
(1922) 03 AHC CK 0043
In the Allahabad High Court

Badri Prasad

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 24-03-1922

Acts Referred:

Penal Code, 1860 (IPC) — Section 390, 392

Citation : AIR 1922 All 245 : 66 Ind. Cas. 418

Hon'ble Judges : Grim Wood Mears, C.J.; P. C. Banerjee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Grim Wood Mears, C.J.—In this case one Badri Prasad was convicted by a Magistrate of the First Class of Aligarh. The prosecution case against him was, that he, with two other companions, on the evening of the 21st of January, followed three servants who were going to the house of their master, Jarao Lal, and who had at the time with them some money and a considerable quantity of valuables, said to be worth about Rs. 700, When two of the servants had entered the shop of their master, Badri Prasad was proved to the satisfaction of the Magistrate to have struck the third and rearmost man, Jwala Prasad, with a stout danda on the head; and in the confusion which resulted either Badri Prasad or one of his associates got hold of the box containing the valuables and got away with it. The blow struck was not a severe one. After that, Badri Prasad ran away. The man who had been struck was apparently able to follow him and some body or other caught Badri Prasad, he having slipped up. In these circumstances, the Magistrate inflicted a fine of Rs. 100 with an alternative period of imprisonment, if that fine was not paid, and sentenced Badri Prasad also to thirty stripes. Badri Prasad preferred an appeal to this Court and it has been admitted upon the question of sentence only-and, at the same time, notice has been served on him to show cause why the sentence should not be enhanced or otherwise altered, This was a charge u/s 390 and the penalty is prescribed u/s 392, An examination of that section shows that a fine alone is not a permitted punishment for a robbery. Robbery, under these circumstances, may be punished by rigorous

imprisonment and by a fine, and in certain cases by whipping in addition. But the Magistrate erred in law in sentencing the accused to a fine and a fine unaccompanied by imprisonment. We have got the whole matter before us and I personally wish to say, and I wish it to be known, that, in my view, when a person inflicts pain upon another and when the offense is one which permits of the penalty of whipping, I think it a good thing to inflict that penalty. There are, of course, circumstances in which the actual hurt caused is very slight, and that is a circumstance to which attention has to be paid; and though I myself should certainly have reduced the number of stripes awarded to this young man in this case, I should not myself have eliminated the punishment of whipping altogether; but I see that there are other points of view in this case. The accused is a young man, a Brahmin, and the degree of injury which he inflicted on Jwala Prasad was extremely slight, perhaps, in a sense, negligible. Therefore, I defer very gladly to what I have no doubt is in this case Mr. Justice Banerji's better judgment on the matter, I am quite in accord with him that there must be a substantial period of imprisonment and, therefore, we alter the nature of the punishment which Badri Prasad must undergo, and we sentence him to twelve months' rigorous imprisonment with effect from the date of his arrest. We maintain the fine of imprisonment with the alternative period of imprisonment if that fine be not paid, and we wipe out that part of the sentence which orders him to receive a whipping.

P. C. Banerjee, J.

2. I am of opinion that the Court below was wrong in not inflicting on the appellant a sentence of imprisonment. A sentence of imprisonment is an essential sentence u/s 392 of the Indian Penal Code. To this sentence a fine may be added and, u/s 4 of the Whipping Act, a sentence of whipping may be imposed where, in the commission of robbery, hurt is caused. Therefore, the sentence of fine only was an illegal sentence, and a sentence of imprisonment ought to have been imposed. The sentence of whipping was not an illegal sentence but, in the circumstances of the present case, I think a sentence of whipping should not have been inflicted. That is a punishment which, in view of the provisions of the Whipping Act, as amended, should be inflicted in cases where there is a certain amount of aggravation in the commission of the original offence. In the present case the offence was the first offence, so far as is known, committed by Badri Prasad. He is a young man and is a shop-keeper. The hurt caused was obviously slight. A sentence of twelve months' rigorous imprisonment would, in my opinion, be a sufficiently deterrent punishment so far as he is concerned, in addition to the fine which the Court below imposed on him. I, therefore, agree in the order proposed by the learned Chief Justice.