SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Baddan Vs. Emperor

Baddan Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/452847

Court : Allahabad

Decided On : Jul-20-1945

Reported in : AIR1946All253

Appellant : Baddan

Respondent : Emperor

Judgement :

Sinha, J.

1. The appellant, Baddan, has come in appeal before us from the sentence of death passed upon him by the learned Sessions Judge of Cawnpore under Section 302, Penal Code. There is along with the appeal the usual recommendation for the confirmation of the sentence. The learned Counsel for the appellant has challenged the order of the learned Sessions Judge on a legal ground. The trial started with the aid of three assessors, M. Ashfaq Ahmad Beg, B. Mannu Lal and M. Fateh Mamoor Khan. On 17th March 1945, one of the assessors, viz., M. Fateh Mamoor Khan did not attend the Court. The learned Judge chose to proceed with the case in his absence with the aid of the remaining two assessors. He passed the following order:

M. Fateh Mamoor Khan, assessor, has not come, I shall continue to hear the case without him, and I shall deal with him separately.

Section 284, Criminal P.C., provides that the trial should be held with the aid of at least three assessors. Section 285 provides for the contingency that

If in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

It was, no doubt, open to the learned Sessions Judge to continue the case with the aid of the remaining two assessors. But the section makes it clear that he ought to have ascertained whether the absence of Fateh Mamoor Khan was due to 'sufficient cause.' The judgment does not show what prevented Fateh Mamoor Khan from attending the Court and whether the learned Judge considered that his absence was due to sufficient cause within the meaning of the law. All that the order sheet shows is that he was; not present. It also does not show that the learned Judge took any steps which were practicable 'to enforce the attendance' of Fateh Mamoor Khan. We think that this was a material irregularity which has vitiated the trial of the accused. We, therefore, set aside the order of the learned Sessions Judge and send the case back for trial according to law. The case should be tried by the learned Additional Sessions Judge of Cawnpore.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com