

PUNJAB LAW REPORTER, VOL. 1 [1900]
CRIMINAL JUDGEMENTS
(CHIEF COURT, PUNJAB) PG. 6
Before Mr. Justice Reid, Chief Judge, and Mr. Justice Maude.

QUEEN EMPRESS, *Versus* GAMAN,- (ACCUSED)

Case No. 1316 of 1899

*Solitary confinement – Criminal Procedure Code, Section 395 –
Indian Penal Code, Section 73*

*Held, that solitary confinement may be awarded to persons sentenced to rigorous imprisonment in lieu of whipping, under Section 395, Criminal Procedure Code.
Reference by J.G.M. Rennie, Esquire, Sessions Judge, Multan Division, dated 6th September 1899*

JUDGMENT.

MAUDE, J.-(23rd October 1899) – An accused person was convicted by a 1st Class Magistrates, under Section 379 of the Indian Penal Code, and was sentenced to whipping. The accused being considered to be unfit to undergo that punishment, the Magistrates revised the sentence, and in lieu of the whipping ordered the prisoner to undergo ten months rigorous imprisonment, including fifty days' solitary confinement. The Sessions Judge has forwarded the proceedings to this Court, and has recommended that the sentence of solitary confinement be remitted on the ground, that Section 395 of the Code of Criminal Procedure is a special section, overriding the ordinary law, and that, therefore, the accused cannot be sentenced to any punishment not specially authorised by that section.

[Old Ed. P. 10] We are unable to concur in the view taken by the learned Sessions Judge. There can be no doubt that the accused has been convicted of and has been sentenced to rigorous imprisonment for committing an offence for which, under the Indian Penal Code, the Magistrate had power to sentence him to rigorous imprisonment. Had the Magistrate passed the sentence, of rigorous imprisonment in the first instance, he had, under Section 73 of the Penal Code, power to award solitary confinement. We are unable to see that Section 395 of the Code of Criminal Procedure takes away this power, merely because it does not specifically state that solitary confinement may be ordered as a portion of the term of imprisonment. Section 1(2) enacts that "*in the absence of any "specific provision to the contrary, nothing contained in the Code shall affect any power conferred by any other law for the time being in force"*."

Had it been the intention of the Legislature that solitary confinement should not be awarded to persons sentenced to rigorous imprisonment in lieu of whipping, it is not unreasonable to suppose that a specific provision would have been made restricting the power conferred by Section 73 of the Penal Code. We are of opinion, therefore, that the Magistrate's order was not illegal, and we see no ground for interfering with this. The sentence of solitary confinement should now be carried out in due course.

A Touch of History - researched and produced by Sajid Malik