains ". He agreed that the scheme of s. 498 showed that though the woman may be perfectly willing to go with the man the offence of taking or enticing away would occur because it simply consists of taking or enticing away a woman without anything more; but according to him, in the latter part of the section, which speaks of concealing or detaining the woman, the woman would be detained only if she is prevented from going in any quarter where she wants to go. In our opinion, this construction is not sound. It is not easy to see how the act of concealing the woman would necessarily import any considerations of the consent of the woman ; besides, according to Divatia, J., himself, the woman's Consent would be irrelevant in the cases of -taking or enticing her away. If that be so, it is difficult to make her consent relevant and decisive in dealing with the cases of detention. Unfortunately the learned judge does not appear to have appreciated the fact that the primary and the sole object of s. 498 is to protect the husband's rights and not the rights of the wife. If it is shown that the woman's inclination to stay away from her husband was either instigated or encouraged by the offender, she can be said to have been detained or kept away from her husband within the meaning of the section though at the time of the detention she may be willing to say with the offender. The same view has been expressed by Broomfield and Sen, JJ., in Emperor v.Ram Narayan Baburao Kapur (1) and by Beaumont C.J., and Sen, J., in Mahadeo Rama v. Emperor (2). We may point out that in both these cases the court was have detained the woman.

The Calcutta High Court appears to have put a similar construction on the word "detention". In Prithi Missir v. Harak Nath Singh (3) it has been held by the said High Court that " the word ' detention' 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 ". On the merits, however, the court held that the learned trial magistrate had not come to any definite finding of fact. In fact it did not appear that the accused was keeping the complainant's wife as his mistress; and on the whole, the court was not satisfied that the accused was responsible for the conduct of the complainant's wife for leaving her husband's house and so detention was held not proved against the accused. In Mabarak Sheikh v. Ahmed Newaz (4) the same High Court held that there can be no detention of a woman within the meaning of s. 498, second part, if the woman is an absolutely free agent to go away from the person charged whenever she likes. It appears that the learned judges were inclined to hold that there could be no detention if the woman was an absolutely free agent to go away from the person charged whenever she likes to do so; and in support of this view they have referred to some of the decisions which we have already considered. With respect, it appears that the effect of the earlier decisions has not been properly considered and the findings of fact recorded in the said decisions are assumed to lend colour to, and modify, the construction of the section (1) (1937) 39 Bom. L.R. 61.

(3) I.L.R. [1937] 1 Cal. 166.

(2) A.I.R. (1943) Bom. 179.

(4) (1939) 43 C.W.N. 980.

adopted by them. Besides, the relevant observations appear to be obiter because, on the facts, it was found in this case that the woman was not a free agent and so the charge against the accused under s. 498 was held established. In Bipad Bhanjan Sarkar v. Emperor (1), Henderson and Khundkar, JJ., have considered the word " detains " in the same manner as we have done. However, as in many other cases, in this case also, the court found that there was absolutely nothing to show that the accused had done anything which could bring his case within the mischief of s. 498.

The Patna High Court, in Banarsi Raut v. Emperor (2), has held that providing shelter to a married woman is such an inducement as to amount to detention within the meaning of s. 498. This case shows that where a married woman was found living in the house of the accused for some time and sexual intercourse between them had been established, the court was inclined to draw the inference that there was per- suasion or inducement of the woman as would come within the meaning of the word " detention ". This is a case on the other side of the line where on facts the inference was drawn against the accused.

The Lahore High Court has taken a similar view as early as 1913 in Bansi Lal v. The Crown (3 ). The court has held that where the accused had provided a house for the woman where she stayed after deserting her husband under the protection of the accused as his mistress, it was active conduct on his part which was sufficient to bring him within the terms of s. 498. In 1939, however, a Division

Bench of the Lahore High Court has taken a contrary view in Harnam Singh v. Emperor (4). In this case the revisional application filed by Harnam Singh against his conviction under s. 498 was first argued before Din Muhammad, J., who referred it to a Division Bench because he thought that the question of law raised was of some importance. In his referring judgment the learned judge mentioned some of the relevant decisions to which his attention was drawn and indicated his own view that (1) I.L.R. [1940] 2 Cal. 93.

(3) (1913) XlV Punjab L. R. 1066.

(2) A.I.R. (1938) Pat. 432.

(4) A.I.R. (1939) Lah. 295.

the word " detains " would naturally imply some overt act on the part of the person who detains in relation to the person detained. He thought that mere blandishment would not constitute any relevant factor in the matter of detention. The matter was then placed before a Division Bench consisting of Young, C. J., and Blacker, J. Unfortunately the judgment of the Division Bench does not discuss the question of the construction of s. 498 ; it merely records the conclusion of the court in these words: " In our opinion, the word " detains " clearly implies some act on the part of the accused by which the woman's movements are restrained and this again implies unwillingness on her part. Detention cannot include persuasion by means of blandishments or similar inducements which would leave the woman free to go if she wished ". The learned judges also added that they were of the opinion that the word " detains " cannot be reasonably construed as having reference to the husband. In our opinion, these observations do not correctly represent the true purport and effect of the provisions of s. 498.

The position, therefore, is that, on the findings of fact made by the lower courts against appellant No. I it must be held that he has been rightly convicted under s. 498. That takes us to the question of sentence imposed on him by the High Court in its revisional jurisdiction. We are satisfied that the High Court was not justified in directing appellant No. I to suffer rigorous imprisonment for six months by way of enhancement of the sentence. It is unnecessary to emphasise that the question of sentence is normally in the discretion of the trial judge. It is for the trial judge to take into account all relevant circumstances and decide what sentence would meet the ends of justice in a given case. The High Court undoubtedly has jurisdiction to enhance such sentence under s. 439 of the Code of Criminal Procedure; but this jurisdiction can be properly exercised only if the High Court is satisfied that the sentence imposed by the trial judge is unduly lenient, or, that, in passing the order of sentence, the trial judge had manifestly failed to consider the relevant facts. It may be that the High Court thought that the appellate order passed by the Sessions Judge modifying the original sentence was wrong, and in that sense, the issue of notice under s. 439 of the Code of Criminal Procedure against appellant No. 1 to show cause why his sentence should not be enhanced may have been justified; but, in enhancing the sentence, the High Court should, we think, have restored the sentence passed by the trial judge himself. It is true that, in enhancing the sentence, the High Court has observed that " women in this country, whether chaste or unchaste, must be protected and that it is the duty of the court to see that they are given sufficient protection ". We are inclined to think

that the considera- tion set out in this observation is really not, very helpful and not decisive because, as we have already observed, s. 498 does not purport to protect the rights of women but it safeguards the rights of husbands. Besides, in the present case, it is clear that Mst. Rahmatia, who is a woman of loose moral character, was dissatisfied with the complainant, who is her second husband, and was willing to marry appellant No. 1. In such a case, though appellant No. I is guilty under s. 498, it is difficult to accept the view of the High Court that the sentence of two months' simple imprisonment imposed on him, by the trial court was so unduly or manifestly lenient as not to meet the ends of justice. It would not be right for the appellate court to interfere with the order of sentence passed by the trial court merely on the ground that if it had tried the case it would have imposed a slightly higher or heavier sentence. We would accordingly modify the order of sentence passed against appellant No. 1 by reducing it to that of simple imprisonment for two months.

The case of appellant No. 2 is clearly different from that of appellant No. 1. The findings of fact recorded by the courts below do not implicate appellant No. 2 in the act of persuasion or offering blandishments or inducements to Mst. Rahmatia. The only evidence against this appellant is that when the complainant went to take away his wife appellant No. 2 threatened him. The record shows that appellant No. 2 is the brother of appellant No. 1; and, if knowing that Rahmatia had married his brother, appellant No. 2 told the complainant to walk away, that cannot legally justify the inference that he must have offered any inducement, blandishment or allurement to Rahmatia for leaving the protection of her husband and refusing to return to him. Indeed the courts below have not considered the case of this appellant separately on its own merits at all. In our opinion, the conviction of appellant No. 2 is not supported by any evidence on the record. The result is the appeal preferred by appellant No. 2 is allowed, the order of conviction and sentence passed against him is set aside and he is ordered to be acquitted and discharged.

Appeal of appellant No. 1 dismissed.

Appeal of appellant No. 2 allowed.