

Emperor Vs. Salimullah

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Court : Kolkata

Decided On : Jan-23-1912

Reported in : (1912)ILR39Cal487

Judge : Woodroffe, J.

Appellant : Emperor

Respondent : Salimullah

Judgement :

Woodroffe, J.

1. Learned Counsel for the accused, before the charge was read, contended, first, that this Court had no jurisdiction to try the case, and, secondly, that if it had, the Penal Code and not the English law was the substantive law applicable. The first contention is based on the fact that after the offence, the ship touched at the ports of Perim, Aden and Tuticorin. Assuming, for the sake of argument, though I do not consider the point, that the accused might have been tried at any of those places, Section 681 of the Merchant Shipping Act (57 and 58 Vict., c. 60) provides for jurisdiction in any place in which the offender, or person complained against, may be. The accused is now here, however he may have come here (though it is to be noted that this port was that of the destination of the ship); and I hold, therefore, that this Court has jurisdiction to try him.

2. Learned Counsel's argument on the second contention assumes that the question he now raises could not have arisen prior to the Court (Colonial) Jurisdiction Act (37 and 38 Vict., c. 27, Section 3), and that even after that Act the English law would be applicable if the accused had been by nationality British., The accused who is a British subject is, however, an Indian, native of Sylhet. Learned Counsel, therefore, contends that, so far as such subjects are concerned, the law was altered by Courts (Colonial) Jurisdiction Act, and he relies upon the decisions of the Bombay High Court in Queen-Empress v. Sheik Abdool Rahiman (1889) I.L.R. 14 Bom. 227 and King-Emperor v. Chief Officer of the 'Mushtari' (1901) I.L.R. 25 Bom. 636. His contention is that the substantive law varies with the nationality of the accused. The correctness of the Bombay decisions has been doubted by Mr. Mayne in his Criminal Law of India for reasons with which I agree (3rd edition, Section 76). As he states, and I agree, Section 3 of the Courts (Colonial) Act does not deal with the trial of the case, but with the sentence after conviction, the statute adopting the local machinery for punishment to the English definition of crime. Moreover, the very terms of Section 3 is against the contention now raised, in so far as it provides for the case of an offence which is not punishable by the law of the Colony in which the trial takes place. This negatives the view that the law governing the offence is the substantive law of the Colony. Section 686 of 57 and 58 Vict., c. 60, speaks of a 'British subject,' which includes an Indian subject. Reference has been made to Section 4 of the Penal Code. It is possible to give this Section a construction which is not inconsistent with the English Statute, but in any case it could not, assuming that the Indian Legislature had jurisdiction in this matter, affect the specific Statute of Parliament.

3. I hold, therefore, that the substantive law applicable to the case is the English law, and that the charge has been rightly framed in this respect. The accused will, therefore, be called upon to plead to the charge, and the trial will proceed.

4. The trial proceeded, and the Jury ultimately found the prisoner not guilty on the first, but guilty on the second, count. Mr. Asghur contended that the sentence should be passed under the English law, as no Section of the Penal Code corresponded to the offence of which the prisoner was found guilty. Woodropffe J. reserved judgment; and considering that the offence found corresponded most

nearly to the second part of Section 304 of the Indian Penal Code, his Lordship sentenced him to four years' rigorous imprisonment thereunder.

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