

Jagdeo Vs. Emperor

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Court : Allahabad

Decided On : Jan-29-1917

Reported in : AIR1917All328; 39Ind.Cas.310

Judge : George Knox, J.

Appellant : Jagdeo

Respondent : Emperor

Judgement :

George Knox, J.

1. Jagdeo was committed to the Court of Session on the 30th November 1916 for an offence under Section 394 of the Indian Penal Code. When he came before the Committing Magistrate, it is evident that that officer entertained doubts about his soundness of mind and his capability of making a defence. He took evidence, examined the Civil Surgeon at some length and apparently came to the conclusion upon the evidence he took that the accused was capable of making his defence. When examined under Section 364 of the Code of Criminal Procedure, Jagdeo had said that he was not in his senses when he tried to rob Abdul Samad. Under such circumstances the Court of Session should have acted under Section 465 of the Code of Criminal Procedure and tried the fact whether on the 12th December, the date upon which the accused was called on to plead, the accused was or was not of unsound mind and capable or incapable of making his defence?

2. This fact should have been tried with the aid of assessors. The memorandum of examination recorded on the 12th December under Section 364 of the Code of Criminal Procedure is in some ways a curious document and the evidence taken at the trial shows that from time to time the accused has fits of apparent insanity. The result is that I quash the proceedings and direct that a new trial be held; at the commencement of that trial the fact whether at the time when he pleads the accused is capable of making his defence shall first be tried with the aid of assessors--if as the result of such trial the Court is satisfied that the accused is capable of making his defence the trial shall proceed upon the charge on which the accused stands committed. In the course of that trial no doubt the Court will have to try, with the aid of assessors, the question whether at the time when it is alleged that the accused committed the offence he was then of sound mind, but this will be quite separate from the fact into which enquiry is made under Section 465 of the Code of Criminal Procedure. The conviction and sentence are set aside and the accused will be tried as directed above.

3. I draw the attention of the learned Judge to the case of Reg. v. Hira Punja 1 B.H.C.R. 33, also to the cases of Emperor, v. Niaz Ali A.W.N. (1905) 2 ; 2 Cr. L.J. 91, Queen v. Doorjodhun Shamor to 19 W.R. 26 Cr.