

(1880) 02 CAL CK 0008

Calcutta High Court

Case No: None

Roshun Doosadh and Others

APPELLANT

Vs

The Empress

RESPONDENT

Date of Decision: Feb. 10, 1880

Acts Referred:

- Evidence Act, 1872 - Section 54
- Penal Code, 1860 (IPC) - Section 411

Citation: (1880) ILR (Cal) 768

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Prinsep, J.

We think that there roust be a new Trial in this case.

2. The three persons were charged, u/s 411 of the Indian Penal Code, with having dishonestly been in possession of certain articles claimed by the complainant, as property stolen from his house. A dohur and pugree were found with the prisoner Roshun. The complainant and a friend identified these as the property of the former; Roshun, on the other hand, stated that they were his, but that statement was unsupported by any evidence. The Sessions Judge was quite correct in putting it to the jury, "to say whether there is any reason to. believe that they (the complainant and his friend) have made any mistake," but he was clearly wrong in adding, "the fact that he (Roshun) has been twice imprisoned for theft is also not without its weight, and should be taken by you into consideration when deciding as to the credibility of the evidence of identification." Section 54 of the Evidence Act, though it declares that "the fact that the accused person has been previously convicted of an offence is relevant,"--also declares that "the fact that he has a bad character is irrelevant," except under certain circumstances, which do not exist in the present case. The evidence of the prisoner's previous convictions has been

treated by the Sessions Judge as evidence of his character, which he has told the jury to consider in determining the value of his claim to the property found in his possession. In this respect the Sessions Judge has clearly misdirected the jury, because this evidence was irrelevant and inadmissible. He should have merely pointed out to the jury the conflicting claim to this property, and called upon them to determine which they believed, at the same time reminding them that the prisoner was entitled to the benefit of any reasonable doubt. We think that the prisoner Roshun has been prejudiced by this error, and that he ought to have a retrial. Except under very special circumstances none of which arise here, the proper object of using convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.