

Badiya Vs. the Queen

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SooperKanoon Citation : sooperkanoon.com/777157

Court : Chennai

Decided On : Mar-15-1882

Reported in : (1882)ILR5Mad158

Judge : Innes, J.

Appellant : Badiya

Respondent : The Queen

Judgement :

Innes, J.

1. The conviction is right and the sentence not improper; but the High Court has only lately ruled, in accordance with Section 439* of the Criminal Procedure Code that when an accused person is liable to be punished under the Whipping Act, the charge must state the liability (Circular No. 2686, dated 20th December 1851).

2. It has been repeatedly directed also that the judgment should set out the grounds of the liability to punishment under the Whipping Act when that punishment is imposed.

3. The Sessions Judge should not have ignored the instructions of the High Court.

*Charge to state offence.

[Section 439 : The charge shall state the offence with which the accused person is charged.

Specific name of offence, sufficient statement.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged. The Act and section or sections of this Act against which the offence is said to have been committed must be referred to in the charge.

What implied in charges.

The fact that the charge is made shall be equivalent to a statement that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular case.

Language of charge.

The charge may be written either in English or in the language of the District.

If not written in a language understood by the prisoner, it must be read to him in a language which he understands.

Previous conviction to be set out in charge.

If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.]

