

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Boddam.

THE PUBLIC PROSECUTOR, APPELLANT,

1908.
April 7.

v-

RAMASWAMI KONAN, ACCUSED.*

Penal Code, Act XLV of 1860, s. 225B—Offence under section committed when a prisoner escapes while the peon having custody of him is asleep.

A man legally arrested for an offence must submit to be tried and dealt with according to law.

A prisoner who escapes, after he is arrested and before he is delivered by due course of law, owing to the neglect or consent of the person having him in custody is guilty of an offence under section 225B of the Penal Code.

Queen-Empress v Muppan, (I.L.R., 18 Mad., 401), followed.

The complainant in this case was a process-server in the Court of the District Munsif of Tirukkoyilur. He arrested the accused under a civil warrant and brought him to Tiruvannamalai after night fall on his way to the Court. The complainant made the accused sleep by his side in the pial of a house in Tiruvannamalai, and the accused escaped while the complainant was asleep. The complainant, having obtained the sanction of Court, prosecuted the accused for an offence under section 225B of the Penal Code. The Second-class Magistrate acquitted the accused on the authority of a case quoted from Weir's 'Law of Offences.'

The Government appealed against the acquittal to the High Court.

The Public Prosecutor for appellant.

The accused was not represented.

JUDGMENT.—We are unable to accept the view taken in the case quoted from Weir's 'Law of Offences,' vol. I, p. 202, and relied on by the Sub-Magistrate. We take it that the law is correctly stated in the case of the *Queen-Empress v. Muppan*(1) in the following terms:—

"A man legally arrested for an offence must submit to be tried and dealt with according to law. If he gains his liberty

* Criminal Appeal No. 153 of 1908, presented under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused by M. R. Ry. C. S. Sivaramakrishna Sarma, Stationary Second-class Magistrate of Tiruvannamalai, in Calendar Case No. 815 of 1907.

(1) I.L.R., 18 Mad., 401.

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before he is delivered by due course of law, he commits the offence of 'escape.' It has been long established that even when the escape is effected by the consent or the neglect of the person that kept the prisoner in custody, the latter is no less guilty, as neither such illegal consent nor neglect absolves the prisoner from the duty of submitting to the judgment of the law (1 Russ, 5th, p. 567; Roscoe, 11th edition, p. 453; and Bishop's Criminal Law, 7th edition, section 1104)."

The fact that the peon who had the custody of the accused went to sleep did not in any way put an end to the custody, or affect the accused's duty to submit to the judgment of the law.

We must, therefore, set aside the acquittal, and direct the Sub-Magistrate to restore the case to his file, and to try it afresh in accordance with law.

APPELLATE CRIMINAL.

Before Mr. Justice Wallis and Mr. Justice Munro.

ARUNACHELLAM

v.

EMPEROR.*

1908.
February 27.

Criminal Procedure Code—Act V of 1898, ss. 337 (2), 339—Accused to whom pardon tendered ought to be examined as a witness and not be put into the dock at once.

An accused person to whom pardon has been tendered and who has accepted such pardon, ought not, when he shows an intention not to give the evidence which he has led the prosecution to expect, to be put back into the dock without being examined as a witness. He should, under such circumstances, be examined as a witness as directed by section 337 (2) of the Criminal Procedure Code, and then dealt with under section 339 of the Code.

Such a person should, if tried, be tried separately and after the trial of the other accused is over.

Queen-Empress v. Ramasami, (I.L.R., 24 Mad., 321), followed.

* Referred Case No. 14 of 1908 (Criminal Revision Case No. 77 of 1908), for the orders of the High Court, under section 438 of the Code of Criminal Procedure, by J. H. Robertson, Esq., District Magistrate of Salem, in his letter, dated 4th February 1908, Referred No. 204 M. B. of 1908.