

## REVISIONAL CRIMINAL.

*Before Mr. Justice Harrison.*

FATTEH MUHAMMAD AND OTHERS, Petitioners

*versus*

THE CROWN, Respondent.

Criminal Revision No. 754 of 1926.

*Criminal Procedure Code, Act V of 1898, section 403—  
Single act with two distinct results—Acquittal in respect of  
one result—Subsequent trial in respect of the other result—  
whether competent.*

The petitioners went into a Muhammadan graveyard and there cut down a tree. They were convicted under section 297, Indian Penal Code, by the trial Magistrate for having hurt the religious feelings of the Muhammadans. They were acquitted by the District Magistrate on appeal, who thereupon ordered them to be prosecuted for theft.

*Held*, that on the principle of "*autrefois acquit*" no further action could be taken against the accused after they had been acquitted on the first charge, as the act was one, though it may have had two distinct results of hurting the religious feelings of those interested in the graveyard and causing wrongful loss to the Muhammadan community.

*Ram Sahay Ram v. Emperor* (1), *Emperor v. Prasanna Kumar Das* (2), and *Emperor v. Jivram Dankarji* (3), distinguished.

*Application for revision of the order of H. F. Forbes, Esquire, Sessions Judge, Attock, at Campbellpur, dated the 30th April 1926, affirming that of M. Sher Muhammad Khan, Magistrate, 2nd Class, Attock, dated the 28th March 1926, framing the charge against the accused petitioners.*

LACHEMI NARAIN and DIN DAYAL, for Petitioners.

ABDUL RASHID, Assistant Legal Remembrancer,  
for Respondent.

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(1) (1920) I. L. R. 48 Cal. 78.      (2) (1904) I. L. R. 31 Cal. 1007.

(3) (1915) I. L. R. 40 Bom. 97.

## JUDGMENT.

1926

FATTEH  
 MUHAMMAD  
 v.  
 THE CROWN.  
 HARRISON J.

HARRISON J.—In this case seven men were sent up for trial under section 297 and convicted by the Magistrate. They were acquitted by the District Magistrate on appeal, who thereupon ordered them to be prosecuted for theft. A charge was framed and they applied for revision to the Sessions Judge. The application was dismissed and a petition to this Court has been admitted.

The facts alleged are that these seven men went into a Muhammadan graveyard and there cut down a tree. The cutting down of the tree was in the first instance said to have hurt the religious feelings of the Muhammadans, and now it is said that by the cutting down they committed the offence of theft. Counsel for the Crown has relied on *Ram Sahay Ram v. Emperor* (1), *Emperor v. Prasanna Kumar Das* (2) and *Emperor v. Jivram Dankarji* (3). None of these cases, in my opinion, throw any light upon the position. This is not a case of forging a document and then making use of it—nor do the facts in this case resemble those of any of the authorities quoted. The action complained of is the cutting of the tree. This may have had two distinct results of hurting the religious feelings of those interested in the graveyard and of causing wrongful loss to the Muhammadan community. The act, however, was one. On the principle of “*autrefois acquit*” no further action could be taken against the accused after they had been acquitted on the first charge. I accept their application and quash the charge.

A. N. C.

*Revision accepted*

(1) (1920) I. L. R. 48 Cal. 78. (2) (1904) I. L. R. 31 Cal. 1007.

(3) (1915) I. L. R. 40 Bom. 97.