

**Jafar Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/480244](http://sooperkanoon.com/480244)

**Court :** Allahabad

**Decided On :** May-31-1916

**Reported in :** AIR1916All253(2); 36Ind.Cas.577

**Judge :** Sunder Lal, J.

**Appellant :** Jafar

**Respondent :** Emperor

**Judgement :**

**Sunder Lal, J.**

1. The appellant Jafar was found selling some spices in the bazar by two chaukidars, who suspected him of possessing stolen property and of attempting to dispose of the same. He was arrested by them and was being taken to the Police station when certain persons rescued him from the custody of the chaukidars. He has been charged under Section 224 as also under Section 333/34 of the Indian Penal Code. The first point for consideration is whether the chaukidars had any authority to arrest him. The learned Judge has found that, these chaukidars were acting under Section 52 of Act XX of 1856. That Act was repealed by Section 41 of Local Council Act, II of 1914 (the United Provinces Town Areas Act). Act XX of 1856 is no longer in force in these Provinces, and the Town Areas Act contains no provision similar to that contained in Section 52 of Act XX of 1856. The chaukidars, therefore, did not belong to the Police force and had no authority to

arrest the appellant on mere suspicion under the circumstances mentioned by them. The rescue, therefore, of this man was not an offence under Section 224 of the Indian Penal Code. There remains the charge under Section 333/34. Section 31 of the Indian Penal Code enacts that when an act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. To make out, therefore, an offence under Section 333/34 it must be shown that the actual rescuers and Jafar were acting together in pursuance of a common intention. There is nothing to show that before his arrest Jafar had any apprehension of being arrested or that any pre-arrangement was made for his rescue. It may be that the rescuers were all actuated by a common intention of acting as rescuers. But it cannot be said that Jafar was one of the persons who had been in the party and with whom such arrangement was made. The charge under Section 333/34 of the Indian Penal Code cannot, therefore, be sustained. The learned Government Pleader has asked me to alter the conviction to one under Section 323 of the Indian Penal Code as according to the evidence of Het Ram, Jafar himself snatched a lathi from the hand of Ram Narain and gave a blow to him, If this were true, he would be guilty of the offence of simple hurt. As he has already been in jail from the 31st March 1916 up to this day, the offence, if any, committed by him under Section 323 seems to have been adequately punished by his detention in prison for such a period. I do not think this is a case in which I ought to alter the conviction. I allow the appeal, set aside the conviction and the sentence and direct that the appellant be forthwith released.