

Emperor Vs. Sardar and ors.

Emperor Vs. Sardar and ors.

SooperKanoon Citation : sooperkanoon.com/450347

Court : Allahabad

Decided On : Oct-20-1911

Reported in : (1912)ILR34All115

Judge : Chamier, J.

Appellant : Emperor

Respondent : Sardar and ors.

Judgement :

Chamier, J.

1. Hargu obtained a warrant from a Magistrate under Section 100 of the Code of Criminal Procedure for the production of a woman named Daulatia, who was said to be in illegal confinement. The Sub-Inspector, some constables and the chaukidar went to get the warrant executed. The appellants, Wazira and Sardara, refused to allow the police to search the house in which the woman was said to be concealed. Ultimately she was brought to the door, but they declined to give her up to the police. Later, Sardara, Wazira and others made an attack upon Hargu and Mula. There was also an attack of some kind on the police. The first court framed a charge against all the accused under Sections 147/225 and 353 of the Indian Penal Code. In the result it sentenced six of them, including Sardara and Wazira, to three months' rigorous imprisonment under Section 147/225, and convicted Wazira and Sardara under Section 353 of the Indian Penal Code also,

and sentenced each of them to three months' rigorous imprisonment. On appeal the Sessions Judge modified the order of the Magistrate. It is not quite clear what he intended to do, but I think he intended to confirm the conviction of Wazira and Sardara under Section 353 of the Indian Penal Code on account of their attack on the police and the rescue of Daulatia and to convict all six appellants under Section 353 of the Indian Penal Code, instead of under sections 147/225, on account of their conduct before Daulatia was arrested. On the facts found it seems to me that all six were rightly convicted under Section 353 of the Indian Penal Code. It is contended that the order of the Sessions Judge convicting under Section 353 of the Indian Penal Code those whom the Magistrate had declined to convict of that offence was illegal as it was not open to the Sessions Judge to convert an acquittal into a conviction. This point was considered in the case of *Queen-Empress v. Jabanulla* (1896) I.L.R. 23 Calc. 975. The High Court held that an appellate court could, under Section 423 of the Code of Criminal Procedure, in an appeal from a conviction under one of several sections of the Indian Penal Code mentioned in the charge-sheet, alter the finding of the lower court and find the appellant guilty of an offence of which he had been acquitted by that court. This ruling is in accordance with the common practice of these provinces. Accused persons are often charged with having committed several offences, and the Magistrate convicts them of one offence only. On appeal the Sessions Court takes a different view and convicts the accused of one of the offences of which the Magistrate has declined to convict the accused. Very little violence was used in this case. I think I may properly reduce the sentences passed on the applicants to two months' rigorous imprisonment each. The sentences upon Wazira and Sardara will be concurrent. In other respects I dismiss this application. The applicants must surrender to their bail to undergo the remaining portion of their sentences.