

APPELLATE CRIMINAL.

Before Mr. Justice Knox and Mr. Justice Aikman.

EMPEROR v. SIDHU.*

Act No. XLV of 1860 (Indian Penal Code), sections 21 and 99—"Public servant"—*Gorait* in the district of Gorakhpur.

Held that a *gorait* is a public servant within the meaning of sections 21 and 99 of the Indian Penal Code.

THIS was an appeal by the Local Government from an appellate order of the Sessions Judge of Gorakhpur acquitting one Sidhu of an offence under section 332 of the Indian Penal Code, of which he had been convicted by a Magistrate of the first class. The facts of the case are as follows:—In January 1899 one Prasad, *chamar*, made a report to the police that two bullocks of his had been stolen. An investigation pointed to two persons named Baran and Sidhu as being the thieves. The case was inquired into as against Baran, and he was discharged, but Sidhu could not be found. No order was passed for the arrest of Sidhu or for proceedings to be taken against him as an absconding offender. But in April, 1899, two villagers, called Baran and Sheopujan, apparently believing that Sidhu was an absconding offender, and that there was a warrant for his arrest issued by the police, apprehended Sidhu and made him over to Jageshra, *gorait*, and one Ram Baran. The two men tied up Sidhu with a piece of rope and were taking him to the *thana*, Ram Baran in front, Sidhu in the middle, and Jageshra behind, when Sidhu snatched his *lathi* from Ram Baran, knocked him down with it, and after attacking Jageshra also, attempted to escape. Jageshra, however, gave the alarm, and Sidhu was shortly afterwards re-apprehended and conveyed to the police-station. Sidhu was tried by a Magistrate of the first class, and was convicted under section 332 of the Indian Penal Code of voluntarily causing hurt to a public servant, namely, Jageshra, *gorait*, in the execution of his duty, and sentenced to one year's rigorous imprisonment. Sidhu appealed to the Sessions Judge, who acquitted him on the ground that the arrest of Sidhu was in the first instance illegal. On

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appeal from this order by the Local Government, the High Court sent down to the District Magistrate to report on evidence as to the appointment and pay of Jageshra, *gorait*. The finding returned was that "the order appointing Jageshra is not available, but he must have been appointed in the usual way by the District Magistrate. Each *gorait* (Jageshra included) receives five bighas rent-free land in lieu of pay. No revenue is levied on such land by the Government, so that in effect he is supported partly by Government and partly by the landholders. *Gorait*s in this district largely take the place of *chaukidars*."

With this finding, and the evidence taken in compliance with the High Court's order, the appeal was again laid before the Court.

The Government Advocate (Mr. A. E. Ryves), in support of the appeal.

KNOX and AIKMAN, JJ.—After reading the additional evidence and the report furnished by the Magistrate of Gorakhpur, we think there is force in the contention of the learned Government Advocate that Jageshra was a public servant within the meaning of that term as defined in section 21 of the Indian Penal Code, clause (8), and the explanation attached to that section. He was therefore entitled to the protection given by section 99 of the Penal Code to public servants. We allow the appeal. We find Sidhu guilty of an offence under section 223 of the Indian Penal Code and direct that he suffer rigorous imprisonment for three months, with effect from the 2nd of November 1903. As the term has expired, the result is that he will be released at once.