

Motiram Vs. Emperor

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Court : Allahabad

Decided On : Aug-20-1936

Reported in : AIR1936All758; 165Ind.Cas.734

Appellant : Motiram

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. This is an application in revision. The case has a peculiar history. The applicant Moti Ram and three others were charged with an offence of culpable homicide not amounting to murder and were tried by an Assistant Sessions Judge under Section 304, I.P.C. The Assistant Sessions Judge found that the accused did not have the common intention of causing death and he, therefore, acquitted all of them of having committed any offence punishable under Section 304, I.P.C. He convicted two of them including the present applicant Moti Ram of an offence of voluntarily causing grievous hurt using for this purpose the provisions of Section 34, I.P.C. The two men who had been convicted appealed to the Sessions Judge. He came to the conclusion that the offence if it was committed was properly punishable under Section 304, I.P.C., and after issuing notice to the appellants to show cause why he should not order a re-trial, he did pass such an order and the

case went back to the Assistant Sessions Judge and was re-tried by him. He then convicted the two men under Section 304, I.P.C., and sentenced each of them to rigorous imprisonment for a period of three years. The sentence at the previous trial under Section 325, I.P.C., had been for two years. After the second trial there was again an appeal to the Sessions Judge who acquitted one of the men and maintained the conviction of the present applicant Moti Ram. It has been urged in argument that the learned Sessions Judge was quite wrong in the first instance in setting aside the acquittal of the applicant of an offence of culpable homicide not amounting to murder and directing that he should be re-tried. It is urged, therefore, that the second trial was void and the conviction cannot stand. I agree that the learned Sessions Judge had no authority to set aside the acquittal under Section 304, I.P.C. Their Lordships of the Privy Council in *Kishan Singh v. Emperor* 1928 50 All 722, have clearly laid down that where a man is tried of a more serious offence and is convicted of less serious one he must be held to have been acquitted of the more serious offence and that the acquittal cannot be set aside except upon an appeal filed by the Local Government.

2. The Sessions Judge after the first trial had no appeal before him against the two men. There could be no appeal in this Court against an acquittal. The appeal was on their behalf. It is true that an appellate Court has a power to order a re-trial, but it can pass such an order only upon proper grounds such as the ground that the original trial has been vitiated by some irregularity. The learned Sessions Judge was certainly not entitled to order a re-trial merely because he disagreed with the finding of the lower Court that the accused men had not committed the more serious offence of culpable homicide not amounting to murder. In exercise of our powers of revision we are to see merely that justice is done. The applicant has twice been tried by the Assistant Sessions Judge who has found on both occasions that he took part in an attack upon another man who died as a result of lathi blows upon the head. The learned Sessions Judge has considered the facts of the case in his judgment after the second trial; and he has agreed that the applicant is guilty. It has been suggested that the case may go down to the learned Sessions Judge on the assumption that he must now consider the original appeal under Section 325, I.P.C., upon its merits. I do not think that I would be justified in exercising powers of revision to cause waste of time and delay which

would have no result beneficial to anybody concerned. The fact is that the applicant has been found guilty by two Courts of having taken part in this attack and that there is no reason why this Court should interfere upon the ground that the applicant is not guilty. On the other hand, the applicant is entitled to claim that he should not receive a more severe sentence than that which he received at the original trial. The learned Sessions Judge was not entitled to set aside the order of acquittal for the offence of culpable homicide not amounting to murder or, in effect, to enhance the sentence. I therefore reduce the sentence to one for a period of two years. It has been argued that the applicant has been put to much inconvenience by being tried over again; but it seems to me that the sentence cannot be further reduced when the injuries resulted in the death of the man who was attacked. The sentence is reduced to one of rigorous imprisonment for a period of two years. The accused shall surrender to his bail.