

Shiam Sunder Vs. Emperor

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Court : Allahabad

Decided On : May-20-1921

Reported in : AIR1921All234; 63Ind.Cas.827

Judge : Stuart, J.

Appellant : Shiam Sunder

Respondent : Emperor

Judgement :

Stuart, J.

1. This is rather a peculiar case. Shiam Sander, the appellant, is on his own showing an habitual and dangerous criminal. He was a member of one or more gangs of dacoits whose depredations were of an extensive character. After the commission of certain dacoities Shiam Sunder was captured. He at once made a full statement implicating himself and a large number of other people and took the Police Officers to a place where he and a carbine and ammunition concealed. These he handed over to the Police Officers, He adhered to his story and was eventually made an approver and granted a pardon under Section 337 of the Criminal Procedure Code. In a subsequent case he deposed against his fellow criminals, many of whom were convicted, and at the close of the case, he was released, having fulfilled the conditions of his pardon. After he was released the Police rearrested him and charged him in respect of possession of the carbine and

ammunition, which he had handed up after his capture. He has been convicted under Section 20 of the Arms Act and sentenced to seven years' rigorous imprisonment. It is clear to my mind that his illegal possession of the carbine and ammunition was an offence of which he was guilty in connection with the matter of the dacoities. The man was a dacoit, and he kept the arms because he was a dacoit. They were implements of his trade of crime, and it is perfectly impossible to separate the possession of the carbine and ammunition from his guilt as a dacoit. He could not make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offenses of dacoity with which he had been concerned, without referring to the arms possessed by the gang, of which this carbine was one. The point is covered by a decision of Straight, J., in *Queen-Empress v. Ganga Charan* 11 A. 79 : A.W.N. (1888) 289 : 13 Ind. Jur. 193 : 6 Ind. Dec. (N.S.) 478. In that case the view taken was that it was illegal to present such a man for such an offense. Straight, J., quoted a note by Mr. Greaves to the 4th Edition of Russell on Crimes, Volume III, page 597, which is extraordinarily pertinent to the present case: If, however, the prisoner having been admitted as an accomplice to one felony, be thereby induced to suppose that he has freed himself from the consequences of another one, the Judge will recommend the indictment for such other felony to be abandoned. Where an accomplice made a disclosure of property which was the subject-matter of a different robbery by the same parties, under the impression that by the information he had given previously as to the robbery of other property he had delivered himself from the consequences of having the property he so disclosed in his possession, Goleridge, J., recommended the Counsel for the prosecution not to proceed against the accomplice for feloniously receiving such property. *Garside's case* 2 Lew. 18.' There is another passage in the judgment of Straight, J., at page 86 which gives my views succinctly: Though approvers may be infamous persons, they are nevertheless entitled to have faith kept with them by the Courts.' Holding this view I accept the appeal, set aside the conviction and sentence and direct that Shiam Sunder be set at liberty.