

Muchi Mian Vs. Emperor

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Court : Kolkata

Decided On : May-28-1917

Reported in : 40Ind.Cas.731

Judge : Teunon and ;Richardson, JJ.

Appellant : Muchi Mian

Respondent : Emperor

Judgement :

1. In this case the petitioner has been convicted under Section 216 of the Indian Penal Code and sentenced to six. months' rigorous imprisonment,
2. It appears that the petitioner's brother one Azizar Rahman was charged with the commission of an offence punishable under Section 411, Indian Penal Code, that to the knowledge of the petitioner first warrants for Azizar's arrest and then a proclamation under the provisions of Section 87 of the Code of Criminal Procedure had been issued by a Magistrate. It also appears that the proclamation had been duly published at the house in which the two brothers as joint owners used to reside.
3. On the 23rd September 1916, on information received, an Inspector of Police with a sergeant and a posse of constables proceeded to his house and interviewed the petitioner.

4. The facts then found against the petitioner are that in answer to the Inspector's enquiry the petitioner replied that Azizar was in the house and promised to produce him. He then went inside the house and after a delay of 15 minutes returned with Azizar's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening. The learned Sessions Judge has further found that the statement made to the Police Officer in the first instance, the delay of 15 minutes spent, as the Police Officer would presumably infer, on a search for the offender, the subsequent production of Azizar's son, and the false statement made with regard to Azizar himself, who on search was in fact found in hiding in the thatch of the roof, were all parts of a plan by which the petitioner sought to give and did give Azizar Rahman an opportunity of making his escape or of concealing himself.

5. On behalf of the petitioner it is contended that the facts found are insufficient for the finding that the petitioner 'assisted (the offender) in any way to evade apprehension' and so 'harboured' him within the meaning of Sections 216A and 216B, Indian Penal Code. In support of this contention it is urged that the words assisting in any way should be read as ejusdem generis with the two methods specified in the preceding part of the section, and in further support of this view we are referred to the case of Emperor v. Husain Bakhsh 25 A. 261 : A.W.N. (1903) 29 But this case though entitled to our great respect is not one which we are bound to follow and moreover the facts in that case were wholly different. If the intention had been that the words 'assisting in any way' should be read as ejusdem generis with the former part of the section, we should have expected the Legislature to frame this provision of law somewhat in the following manner: 'the word harboring includes the giving of assistance by supplying a person with shelter, food, etc., means of conveyance or otherwise.'

6. As the section has been framed, we are not prepared to hold that the ways in which assistance may be rendered must, for the purposes of the section, be restricted to methods which may properly be regarded as ejusdem generis or of a like nature with supplies of food or of other necessary articles.

7. On the contrary we are of opinion that by the methods he employed the petitioner did give time and opportunity for the offender to conceal himself or effect his escape and thereby gave him material assistance in evading apprehension.

8. In this view the petitioner has been properly convicted but having regard to all the facts we are of opinion that the sentence is unnecessarily severe. We, therefore, reduce the sentence from six months to three months' rigorous imprisonment.

9. The petitioner will now surrender to his bail and serve out the unexpired portion of his sentence.

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