

1897

QUEEN-
EMPERESS
v.
ZAWAR
HUSEN.

question. We say 2. A. M. because the first report was made at the thána at 2-30 A. M. There was moon-light. These men were known perfectly well to the witnesses by sight; they lived in the same village. Zawar Husen's identity was also further established by witnesses hearing his voice. It is fortunate for these appellants that they did not succeed in their object that night. This was a planned and deliberate attempt at murder. The sentence of transportation for life passed on these men was the proper sentence. We dismiss these appeals.

REVISIONAL CRIMINAL.

1897

November 20.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.

QUEEN-EMPERESS v. HIMAI.*

Act No. VIII of 1887 (*Reformatory Schools Act*) sections 4, 8 and 16—
Order for detention in a Reformatory School under section 8—Revision
—Powers of High Court.

Held that the High Court has no power to interfere in appeal or revision with an order for detention in a Reformatory School passed in substitution for an order of transportation or imprisonment.

THIS was an application for revision made by the Government Advocate in respect of an order of the Joint Magistrate of Jaunpur. The Joint Magistrate convicted five persons, including Himai, of the offence punishable under section 411 of the Indian Penal Code, and sentenced them therefor to various terms imprisonment. As to Himai the Magistrate recorded:—"Himai is a boy of fifteen years and shall be sent to the Reformatory for three years in place of going to prison for one year".

Revision of this order was applied for on the ground that Himai, being fifteen years of age, could not be the subject of an order under section 8 of Act No. VIII of 1897.

THE Government Advocate (*Mr. E. Chamier*) for the Crown.

EDGE, C. J. and BURKITT, J.—Himai was convicted of the offence punishable under section 411 of the Indian Penal Code and was sentenced to one year's rigorous imprisonment therefor.

* Criminal Revision No. 578 of 1897.

The Magistrate, purporting to act under section 8 of Act No. VIII of 1897, substituted for that order of imprisonment an order for detention in a Reformatory School. The Magistrate found that Himai was fifteen years of age. Consequently Himai was not a "youthful offender" within the meaning of section 4 of Act No. VIII of 1897 at the time of his conviction. The order substituting detention in a Reformatory School for imprisonment was therefore illegal.

But section 16 of Act No. VIII of 1897*, precludes this Court from interfering in appeal or revision with an order for detention in a Reformatory School passed in substitution for an order of transportation or imprisonment. We can put no other construction upon section 16. We accordingly dismiss this application for revision.

1897

 QUEEN-
EMPERESS
v.
HIMAI.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt,
QUEEN-EMPRESS v. GOBINDA.†

 1897
November 27.

Act No. VIII of 1897 (*Reformatory Schools Act*), sections 8 and 16—
Order for detention in a Reformatory School under section 8—Revision—
Powers of High Court.

THIS case is similar in principle to that of *Queen-Empress v. Himai (supra)*.

The facts of this case are sufficiently stated in the judgment of the Court which was as follows:—

EDGE, C. J. and BURKITT, J.:—Gobinda was convicted of the offence punishable under section 379 of the Indian Penal Code and was sentenced therefor to one month's rigorous imprisonment. The Magistrate substituted an order of detention in a Reformatory School for four years for the order of

* Section 16 of Act No. VIII of 1897 is as follows:—"Nothing contained in "the Code of Criminal Procedure, 1882, shall be construed to authorise any "Court or Magistrate to alter or reverse in appeal or revision any order passed "with respect to the age of a youthful offender or the substitution of an order "for detention in a Reformatory School for transportation or imprisonment."

† Criminal Revision No. 576 of 1897.