

Dhum Singh Vs. Emperor

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Court : Allahabad

Decided On : Apr-09-1925

Reported in : AIR1925All448; 88Ind.Cas.1

Judge : Banerji, J.

Appellant : Dhum Singh

Respondent : Emperor

Judgement :

Banerji, J.

1. A report was made at the police station, Srinagar, Garhwal, by constable Sadanand that one Dhum Singh came into the bazar carelessly and fast on a bicycle. Two girls were pushed down by it, and in spite of the policeman asking him to stop, he did not. The girls wept loudly but were not hurt. Upon that the Sub-Inspector submitted the report to the Town Magistrate suggesting that the man should be triad for driving the bicycle rashly without blowing the horn. Thereupon summons were issued to Dhum Singh to answer a charge under Section 34 of the Police Act. The accused was tried by a Magistrate of the first class. The Magistrate says that the facts proved do not constitute an offence under Section 34, but the Magistrate convicted him under Section 279 of the Indian Penal Code and ordered him to pay a fine of Bs 15. The accused went up in revision before the Sessions Judge, and one of the points taken by him was that he could not be convicted

under Section 279 of the Indian Penal Code when the charge was under Section 34 of the Police Act, and the next point taken was that the Magistrate in his judgment does not definitely state in what way the accused was driving rashly. Mt. Alston on behalf of the accused has come up here in revision, and he states that his client was the first man to ride a bicycle in the bazar at Srinagar, and further that if the accused is held not to have committed an offence under Section 34 you could not convict him of an offence under Section 279 of the Indian Penal Code and further that under Section 227 of the Criminal Procedure Code the accused should have been told what was the offence that the Magistrate was going to try him for and that he could not under Section 237 convict him of a different offence. It seems to me that the finding of the Magistrate that the accused was not guilty of an offence under Section 34 necessarily and logically means that the accused could not be convicted of an offence under Section 279 of the Indian Penal Code. Moreover an accused is certainly entitled to know what offence he has to answer, and Sections 237 and 227, Criminal Procedure Code, necessarily go together, and it is not the intention of the legislature to empower a Court to convict an accused person of an offence of which he has not been told anything. I, therefore, set aside the conviction and direct that the fine, if paid by accused, be refunded to him.

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