

1900

QUEEN-
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v.
BENI.

he was armed with a deadly weapon, *viz.*, a pistol. There is no evidence to show who carried the other pistol and the sword. I am also of opinion that all the appellants were rightly convicted under section 399. They might have been convicted under section 402. I see no reason to interfere with the sentences, and dismiss the appeals, except in so far that I set aside the convictions under section 397 coupled with section 511.

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

QUEEN-EMPRESS v. RAZA ALI.*

Criminal Procedure Code, Section 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.

Where a Magistrate, acting under section 118 of the Code of Criminal Procedure, required securities to an amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court *held* that the Magistrate had not exercised a proper discretion in the matter and reduced the amount of the security. *Queen-Empress v. Rama* (1) followed.

THE facts of this case sufficiently appear from the order of the Court.

Pandit *Tej Bahadur Sapru*, for the applicant.

The *Government Pleader*, for the Crown.

AIKMAN, J.—In this case the applicant, Raza Ali *alias* Ghuran, was called upon to show cause why he should not give security for his good behaviour. After recording evidence both for and against the applicant, the Joint Magistrate made the order absolute, and directed the applicant to give his own bond in the sum of Rs 500, together with two sureties in the sum of Rs. 500 each, for his good behaviour for a term of one year. On appeal the District Magistrate saw no reason to disagree with the lower Court as to the necessity for taking security. But he reduced the amount of the bond and sureties from Rs. 500 to Rs. 200 each. An application for revision has been made to this Court, and it is urged that the amount fixed by the District Magistrate is still too high. The second proviso to section 118 of the Code of Criminal

* Criminal Revision No. 463 of 1900.

(1) (1892) I. L. R., 16 Bom., 372.

Procedure is that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. In my opinion the reduced amount fixed by the District Magistrate is excessive, having regard to the circumstances of the applicant. Although upwards of two and a half months has elapsed since the date of the District Magistrate's order, the applicant has been unable to furnish the sureties as demanded, and is still in prison. I agree with what was said by the Bombay High Court in the case *Queen-Empress v. Rama* (1), and the remarks contained in paragraph 6 of the Government Review of the Police Administration Report of these Provinces for the year 1898, which are quite in accord with what was there said. I do not interfere with the amount of the personal recognizance which the applicant was called on to give, but I reduce the amount of the sureties from Rs. 200 to Rs. 50.

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Before Mr. Justice Aikman.

QUEEN-EMPRESS v. MUHAMMAD ALI AND OTHERS.*

Act No. XLV of 1830 (Indian Penal Code), section 215—Theft—Receiving gratification to help the owner to recover stolen property—Section 215 not intended to apply to the actual thief.

Section 215 of the Indian Penal Code was not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence.

THE facts of this case were as follows:—

On or about the 12th February 1900 four bullocks were stolen from the sugar mill of one Baldeo Sahai. Baldeo Sahai obtained early information that four men, Muhammad Ali, Kure, Rahmat-ullah and Karim Bakhsh, had been seen driving away the bullocks. As these men were men of his own village, Baldeo Sahai did not at once report his loss at the thana, but entered into negotiations with the thieves through some of their relatives, with the result that Muhammad Ali and his friends agreed to return the bullocks on payment of Rs. 100. Two of the bullocks were returned, as arranged and Baldeo Sahai paid Rs. 50 for their

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