

Nithuri Vs. Emperor

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Court : Allahabad

Decided On : Jun-03-1909

Reported in : 3Ind.Cas.466

Judge : Richards and ;Alston, JJ.

Appellant : Nithuri

Respondent : Emperor

Judgement :

1. Nithuri has been convicted under Section 307, I.P.C., and sentenced to transportation for life. He has also been convicted under Section 406, I.P.C., and sentenced to 3 years' rigorous imprisonment to run concurrently. We do not think that the charge under Section 406 ought to have been joined with a charge under Section 307. The only provision enabling this to be done is to be found in Section 235 of the Code of Criminal Procedure. That section provides that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. It is doubtful whether the provisions of this section could apply to the facts of the present case. The taking of the ornaments can hardly be said to form one transaction with the pushing of Musammatt Sahodra into the well. However, it is quite clear that the accused has not been prejudiced in anyway. We think that the evidence amply justified the conviction. On the question of sentence, ten years is the maximum sentence for an attempt to murder under

Section 307 unless hurt is caused to any person by the act. We think that the view that any hurt received was part of the act is doubtful. Under all the circumstances we consider that the sentence maybe reduced. We set aside the conviction and sentence under Section 406, and we alter the sentence under Section 307 from the sentence of transportation for life to a sentence of ten years' rigorous imprisonment. In other respects the appeal is dismissed.

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