

Badlu Vs. Emperor

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Court : Allahabad

Decided On : Jul-28-1919

Reported in : AIR1919All393; 52Ind.Cas.887

Judge : Wallach, J.

Appellant : Badlu

Respondent : Emperor

Judgement :

Wallach, J.

1. Badlu applies in revision seeking to have an order passed against him under Section 110 of the Code of Criminal Procedure set aside. This order was passed by a Magistrate of the First Class on the 13th May 1919 and was upheld in appeal by the District Magistrate of Fatehpur on the 5th June 1919. Ordinarily, I would not interfere in revision with findings of fact but this case presents some peculiar features. It is argued on behalf of the petitioner that he has been greatly prejudiced by the Court of first instance having been influenced adversely to the petitioner by a judgment of the Additional Sessions Judge of Cawnpore acquitting him (the petitioner) in a dacoity case on the 29th September 1918. That the petitioner's view in this respect is correct would appear from the following paragraph from the first Court's judgment: 'it would be better to say something regarding the dacoity which occurred at Chak Jahanpur, Police Circle Budki, on the 31st May 1918. The

dacoits carried away property to the value of Rs. 750, a part of the property was recovered from the possession of three of the accused and one of them, Bansi Singh, was made King's witness. The case resulted in an acquittal on the 29th September 1918 from the Court of the Additional Sessions Judge of Cawnpore, Khan Bahadur Muhammad Husain Sahib. The evidence on the record appears to be free from bias and mostly consisted of disinterested persons who had no motive to fabricate a false case, but the learned Judge came to the conclusion that no dacoity actually occurred and that the case for the prosecution was the result of a conspiracy. An appeal against the order of acquittal of the learned Judge could not be preferred on behalf of the Government, as the period of three months laid down by the Government of India for appeals against acquittals had expired.' The Magistrate was not justified in importing this sentence into his judgment. It was not for him to question in his judgment the decision of the Court of Session which had come to the conclusion that the case then brought against the petitioner was false and the result of a conspiracy. His remarks that the appeal could not be brought by the Local Government within the time prescribed by law are futile. If the district authorities had moved in time and the Government had desired to file an appeal, they would have found no difficulty in carrying out their intention. I have gone through the evidence on the record, and I find that several of the witnesses against him in this case were witnesses against him in the Sessions case, in which their evidence was disregarded by the Sessions Judge. This has led me to go through the further evidence against the applicant on the record which, in my opinion, is clearly insufficient to establish the case against him, a great deal of it consisting of inadmissible evidence. The first Court said in its judgment that it cannot act on the evidence of the Sub Inspector. The reasons he has given for not doing so are sound. In my opinion the evidence on the record does not justify the orders passed by the Courts below. For the above reasons this revision must be allowed and the orders of the Court below directing the applicant to enter into a personal bond and to give sureties must be set aside. I am informed by the learned Counsel for the applicant that the applicant is in custody. He must be released forthwith.