

**Emperor Vs. Kishan Singh**

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**Court :** Allahabad

**Decided On :** Nov-29-1923

**Reported in :** (1924)ILR46All174

**Judge :** Stuart, J.

**Appellant :** Emperor

**Respondent :** Kishan Singh

**Judgement :**

**Stuart, J.**

1. After examining the evidence, I am of opinion that the conviction cannot be interfered with, but the sentence, as passed by the Sessions Judge, cannot stand. The appellant, who is a boy of 12, was convicted under Section 436 of the Indian Penal Code for having committed mischief by setting fire to a cow-shed in the hills and was sentenced, under the provisions of Section 5 (Act IV of 1909), to 15 stripes and also to a fine. Under Section 5 he could be punished with whipping in lieu of any other punishment to which 'he may for such an offence be liable.' If the sentence of whipping is passed, no other sentence can be passed, for the whipping is considered to be in lieu of either a single punishment or a combined punishment. This is clear from the words of the Section itself. A similar point arose in a Bombay case, Queen-Empress v. Dagadu (1891) I.L.R. 16 Bom. 357. It arose under the old Act XL of 1860. The words of the head-note, with some slight

alteration, will apply to the present case. When an accused person is 'sentenced to whipping under Section 5 (Act IV of 1909), the punishment of fine or imprisonment or both cannot be legally inflicted under the Indian Penal Code in addition to the whipping.' The sentence of whipping can stand alone; the sentence of fine only if imprisonment is added to it. As far as I am instructed, the boy is at present in custody in default of payment of the fine. The sentence of whipping has not yet been inflicted upon him. It is clear that the Judge intended the sentence of whipping to be the main sentence. The boy has thus been, as far as I can see, already for over four months in jail in default of payment of a fine which could not be exacted from him. I must make allowance for that fact. I, therefore, alter the sentence into one of one day's simple imprisonment, and as that sentence has already been served, I direct that the appellant be released from custody.

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