

Emperor Vs. Khalpa Ranchod

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SooperKanoon Citation : sooperkanoon.com/336099

Court : Mumbai

Decided On : Jun-14-1916

Reported in : (1916)18BOMLR789; 36Ind.Cas.581

Judge : Basil Scott, Kt., C.J. and ;Heaton, J.

Appeal No. : Criminal Confirmation No. 11 of 1916

Appellant : Emperor

Respondent : Khalpa Ranchod

Judgement :

Basil Scott, Kt., C.J.

1. We have before us a reference by the Political Agent of Mewas Estates in West Khandesh in which we have to decide whether a sentence of death passed by the Agent upon the accused should be confirmed. We have also before us an appeal by the accused against the sentence. The accused is stated to be a resident of Boripada in the Nala State, taluka Taloda, District West Khandesh, and the murder is said to have been committed at Boripada, Nala State, and the charge is framed accordingly.

2. The question is whether the Agent for the Mewas Estates has jurisdiction in the case of a murder committed at Boripada, Act XI of 1846 recites that whereas it has been deemed expedient to exempt from the jurisdiction of the civil and criminal

Courts of the Bombay Presidency certain portions of the Purganas of Nandurbar, etc., in the Province of Khandesh, it is enacted that so much of Appendix A of Regulation XXIX of 1827 of the Bombay Code as declares the villages contained in the Schedule annexed to the Act, and the lands attached thereto (being parts of the Purganas of Nandurbar, etc.), subject to the Regulations established for the administration of Civil and Criminal Justice in the Bombay Presidency, be repealed; and it is enacted that from and after the said day the administration of Civil and Criminal Justice, the superintendence of the Police, etc., shall vest in such Agent to the Governor of Bombay as shall be appointed by the Governor of Bombay in Council, and it shall be competent to the Governor in Council by an order in Council, to prescribe such rules as he may deem proper for the guidance of the Agent aforesaid and of all the officers subordinate to his control and authority, and to determine to what extent the decision of the Agent in civil suits shall be final, and to define the authority to be exercised by the Agent in criminal trials, and what cases he shall submit to the decision of the Sudder Foujdaree Adawlut; and it is enacted by Section 4 that upon the receipt of any criminal trial by the Agent under the rules which may be prescribed by the Governor in Council, the Sudder Foujdaree Adawlut shall proceed to pass a final judgment, or such other order as may after mature consideration seem to the Court requisite and proper, in the same manner as if the trial had been sent up in ordinary course from a Sessions Judge.

3. Now the villages described in the Schedule include as belonging to the Chief, styled Oomed walad Pacha Parvee of Nal, an uninhabited village of Nal and certain other uninhabited villages and the inhabited village of Goolyambn. There is no mention of any village of Boripada.

4. The next legislation which affects the district in charge of the Political Agent of the Mewas Estates is Act XIV of 1874 which repealed Act XI of 1846 but provided that all rules theretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in Section 6 and in force at the time of the passing of the Act, shall continue to be in force, unless and until the Governor General in Council or the Local Government, as the case may

be, otherwise directs; and Part II of the Schedule to that Act includes the villages of the following Mewasi Chiefs, the Parvi of Nal and other Chiefs.

5. That brings us to the rules made under Act XI of 1846. Rules 35, 37 and 44 are the relevant ones in this connection. Rule 35 provides that ' the absolute jurisdiction of the Agent in criminal cases shall extend to fine and imprisonment for five years, with or without hard labour; and sentences involving a punishment beyond that period, or of greater severity, " must be submitted for the confirmation of the Sadar Faujdari Adalat.' Rule 37 provides that ' the Agent will obey all injunctions and orders of the Sadar Faujdari Adalat, and will return process duly executed as required by that Court, and will forward from time to time such periodical or other returns as may be called for by the Judges of the Sadar Faujdari Adalat,' Rule 44 provides that ' the Sadar Faujdari Adalat shall be empowered to call for the Agent's proceedings in any case, on petition being made to that Court by any party against whom a sentence may have been passed by the Agent, and the Sadar Court may hereafter proceed according to the provisions of Section 4 of Act XI of 1846.'

6. Now Section 4 of Act XI of 1846, as has already been shown, provides that the Sudder Foujdaree Adawlut on the receipt of any Criminal trial referred by the Agent, should proceed to pass a final judgment, in the same manner as if the trial had been sent up in ordinary course from a Sessions Judge. That provision taken in conjunction with the Rule 44, which permits of a petition being made by a party against whom a sentence has been passed by the Agent, appears to us to permit the High Court to entertain the appeal of the accused, and, if necessary, to resort to the provisions of Section 428 of the Criminal Procedure Code for the purpose of obtaining any additional evidence that may be necessary.

7. When the case first came up before this Court there was no evidence on the record to show that the village of Boripada was subject to the provisions of the Acts of 1846 and 1874, and of the Rules under the Act of 1846, and an adjournment was given in order that the Government Pleader might obtain information upon the subject. The Government Pleader has only been able to obtain a statement made by the Judge whose judgment is under appeal with

reference to his jurisdiction in the matter, and without throwing any doubt upon the correctness of the statement, we feel that it is necessary in a case of such gravity as the present to have upon the record independent evidence that the Court had jurisdiction to pass the sentence which is under consideration. For that reason being of opinion that additional evidence is necessary showing that the village of Boripada is within the jurisdiction of the trial Judge, and acting under the powers conferred by Section 428 of the Criminal Procedure Code, we direct that evidence upon the point be taken by the Sessions Judge at Dhulia, and that when the evidence has been taken such Judge should certify it to this Court.

8. Accordingly the Sessions Judge at Dhulia took the additional evidence. It showed that the village of Boripada was within the territory of the Nala State.

9. On the 31st July 1916, the Court (Scott C. J. and Heaton J.) passed an order confirming the conviction recorded against the accused Khalpa alias Krishna Ranchhod under Section 302 of the Indian Penal Code, but having regard to the mental condition of the accused the Court sentenced him to transportation for life.