

Queen-empress Vs. Kharga and ors.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All665

Judge : John Edge, C.J.

Appellant : Queen-empress

Respondent : Kharga and ors.

Judgement :

John Edge, C.J.

1. The appellants here have been convicted under Sections 304 and 301/109 of the Indian Penal Code, and they have also been convicted of an offence under Section 323 of the same Code. They were committed to the Sessions Court-- Kharga and Kuar Sen under Section 304 and Nanhua under Sections 304/109 but at the trial the Judge added the charge under Section 323, in respect of an assault upon a man called Chiddu. This assault took place at the same time or at any rate immediately after, the attack which resulted in the death of Jaisukh. It was objected, both here and in the Sessions Court, that the Sessions Judge had no power to add the charge under Section 323; and it is further argued that even if he had such power, he had no power to try such a charge. The, first objection is met by the Government Pleader by referring to Section 226, Criminal Procedure Code, under which section he argues the Sessions Judge would be empowered to add

such a charge. I very much doubt whether, under the circumstances, the Judge had power to add this charge under Section 323. In this case the prisoners were not committed 'without a charge,' for they were sent up on a charge on which they have been actually convicted. Nor can it be said that the charge was an 'imperfect' charge, for it disclosed a separate offence. Nor yet is it an 'erroneous' charge, for the evidence shows that the offence, as charged, was established. I therefore consider that this case does not come within the terms of Section 226 of the Criminal Procedure Code, and I consider that the adding of this charge was an irregularity in the proceedings. I do not think that it is covered by Sections 236 and 237 of the same Code. Those sections apply to a different state of things entirely. As to the second point taken in argument, I am of opinion that the Sessions Judge had power, under Section 28 of the Criminal Procedure Code, to try the charge, supposing he had power to add it. This section is a general section, which, subject to the other provisions of the Code, gives power to the High Court and the Court of Session to try any offence under the Indian Penal Code; and it also enacts that any offence under the Indian Penal Code may be tried 'by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.' The provision as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session. Now, if it could be shown to me that the action of the Sessions Judge had caused a failure of justice and had prejudiced the accused in their defence, I should without hesitation set aside so much of the proceedings as related to the charge under Section 323. That a party might in some cases be so prejudiced is quite clear; but in this particular case the Sessions Judge was addressed by the gentleman who appeared for the prisoners, and he heard all the objections raised, and if the pleader had so desired, he might have called fresh witnesses as to this charge. This being no, I do not think that the objections now urged are of sufficient weight, and I consider that the provisions of s 537 of the Code meet the case. As to the merits, I am of opinion that there is ample evidence to support the findings, and I do not see how the Judge could have come to any other conclusion than that the men were guilty. The appeals are dismissed.