

Emperor Vs. Jagardeo

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Court : Allahabad

Decided On : Apr-27-1916

Reported in : AIR1917All369; 36Ind.Cas.873

Judge : Piggott and; Walsh, JJ.

Appellant : Emperor

Respondent : Jagardeo

Judgement :

Piggott, J.

1. In this case one Jagardeo was tried at one trial in respect of two acts of theft committed in the course of the same night. It was alleged that he stole bajra from one man's field and rice from the field of another. He appealed to the Court of Session, and there the learned Sessions Judge, holding that the trial was illegal, has directed him to be re-tried. The case has been brought to our notice and we have taken up the matter in the exercise of our revisional jurisdiction. It is said that there is authority of this Court in favour of the view taken by the learned Sessions Judge. The case of *Empress of India v. Murari* 4A. 147 : A.W.N. (1881) 155 was decided on a differently worded section of the Criminal Procedure Code of 1872. If it is necessary to say so, we are quite prepared to say that that decision should no longer be regarded as laying down the law as it stands under the Criminal Procedure Code at present in force. The learned Sessions Judge seems to have

appreciated this point, but to have been of opinion that the decision in *Empress of India v. Murari* 4A. 147 : A.W.N. (1881) 155 was re-affirmed in the case of *Queen-Empress v. Juala Prasad* 7 A. 174 : A1 W.N. (1884) 321 It was remarked at the close of that judgment that the decision in *Empress of India v. Murari* 4A. 147 : A.W.N. (1881) 155 was under a different Statute and would not be affected by the decision then being pronounced. It seems to us that, so far from the learned Judges desiring to lay it down that the decision in *Empress of India v. Murari* 4A. 147 : A.W.N. (1881) 155 was a correct exposition of the law as it stood under the Criminal Procedure Code of 1882, they suggested the contrary. At any rate nothing was decided in the Full Bench case of *Queen-Empress v. Juala Prasad* 7 A. 174 A1 W.N. (1884) 321 with regard to the meaning or effect of the expression 'offences of the same kind' as used in Section 234, Criminal Procedure Code, and as defined by Sub-Clause (2) of the said section. Taking these words into our consideration, it seems clear to us that the offences of the same kind' referred to in that section need not necessarily have been committed against the same person. This principle has recently been affirmed by the Calcutta High Court in *Subedar Ahir v. Emperor* 28 Ind. Cas. 668 : 43 C. 13 : 19 C.W.N. 557 : 16 Cr. I.J. 332 : 43 C. 13 after an exhaustive view of previous authorities.

Walsh, J.

2. I agree and wish to add that, the decision in *Empress of India v. Murari* 4A. 147 : A.W.N. (1881) 155 must be considered as bad law. It was decided directly in face of the clear definition and exposition contained in the section itself. It must be regarded as no longer law. The point which is now before us and which is the only point reported in the head-note, was not the point on which the case came up. The opinion of Mr. Justice Straight was merely an obiter dictum apparently without examination of the section with which he was dealing. It was a statement of the English Law. In that particular case they enhanced the sentence against the man with regard to whom it was suggested that there was irregularity, so the report has to our mind no weight as authority.

3. Order of the Court is that the learned Sessions Judge of Benares readmit the appeal of Jagardeo on to his file of pending appeals and proceed to dispose of it

according to law.

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