

**Gopal Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/456183](http://sooperkanoon.com/456183)

**Court :** Allahabad

**Decided On :** Feb-12-1932

**Reported in :** AIR1932All507; 137Ind.Cas.208a

**Judge :** Boys, J.

**Appellant :** Gopal

**Respondent :** Emperor

**Judgement :**

**Boys, J.**

1. The accused was tried summarily by an Honorary Magistrate on a charge under Section 379, I.P.C., and the Magistrate having only Third Class powers thought that the sentence he could give was not sufficient, and referred the case under Section 349, Criminal P.C., to the District Magistrate, who without taking any further evidence or hearing the case anew in any way at all, sentenced the accused to a year's rigorous imprisonment. It is urged, and rightly urged that this is in conflict with Section 262(2), Criminal P.C. The trial was originally a summary trial, and its nature could not be altered by the mere fact of a reference under Section 349. The case might be otherwise if the District Magistrate had really heard the case de novo at full length in accordance with the regular procedure. But that is not the case here. I reduce the sentence to one of three months' rigorous imprisonment. The applicant will surrender to his bail. I am told that there is only a

fortnight of the sentence to serve. But both Courts thought that he deserved at least three months and I see no reason to interfere in this respect.

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