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Subedar Singh Vs. Emperor

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Court : Allahabad

Decided On : Aug-12-1942

Reported in : AIR1943All272

Appellant : Subedar Singh

Respondent : Emperor

Judgement :

Collister, J.

1. Since there is a disagreement between us as regards one of the appellants, namely Subedar Singh, this case must be referred to a third Judge under Section 429, Criminal P. C. It is only the case of this particular appellant which need be referred; not the whole case. In Sarat Chandra Mitra v. Emperor ('11) 38 Cal. 202. Mookerjee J. observed :

I am not now concerned with the question of the trial of two prisoners with regard to one of whom the Judges composing the Court of appeal may be agreed in their opinion while as regards the other the Judges may be equally divided in opinion. In such a contingency it is quite possible to maintain the view that, upon a reasonable interpretation of the term 'case' what has to be laid before another Judge is the ease of the prisoner as to whom the Judges are equally divided in opinion.

2. This view was followed by the High Court at Lahore in Ahmad Sher v. Emperor ('31) 18 A. I. R. 1931 Lah. 313. At p. 520 Addison J. says :

Mookerjee J., held in 38 Cal. 2021 that the case laid before a third Judge under Section 429, Criminal P. C. is the complete case in so far as the two Judges who first heard the appeal have differed as regards particular appellants, but not the case of the other appellants as to whom they did not differ. That is, I think, a reasonable view to take and I am not now concerned with the question of the guilt of those persons whose appeal they have concurred in accepting.

3. We have no doubt in our mind that this is the proper view to take of Section 429, Criminal P. C, for it can never have been in the contemplation of the Legislature that the opinion of a single Judge should prevail against the opinion of the Bench which originally heard the appeal as regards any particular appellant. We accordingly direct that the case of Subedar Singh, appellant, be laid before a third Judge under the provisions of Section 429, Criminal P. C. As regards the other appellants, we allow the appeal of Shib Singh and set aside his conviction and the sentence which has been imposed upon him. He will be forthwith released unless required for any other matter. We dismiss the appeals of Chunna Singh, Mangli, Jograj Singh and Kannoo. We reduce Gur Sahai's sentence to ten years rigorous imprisonment. In other respects his appeal is dismissed. [On difference of opinion, the case of Subedar accused was referred to Mohammad Ismail J., who on 15th October 1942 held that Subedar had been rightly convicted under Section 395, Penal Code. On receipt of that finding the Bench dismissed the appeal of Subedar Singh on 2nd November 1942.]

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