

Kanchan Vs. Emperor

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Court : Allahabad

Decided On : Nov-17-1933

Reported in : AIR1934All651

Appellant : Kanchan

Respondent : Emperor

Judgement :

ORDER

Niamatullah, J.

1. This is a criminal revision filed by Kanchan and three others, who were convicted by a Magistrate, Third Class, of Etawah, for an offence under Section 323, Penal Code. Each of the accused was fined Rs. 35. There was a cross-case by some of the applicants against the complainants, which was dismissed and the accused in that case acquitted. Both the cases were heard almost simultaneously. The Magistrate believed the evidence for the prosecution in the case against the applicants and disbelieved their evidence holding that the complaint of some of the applicants in the cross-case was untrue. Accordingly the applicants were convicted and sentenced, as already stated. An appeal to the District Magistrate was unsuccessful. Hence this revision.

2. The learned advocate for the applicants has strongly contended that the trial of the applicants is vitiated by several errors of law committed by the Magistrate. It is

pointed out that the evidence adduced in the cross-case has been used in this case by the Magistrate in arriving at his finding. The extent to which this has been done is very trifling. The Magistrate has carefully weighed the evidence led on behalf of the prosecution in this case and has made no reference to the evidence in the cross-case in arriving at his finding as regards the guilt of the applicants so far as it is based on the prosecution evidence. In discussing the evidence led by the applicants in their defence an incidental reference has been made to the evidence for the prosecution in the cross-case. The object of the Magistrate in doing so was to point out that the evidence for the prosecution in the counter-case which was probably the same as the evidence led in defence in the present case, was full of inconsistencies. Where two cases are tried side by side and the Magistrate disposes of them together, it is generally not possible for him while disposing of one case to refrain from taking impressions from the evidence in the other case. The irregularity complained of in this case has not occasioned any failure of Justice, nor has it in any way prejudiced the accused. If the Magistrate had made no reference to the evidence for the prosecution in the counter-case, the criticism of the defence witnesses, produced in the present case would have been precisely the same. Another ground on which the conviction of the applicants is questioned is that the Magistrate did not record the statements of the accused persons under Section 342, Criminal P.C. after recording the whole prosecution evidence. It is not denied that, after all the witnesses for the prosecution were examined in chief, the accused were examined under Section 342. Thereafter the witnesses for the prosecution were cross examined. It is said that the Magistrate did not examine the accused a second time 'generally on the whole case.' The learned advocate was questioned by me as regards the particular questions which should have been put and were not put. The only reply which he could give was that the Magistrate did not ask the accused as to whether they had anything further to say. It was also urged that the accused had promised to file a written statement and did not do so. It is argued that it was the Magistrate's duty to have reminded the accused of their promise to file a written statement and to have recorded their statement on the question on which the accused said they would file a written statement. I do not think this argument merits any consideration.

3. One of the accused was Bhajan who was convicted by the Magistrate but acquitted by the District Magistrate on appeal mainly on the ground that his name did not find a place in the first information report. It is argued that all the witnesses for the prosecution implicated Bhajan. Like the applicants the latter should have been acquitted inasmuch as the prosecution witnesses gave untrue evidence in case of Bhajan. This contention is based on the assumption that the District Magistrate discredited the evidence for the prosecution. He did nothing of the sort. He merely gave the benefit of doubt to Bhajan without disbelieving the prosecution witnesses.

4. Lastly, it is argued that the Magistrate relied on certified copies of two applications, which had been produced by the prosecution in proof of enmity between the parties. It may be as is alleged, that formal evidence to prove the applications, was not adduced. The applications according to the judgment of the Magistrate, furnished additional evidence of enmity between the parties. There was other evidence which was believed and which showed that the parties were on. bad terms. The question of enmity was not a cardinal question in the case; and the irregularity if any, implied in the Magistrate's action in treating the applications as evidence has in no way prejudiced the accused. The result is that this revision is dismissed.