

**Abdul Rab Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/469658](http://sooperkanoon.com/469658)

**Court :** Allahabad

**Decided On :** Dec-21-1915

**Reported in :** AIR1916All294; 32Ind.Cas.656

**Judge :** Piggott, J.

**Appellant :** Abdul Rab

**Respondent :** Emperor

**Judgement :**

**Piggott, J.**

1. The appellant, Abdul Rab was a Police constable employed at Police station Man, in the Azamgarh District. He fell out with another constable of the name of Ram Raj, and the latter gave information to the Circle Inspector accusing Abdul Rab of having been concerned in various malpractices. There was an inquiry, with the result that a Magistrate committed Abdul Rab for trial before the Court of Session on two specific charges, each framed under Section 161, Indian Penal Code. The learned Sessions Judge has convicted Abdul Rab on one of these charges as framed; but with reference to the other has used the powers conferred on the Court by Section 237 of the Code of Criminal Procedure to record a conviction for an offence of extortion punishable under Section 384, Indian Penal Code. When a Court finds it necessary to make use of the section above referred to in order to convict an accused person of an offence with which he has not been

charged, I think it should be particularly careful to formulate to its own mind the charge upon which, had it been duly framed, it would be prepared to convict. I do not think the learned Sessions Judge has done so in the present case, for I find it very difficult to understand, either from the evidence or from his judgment, what was the injury of which the persons who gave evidence against Abdul Rab were put in fear in order to induce them to deliver to Abdul Rab the sum of. Re. 1 alleged to have been paid. The transaction as a whole, according to the story told by the prosecution witnesses, was one to which Section 161 rather than Section 384 would ordinarily be applicable. The story told is that certain butchers had purchased 12 head of cattle and were bringing them to their homes, when the cattle were seized and detained at the Police station; they were not released until an illegal gratification of Re. 1 had been paid to the Police officer concerned. According to the complainants the payment was made to the appellant Abdul Rab. The records of the Police station show that 12 head of cattle were in fact stopped and detained for a time at the Police station, nor does the accused himself deny that this was the case. It is clear, however, that this was done by the authority of Mohammad Askari, Head Constable. It is quite probable that under pretence of satisfying themselves that the animals were not stolen property, the officers in authority at Police station Man detained these 12 head of cattle, put the persons in charge of them to a certain amount of inconvenience, and did not finally release them until their palms had been oiled. I am by no means satisfied on the evidence that this offence is brought home to the appellant Abdul Rab in particular. Once the transaction is placed on its proper footing as an offence punishable, if at all, under Section 161, Indian Penal Code, it becomes patent that the whole of the evidence for the prosecution is accomplice evidence, and has to be received with caution as such. In my opinion this charge was not satisfactorily proved against Abdul Rab and I set aside the conviction and sentence in respect of the same.

2. The other offence charged seems to rest on a securer basis of fact. There is a great deal of evidence, including statements made by persons who cannot strictly be regarded as accomplices, to the effect that a vicious system had grown up amongst the butchers at Man of making a monthly payment to the officials at the local Police station in return for which they were permitted to make their cattle as much of a nuisance on the public thoroughfares as they chose, without

interference on the part of the Police I think the evidence on the record does prove that Abdul Rab was the Police officer to whom this payment was actually made. I am prepared to affirm the conviction under Section 161, Indian Penal Code, which has been recorded in respect of the second charge. The learned Sessions Judge has given good reasons for passing a lenient sentence on this conviction. It has been suggested to me that the sentence of three months' rigorous imprisonment might still further be reduced but on the whole, I think, in the interest of public justice it may be allowed to stand.

3. The result is that this appeal prevails with regard to the conviction and sentence on the first charge and is dismissed with regard to the conviction and sentence on the second charge.

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