

REVISIONAL CRIMINAL

*Before Mr. Justice Ziaul Hasan*1939
April, 4SHIV NARAIN AND ANOTHER (ACCUSED) *v.* KING-EMPEROR
(COMPLAINANT)*

Penal Code (Act 45 of 1860), section 380—Theft—Whipping sentence, when can be inflicted in case of theft under section 380. Indian Penal Code—Whipping Act (IV of 1909), sections 2 and 3.

An offender in a case of theft under section 380, Indian Penal Code, can be sentenced to whipping but only in lieu of the punishment of imprisonment or fine to which he is liable under the Code.

None for the accused.

Assistant Government Advocate for Crown.

ZIAUL HASAN, J.:—This is a reference by the learned Sessions Judge of Sitapur recommending that the sentence of whipping imposed on Sheo Narain and Lalji in addition to one year's rigorous imprisonment for an offence under section 380 be set aside.

It appears that originally three persons namely Sheo Narain, Lalji and Saifu were convicted by a Magistrate of the first class under section 380, Indian Penal Code and sentenced to one year's rigorous imprisonment and ten stripes each. All of them appealed against their conviction but the learned Additional Sessions Judge who heard the appeal upheld their conviction. Saifu filed an application in revision in this Court and he was acquitted. This reference is with regard to the other two whose appeal has been dismissed.

The view of the learned Judge is that in a case of theft under section 380, Indian Penal Code, a sentence of whipping can be passed in lieu of but not in addition to the sentence of imprisonment prescribed by the Indian Penal Code. The learned Assistant Government Advocate disputes the correctness of this view but I am of opinion that the learned Judge is right in the view he

*Criminal Reference No. 8 of 1939, made by N. Storr, Esq., I.C.S., Sessions Judge of Sitapur.

has taken. Section 2 of the Whipping Act of 1909 only lays down as a general proposition that offenders are also liable to the punishment of whipping in addition to the punishments described in section 53, Indian Penal Code, which do not include whipping; but a comparison of sections 3 and 4 of the Act leaves no room for doubt that in regard to the offences mentioned in section 3, the intention of the Legislature was that whipping should be inflicted, if at all, in lieu of any punishment to which the offender may be liable under the Indian Penal Code, and it is only in case of offences under sections 375, 377, 390 and 391 of the Indian Penal Code, and of abetment of or attempt at an offence under section 375, that a person can be punished with whipping in addition to any punishment that can be awarded under the Indian Penal Code. Theft under section 380, Indian Penal Code, is included in the offences mentioned in section 3. Therefore an offender under section 380, Indian Penal Code, can be sentenced to whipping but only in lieu of the punishment of imprisonment or fine to which he is liable under the Code.

I, therefore, accept the reference and set aside the sentence of whipping passed on Sheo Narain and Lal Ji. Let the record be returned.

Reference accepted.

APPELLATE CRIMINAL

*Before Mr. Justice Ziaul Hasan, Acting Chief Judge, and
Mr. Justice J. R. W. Bennett*

KING-EMPEROR (COMPLAINANT-APPELLANT) *v.* MENDAI
AND OTHERS (ACCUSED-RESPONDENTS)*

1939
July, 26

*Murder charge based on purely circumstantial evidence—
Evidence—Circumstantial evidence, when sufficient to base
conviction for murder—Circumstantial evidence, value of.*
Where a charge of murder is based purely on circumstantial evidence that evidence must point conclusively to the guilt of the accused and must practically exclude the possibility of

*Criminal Appeal No. 148 of 1939, against the order of Mr. Bhagwat Prasad, Sessions Judge of Bara Banki, dated the 24th February, 1939.