

Balku Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/456194

Court : Allahabad

Decided On : Oct-08-1947

Reported in : AIR1948All237

Appellant : Balku

Respondent : Emperor

Judgement :

Verma, J.

1. This appeal was originally heard by a Bench consisting of Sankar Saran and Akbar Husain JJ. There was a difference of opinion between the Judges composing the Bench. Sankar Saran J. holding that the appeal be allowed and the conviction and sentence should be set aside and Akbar Husain J. expressing the opinion that the appeal should be dismissed and the conviction and sentence should be affirmed. The case was, therefore, in pursuance of the provisions of Section 429, Criminal P. C, (read with Clause 29 of the Letters Patent) laid before another Judge of this Court, viz. Mathur J. He has delivered the opinion that the appeal should be allowed, that the conviction and sentence of the appellant should be set aside and that he should be acquitted. All that remains now to be done is to pronounce, 'the judgment or order 'which under Section 429, Cr. P.C., has to' follow such opinion'. The case has been laid before this Bench for the delivery of this judgment and order.

2. It may be mentioned that Akbar Husain J. who was a member of the Bench which had originally heard the appeal, has since ceased to be a Judge of the Court. In view of that fact, we have been invited to consider the question whether the case has been rightly laid before this Bench for the delivery of the judgment and order.

3. Having carefully considered the point, we have come to the conclusion that there can be no doubt that the answer to the question must be in the affirmative. As we have indicated above, Clause 29 of the Letters Patent lays down that the proceedings in criminal cases which come before this Court otherwise than in the exercise of its ordinary original criminal jurisdiction shall be regulated by the Code of Criminal Procedure for the time being in force. The relevant provision in the Code of Criminal Procedure is to be found in Section 429, which is as follows:

When the judges composing the Court of appeal are equally divided in opinion, the ease, with their opinion thereon, shall be laid before another judge of the same Court, and such judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

4. In view of what is laid down in this section, it appears to us to be clear that the judgment or order of the Court-which has to be in accordance with the opinion of the third judge before whom the case had been laid in pursuance of the section - can be pronounced by this Bench. In fact, the judgment or order can, in our opinion, be pronounced by any Bench of the Court. The case has, therefore, been rightly laid before this Bench for the delivery of the judgment or order of the Court.

5. The order of the Court is that this appeal be allowed, that the conviction of the appellant and the sentence passed upon him by the Court below be set aside and that he be acquitted forthwith unless his detention is necessary for some other offence.