

Queen-empress Vs. Ishri Singh

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All672

Judge : John Edge, C.J. and; Straight, J.

Appellant : Queen-empress

Respondent : ishri Singh

Judgement :

John Edge, C.J.

1. In this case I am of opinion that on the evidence of Musammat Durga and that contained in the deposition of Musammat Chittan taken before the Magistrate, there can be no doubt that one Ishri Singh took part in the murder of Fakir Ghand, deceased. I have also no doubt on the evidence that the Ishri Singh who took part in the murder of Fakir Chand is the prisoner who has now been convicted.

2. Besides Musammat Durga, Lal Singh, who says he knew him for 20 years, Sita Ram, Ahir, who knew him for 12 or 13 years, Ganga, Brahman, who says he taught him fencing--all speak to his identity. This is enough to say in reference to the appeal of the prisoner, which is dismissed and the conviction affirmed. As regards the sentence, considering the time that has elapsed, I think the ends of justice will be sufficiently met by reducing the sentence to one of transportation for life.

3. I have a few words to add regarding the proceedings and the evidence admitted in the case. It is said by Musammat Durga that the Magistrate, addressing her, said: 'Recollect, or else I will send you into custody.' Her statement in this respect may be true or false. If the Magistrate did speak to the Musammat in this manner, he exceeded his duty. It is the duty of a Magistrate to protect a witness from coercion of that kind.

4. With regard to the depositions of the witnesses who were examined before the Magistrate in 1874, and who were proved to have died, I am clearly of opinion that these depositions were not admissible under Section 33 of the Evidence Act. In order to be admissible under that section, the proceedings in which the same evidence was given must have been between the parties or their representatives in interest, and the person against whom such depositions could be heard must have had an opportunity of cross-examining the witnesses.

5. Now the accused was not present when the evidence was given, nor was he a party to that proceeding. Does Section 512 of the Criminal Procedure Code make it admissible? The evidence of Musammat Chittan did come within the terms of the section, because we find it recorded by the Magistrate that the accused Ishri Singh was an absconder, and the Magistrate did record the depositions of the witnesses, and he was a Magistrate who was competent to try or commit for trial such absconder, if he had been present, for the offence complained of; and consequently, in my opinion, the deposition of Musammat Chittan before the Magistrate came within the terms of Section 512, and was admissible against the accused. As to the evidence given at the time before the Judge, that evidence was not taken as evidence against the absconder. It was recorded against the persons then being tried. Excluding, therefore, this inadmissible evidence, there is as I have already pointed out, ample evidence that the prisoner was one of those who took part in the murder of Fakir Chand in 1874.

Straight, J.

6. I am anxious to state the facts in this case which lead me to the same conclusion as the learned Chief Justice.

7. On the 19th March 1874, one Fakir Chand was undoubtedly murdered by Some persons, and shortly after the murder, the parties who were named as the perpetrators were six individuals, namely--(1) Pahlad Singh, (2) Ishri Singh, (3) Moti Singh, (4) Umrao Singh, (5) Fauji Singh, (6) Mansukh Chamar. Five of these persons, namely, Nos. (1), (3), (4), (5), and (6), were at once arrested, and taken before the Magistrate who held the inquiry, and on the 2nd 'April 1874' these were all committed for trial to the Sessions Court. Nos. (1), (3), (4), and (6), were subsequently convicted and hanged, while Fauji escaped with a sentence of transportation for life. At the time of the inquiry before the Magistrate, the person named as Ishri Singh absconded, as was then proved, and through the proceedings in that officer's Court, he was distinctly mentioned as one of the participators in the crime charged against the others, and the statements of the witnesses to that effect were, as the depositions show, fully recorded. I therefore do not think it will be placing a strained interpretation on the language of Section 512 of the present Criminal Procedure Code, read in conjunction with Section 327 of the old Act, to hold that, qua Ishri Singh, those depositions were recorded for the purposes and within the meaning of that provision of the law, and were admissible at the trial out of which the appeal before us arises. I quite agree with the learned Chief Justice, however, in the limitation he would impose, by which he would exclude the evidence given in the sessions trial of 1874, as under the circumstances being inadmissible in the present case, though I am by no means prepared to say that such a limitation would invariably apply. It is clear that the Judge, from whose decision the appeal before us is preferred, was in error in receiving the depositions taken in the former proceedings under Section 33 of the Evidence Act as proof on the trial held by him, and he either did not carefully read the section in conjunction with the provisos, or, if he did, he failed to understand its meaning. The appellant was no party to the former proceedings, and he had no opportunity of cross-examining the witnesses, which circumstances removed the case from the operation of Section 33. But, as I have said, Section 512 of the present Criminal Procedure Code, taken in conjunction with Section 327 of the old law, meets the difficulty, and at least made the deposition of Musammat Chittan evidence at the trial. I also think that, under the special circumstances, the deposition of Musammat Durga, taken in 1874, was admissible, in advertence to

the terms of Section 157 of the Evidence Act. I agree with the Chief Justice that there was good evidence before the Judge to show, first, that Ishri Singh was one of the persons who took part in the violence that led to the death of Fakir Chand, and secondly, that the appellant is that Ishri Singh. I concur therefore in dismissing his appeal, as also, in the mitigation of the sentence to one of transportation for life, I can only add that if the statement of the girl Durga in the Court below, in cross-examination, as to the action of the committing Magistrate, is correct, the conduct of that officer was not only most improper, but absolutely illegal, and a repetition of it will involve very serious consequences.

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