
(1866) 07 CAL CK 0002

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Ramcharan Kairi and
Another

RESPONDENT

Date of Decision: July 9, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the Sessions Judge was wrong in sending the case back to be retried on the two charges mentioned in his order. The prisoner clearly could not be retried under s. 380, as he had already been tried, convicted, and sentenced under that section, as the Sessions Judge says, and properly says under the facts found by him erroneously. We think that the Sessions Judge was wrong in ordering the prisoner to be retried under s. 457, the prisoner having been already convicted and sentenced under s. 456. We think that the Sessions Judge ought to have set aside the conviction and sentence under s. 380, the conviction and sentence under s. 456 would then have remained. The prisoner appealed upon the ground that he was not guilty of an offence under s. 456. Upon that appeal the Sessions Judge could not set aside the conviction under s. 456, upon the ground that he was guilty under s. 457. If he was guilty of lurking house-trespass by night with intent to commit theft, under s. 457, he was guilty of lurking house-trespass by night. Having been tried and convicted of the minor offence, the Sessions Judge could not, upon the appeal of the prisoner, set aside the conviction in order that he might be tried and punished for the aggravated offence under s. 457. The Judge's order should be altered accordingly, the effect of which will be that the sentence under s. 456 will stand, and the conviction and sentence under s. 380 will be reversed.

2. The Magistrate should be cautioned to be more careful in future, and not to split up one single aggravated offence into separate minor offences.

3. As regards the prisoner who has not appealed, he may have the benefit of a similar order by this Court as a Court of Revision.

4. The case will go back to the Division Bench.

Kemp, Seton-Karr and Campbell, JJ.

Norman, J.

I concur, though not without some doubts whether the Sessions Judge"s order directing that the prisoner should be tried under s. 457 is not correct, whether we might have treated the splitting of the charge as an error in law justifying the Judge in reversing the whole sentence of the Magistrate.