

Emperor Vs. Darbari Singh

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Court : Allahabad

Decided On : Jun-27-1923

Reported in : (1923)ILR45All749

Judge : Walsh, J.

Appellant : Emperor

Respondent : Darbari Singh

Judgement :

Walsh, J.

1. On the whole I am unable to accept this recommendation. The matter has been very fully argued, and I agree that the Sessions Judge had ground for referring the matter, but the explanation of the District Magistrate* throws an entirely different light on at least two points, if not all of them. Further, the case is clearly a different one from that-which has been referred to, decided by myself, namely the case of Ashiq Ali v. Emperor (1923) 21 A.L.J. 513 and the report shows the danger of reporting cases which are really only decisions on particular-findings.

2. Dealing first with the general observations contained in my previous judgment: Although it is clear from the report that I was prepared to interfere on the single ground that the-Magistrate had made private inquiries, it is equally clear to myself from the language which I used, that although the report in the Allahabad Law

Journal, as is so often the case, fails to state the facts and does not give the judgment of the-Magistrate which I was considering, the Magistrate in that case had made inquiries about the particular individuals who were subsequently brought before him before the trial, and had' allowed the actual information against such individuals to influence his decision. I agree with the general observations of the District Magistrate on this question of making inquiries, and, although it is dangerous at all times to generalize, and people are much too apt in this Court to seize upon the slightest dictum as laying down some new rule of law, I compare the use which a Magistrate is bound to make, if he is conscientious, of knowledge which is already in his possession when he hears a case, with the examination of the police diary in a criminal charge. That is to say, it is not in itself substantive evidence which may be used against the accused, but it is a form of check which the trial court may legitimately use in order to test the nature of the evidence with which it has to deal, and to negative, for example, a suggestion that the police investigation has been unfair. That is to say, a finding that 'inquiries about the accused satisfy me that he is a badmash,' would be objectionable, but 'the result of my inquiries in the neighbourhood, so far as they appear in the case of this accused, tend to show that the case against him has not been got up without reason,' would be quite legitimate.

3. As regards the first point dealt with by the learned Sessions Judge and the Magistrate, all that the Magistrate did in dismissing the appeal was to say that the evidence was fairly evenly balanced, which referred to quantum, and a perusal of the judgment of the Magistrate who tried the case shows that he believed the prosecution evidence, and that the prosecution evidence was in fact stronger than the defence, and was called from the district or rather the village of the accused. In the case which has been cited, the prosecution evidence was vague, hearsay and unsubstantial, and none of it came from the village of the accused.

4. Thirdly, I think the Sessions Judge has really misunderstood the point about-the history-sheet. It was not a question of the man being a history-sheeter only. It was definitely proved that he had been under surveillance, and the observation of the District Magistrate that there had recently been a large reduction in the history-sheets and that in the last cold weather tour at least 60 were closed after

consultation, and this one was not, is at any rate evidence that a new chapter in relation to this man's reputation opened at that time unfavourably for him. After all, the badmashi section is a section of reputation and not of actual crime, and that is one reason why it is so unpopular. I am not disposed to encourage these references or revision applications, because so long as cases proceed regularly and fairly, the Magistrate is the best tribunal, in fact the only tribunal, who can satisfactorily decide them. I therefore decline to interfere and direct that the record be returned to the Sessions Judge.

*This could not be found on the record in the High Court--Ed.

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