

Gulab Singh Vs. Emperor

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Court : Allahabad

Decided On : Feb-06-1935

Reported in : AIR1935All458a; 158Ind.Cas.38

Appellant : Gulab Singh

Respondent : Emperor

Judgement :

Kendall, J.

1. The appellant Gulab Singh. has been convicted by the learned Additional Sessions Judge of Aligarh of offences under Sections 458 and 459 Penal Code, and sentenced to concurrent terms of three years rigorous imprisonment under those sections. He has appealed from jail, and the appeal has been, admitted on the ground that there appears to have been some irregularity by the Court in altering the charges which were originally framed under Sections 395 and 307, Penal Code, to charges under Section 459, Penal Code, without explaining the altered charges to the accused or giving him an opportunity of meeting them, or giving the assessors an opportunity of expressing their opinion in regard to the altered charges.

2. If the learned Additional Sessions Judge had in fact altered the charge so as to make it one of an offence different in nature from that set out in the original charge sheet I am of opinion that the Court would have had no jurisdiction to convict the

appellant without calling on him to answer the charge and without taking the opinion of the assessors as has been provided for in Section 227, Sub-section (1), Criminal P.C. This is not however what happened. The appellant and certain other persons were charged with an offence under Section 395, Penal Code, and although it appears in evidence that the acts of the appellant amounted to lurking house trespass by night after making preparations for assault, and causing grievous hurt in the course of that trespass, yet it did not appear that he was accompanied by the other persons who were put on their trial with him. The offence of which he was found to be guilty did not differ in nature from the offence with which he had been charged, and it was, therefore, not necessary for the Court to alter the charge, as the provisions of Section 237, Sub-section (1), Criminal P.C., clearly cover the case. Moreover, it does not appear that the Court actually did alter the charge. The charge sheet itself stands in its original form, and the only reason why it can be said that the Court altered the charge is the following sentence which was included in the judgment:

I find that his conviction under Sections 458 and 459 is possible without giving him a further opportunity to defend himself against charge under the two latter sections. I therefore alter the charges against him and charge him under Sections 458 and 459, I.P.C. I convict him under these two sections.

3. If the Judge had omitted the sentence italicised there would have been no difficulty about the procedure, and as it is clear that what he meant in the sentence was merely that he was about to convict the accused under different sections from those under which he had been charged, it cannot be said that there has been any irregularity of the procedure.

4. The learned Judge has not stated in the judgment what the opinions of the assessors were, or whether he put it to the assessors that the appellant might be guilty of the minor offence even if he had not been guilty of the major offence with which he had been charged. This is an omission, but as I find from the record that the opinions of the assessors were duly taken it is obvious that the Judge has discredited them, though he has not stated so. It is however necessary to call the attention of the learned Additional Sessions Judge to the procedure set out in Ch.

19, Criminal P.C., and also to the provisions of Section 309, I have had to assume that it was explained to the assessors that if the appellant was not guilty of the major offence of dacoity. it was still open to them to find that he was guilty of the minor offence of lurking house trespass by night after making preparations to cause hurt, that they replied that they believed the appellant to be not guilty, and that the Judge after considering their opinion differed from them and found the accused guilty of the minor offence. This is what should have been done, and there is nothing on the record to show, nor has it been suggested by the appellant, that it was not done, but the judgment should have made it clear that it was done.

5. The result is that the appeals fail and are dismissed.

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