Queen-empresa Vs. Munna Lal and anr.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1888)ILR10All414

Judge : Tyrrell, J.

Appellant : Queen-empresa

Respondent : Munna Lal and anr.

Judgement :

Tyrrell, J.

1. This is an application arising out of a Sessions trial held at Cawnpore, in which Munna Lal and Badri were tried on a charge of murder, in a prosecution instituted on the complaint of one Misri Lal, the son of Sahib Din, deceased. The case for the prosecution appears to have been closed, the trial being held with the aid of assessors; the examination of the accused had been put in evidence, and the accused had expressed their intention of calling witnesses, when the presiding Judge closed the trial, holding that there was no evidence that the accused had committed the offence of murder, and the Judge proceeded to record a finding of acquittal. This application is made for revision of this order, on the ground that the Judge was not competent, under the circumstances of this ease, to make such an order. The order was made under the third paragraph of Section 289 of the Code of Criminal Procedure. If there had been no evidence on behalf of the prosecution, the order was right and legal. On the other hand, if there was any evidence which would be legal proof of the guilt of the accused in the event of the evidence being held to be trustworthy, the order was illegal.

2. Now, the Judge recorded that 'a number of eye-witnesses ' had deposed to seeing Sahib Din murdered, but he refused to believe them, because he thought them prejudiced' and discrepant in their statements. It has been argued by Mr. Spankie for the acquitted persons, Munna Lal and Badri, that the words 'there is no evidence' in Section 289 of the Criminal Procedure Code may be extended so as to mean no satisfactory, trustworthy, or conclusive evidence; but I do not think that this view is correct. If we were to understand the words in this sense, it would be competent to a Sessions Judge to exclude his assessors from their share of the trial whenever he thought the evidence unsatisfactory or inconclusive. He might terminate any trial before him without consulting the opinion and using the judgment of the assessors, by finding that the evidence was not to be believed, and by directing a verdict of acquittal to be recorded. It is clear that it is not the intention of the Legislature that the Sessions Judges should have such a power, or that assessors might be confined to the function of giving their opinions on the evidence, in those cases only, in which the

Judge was inclined to believe the evidence for the prosecution. Several rulings have been cited here to-day in support of the contrary proposition. They are to be found in Queen v. Musammat Mina Nuggerbhatin, 3 W. R., Cr., 6; Queen v. Bhugwan Lall, 15 W. R., Cr., 3; Queen v. Button Dass, 16 W.R., Cr., 19; In re Hurro Shaha, Ibid., Cr., 20, and Queen v Matam Mal, 22 W. R., Cr., 34. I have no doubt that the meaning of the third paragraph of Section 289 of the Criminal Procedure Code is, that if at a certain stage of a Sessions trial the Court is satisfied that there is not upon the record any evidence which, even if it were perfectly true, would amount to legal proof of the offence charged against the accused, then the Court has power, without consulting the assessors, to record a finding of not guilty. But the Sessions Judge, acting with the aid of assessors, has no such power because only he considers the evidence unsatisfactory, untrustworthy, or inconclusive. In my view a Court acting in this way acts without jurisdiction, and its order in discharging the accused is illegal. But I have been referred by the learned Counsel for the acquitted persons to a ruling of this Court In the matter of the petition of Narain Das I. L. R., 1 All., 610, in which procedure of this kind was designated as ' a serious irregularity.' I am willing to treat the order made by the Sessions Judge of Cawnpore, in this case, as being no more than a serious irregularity; and it would then be necessary to see whether, under Section 537 of the Criminal Procedure Code, the irregularity was one which has occasioned a failure of justice. To my mind it is obvious that there may have been and perhaps must have been, a failure of justice in consequence of the way in which the trial has been held. It is obvious that the prosecution must have been prejudiced by the omission of some important steps in the progress of the trial. The prosecution was debarred from summing up the case, and the Sessions Judge precluded himself from the advantage of taking the opinion of the assessors upon the evidence. Serious effects might have been produced upon his mind, if he had had the advantage of the opinion of the assessors, in a case, in which the whole question was, whether a considerable number of native witnesses of the lower ranks of life, had or had not told probable stories on behalf of the prosecution. And further, it is conceivable that if the case had proceeded to its legal termination, the proceedings which have since, in consequence of the Judge's order of acquittal, been taken against the son of Sahib Din and against his witnesses, might not have been instituted. But whether the Sessions Judge's order is illegal, as made without jurisdiction, or is a serious irregularity, I hold that it must be set aside, and I hereby set it aside and cancel all the proceedings held in the trial which terminated on the 13th September 1887.