

Emperor Vs. Sailani

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Court : Allahabad

Decided On : Oct-22-1913

Reported in : (1914)ILR36All4

Judge : Pramada Charan Banerji and ;Ryves, JJ.

Appellant : Emperor

Respondent : Sailani

Judgement :

Pramada Charan Banerji and Ryves, JJ.

1. Sailani and Ram Ghulam were originally put on their trial for causing simple hurt to one Kesri. That case was compounded, and in consequence both the accused persons were acquitted. Subsequently Kesri died, and a post mortem examination revealed the fact that his death was due to an injury which he received in the course of the assault made on him by Sailani and Ram Ghulam. The police challaned both these persons under Section 304 of the Indian Penal Code for causing the death of Kesri. The Magistrate committed Ram Ghulam to take his trial under Section 304, but held that the injury which was caused by Sailani to the back of the head of Kesri did not in any way contribute to his death, and that at the utmost Sailani could only be convicted of causing simple hurt under Section 323 of the Indian Penal Code. As he had already been acquitted on that charge the learned Magistrate refused to commit him. The learned Sessions Judge on perusal

of the record directed that Sailani also should be committed to the Sessions for trial under Section 304 of the Indian Penal Code. From that order this application for revision has been presented before us. It appears to us that there is no legal bar to the trial of Sailani on a charge under Section 304. Whether he can be convicted under that section will depend on the evidence in the case and if it is proved by that evidence that he is as much responsible for the death of Kesri as Ram Ghulam, that is to say, if the evidence enables the court to apply either Section 34 or Section 114 of the Indian Penal Code to the case. That is purely a question of fact to be determined by the court at the trial. A commitment can be set aside only on a point of law. As no such point arises in this case, we are unable to set aside the order of commitment. The application is, accordingly, rejected.

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