

APPELLATE CRIMINAL.

Before Mr. Justice Carr.

PO THAUNG

v.

KING-EMPEROR.*

1927

Nov. 28.

Whipping Act (IV of 1909), s. 4—Sentence of whipping whether justified for offences under s. 394, Indian Penal Code.

Held, that before a sentence of whipping in addition to imprisonment can be passed on a person found guilty under section 394, Indian Penal Code, there must also be a finding that he himself caused hurt while committing the robbery.

CARR, J.—The appellant Nga Po Myit pleaded guilty. In the circumstances of the case I see no sufficient reason for interference with the sentence passed on him.

Nga Po Thaung was caught redhanded and there is no doubt of his guilt. But in my view the combined sentence of whipping and imprisonment passed on him is illegal. Section 394, Indian Penal Code, by its terms clearly shows that any person taking part in the commission of a robbery in which hurt is caused by any of the robbers is liable to punishment under that section. But section 4 of the Whipping Act is differently worded. It provides that a person may be punished with whipping in addition to or in lieu of any other punishment if he “causes hurt in committing robbery.” This clearly applies only to a person who himself causes hurt. Therefore, before a sentence of whipping in addition to imprisonment can be passed on a person found guilty under section 394, Indian Penal Code, there must be also a finding that he himself caused hurt while committing the

* Criminal Appeals Nos. 1373 and 1434 of 1927.

robbery. In this respect section 4 of the Whipping Act is analogous to sections 397 and 398 of the Penal Code, which apply only to persons who while committing the offence in question themselves are armed with or use a deadly weapon or who themselves cause grievous hurt.

In this case there is no finding that Nga Po Thaung himself caused hurt, nor does there seem to be any evidence on which such a finding could have been based..

I dismiss the appeal of Nga Po Myit.

I confirm the conviction and the sentence of five years' rigorous imprisonment passed on Nga Po Thaung, but set aside the sentence of whipping also passed on him.

1927
 PO THAUNG
 v.
 KING-
 EMPEROR.
 CARR, J.

APPELLATE CRIMINAL.

Before Mr. Justice Baguley.

RANGASWAMI CHETTYAR

v.

MAUNG PO KU AND THREE.*

1927
 Nov. 28.

Penal Code (Act XLV of 1860), ss. 464, 467—Fraudulent execution of document on an alleged date other than the actual date of execution is forgery—Alteration of date of purchase of stamp-paper only evidence to show forgery of document engrossed thereon.

Complainant filed a suit against the first three respondents and obtained a temporary injunction order against them to prevent alienation of certain property. Some twelve days after the service of the summonses and four days before the notice of injunction was served on them, the first three respondents presented for registration a document purporting to be a mortgage of the property covered by the injunction, and purporting to be executed by them in favour of the 4th respondent some three months prior to the suit. Complainant asserted that the document could not have been executed on such earlier date, as the stamp-paper on which the document was engrossed was bought only two days before the registration of the document and there was an alteration of the date on which the stamp-paper was bought. Respondents were charged under

* Criminal Revision No. 460B of 1927.