

1880  
 PATTN  
 v.  
 ADMINISTRATOR-GENERAL  
 OF BENGAL.

that it will be cheaper to try the suit here; and that all parties appearing on the motion desire a transfer. These reasons to be recorded.

*Application granted.*

Attorneys for the petitioner: Messrs. *Carruthers and Jennings.*

Attorneys for the plaintiff: Messrs. *Sanderson & Co.*

Attorneys for the defendants: Messrs. *Carruthers and Jennings.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Morris and Mr. Justice Prinsep.*

ROSHUN DOOSADH AND TWO OTHERS v. THE EMPRESS.\*

1880  
 Feby. 10.

*Previous Conviction—Irrelevant Evidence of Character—Quantum of Punishment—Evidence Act (1 of 1872), s. 54.*

In charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused.

*Held*, that this amounted to a misdirection; for though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible.

Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.

THE facts of this case sufficiently appear from the judgment, which was delivered by

PRINSEP, J. (MORRIS, J., concurring).—We think that there must be a new trial in this case.

\* Criminal Appeal, No. 795 of 1879, against the order of J. F. Brown, Esq., Sessions Judge of Patna, dated the 30th September 1879.

The three persons were charged, under s. 411 of the Indian Penal Code, with having dishonestly been in possession of certain articles claimed by the complainant, as property stolen from his house. A *dohur* and pugree were found with the prisoner Roshun. The complainant and a friend identified these as the property of the former. Roshun, on the other hand, stated that they were his, but that statement was unsupported by any evidence. The Sessions Judge was quite correct in putting it to the jury, "to say whether there is any reason to believe that they (the complainant and his friend) have made any mistake," but he was clearly wrong in adding, "the fact that he (Roshun) has been twice imprisoned for theft is also not without its weight, and should be taken by you into consideration when deciding as to the credibility of the evidence of identification." Section 54 of the Evidence Act, though it declares that "the fact that the accused person has been previously convicted of an offence is relevant,"—also declares that "the fact that he has a bad character is irrelevant," except under certain circumstances, which do not exist in the present case. The evidence of the prisoner's previous convictions has been treated by the Sessions Judge as evidence of his character, which he has told the jury to consider in determining the value of his claim to the property found in his possession. In this respect the Sessions Judge has clearly misdirected the jury, because this evidence was irrelevant and inadmissible. He should have merely pointed out to the jury the conflicting claims to this property, and called upon them to determine which they believed, at the same time reminding them that the prisoner was entitled to the benefit of any reasonable doubt. We think that the prisoner Roshun has been prejudiced by this error, and that he ought to have a retrial. Except under very special circumstances, none of which arise here, the proper object of using convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.

*Re-trial ordered.*

---

1880

ROSHUN  
DOOSADK  
v.  
EMPRESS.