

Emperor Vs. Tulsi Ram and ors.

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Court : Allahabad

Decided On : Jan-08-1913

Reported in : (1913)ILR35All154

Judge : Tudball, J.

Appellant : Emperor

Respondent : Tulsi Ram and ors.

Judgement :

Tudball, J.

1. The appellants in this case were connoted by the Assistant Sessions Judge of Aligarh, some of them of offences under Sections 304 and 147 and some of them under Sections 325 and 147 of the Indian Penal Code. Of these, two persons, Tulsi Ram and Chotey Lal, were each sentenced to four years' rigorous imprisonment under Section 304 and one year's rigorous imprisonment under Section 147, the two sentences to run concurrently.

2. These two have filed their appeals here, and the question arises whether these appeals have been rightly filed, in this Court or whether they lay to the court of the Sessions Judge. Section 408 says that when in any case an Assistant Sessions Judge passes any sentence of imprisonment for a term exceeding four years, the appeal shall lie to the High Court. This is in Clause (6) of the proviso; otherwise

under the opening clause of the section an appeal would lie to the Court of Session. It has been urged that under Section 35(3) and Section 408 the total of the two sentences passed being five years the appeal lies to this Court. Clause (3) of Section 35 lays down that for the purpose of appeal, aggregate sentences passed under the section in case of convictions for several offences at one trial shall be deemed to be a single sentence. It is quite clear to my mind that the words, 'aggregate sentences and in fact the whole of Clause (3), relate to the case of consecutive sentences mentioned in Clause (2). The word aggregate implies an adding together of separate items, and where sentences are concurrent there is no such aggregation. As a matter of actual fact the sentences which these two appellants would have to undergo on the decision of the Assistant Sessions Judge are sentences of four years' rigorous imprisonment each, and no more.

3. My attention has been called to the decision of the Calcutta High Court in *Abdul Khalek v. King-Emperor* (1912) 17 C.W.N. 72. The ruling, no doubt, is in the appellant's favour, but the judgment gives no reasons. On the other hand the point was considered in the case of *Sher Muhammad v. Emperor of India* Punj. Rep. 1901, Cr. J., 83 and it was therein held that where two sentences had to run concurrently there could be no aggregation of sentences, and as there was no sentence of imprisonment for a term exceeding four years the appeal lay to the Sessions Court. That was in the case of a decision by an Additional District Magistrate. The same point was considered in *Emperor v. Tulshidas Lakshman* (1909) 11 Bom. L. Rep., 544. The ruling of the Punjab Chief Court and also an old ruling 'of the Bombay High Court itself, *Regina v. Gulam Abas* (1875) 12 Bom. H.C. Rep., 147, were followed. In my opinion these decisions are perfectly correct, and as these two appellants have not been sentenced to imprisonment for terms exceeding four years by the Assistant Sessions Judge, their appeals will lie to the court of the Sessions Judge. I therefore direct that the memorandum of appeal be returned to the appellants to be filed in the proper court. The Sessions Judge will no doubt under the circumstances of the case admit the appeal although they may be out of time when presented to him.