

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

GOBIND KOERI

v.

EMPEROR.*

1902
Feb. 7.

Joint trial—Several persons—Offences not committed in same transaction—Irregularity—Illegality—Criminal Procedure Code (Act V of 1893) ss. 235, 239 and 537. Penal Code (Act XLV of 1860) s. 225—Indian Railways Act (IX of 1890) s. 123.

Gobind Koeri was caught by some persons placing clods of earth on a railway line. While being taken away by them, Gobind Koeri was shortly afterwards rescued by Hira Mander and Manger Koeri. Gobind Koeri was charged under s. 128 of the Railway Act for placing clods on the line. Hira Mander and Manger Koeri were charged under s. 225 of the Penal Code with rescuing Gobind Koeri from lawful custody. All three persons were tried jointly in one trial and were convicted.

Held, that the offences not having been committed in the same transaction, the persons accused of each of these offences should have been tried separately, and that the Court had no jurisdiction to try them in the same trial.

Subrahmanya Ayyar v. King-Emperor (1) followed.

THE petitioners Gobind Koeri and another obtained a Rule calling upon the District Magistrate to show cause why the conviction and sentences passed on them should not be set aside on the ground that the joint trial of them for different offences, not committed in the same transaction, was not permitted by law.

On the 17th May 1901 certain gangmen who were returning home from work saw three boys putting clods of earth on the line of the Bengal and North-Western Railway near Pasraha. One of the boys, the accused Gobind Koeri, was caught, and while being taken along by the gangmen was shortly afterwards rescued by some men, among whom were the accused Hira Mander and Manger Koeri.

The accused Gobind Koeri was charged under s. 128 of the Railway Act IX of 1890 for placing clods of earth on the

* Criminal Revision No. 951 of 1901, made against the order passed by W. H. Vincent, Esq., Sessions Judge of Bhagalpur, dated the 5th of October 1901, confirming the order of E. F. Ainslie, Esq., Deputy Magistrate of Monghyr, dated the 1st of October 1901.

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railway line, and the accused Hira Mander and Manger Koeri were charged under s. 225 of the Penal Code with rescuing Gobind Koeri from lawful custody.

The three accused were tried jointly in one trial, and were convicted and sentenced to various terms of imprisonment.

Babu Dwarka Nath Mitter for the petitioners.

Babu Srish Chunder Chowdhry for the Crown.

PRINSEP and STEPHEN JJ. A Rule was granted in this case to consider whether the conviction and sentences should not be set aside on the ground that the joint trial of these petitioners for different offences, not committed in the same transaction, was not permitted by law. Of the three petitioners before us, one has been convicted under the Railway Act of unlawfully obstructing the railway by placing clods on the lines. The other two have been convicted under s. 225 of the Indian Penal Code of rescuing him from lawful arrest. S. 239 of the Code of Criminal Procedure declares:—"When more persons than one are accused of the same offence or of different offences committed in the same transaction, they may be charged and tried together or separately as the Court thinks fit; and the provisions contained in the former part of this Chapter shall apply to all such charges." Now s. 235 in regard to the joinder of different offences must be read with s. 239, and it is, no doubt, one of the sections referred to in s. 239. The question arises whether the offence under the Railway Act and the unlawful rescue of the person arrested were offences committed in the same transaction. We think that they were clearly distinct, and in this view the persons accused of each of these offences should have been tried separately. The learned Government Pleader, who appears to defend the order, refers to s. 537. But notwithstanding reported cases of the Indian High Courts, which would be applicable to the present case, if it be dealt with under s. 537, we think that the recent judgment of their Lordships of the Privy Council in the case of *Subrahmania Ayyar v. King-Emperor* (1) is a binding authority for holding that the Court had no jurisdiction to try persons accused of these two separate and distinct

offences in the same trial. We accordingly set aside the conviction and sentences, and leave it to the District Magistrate to consider whether, having regard to the sentences passed and undergone, it is necessary that a fresh trial should be held.

D. S.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

MOHENDRO NATH DAS GUPTA

v.

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Witness, examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Possession of forged or counterfeit currency notes—Distinct offences—Separate trial—Criminal Procedure Code (Act V of 1898) ss. 233 and 540—Penal Code (Act XLV of 1860) ss. 411 and 489 (c).

During the trial of a case the accused obtained a process for the attendance of a witness. Before the witness appeared the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so.

Held, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him.

Held, also, that offences under ss. 411 and 489 (c) of the Penal Code are distinct offences and should be tried separately.

THE accused Mohendro Nath Das Gupta obtained a Rule calling upon the District Magistrate of Chittagong to show cause why the conviction and sentence of the accused under s. 411 of the Penal Code should not be set aside on the ground—

(1) that the evidence disclosed the commission of an offence under s. 489 (c) of the Penal Code, as recently amended, an offence exclusively triable by a Court of Session;

(2) that the accused was entitled to cross-examine the Inspector who had been called and examined as a witness by the Court.

On the 28th August 1900, two Marwaris sent from Chittagong a sum of Rs. 1,700 in currency notes—one of Rs. 1,000, another of Rs. 500, and two of Rs. 100, the notes being in halves in two

* Criminal Revision No. 952 of 1901.