

REVISIONAL CRIMINAL.

1903
January 23.*Before Mr. Justice Blair*

EMPEROR v. HUSAIN BAKHSH AND OTHERS.*

*Act No. XLV of 1860 (Indian Penal Code), section 216B—Definition—
Meaning of term "harbouring".*

Held, with regard to the definition contained in section 216B of the Indian Penal Code, that the words "assisting a person in any way to evade apprehension" are meant to point out some method *ejusdem generis* with those specified in the earlier portion of the section. They will not include the assisting of an accused person to escape by merely telling lies to the police as to his whereabouts.

IN this case a warrant of arrest was out against one Subha on a charge of dacoity. It was discovered that Subha visited Husain Bakhsh and others, and the Police, on receipt of information that on a particular occasion Subha was with them, went to seize him. When the Police party came Subha, Husain Bakhsh and others were sitting near a well. They saw the Police coming, and Subha therefore left the others and hid in an adjoining sugarcane field. The Police surrounded the field. They then went up to the men at the well and questioned them. These men said that the person who had left them and gone into the field was not known to them and was certainly not Subha, who was well known to them as a dacoit. The men took oaths to this effect. Meanwhile reinforcements arrived and Subha was captured. On these facts Husain Bakhsh and others were convicted by a Magistrate of "harbouring" Subha, under section 216B of the Indian Penal Code. They applied in revision to the Sessions Judge, who, being of opinion that the facts found did not constitute the offence defined by section 216B, reported the case to the High Court for orders.

BLAIR, J.—The Sessions Judge of Cawnpore suggests that the eight men, Husain Bakhsh, Gulab, Khuda Bakhsh, Kadir Bakhsh, Ilahi Bakhsh, Ghafur, Maula Bakhsh, and Fakir Bakhsh, who have been convicted of harbouring one Subha under section 216 of the Indian Penal Code, have been wrongfully convicted. On the facts stated by the Sessions Judge there is no record which shows what was stated by each

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individual party. There is a further difficulty that nobody did anything but speak. Apparently those persons told lies, and their object in telling lies was to induce the police to desist in their pursuit—a very futile attempt. But I am in grave doubt whether section 216B of the Indian Penal Code includes in the definition of harbouring mere lies. The section runs thus:—"The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension." Now, reading the section in the light of general principles, the words at the end, "or assisting a person in any way to evade apprehension," must be meant to point some method *ejusdem generis* with those that have been specified above. In my opinion a bare lie does not fall within that category. I therefore set aside these convictions, and order that the above-mentioned eight men be at once discharged.

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January 24.

Before Mr. Justice Banerji.

EMPEROR v. GAJADHAR.*

Act No. I of 1878 (Opium Act), section 9—Possession of illicit opium—Custody of a locked box containing opium lawfully belonging to the owner of the box.

A locked box containing the stock of opium and books of a licensed vendor of opium, the key of which was kept by the owner, was found in the house of a person who lived next door to the shop of the opium vendor, and it appeared that the opium vendor, instead of taking his box home with him at night, was in the habit of leaving it with his neighbour for safe custody. *Held*, that the custodian of the box could not be properly convicted of the offence of unlawful possession of opium, inasmuch as the possession of the opium was not his, but that of the legitimate owner.

ONE Gajadhar was convicted by a Magistrate of the first class of an offence under section 9 of Act No. I of 1878 (The Opium Act) and fined Rs. 30. Gajadhar applied in revision to the District Magistrate. The facts of the case as set forth in the District Magistrate's order were as follows:—"Applicant Gajadhar is a shop-keeper, a neighbour of Bhairon, a licensed opium seller. It appears from the evidence that as Bhairon did not sleep in his shop it was his custom when he went home

* Criminal Reference No. 845 of 1902.