

Queen-empress Vs. Gundya

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SooperKanoon Citation : sooperkanoon.com/328314

Court : Mumbai

Decided On : Jan-28-1889

Reported in : (1889)ILR13Bom502

Judge : Jardine and; Candy, JJ.

Appellant : Queen-empress

Respondent : Gundya

Judgement :

Jardine, J.

1. Rav Saheb Narayan Vaman, a Magistrate of the second class, who tried the case, convicted the accused under Section 325 of the Indian Penal Code of grievous hurt. In the opinion of the Magistrates, Mr. Loch and Mr. Fraser, who heard the appeals, the offence disclosed by the evidence was that of grievous hurt with a dangerous weapon, punishable under Section 326, and beyond the jurisdiction of the Magistrate of the second class, who appears to have ignored the fact that an axe was used in causing the hurt. The learned Sessions Judge has referred the case and the appeals decided by Mr. Fraser to this Court, on the ground that the proceedings were void ab initio under Section 530, Clause (p) of the Code of Criminal Procedure. That clause declares void the proceedings of any Magistrate who, not being empowered by law in this behalf, tries an offender. It has not been suggested that the accused have been prejudiced, nor that the

sentences passed are unduly lenient. We have, therefore, only to consider the question of jurisdiction.

2. The same question was much discussed in the Court of Exchequer in *In re Thompson* 30 L.J.N.S. Mag. Cas. 19 where the learned Judges were divided in opinion, and the conviction had before the Justices was not interfered with. *Queen-Empress v. Husein Gaibu* I.L.R. 8 Bom. 307 was a case in which the point before the Court was very similar to the present. The Court declined to interfere, and drew attention to the provisions of Section 403 of the Code of Criminal Procedure. There has been no appearance in the case before us, and in the present state of the authorities we are unable to hold that the Magistrate of the second class was wholly without jurisdiction and we, therefore, refrain from interference. At the same time, we think it proper to point out that it is an evasion of the law to treat an aggravated as an ordinary offence, and thus introduce a different jurisdiction or a lower scale of punishment. When the evidence discloses a circumstance of aggravation, such as the use of a dangerous weapon, which makes the offence one cognizable by a higher Court, it becomes the duty of the trying Magistrate to use the proper procedure for sending the case to the higher Court. The Magistrate of the second class should be so informed.

Candy, J.

3. On the single point referred by the Sessions Judge, I am of opinion that the proceedings before the second class Magistrate were not void ab initio. Section 530 of the Code of Criminal Procedure runs: 'If any Magistrate, not being empowered by law in this behalf...tries an offender, his proceedings shall be void,--' i.e., if a Magistrate tries an offender for an offence beyond his jurisdiction, his proceedings shall be void. In the present case the accused were tried for voluntarily causing grievous hurt as members of an unlawful assembly (Indian Penal Code, Sections 149 and 825) They were guilty of that offences. The second class Magistrate was empowered by law to try them for that offence. Therefore, the proceeding of the second class Magistrate are not void. We could, interfering under Section 439, Criminal Procedure Code, set aside the proceedings and order a re-trial if the interests of justice required such a course; e.g., if, considering the

facts on the record, the sentence was inadequate, or if the procedure followed by the Magistrate had deprived the accused persons of their right of appeal. Such is not the case here. No representation has been made to this Court that the sentences are inadequate, and the accused persons attorned to the appellate jurisdiction of the First Class Magistrate and here made no objection. With regard to the case of Queen-Empress v. Husein Gaibu I.L.R. 8 Bom. 307 it may be noticed that there was no distinct ruling that the Magistrate's proceedings were void. And with regard to the case of Empress v. Abdool Karim it may be noted that it was unnecessary to rely on Section 34 of Act X of 1872 as an authority for quashing the proceedings and ordering a re-trial. In that case the Magistrate, who had been invested with summary powers, tried an offender summarily for an offence which could not be tried summarily. But in so acting, the Magistrate deprived the accused of his right of appeal, and, therefore, the High Court could, under Section 297 of Act X of 1872, have annulled the proceedings and ordered a new trial. In the present case, on the point before us, I see no cause for interference.