

In Re: Petition of Uttom Koondoo and anr. and Vs. Uttom Koondoo and anr.

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Court : Kolkata

Decided On : Mar-31-1882

Reported in : (1882)ILR8Cal634

Judge : McDonell and ;Field, JJ.

Appellant : In Re: Petition of Uttom Koondoo and anr. and ;The Empress

Respondent : Uttom Koondoo and anr.

Judgement :

Field, J.

1. There is no finding or sentence under Section 413 of the Penal Code. The Sessions Judge erroneously speaks of the 'seven headings of the charge.' There were seven distinct charges, not seven headings of one charge. Upon conviction on a single charge under Section 411, three years is the maximum term of imprisonment that could have been directed. Regard being had to the provisions of Section 453 of the Code of Criminal Procedure, the prisoner could not have been charged and tried at the same time for more than three offences of the same kind. The Sessions Judge was, therefore, wrong in trying the seven charges together. The appellants do not, however, complain of this irregularity in procedure; and it does not appear that the irregularity has occasioned a failure of justice prisoners in their defence (Section 283, Code of Criminal Procedure). We, therefore, direct a new trial; but the conviction and sentence must be set aside, and the prisoners will

be convicted upon the three charges concerned with the property offences the prisoners will be sentenced each to one year's rigorous imprisonment in respect of each charge. For the third offence Uttom Koondoo will be sentenced to three year's rigorous imprisonment, and Krishno Moni Telani to one year's rigorous imprisonment. We think a sentence of fine unnecessary.

2. We may observe that the prisoners could not be tried at the same trial for receiving or retaining (Section 411) and habitually receiving or dealing in (Section 413) Code of Criminal Procedure). The proper course would have been to try the accused first for the offences under Section 411, and then, if he were convicted, to try him for the offence under Section 413, putting in as evidence the previous convictions under Section 411, and proving the finding of the rest of the property in respect of which a separate charge, under Section 411, could be made or tried by reason of the provisions of Section 413, is, in our opinion, sufficient, it is unnecessary to proceed further under Section 413. The appeal will be dismissed, the conviction and sentence being altered as above directed.

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