

Hemraj Vs. Emperor

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Court : Allahabad

Decided On : Apr-09-1910

Reported in : 6Ind.Cas.250

Judge : George Knox, J.

Appellant : Hemraj

Respondent : Emperor

Judgement :

George Knox, J.

1. Hemraj has been convicted in the alternative of an offence falling either under Section 215 or under Section 420 of the Indian Penal Code. There can be no conviction for an offence under Section 215 of the Indian Penal Code until it is proved that a person has been deprived of movable property by an offence punishable under the Code. The property in this case is a buffalo. I have examined the evidence and can find no evidence that Jahangira was deprived of the buffalo by any offence. All that is known for certain is that the buffalo has disappeared. It is quite possible that it may have strayed away, at any rate, it cannot be presumed that an offence has been committed in respect of it. The conduct of the accused though suspicious does not amount to knowledge that a theft had been committed and that the accused knew who had committed it. The conviction under Section 215, Indian Penal Code, is illegal and must be set aside. The Court finds no such

offence proved against Hemraj. Again though I have scrutinised the evidence carefully, I am not satisfied that Hemraj had any dishonest intent when he took the money at the punchayat from Jahangira. If his intent became dishonest after the day on which punchayat was held, that will not constitute his act an offence under Section 420, Indian Penal Code. The dishonest intent must be one which precedes, or at any rate accompanies, not one which follows after. The evidence points rather to his having made some real attempt to recover the buffalo and to that attempt having failed and to the money having followed the buffalo. There is no Clause in Section 420, Indian Penal Code, corresponding to the Clause 'unless he used all means in his power to cause the offender to be apprehended and convicted', which occur in Section 215, Indian Penal Code. I find no offence under Section 420, Indian Penal Code, proved:

I set aside the conviction and sentence and direct that Hemraj be at once released or if he be on bail that his recognizance be discharged.

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