

On 12th September, 1894, the High Court passed an order on Mahomedsháh's appeal, acquitting him and reversing the conviction and sentence passed in his case.

1891.

IN RE
NABISHÁH.

Thereupon the present applicant, who was the nephew of the deceased Nabisháh, applied to the High Court to reverse the conviction and sentence passed upon the deceased Nabisháh, and order the fine levied from him to be refunded to his heirs.

Máneeksháh Jahángirsháh for the applicant.

PER CURIAM:—The Court's records that the appeal of the deceased Nabisháh Rahimansháh has abated under section 431 of the Code of Criminal Procedure. Under the circumstances we do not think we should take up the case under our revisional powers, as it depends on appreciation of evidence, and the judgment appealed against is not one of the kind about which this Court uses that jurisdiction as a general rule. The representatives of the deceased appellant have their remedy by application to the Governor in Council, and will be furnished, if they so desire, with a copy of the judgment of this Court on the appeal of the co-prisoner to support any such application.

Order accordingly.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS *v.* HORMUSJI NOWROJI LORD.*

1894.

August 29.

Penal Code (Act XLV of 1860), Sec. 279—Rash riding on a public way.

The accused was convicted of rash riding on a public way under section 279 of the Indian Penal Code (Act XLV of 1860). He contended that his conviction was bad, on the ground that there was no proof that any person was on the road in question at the time when he was alleged to have ridden in a rash or negligent manner.

Held, that though there was no such proof, it was competent to the Court to take into its consideration the probability of persons using the public way being placed in danger by the act of the accused. The accused's act came within the mischief struck at by section 279 of the Indian Penal Code and was included within its terms.

THIS was an application for the exercise of the High Court's Revisional Jurisdiction under section 439 of the Code of Criminal Procedure (Act X of 1882).

* Criminal Revision, No. 177 of 1894.

1894.

QUEEN-
EMPRESS
v.HORMUSJI
NOWROJI
LORD.

THE applicant, Hormusji Nowroji Lord, was charged under section 279 of the Indian Penal Code (Act XLV of 1860) with riding along the public road from Mátherán to Narel in a manner so rash as to endanger human life, or to be likely to cause hurt or injury.

The accused was convicted of the offence, and sentenced to pay a fine of Rs. 15.

Against this conviction and sentence the accused appealed to the Sub-Divisional Magistrate of the district on the ground, among others, that as there were no persons on the road at the time when he was riding whose lives were actually endangered, no offence had been committed.

This contention was overruled, and the conviction and sentence were confirmed on appeal.

The accused thereupon applied to the High Court under its revisional jurisdiction to set aside the conviction and sentence.

Inverarity (with him *Naráyan G. Chandávarkar*) for accused:—To sustain a conviction under section 279 of the Indian Penal Code, the prosecution must prove not only that the accused was riding rashly or negligently so as to endanger human life, but also that some person was actually there in a position of danger. See *Starling's Criminal Law*, p. 326. In the present case the evidence shows that there were no persons on the road from Mátherán to Narel, at the time the accused was riding, whose lives were endangered. The conviction, therefore, is bad.

There was no appearance for the Crown.

JARDINE, J.:—We think that although there is no proof of any person being on the part of the road between Narel and Mátherán on which and at the time when the accused was riding his horse in a rash or negligent manner, it was competent to the Magistrate to take into his consideration the probability of persons using that road being placed in danger by the act of the accused. What the accused is found to have done comes within the mischief struck at by section 279 of the Indian Penal Code, and we think is included within the words. The Court, therefore, declines to interfere.

Application rejected.