

Emperor Vs. Daji Yesaba

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Court : Mumbai

Decided On : Oct-19-1915

Reported in : (1915)17BOMLR1072

Judge : Batchelor and ;Hayward, JJ.

Appeal No. : Criminal Confirmation No. 24 of 1915

Appellant : Emperor

Respondent : Daji Yesaba

Judgement :

Batchelor, J.

1. The appellants before us, who are five in number, were convicted by the learned Sessions Judge of Belgaum of the offence of murder. The conviction followed upon the unanimous verdict of the Jury.

2. Of the five accused persons before the Sessions Court, Nos. 3 and 4, Daji bin Yesaba and Bhima bin Shidlinga, were sentenced to death, that sentence being subject to this Court's confirmation. The other three accused were sentenced to transportation for life.

3. It appears to be the practice of this Court that where a prisoner has been sentenced to death, even though the conviction was had on the unanimous verdict

of a Jury, the whole case is reopened before the High Court both on matters of fact as well as on matters of law. In deference to that practice we have allowed Mr. Sirur, for the accused Nos. 3 and 4, to address us on all matters of evidence in the appeals. I desire, however, to reserve my own opinion as to the correctness of the practice to which I have alluded, should the question of its correctness ever arise for judicial decision. [After discussing the evidence at length his Lordship continued:-] On these grounds I am of opinion that the convictions must be confirmed.

4. The accused Nos. 3 and 4, upon whom the sentence of death has been passed, are proved to have taken the leading part in this brutal crime. The accused No. 2, whose part in the offence was hardly distinguishable, has been sentenced to transportation for life on account of his comparative youth, and with that sentence I agree. But in the case of accused Nos. 3 and 4 I agree also that the extreme sentence was rightly passed and should be enforced.

5. I would, therefore, confirm the convictions and sentences and dismiss these appeals.

Hayward, J.

6. I concur that the marks found on the body and the signs of struggle on the ground together with the evidence of the eye-witness establish that this was a case not of suicide but of murder. I also concur that the evidence of the witnesses together with the confessions of the accused has shown beyond any reasonable doubt that it was the accused who were guilty of conspiring together to commit this murder. There is no good ground in my opinion for interfering with the sentences of death passed by the learned Sessions Judge.

7. I desire to add this on the attitude to be adopted in scrutinizing proceedings submitted for confirmation : that no considered case has been cited before us in which it was held upon full argument that the evidence in support of the facts found by the Jury is laid open by the mere submission to the unrestricted judgment of the confirming Court. It would, no doubt, always be necessary to consider that evidence in order to ascertain that there had been no misdirection in the charge to

the Jury and to determine whether it would or would not be proper in all the circumstances to confirm the sentence of death passed by the Sessions Judge. But should the question, whether anything more than this is permitted, be hereafter raised, it seems to me that the answer would entirely depend on the interpretation of the language used in Sections 374 to 376 of the Criminal Procedure Code : and it is to be observed that the provisions of Section 374 do not require the convictions but only the sentences of death to be submitted for confirmation by the High Court. It is no doubt true, that Section 375 authorizes further inquiry or the taking of additional evidence in proper cases and that Section 376 gives power to acquit or alter the conviction whether the trial were with Assessors or a Jury. But the cases there contemplated might well be cases in which there had been an error of law, such as improperly withholding evidence from or misdirection in the charge to the Jury. And it; is significant that under the proviso to Section 376 it is only after the disposal of any appeal, which would only lie on a matter of law where the trial was by Jury under Section 418 of the Criminal Procedure Code, that the powers of confirmation or otherwise of the sentence of death can be exercised by the High Court.

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