

Khohua Moran Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/877409

Court : Kolkata

Decided On : May-08-1916

Reported in : 34Ind.Cas.654

Judge : Asutosh Mookerjee and ;Sheepshanks, JJ.

Appellant : Khohua Moran

Respondent : Emperor

Judgement :

ORDER

1. In this case the appellant has been convicted by the Sessions Judge, upon an unanimous verdict of the Jury, upon three charges, namely, first, a charge under Section 302, Indian Penal Code, for murdering Pamboo Bura, secondly, a charge under Section 324, Indian Penal Code, for causing hurt to Rengai Graondura, and, thirdly, a charge under Section 324, Indian Penal Code, for causing hurt to Mosai. The sentence passed upon the accused is in these terms: the 'Court accepting the unanimous verdict of the Jury convicts the accused Khohua Moran under Section 302, Indian Penal Code, and sentences him to transportation for life. The Court also accepting the unanimous verdict of the Jury convicts the accused under Section 324, Indian Penal Code, and sentences him upon each of these counts, to one year's rigorous imprisonment, the sentences to run consecutively.' The sentence is defective in form, as the Judge has omitted to determine, whether the sentences of imprisonment and transportation are to run concurrently or

consecutively. Sub-section (1) of Section 35, Criminal Procedure Code, provides that when a person is convicted at one trial of two or more distinct offences, the Court may sentence him for such offences to the several punishments prescribed therefor which such Court is competent to inflict, such punishments, when consisting of imprisonment or transportation, to commence one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently. We are of opinion that Section 35 is not restricted to cases where the several punishments are all of the same kind, that is, are all sentences of imprisonment or all sentences of transportation. Notwithstanding the use of the word 'or' between the terms 'imprisonment' and 'transportation,' we think the section was intended to cover cases of the description now before us, where one of the punishments inflicted is imprisonment, while the other is transportation. If this view were not adopted, the result would follow that the Legislature had made no provision for cases of this type. We direct accordingly that the two sentences of imprisonment which the Judge has ordered to run consecutively and which consequently amount in substance to rigorous imprisonment for two years, should run concurrently with the sentence of transportation. The sentence, subject to this addition, will stand, because on an examination of the record we are satisfied that the propriety of the conviction is amply made out.