

Gobind Koeri Vs. Emperor

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Court : Kolkata

Decided On : Feb-07-1902

Reported in : (1902)ILR29Cal385

Judge : Prinsep and ;Stephen, JJ.

Appellant : Gobind Koeri

Respondent : Emperor

Judgement :

Prinsep and Stephen, JJ.

1. A Rule was granted in this case to consider whether the conviction and sentences should not be set aside on the ground that the joint trial of these petitioners for different offences, not committed in the same transaction, was not permitted by law. Of the three petitioners before us, one has been convicted under the Railway Act of unlawfully obstructing the railway by placing clods on the lines. The other two have been convicted under Section 225 of the Indian Penal Code of rescuing him from lawful arrest. Section 239 of the Code of Criminal Procedure declares: 'When more persons than one are accused of the same offence or of different offences committed in the same transaction, they may be charged and tried together or separately as the Court thinks fit; and the provisions contained in the former part of this Chapter shall apply to all such charges.' Now Section 235 in regard to the joinder of different offences must be read with Section 239, and it is,

no doubt, one of the sections referred to in Section 239. The question arises whether the offence under the Railway Act and the unlawful rescue of the person arrested were offences committed in the same transaction. We think that they were clearly distinct, and in this view the persons accused of each of these offences should have been tried separately. The learned Government Pleader, who appears to defend the order, refers to Section 537. But notwithstanding reported cases of the Indian High Courts, which would be applicable to the present case, if it be dealt with under Section 637, we think that the recent judgment of their Lordships of the Privy Council in the case of Subrahmania Ayyar v. King-Emperor (1902) I. L. R. 25 Mad. 61. in a binding authority for holding that the Court had no jurisdiction to try persons accused of these two separate and distinct offences in the same trial. We accordingly set aside the conviction and sentences, and leave it to the District Magistrate to consider whether, having regard to the sentences passed and undergone, it is necessary that a fresh trial should be held.

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