

APPELLATE CRIMINAL.

Lort-Williams and S. K. Ghose JJ.

THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL

v.

HARAKALI BISWAS.*

1930

Nov. 12.

Embankment—Publication of notification under the Bengal Embankment Act, if mandatory—Bengal Embankment Act (Beng. II of 1882), ss. 6, 80.

The provisions of the latter part of section 6 and section 80 of the Bengal Embankment Act (Beng. II of 1882) for publication of the notification are directory and not mandatory.

Goverdhan Sinha v. Queen-Empress (1) dissented from.

Lakshmi Kanta Hazra v. Emperor (2) followed.

Ajodhya Nath Koila v. Raj Krishto Bhar (3) referred to.

CRIMINAL APPEAL by the Government.

The material facts appear from the judgment of the Court

Prabodhchandra Chatterji and Nirmalchandra Chakravarti for the Crown.

No one for the accused.

LORT-WILLIAMS J. This is an appeal by the Local Government against an order of acquittal made by the learned Subdivisional Magistrate of 24-Parganas. Four accused were charged under section 76B of the Bengal Embankment Act (Beng. II of 1882), the evidence being that they had erected, or added to, an existing embankment in an area covered by a notification under section 6 of the Act. The learned Magistrate did not decide whether the accused had in fact so erected or added to such an embankment, because he came to the conclusion that

*Government Appeal, No. 4 of 1930, against the order of A. Datta, Subdivisional Magistrate of 24-Parganas, dated March 1, 1930.

(1) (1885) I. L. R. 11 Calc. 570. (2) (1919) I. L. R. 46 Calc. 825.

(3) (1902) I. L. R. 30 Calc. 481.

the accused could not be convicted under the section, because the notification which under section 6 has to be made in the *Calcutta Gazette*, had not been published in the mode prescribed by the latter part of that section and section 80 of the Act. Specific notice had in fact been served upon the accused as appears in Ext. 2 and they had been told to remove the embankment. Further, it appears that this was not the first time that they had built the embankment nor the first time that it had been removed by order of the Government. In our opinion, this case is covered by the decision of Richardson and Shamsul Huda JJ. in the case of *Lakshmi Kanta Hazra v. Emperor* (1) with which decision we agree. The provisions of the latter part of section 6 and section 80 for publication of the notification are merely directory and not mandatory. It is true that the decision of Mitter and Norris JJ. in *Goverdhan Sinha v. Queen-Empress* (2) is in favour of the view expressed on behalf of the accused. But that decision, in so far as it dealt with another point under the Act, has been overruled by the decision in *Ajodhya Nath Koila v. Raj Krishto Bhar* (3) and we are not disposed to follow it, in so far as it deals with the point raised in the present case.

The result is that the order of acquittal must be set aside and the case sent back to the learned Magistrate for further enquiry, whether the accused in fact committed the offence alleged against them under section 76B. If he comes to the conclusion that they have committed that offence then it will be his duty to convict them in spite of the fact that the provisions in the latter part of section 6 and in section 80 have not been complied with.

S. K. GHOSE J. I agree.

Appeal allowed. Retrial ordered.

A. C. R. C.

(1) (1919) I. L. R. 46 Calc. 825. (2) (1885) I. L. R. 11 Calc. 670.

(3) (1902) I. L. R. 30 Calc. 481.

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Lord-Williams J.