

Ambika Prasad Vs. Emperor

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Court : Allahabad

Decided On : Aug-02-1930

Reported in : AIR1931All7; 129Ind.Cas.369

Appellant : Ambika Prasad

Respondent : Emperor

Judgement :

King, J.

1. Ambika Prasad was accused of offences under Sections 186 and 353, I. P.C. for obstruction and assaulting a 'kurkamin' in the discharge of his duty. The trial was begun as that of a warrant case but after the two principal witnesses the amin and the decree-holder had been examined and cross-examined and the examination of the accused had been recorded, the Magistrate found that the evidence did not support a conviction under Section 353 and therefore framed no charge but ordered that the case should proceed (as a summons case) in respect of the offence under Section 186 only. The defence was an alibi which the Magistrate had good grounds for disbelieving. He found an offence under Section 186 clearly established by the evidence of three eyewitnesses and convicted the accused.

2. The Sessions Judge of Banda recommends that the conviction be set aside because the Magistrate should have framed a charge under Section 186 and

should thus have given the accused an opportunity of cross-examining the amin for the second time. He relies on a ruling of a single Judge of this Court in *Ganga Saran v. Emperor* A.I.R. 1921 All. 282 which supports his view. With due respect to the learned Judge I do not agree that the Court was bound to frame a charge. Section 254, Criminal P.C., requires a Magistrate to frame a charge only when he is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter.

i.e., an offence punishable with death, transportation or imprisonment for a term exceeding six months. As the Magistrate was of opinion that no such offence had been established I hold that he was not bound to frame a charge. In any case the omission to frame a charge is no ground for setting aside the conviction. Even if the omission appears to have occasioned a failure of justice the utmost that I could do under Section 535 (2) would be to order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge. This would give the accused an opportunity of a second cross-examination of the amin and if I thought there was the least likelihood of the result of the trial being thereby affected I might do so. Or I might give the accused an opportunity of further cross-examination without ordering that a charge be framed. But the accused has already cross-examined the amin without eliciting anything tending to shake his credit. Moreover the guilt of the accused is established by the evidence of two other eyewitnesses who have been believed. No useful purpose will be served by permitting further cross-examination of the amin. The prosecution case is too clear and the defence is too incredible. There has been no failure of justice.

3. I reject the reference. Let the records be returned.

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