

**Emperor Vs. Salimulla**

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**SooperKanoon Citation :** [sooperkanoon.com/877585](http://sooperkanoon.com/877585)

**Court :** Kolkata

**Decided On :** Jan-23-1912

**Reported in :** 14Ind.Cas.598

**Judge :** Woodroffe, J.

**Appellant :** Emperor

**Respondent :** Salimulla

**Judgement :**

**Woodroffe, J.**

1. Learned Counsel for the accused, before the charge was read, contended, firstly, 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 684 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. Learned Counsel's argument on the second contention assumes that the question he now raises

could not have arisen prior to the Colonial Jurisdiction Act (37 and 33 Vict., C. 27, Section 3) and that even after that Act, 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, the law was altered by the Colonial Jurisdiction Act and he relies upon the decisions of the Bombay High Court reported in Queen-Empress v. Sheik Abdool Rahiman 14 B. 227 and King-Emperor v. Chief Officer of 'S.S. Mwshtari' 25 B. 639 : 3 Bom. L.R. 253. His contention is that the substantive law varies with the nationality of the accused. The correctness of the Bombay decision, Queen-Empress v. Sheik Abdool Rahman 14 B. 227 has been doubted by Mr. Mayne in his Criminal Law of India (3rd Edition, Section 76) for reasons with which I agree. As he states, and I agree, Section 3 of the Colonial Act does not deal with the trial of the case but with the sentence after conviction, the Statute adapting the local machinery for punishment to the English definition of crime. Moreover, the very terms of Section 3 are 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. 94 speaks of British subject which includes an Indian subject. Reference has been made to Section 4 of the Penal Code. It is possible to give the 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. 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.