

Queen Vs. Naiada

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All43

Judge : Turner, Officiating C.J., ;Pearson, ;Spankie and ;Oldfield, JJ.

Appellant : Queen

Respondent : Naiada

Judgement :

1. When the Indian Penal Code was originally drawn, it was in the contemplation of the framers of the measure that no sentence of transportation should be passed for a less period than life, and the Bill was so prepared. When the Bill was before the Council, Section 59 was introduced, which enacts that in every case in which an offender is punishable with imprisonment for a term of seven years or upwards, the Court may, in lieu of awarding a sentence of imprisonment, sentence the offender to transportation, for a term no less than seven years, and not exceeding the term for which by the Code such offender is liable to imprisonment. No alteration appears to have been made in the language of the several sections which prescribed transportation as a punishment. Thus, in the majority of instances, the words used are as follows:--'shall be punished with 'transportation for life or with imprisonment which may extend, &c.:' While the Court has an option in determining the duration of the term of imprisonment, it has no option in determining the duration of the term of transportation. By Section 302 an offender

convicted of murder shall be punished with death or transportation for life. By Section 307 an offender convicted of an attempt to murder shall, if hurt be caused, be liable to transportation for life, or to imprisonment for a term which may extend to ten years. By Section 389 an offender convicted of extortion under certain circumstances may be punished with transportation for life. By Section 75, on a second conviction of certain offences, an offender 'shall be subject to transportation for life or to double the amount of punishment for which he would otherwise be liable.' In no section of the Code which prescribes transportation as a punishment, with the exception of Section 59, is the language used such as to leave the Court any option regarding the duration of the term. It follows that a sentence of transportation for a period less than life can only be passed under the provisions of Section 59, and consequently that when an offence is punishable, either with transportation for life or imprisonment which may extend to ten years, if a sentence of transportation for a term less than life is awarded, the term cannot exceed ten years.

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