

Har Narain Vs. Emperor

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Court : Allahabad

Decided On : Aug-08-1924

Reported in : AIR1925All239; 84Ind.Cas.706

Appellant : Har Narain

Respondent : Emperor

Judgement :

Mukerji, J.

1. This is an appeal by one Har Narain who has been convicted of an offence under Section 228 of the Indian Penal Code under proceedings taken under Section 480 of the Criminal Procedure Code. The sentence inflicted is a fine of Rs. 200, in default one month's simple imprisonment. There is also an application in revision on behalf of Har Narain. This was filed against the contingency that no appeal lay. There can be no doubt that an appeal lies and therefore the application in revision is rejected.

2. The facts given in the judgment by which the appellant was convicted are more or less summary, but they do indicate what really happened. To understand the whole circumstance it would be necessary to know the facts of the case which were before the Sessions Judge.

3. It appears that six persons were charged with murder and the learned Sessions Judge was hearing the case against those men. The person murdered was one Misri. Badri Praaad was his brother. Badri Prasad said, among other matters, that he saw the actual murder from the roof of his house and also noticed who were the persons that committed the murder and were present at the time. The learned Sessions Judge wanted to get at the bottom of the case and sent for the appellant Har Narain under Section 540 of the Criminal Procedure Code inasmuch as Badri Prasad had stated that shortly after the murder Har Narain the Mukhia of the village had arrived on the scene. When Har Narain was under examination he was asked, (vide his statement on the file of the Sessions trial,) what Badri Prasad had stated to him. Evidently the appellant would not say anything beyond this that Badri Prasad did not mention any names that is to say Badri Prasad did not mention if he had seen the accused persons at the time of the murder. The learned Judge has noted the question put by him and the answer given by the witness in the deposition itself. This shows that he despaired of having a relevant answer to his questions and was obliged to take the extreme step of taking down the question in order that the answer and the question together might show how things were going on in his Court. His note runs as follows:

Note : This witness, asked again and again what Badri said, will reply nothing but only. 'He named no one. Asked if Badri said how the murder happened and whether he gave any other information the witness merely replies. 'He named no one.'

4. It is clear that the Judge was attempting to find out whether Badri's story was true and whether on the arrival of the Mukhia he had given out in detail the story which he gave subsequently in Court.

5. It has been urged before me that the witness did not understand the question and in any case he never wanted either to insult the Court or to interrupt it while sitting in a stage of judicial proceeding. I agree that this is really not a case under Section 223 of the Indian Penal Code. The case really comes under Section 179 of the Indian Penal Code. That is a section which is covered by Section 480, Criminal P.C., and the learned Judge could take action under the said rule of

procedure.

6. On the question whether the witness deliberately refused information or whether he did not understand the question of the Court. I think we must accept the Judge's version of the story. The question has been taken down in the vernacular record as also the answer. When the witness persisted in giving no information beyond this, that Badri mentioned no names, he certainly refused to answer the questions that had been put to him. As I have already stated, the learned Judge wanted information as to what, if anything, Badri stated to the witness as to the murder. The answer that Badri mentioned no names was no answer to the question put to him. The result was that the Judge's attempt; to get at the truth was partially frustrated by this witness.

7. I alter the conviction from one under Section 228 of the Indian Penal Code to one under Section 179 of the same Code. As to the sentence I think that having regard to the extremely grave nature of the case which was being heard by the learned Sessions Judge, the conduct of the appellant was very reprehensible. I, therefore, refuse to interfere with the sentence.

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