

Bansidhar and ors. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/462634

Court : Allahabad

Decided On : Jul-07-1939

Reported in : AIR1940All18

Appellant : Bansidhar and ors.

Respondent : Emperor

Judgement :

ORDER

Mulla, J.

1. This is a reference by the learned Sessions Judge of Jhansi drawing the attention of this Court to a judgment recorded by the learned District Magistrate of Jalaun in an appeal made before him by seven persons who were convicted by a Magistrate of the Second Class of offences under Secs. 147 and 355, Penal Code. The learned Sessions Judge has suggested without making a specific recommendation to that effect that the judgment of the learned District Magistrate should be set aside and that he should be directed to re-hear the appeal and to record a proper judgment. The judgment of the learned District Magistrate to which objection has been taken by the learned Sessions Judge runs as follows:

This is an appeal against an order of a Special Magistrate of the Second Class, Orai, in a case under Sections 355 and 147, Penal Code. Seven persons were convicted and all of them appeal. I have given a patient hearing to the learned

Counsel for the appellants. Not a single new thing has been said in this Court. Almost all the points advanced by the learned Counsel for the appellants have been discussed in the judgment of the Court below. In my opinion, the Court below has not erred in its findings. If anything, the learned Magistrate was lenient to the accused persons. I dismiss the appeal and further order that all the appellants be bound down under Section 106, Criminal P.C., for one year (after the release of the accused persons sentenced to imprisonment) and each accused person will have to furnish a surety for Rs. 100 to keep the peace.

2. The objection taken by the learned Sessions Judge is that this judgment does not fulfil the provisions of Section 424 read with Section 367, Criminal P.C. Having considered the judgment of the trying Magistrate as well as of the learned District Magistrate, I have not the least hesitation in agreeing with the view taken by the learned Sessions Judge. The judgment written by the learned District Magistrate obviously fails to fulfil the conditions of Sec. 424 read with Section 367, Criminal P.C. The latter Section which is relevant for the purposes of the argument provides that a judgment of a Criminal Court 'shall contain the point or points for determination, the decision thereon and the reasons for the decision.' This provision is made applicable to the judgments of the Appellate Courts by Sec. 424, Criminal P.C. It would be well for District Magistrates who hear appeals in criminal cases to bear in mind that they are also subordinate to higher Courts and it is their duty to satisfy the higher Courts by their judgments that they have applied their minds to the case before them and in recording a finding of conviction upon the evidence produced before them have arrived at a correct conclusion. In order to discharge this duty, it is necessary for them to see that their judgments fulfil the requirements laid down by the law. It is always easy for the Appellate Court to say that all the points arising in the case have been considered by the Court below and have been rightly decided. This does not however show that the Appellate Court has applied its mind to the points arising in the case and has arrived at its own independent judgment in respect of them as it is required by the law to do. In the present case I have carefully perused the judgment of the trying Magistrate which covers seven typed pages and I find that the prosecution story is by no means a simple and straight-forward story and the evidence produced by the prosecution is by no means overwhelming or of such a character as to leave no room for doubt.

3. It is quite evident that several points arise for consideration relating to the inherent merit of the prosecution story and the credibility of the evidence by which it is sought to be supported. Some of these points have been considered by the trying Magistrate and it is not for me to say whether the findings arrived at by him are right or wrong. The fact remains that the case demanded some consideration on the part of the Appellate Court, but the judgment of the learned District Magistrate does not show that he gave the case the consideration which it deserved. Under the law it was clearly his duty to state the various points urged before him and to record his decisions thereon with his reasons for those decisions. He has entirely failed to discharge that duty and I am therefore of the opinion that his judgment must be set aside. I therefore accept this reference and direct that the case shall be sent back to the learned District Magistrate of Jalaun for re-hearing the appeal and for recording a proper judgment as required by the law.