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Empress of India Vs. Mulua

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All599

Judge : Turner and ;Spankie, JJ.

Appellant : Empress of India

Respondent : Mulua

Judgement :

Turner, J.

1. The prisoner was charged with the offence of murder committed in the year 1855. On that charge he was tried by the Judge of Fatehgarh and convicted and sentenced, under the Regulation in force before the 1st January 1862, to transportation for life. The Judge has submitted the sentence for confirmation, and at the same time has called the attention of the Court to a Full Bench ruling of the High Court of Calcutta Empress v. Diljour Missel I.L.R. 2 Cal. 225, in which it has apparently been held that a person who has committed an offence prior to the 1st January 1862 could not now be legally convicted and sentenced. We say apparently it was so held, because such was the opinion expressed by the learned Judges before whom the case was originally heard, and although the judgment of the Full Bench proceeds on grounds which do not necessarily involve that conclusion, the conviction was pronounced illegal and set aside.

2. Up to the 1st January 1862, the law under which persons wore liable to trial and punishment for the offence of which the prisoner has been convicted was declared in the Regulations. On the 1st January 1862, the Indian Penal Code came into operation, for although in the Code itself the date on which it should take effect was declared to he the 1st May 1861, that date was altered by the subsequent Act VI of 1861. By Act XVII of 1862, Sections 1 and 2, the Regulations and Acts prescribing punishments for offences were repealed from the 1st January 1862, 'except as to any offence committed before the 1st January 1862.' In respect of those parts of India in which the Code of Criminal Procedure came into operation on the 1st January 1862, the Acts and Regulations theretofore regulating procedure in the trial of offences were by Section 4 of the same Act, XVII of 1862, repealed; and it was declared that thereafter the Criminal Courts should be guided by the Code of Criminal Procedure and exercise the powers and jurisdiction vested in them under the said Code, provided that no person convicted of an offence committed before the 1st January 1862 should be liable to any other punishment in respect of such offence than that to which lie would have been liable had he been convicted of such offence before the said first day of January 1862, and that no person who should claim the same should be deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed under any of the Regulations or Acts thereby repealed.

3. The effect then of Act XVII of 1862 was this; it left the Regulations and Acts under which offences were therefore punishable unrepealed in respect of an offence committed before the 1st January 1862; and while it declared that the Criminal Courts should in the investigation and trial of offences be thereafter guided by the provisions of the Code of Criminal Procedure, and enjoy the powers and jurisdiction conferred on them by that Act, it saved offenders guilty of offences committed before the 1st January 1862 from liability to any other punishment in respect of such offences than that to which they would have been amenable under the repealed Regulations and Acts, and secured to them the same rights of reference and appeal to a Sudder Court which they would have enjoyed if they had been tried under the Regulations and Acts thereby repealed.

4. By the General Clauses Act I of 1868, Section 3, it is provided that in all Acts made by the Governor-General in Council for the purpose of reviving either wholly or partially a Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose, and by Section 6 of the same Act it is enacted that the repeal of any Statute, Act, or Regulation shall not affect any thing done or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. By the repealing Act VIII of 1868 the 1st, 2nd and 7th sections of Act XVII of 1862 were repealed, and by Act X of 1872 the sections of the Act then unrepealed were also repealed. There being no express words to that effect, the repeal of Act XVII of 1862 of course did not revive the Regulations in so far as they had been repealed by the Act, but neither did it operate to repeal those Regulations in so far as they were not repealed by the Act. Thus in respect of offences committed prior to the 1st January 1862, the penalties prescribed by the regulations were not affected by the repeal of Act XVII of 1862, nor so far as we can discover, were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of the General Clauses Act I of 1868.

5. We agree with the High Court of Calcutta that a person could not ho convicted of an offence committed prior to the 1st January 1862, under Act XVII of 1862, and for this reason, that that Act was a repealing Act and not an Act providing for the punishment of such offences. But it is another question whether persons who have committed offences prior to the 1st January 1862 are not amenable to punishment under the Regulations. To the several repealing Acts passed since the General Clauses Act came into operation, the provisions of Section 6 of the General Clauses Act apply, and the repeal of the Regulation subsequently to the passing of the Act does not relieve offenders from the penalties to which they were liable under the Regulations.

6. It is a more difficult question whether the right of reference remains after the repeal of Act XVII of 1862. That right had not accrued before the Act was repealed, for it accrued on conviction, and the conviction did not take place till after the repeal of Act XVII of 1862; but to avoid any illegality by the omission of

confirmation if it be still required, we have considered the case on the merits and hold the conviction justified by the evidence and the sentence not improper. We therefore confirm it.

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