

Kidha Singh Vs. Emperor

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Court : Allahabad

Decided On : Nov-10-1915

Reported in : AIR1915All345; 31Ind.Cas.993

Judge : George Knox, J.

Appellant : Kidha Singh

Respondent : Emperor

Judgement :

George Knox, J.

1. This is an appeal against an order of the Additional Sessions Judge of Moradabad, whereby he has granted sanction for the prosecution of one Kidha Singh under Section 193 or Section 465/114 of the Indian Penal Code. With reference to the prosecution, the learned Judge has in his judgment said: 'in this case alternative charges under Section 193 of the Indian Penal Code, and Section 465/114 of the Indian Penal Code, may have to be framed. If the receipt was really written the same day as he sold the bullock, it was not written on December 9th the date it bears. Signing the receipt was fabricating false evidence or forgery.' The ground on which I am asked to interfere in appeal with this order of sanction is 'because the evidence given by the appellants on behalf of Jahana was inconclusive, and even if believed, was insufficient to secure his acquittal. It would be impossible to prove that their statements were demonstrably false, and there

would, in consequence, be no conviction.' I was referred in the course of the argument to what was said regarding this evidence by the Court before which the evidence was given. It appears that Jahana was on his trial for murder. He set up an alibi and in support of the alibi he secured the attendance amongst other persons of Kidha Singh. The alibi was to the effect that on the day in question, Kidha Singh along with Jahana was at a place called Phina and that he there purchased a bullock. The murder was committed at Dayalwala. The two places are far apart, and the argument is on the one side that Jahana could not have been on the day in question at Phina and then subsequently at Dayalwala. The argument on the other side is that it was possible even on the evidence, for Jahana to have caught a train and by means of that train to have arrived at Dayalwala just in time to commit the murder. Regarding this evidence, the learned Judge says: 'The sale of the bullock was not registered or reported at the Thana and the receipt may well have been written long after December 9th. Even if Jahana ever did buy a bullock from Kidha Singh which I very much doubt there is no guarantee that the witnesses have not rolled up an old transaction that took place months ago and merely changed the dates. It is admitted that bullocks of the kind that Jahana says he wanted, can be got in many places in the district very much less remote than Phina, and it does not seem likely that Jahana and his friend would have wandered all over the district for a week and spent a lot of money in tonga and railway fares in order to buy a Rs. 65 bullock. In face of the overwhelming evidence on the other side to prove that Jahana was at Dayalwala on December 9th, I am quite unable to attach the slightest weight to this alibi and the evidence called to support it.' The argument addressed to me is that sanction ought not to be granted when the evidence before the Court granting the sanction is such that the probable result will be acquittal, Scandal is caused if a prosecution on this nature results in acquittal. These arguments are based upon certain cases of the Calcutta High Court, namely, Ram Prosad Malla v. Raghubar Malla 4 Ind. Cas. 6 : 37 C. 13 at p. 20 : 13 C.W.N. 1038 : 10 Cr. L.J. 454 and Jadunandan Singh v. Emperor 4 Ind. Cas. 710 : 37 C. 250 at p. 258 : 14 C.W.N. 330 : 10 C.L.J. 564 : 11 Cr. L.J. 37. With all due respect to the learned Judges who arrived at that conclusion, I find my-self unable to agree with it. I cannot find either in Section 195 of the Code of Criminal Procedure or in Section 476 of the same Code any phrase

which would lead to this result. Reading the two sections together and having regard to paragraph (4) in Section 195 and the words in Section 476 of the Code of Criminal Procedure when any Criminal Court is of opinion that there is ground for enquiring into an offence referred to in Section 195 such Court after making such preliminary enquiry as may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the First Class,' in my opinion, all that a Court granting sanction has to see is that a prima facie case has been made out upon the evidence before it for inquiring further into the question whether or no any of the offences punishable as set out in Section 195 of the Code of Criminal Procedure has or has not been, made out. That question is still under inquiry. It is open to both sides to produce further evidence in support of or against it. In the present case, I do not pronounce any opinion on the value of the evidence which is on the record. I can quite see that the prosecution may be able to prove for instance that the train which left that day left at such a time and hour as to render it impossible for Jahana to have arrived at Dayalwala at the time mentioned. That by no means limits the possibility of what the prosecution may be able to put forward. It often happens that in this country cases are started for the first time and without any warning to the prosecution of the nature of the evidence which the defence is about to put forward. Several cases by the late Mr. Justice Straight when he first came to this Court show how struck he was with this matter. Again the defence may be well able to show that Jahana left Phina at such a time as to enable him to reach Dayalwala before the murder was committed. All this is to be inquired into. When we have one learned Judge stating the result of his view that the evidence for the alibi is not entitled to the slightest weight and when we have another Judge coming to the same conclusion, it does seem to me that there is ample ground for enquiry, or to put it in another way that a prima facie case has been made out against Kidha Singh. I do not wish it to be understood that I think a case has been made out which must necessarily lead to conviction. Far from that. But a cloud of suspicion has been raised and it will be in the interest of justice if it were dispersed and the truth arrived at as far as possible. For these reasons, I am unable to allow this appeal and I dismiss it.