

1913

MUHAMMAD
YASIN
v.
RAZIA
BEGAM.

the case we do not think that this Court ought to interfere in the manner suggested, and we dismiss the application with costs.

Application rejected.

APPELLATE CRIMINAL.

Before Mr. Justice Ryves.

EMPEROR v. BHANWAR *

Act no. XLV of 1860 (Indian Penal Code), section 75—Previous conviction by a court in a Native State.

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Held, that the provisions of section 75 of the Indian Penal Code cannot be applied when the previous conviction is one passed by a Criminal Court in a Native State. *Bahawal v. King-Emperor* (1) followed.

This was an appeal from a conviction under section 454 of the Indian Penal Code, and a sentence of five years' rigorous imprisonment. The accused had been twice previously convicted by the Criminal Courts of the Bharatpur State under sections 411 and 407 of the Code and in the case of the conviction now under appeal the Sessions Judge of Agra had applied the provisions of section 75 with a view to enhancement of the sentence. On the merits there was no doubt as to the propriety of the conviction; but the question raised was whether section 75 could properly be applied where the previous convictions were had in a Native State.

The officiating Government Pleader (Babu *Sital Prasad Ghosh*), for the Crown,

RYVES, J.—Bhanwar has been convicted by the learned Sessions Judge of Agra under section 454 of the Indian Penal Code and under the provisions of that section read with section 75 of the Indian Penal Code has been sentenced to five years' rigorous imprisonment. There can be no doubt whatever on the evidence, which was believed by both the assessors and the learned Judge, that the accused did commit the offence with which he was charged; but with regard to the application of section 75 I have great doubt. The accused admits two previous convictions, one under section 411, Indian Penal Code, and another under section

* Criminal Appeal no. 1046 of 1919 from an order of Piarri Lal, Additional Sessions Judge of Muttra, dated the 30th of August, 1919.

(1) (1913) 48 Punj. Rec., Cr. J., 64.

407. Both these convictions were made by the Digh Nizamats in the Bharatpur State. I have no information as to the nature or constitution of this court. The question is whether section 75, as amended by Act III of 1910, contemplates a conviction by a court of this kind. The point was considered in *Bahawal v. King-Emperor* (1), and it was held that a previous conviction held by a Criminal Court in Bikaner could not come within the scope of the section. Under the circumstances I think section 75 is not shown to be applicable in this case. Having regard to all the circumstances of the case a sentence of three years' rigorous imprisonment will meet the ends of justice. With this modification I dismiss the appeal.

Sentence reduced.

Before Mr. Justice Piggott and Mr. Justice Dalal.

EMPEROR v. JHABBU.*

Criminal Procedure Code, sections 464, 465—Insanity—Inquiry into present un soundness of mind of accused person to precede his trial on the substantive charge.

Where there is any reason for supposing that an accused person may be of unsound mind and consequently incapable of making his defence, it is imperatively necessary that this question should be inquired into or tried under the provisions of section 464 or section 465 of the Code of Criminal Procedure before the Court proceeds to inquire into or try the substantive charge against the accused. *Muhammad Husain v. King-Emperor* (2), referred to.

The facts of this case were as follows:—

The accused, a blacksmith, was convicted of the murder of his elder brother's wife. The case for the prosecution was that the wife of the accused and the deceased were one day laughing and joking among themselves in the presence of the accused who resented this disrespectful behaviour and abused the two ladies. At night he got up from his bed and with a heavy hammer struck the deceased on the head and killed her. The defence put forward was insanity. Before the committing Magistrate the accused said that he did not remember whether he killed the woman and before the Sessions Judge he did not say anything and no witness was produced in either court for his defence.

* Criminal Appeal no. 981 of 1919, from an order of H. E. Holmes, Sessions Judge of Bareilly, dated the 21st of August, 1919.

(1) (1913) 48 *Punj. Rec., Cr. J.*, 64. (2) (1912) 15 *Oudh Cases*, 321.

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