

Mula Vs. Emperor

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Court : Allahabad

Decided On : Jun-09-1925

Reported in : AIR1926All33; 90Ind.Cas.150

Appellant : Mula

Respondent : Emperor

Judgement :

Banerji, J.

1. The petitioner before me, Mula, was put up along with five other persons for trial before a Magistrate of the first class at Bijnor. The order of the Magistrate at the beginning says:

2. The accused... have been sent up for trial for offences under Sections 457/411 of the Indian Penal Code by the Nagina Police.' It seems to me that the learned Magistrate, while writing the judgment, clearly forgot what was the charge he had himself framed against each of the accused, and what was the case he was trying. Different accused were charged with different offences on different dates. Mula, the petitioner, and his brother Harbansa were charged, according to the charge-sheet, which is before me, with having on the 11th of August 1924, broken open the house of Indra by night in order to commit theft,' an offence punishable under Section 457 of the Indian Penal Code. Kanhaiya was charged with the offence of being in possession of stolen property on the 7th of September 1924. Jhuna was

charged with being in possession of stolen property on the 8th of September 1924. Two others, Chunwa and Fullu, appear to have been charged under Section 457, but I am unable to find out the actual charge-sheets. Losing sight of what charge had been framed against each of the accused, the Magistrate treated the case as if the accused had been charged under Section 457, or in the alternative Section 411 of the Indian Penal Code. The Magistrate convicted Mula under Section 457. I have not the case of the others before me. Mula appealed to the learned Sessions Judge, and the learned Sessions Judge, holding that the conviction of Mula could not be recorded under Section 457, found him guilty under Section 411 of the Indian Penal Code. He says: 'I alter the charge but maintain his conviction.' Now the only charge that Mula was called upon to meet, according to the charge framed against him at the trial, was that he had broken open the house of Indra by night in order to commit theft on the night of the 11th of August 1924. He had to meet the evidence-actual evidence if any-of his being seen on or about the 11th August 1924, and although the evidence of being in possession of a portion of the property on the 8th of November 1924, might be used against him along with other evidence, I am clearly of opinion that the charge cannot be so altered by an appellate Court as to make it necessary for the accused to meet an absolutely different case from that with which he is charged in the Court of the committing Magistrate. I find, however, that Mula was asked about the parat, and his answer was that he had been in possession of the parat for 15 years, and that it was a present to him from his father-in-law. Had the charge really been that he was found in possession of a stolen parat on the 8th November, he might have made an attempt to meet it. In view of the fact that the other accused were charged with being in possession of stolen property on different dates, I hold that it was not right and proper for the Sessions Judge to frame a new charge and convict him thereof on appeal.

3. I, therefore, set aside the conviction and sentence of Mula under Section 411 of the Indian Penal Code, and direct that he be forthwith released. The fine if paid will be refunded.