

Emperor Vs. Kadhe Mal

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Court : Allahabad

Decided On : Jul-07-1919

Reported in : (1920)ILR42All24

Judge : Piggott, J.

Appellant : Emperor

Respondent : Kadhe Mal

Judgement :

Piggott, J.

1. This appeal is closely connected with another which I have just disposed of, but the two cases differ in one essential point. In a certain civil suit in which one Debi Singh was being sued as a defendant for the recovery of a certain sum ' of money, Debi Singh produced in evidence a receipt purporting to have been given him by one Kishan Singh. The Civil Court decided against the genuineness of that receipt, and eventually Debi Singh was put on his trial for having produced in evidence a forged document, knowing it to be forged, and Kadhe Mal was separately placed on his trial for abetment of the forgery and for having given false evidence before the Civil Court. The two accused persona were tried separately, as required by the law, but in reality there had been no separate trial. The learned Sessions Judge commences his judgment against Kadhe Mal with the remark that the receipt in question has already been found to be a forged document in the trial of Dobi

Singh. He does not of course mean to say that this fact is conclusive against Kadhe Mal; but he has assumed that the evidence against Kadhe Mal is the same as that against Debi Singh and that the same court must necessarily come to the same finding in the two cases. Now Kishan Singh, whose signature appears on the receipt, had died before criminal proceedings were taken. The deposition which he had made at the civil trial was admissible in evidence against Debi Singh, but was not admissible against Kadhe Mal. If both the cases had been tried with the aid of jury, and Kadhe Mal's case had come before a different jury, it would have been the duty of the court to exclude from evidence the statement which Kishan Singh had made at the trial in the civil suit, and the jury would have been asked to return a verdict as against Kadhe Mal on the evidence available after the exclusion of that deposition. In my opinion no jury could have returned a verdict of guilty without having before them the sworn testimony of Kishan Singh, As I have pointed out in my judgment on Debi Singh's appeal, this sworn testimony is the decisive feature in the case. The rest of the prosecution evidence amounts to circumstantial evidence corroborating Kishan Singh's statement and warranting the court in believing him to have spoken the truth. It is not, in my opinion, evidence such as to justify affirmatively the finding that the receipt in question is a forged document. It may be that Kadhe Mal has been unduly fortunate in the circumstances of his trial, but the law requires him to be tried separately from Debi Singh, and I cannot overlook the fact that the evidence against the two men is by no means the same. I accept the appeal of Kadhe Mal, set aside the conviction and sentence against him and direct that he be released.