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Emperor Vs. Nathu Rewa

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Court : Mumbai

Decided On : Oct-19-1915

Reported in : (1915)17BOMLR1074

Judge : Batchelor and ;Hayward, JJ.

Appeal No. : Criminal Appeal No. 420 of 1915

Appellant : Emperor

Respondent : Nathu Rewa

Judgement :

Batchelor, J.

1. This is an appeal by one Nathu Rewa from a conviction by the learned Additional Sessions Judge of Ahmedabad of the offence of robbery committed between sunset and sunrise on the highway under the 2nd part of Section 392 of the Indian Penal Code.

2. The proceedings leading up to this conviction are of an unusual character. The accused was originally committed to the Court of Session by the Magistrate under Section 392 of the Indian Penal Code, and, on the 30th of July, the trial of the accused began before the Additional Sessions Judge. The Public Prosecutor, however, added charges under Sections 214 and 411 of the Indian Penal Code

over and above the charge under Section 392. On the three charges the trial proceeded up to the point where the assessors gave their opinion. The assessors' opinions having been recorded, the learned Additional Sessions Judge reserved judgment. When, however, he came to write his judgment, he found himself to be of opinion that the trial had been illegal, inasmuch as the third charge under Section 214 of the Indian Penal Code had been improperly joined. He, therefore, in his own words, 'cancelled the trial and decided to hold a fresh trial against the accused.' This he conceived himself empowered to do under Section 537, Clause (a), of the Criminal Procedure Code. The new trial was accordingly held and the accused has been convicted as stated, though both the assessors were of opinion that the offence imputed had not been proved.

3. It appears to me that the present trial was invalid on the ground that the learned Additional Sessions Judge had no authority to cancel or set aside the trial which had originally been held. That trial, as I have said, had proceeded to the point where nothing remained but the delivery of judgment, And under Section 309 of the Criminal Procedure Code, the assessors opinions having been recorded, the Judge had no option but to give his judgment in accordance with the Code.

4. It is not, I think, arguable that Section 537, Clause (a), to which the learned Judge appeals, invested him with authority to cancel his own completed trial. That section must be read in the light of the interpretation placed upon it by the Privy Council in Subrahmania Ayyar v. King Emperor I.L.R. (1901) Mad. 61, P.C., where it was laid down that 'the section cannot avail to cure the disobedience to an express provision as to a mode of trial'. Here it seems to me that there was disobedience to the express provision of the Code as to the mode in which trials should be conducted. I am of opinion, therefore, that all the proceedings before the learned Additional Sessions Judge must now be set aside.

5. We have heard the learned pleaders on the merits of the case in order to guide our judgment to a decision as to whether we should or should not order a retrial. Having heard all that can be said on both sides, and having regard to the peculiar circumstances of the case and the evidence on the record, we are of opinion that there is no good ground for ordering a retrial. The accused must be acquitted and

discharged, and his bail bond will be discharged.

Hayward, J.

6. I concur.

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