

(1935) 07 PAT CK 0019
In the Patna High Court
Case No : Criminal Ref. No. 19 of 1935

Emperor

APPELLANT

Vs

Etwaru Dome and others

RESPONDENT

Date of Decision : 15-07-1935

Acts Referred:

Citation : (1935) 07 PAT CK 0019

Judgement

1. This is a reference by the Deputy Commissioner of Palamau in a case in which three persons Etwaru Dome, Phaguni Dome and Sahdeo Dome, were tried on a charge of stealing two pigs. Against the first two accused their previous conviction was also proved. The learned Magistrate who tried the case found the accused guilty and sentenced Etwaru and Phaguni to twenty stripes each under the Whipping Act and Sahdeo to ten stripes under the same Act. He also passed an order under S. 565, Criminal P.C., directing Etwaru and Phaguni to report their whereabouts for three years. The learned Deputy Commissioner points out that the order under S. 565, in the absence of a sentence of imprisonment is illegal, being contrary to S. 565 of the Act. He therefore recommends either that this order should be set aside or that a substantive sentence of imprisonment should be passed against all the accused persons. Section 3, Whipping Act, authorises the passing of the sentence of whipping "in lieu of" any punishment to which the accused charged of certain offences enumerated in the section has been convicted, and it is under this section, which includes S. 380, I.P.C., that the sentence in the present case was passed. It must therefore be taken that the sentence of whipping was, in the words of the section passed in lieu of the sentence of imprisonment which might have been passed under S. 380. There is ample authority that when a sentence of whipping is passed under S. 3, Whipping Act, a sentence of imprisonment in respect of the same offence is illegal. In this respect S. 3 differs from S. 4 which authorises the passing of the sentence of whipping in lieu of or in addition to any other punishment to which the accused is liable. The reference, in so far as it recommends that the order under S. 565, Criminal P.C., be set aside is accepted and that order is accordingly

set aside. In so far as the reference recommends the passing of a sentence of imprisonment it is rejected.