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Court who referred this matter to a Bench, this view has already been taken in other High Courts, and we are of opinion that in view of the change of law the judgment of the Bench in the case of *Emperor* v. *Matan* (1) need no longer be followed.

In the present case we consider that the matter has gone far enough, and we do not propose that this case should go back for decision on the question which has not yet been tried, namely whether the affidavit was or was not false. With these observations we direct that the record be returned.

APPELLATE CRIMINAL

Before Mr. Justice Pullan and Mr. Justice Thom

EMPEROR *v.* RAM CHAND AND OTHERS *

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Indian Penal Code, section 395—Dacoity—Resistance or violence not a necessary ingredient.

In a case of dacoity the circumstance that the inmates of the house, seeing the large number of the dacoits, do not offer any resistance and no force or violence is required or used does not reduce the dacoity to a theft.

The Government Pleader (Mr. *Sankar Saran*), for the Crown.

Appeal from jail.

PULLAN and THOM, JJ. :—This is an appeal by three persons, Ram Chand, Reoti and Munshi, who have been convicted of an offence under section 380 of the Indian Penal Code and each sentenced to three years' rigorous imprisonment. They had been charged originally under section 395 of the Indian Penal Code, and when their appeals were read by a Judge of this Court notice was issued to all three appellants to show cause why their

*Criminal Appeal No. 45 of 1932, from an order of Govind Sarup Mathur, Sessions Judge of Mainpuri, dated the 23rd of November, 1931.

(1) (1910) I.L.R., 33 All., 163.

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sentence should not be enhanced. This is a very clear case of dacoity. In the first report it was said that there were 14 or 15 dacoits, and the approver, whose evidence has been believed by the Judge, says that there were 12. They entered the house in the night and they took ornaments and a considerable sum of money. It is said that they took Rs.2,000 in cash and ornaments worth Rs.164. There is nothing in the method in which the offence was committed to distinguish it from an ordinary dacoity, and the evidence against all these persons is particularly clear. Munshi himself made a confession which he retracted, and he is also mentioned by the approver whose name is also Munshi. He was identified by several witnesses. The other two appellants were mentioned both by the approver and by Munshi Kachhi in his retracted confession, and stolen ornaments were found in the possession of both of them.

The Judge has laid down a proposition of law which cannot possibly be accepted. He has said: "Probably the inmates did not resist the dacoits, seeing their large number, and so peacefully and calmly without using any force or show of force the dacoits acquired the property, and so the offence comes technically within the purview of section 380 of the Indian Penal Code." If this were so, any dacoity in which no resistance is offered and no violence required will cease to be a dacoity and should be treated as a theft. This decision of the learned Judge shows that he has entirely failed to understand a section of the Indian Penal Code which in the district of Mainpuri, where he is the Sessions Judge, he must have occasion to use almost daily. We cannot alter the section under which he has chosen to convict these persons, and no doubt they are guilty under that section as in the course of committing the dacoity they also committed theft from a building. All that we can do is to emphasise our opinion that the view taken by the learned Judge is entirely wrong, to dismiss the appeal and to enhance the sentence under section 380 of the Indian Penal Code to

five years' rigorous imprisonment in the case of each of the appellants.

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REVISIONAL CRIMINAL

Before Mr. Justice Pullan

EMPEROR *v.* GURDIAL AND OTHERS *

1932 *October*, 5

Indian Penal Code, section 424—Removal of crops attached in execution of decree—Warrant of attachment executed after the date on which it was returnable—Attachment invalid and removal no offence—Civil Procedure Code, order XXI, rule 24(3).

The provisions of order XXI, rule 24(3) of the Civil Procedure Code are mandatory and where the process has a date fixed for its return under this rule it cannot be executed after that date. So, where property is attached after the date fixed for the return of the warrant of attachment, the property is not lawfully attached and the owner does not commit an offence under section 424 of the Indian Penal Code by removing the attached property from the possession of the custodian and taking it into his own use.

Mr. *K. D. Malaviya*, for the applicants.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

PULLAN, J. :—This is an application in revision of an order of the Sessions Judge of Mainpuri. The four applicants are cultivators whose crop was attached in execution of a decree and they have been prosecuted under section 424 of the Indian Penal Code for removing that crop from the possession of the *shahna*. The main ground for revision of the order is that the warrant of attachment was returnable on the 12th of April, 1932, and the attachment was made on the 15th of April, 1932. The warrant, therefore, had no force on

*Criminal Revision No. 612 of 1932, from an order of Babu Ganga Prasad Varma, Sessions Judge of Mainpuri, dated the 6th of August, 1932.