

APPELLATE CRIMINAL.

Before Mr. Justice Chari.

NGA NYI GYI

v.

KING-EMPEROR.

1929

July 29.

Whipping—imprisonment sentences in two different cases against a person collectively exceeding seven years—Additional whipping sentence illegal—Criminal Procedure Code (Act V of 1898), Section 393—Burma Act VIII of 1927.

Where a person who is sentenced in two different cases to punishment, which collectively exceed the term of seven years, he cannot be punished in addition with whipping under the provisions of Burma Act VIII of 1927.

Tun Byu, Assistant Government Advocate, for the Crown.

CHARI, J.—The accused in this case was properly identified by Ma Sein Pu and his guilt has been established.

The case was admitted because a sentence of whipping was passed in addition to the seven years' rigorous imprisonment passed on the accused. In a previous case, Criminal Regular No. 140 of 1929 in the Court of the same Magistrate the accused was sentenced to four years' rigorous imprisonment, and the sentence of seven years passed on him was directed to run after the expiry of the sentence in the previous case.

The question arises whether a sentence of whipping is legal. Under section 393 of the Criminal Procedure Code no male sentenced to death or to transportation or to penal servitude or to imprisonment for more than five years could be punished with whipping. This has been altered by the Burma Act VIII of 1927 and the term of five has been extended to seven years.

1929
NGA NYI
GYI
v.
KING-
EMPEROR.
CHARI, J.

The question for decision is whether a person, who is sentenced in two different cases to punishments which collectively exceed the term of seven years, could be punished with whipping. In a Madras case (I.L.R. 1 Mad. 56) it has been held that a person, who has been punished with the classes of punishment specified in section 393 of the Criminal Procedure Code but in a different case and for a different offence, could not be punished with whipping in a subsequent case in which he has been convicted. It seems to me, therefore, that the word "sentenced" which occurs in section 393, Criminal Procedure Code, and in the Burma Act VIII of 1927, must be read in a general sense, and, if a person is sentenced for any period exceeding the period fixed by the Act whether in conviction in one case or more than one, he cannot be punished with whipping. The order of whipping in this case is illegal and therefore set aside.

The explanation offered by the District Magistrate is accepted. The trial Magistrate's explanation is also accepted, as the question is not free from doubt and the section of the Burma Act is undoubtedly capable of the construction which the learned Magistrate put on it.