

Sami Aiya Vs. the King Emperor

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SooperKanoon Citation : sooperkanoon.com/783545

Court : Chennai

Decided On : Dec-10-1902

Reported in : (1903)13MLJ263

Appellant : Sami Aiya

Respondent : The King Emperor

Judgement :

ORDER

1. In this case the accused were charged with being members of an unlawful assembly, rioting, hurt and theft. The 2nd Class Magistrate acquitted them on the charge of theft on the ground that they have acted without dishonest intention. He convicted them on the other charges.

2. The accused appealed. On appeal the Deputy Magistrate was of opinion that on the facts as found by the 2nd Class Magistrate, the offence of theft must be held to have been committed and that the offence committed by the accused amounted to dacoity, and he committed them to Sessions.

3. One of the facts as found by the 2nd Class Magistrate was that the accused had acted without dishonest intention. The finding of the Deputy Magistrate, in the face of this, that the accused must be held to have committed theft, cannot possibly be supported, the Public Prosecutor, in fact, did not attempt to support it.

4. A further point taken on behalf of the accused was that it was not competent for the Deputy Magistrate to reverse the acquittal on the charge of theft. Now without reversing the acquittal on the charge of theft, a necessary ingredient of the offence of dacoity would have been wanting and a committal to Sessions on a charge of dacoity would have been clearly wrong,

5. I am of opinion that under Section 423, C.C.P., the Deputy Magistrate had no power to reverse the acquittal on the charge of theft. It seems to me the words 'reverse the finding and sentence' in Clause 1(f) mean reverse the finding upon which the conviction was based, and do not empower the Appellate Tribunal (at any rate an Appellate Tribunal other than the High Court) to reverse or set aside an acquittal. The case *Queen Empress v. Jahanulla* I.L.R. 23 C. 975 to which my attention has been called by the Public Prosecutor, is distinguishable on the ground that the Appellate Tribunal in that case (the High Court) was a tribunal which has jurisdiction to set aside an acquittal.

6. The order of the Deputy Magistrate must be set aside

7. The Public Prosecutor has urged that the sentences are inadequate and has asked that, as a court of revision, I should enhance the sentence. The sentences are no doubt light, but I do not think they are so clearly inadequate as to call for the interference of this Court.