ryotwari proprietor is also heritable and alienable. He has a sufficient estate to support a grant of an easement. He would be a " capable grantor " as understood in English law for the application of the doctrine of a lost grant. Therefore in this view it is unnecessary to consider in this case the correctness or otherwise of the interpretation placed by VARADACHARIAR J. on section 15 of the Easements Act in *Chinnasami Goundan* v. *Balasundara Mudaliar*(1). I am therefore of opinion that on the findings in this case the view of the learned Subordinate Judge, that the enjoyment having been for more than thirty years it should be deemed to be of right and the plaintiff's claim should be upheld, is correct ; *vide* also *Kunjammal* v. *Rathinam Pillai*(2).

In the result the second appeal fails and is dismissed with costs.

G. R.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Pandrang Row.*

IN RE ABDUL GANI SAHEB (ACCUSED), APPELLANT.* 1936, August 20.

*Indian Penal Code (Act XLV of 1860), sec. 75—Old offender—Sentence to be passed on.*

There is no rule that the sentence on an old offender should always be at least a little more severe than the sentence just previous.

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(1) (1934) 67 M.L.J. 262. (2) (1921) I.L.R. 45 Mad. 633, 639.

* Criminal Appeal No. 352 of 1936.

ABDUL GANI, *In re.*

APPEAL against the order of the Court of Session of the South Arcot Division in Case No. 16 of the Calendar for 1936.

*Parakat Govinda Menon* for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

JUDGMENT.

This is a jail appeal in which notice has been ordered to issue by my brother BURN J. on the ground that the sentence appeared to be excessive. The appellant was convicted as a result of the unanimous verdict of the jury to the effect that he was guilty of theft, after a trial conducted before the Sessions Judge of South Arcot.

[Portion of the judgment omitted as not being necessary for this report.]

As regards the question of sentence, the learned Judge does not give any particular reason for imposing a sentence of six years' rigorous imprisonment under section 379 read with section 75, Indian Penal Code. The prosecution case is that the property stolen in this case was a cow worth about Rs. 50. For an offence of this nature, if committed by a casual offender for the first time, the ordinary sentence would certainly not exceed six months' imprisonment. The question is whether an old offender, whose previous conviction was in 1929 and whose previous sentence was five years' rigorous imprisonment should now necessarily be given six years' imprisonment. There seems to be an idea prevalent in the minds of some Judges that there is a rule that the sentence on an old offender should always be at least a little more severe than the sentence just previous. This so-called rule cannot be supported

by any good reason. It may be an excellent rule of thumb, but I do not think, in imposing sentences, such a rule can be safely followed in the interests of the proper administration of criminal justice. While the sentences imposed on criminals should be adequate to the offence, there is every reason why they should not be excessive. Apart from the injustice to the offender which an excessive sentence entails, such a sentence tends to undermine public confidence in the administration of criminal justice. In the absence of any reasons for imposing a sentence of six years' rigorous imprisonment in this case, and in view of the nature and value of the stolen property, I am of opinion that the sentence imposed by the learned Sessions Judge is far too severe. The sentence is therefore reduced to three years' rigorous imprisonment. The order directing the appellant to give information of his residence and change of residence to the police for a period of three years after the expiration of the sentence will stand. The conviction is confirmed and the substantive sentence is reduced to three years' rigorous imprisonment.

V.V.C.

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