

Emperor Vs. Dukhu

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Court : Allahabad

Decided On : May-28-1928

Reported in : AIR1929All321

Appellant : Emperor

Respondent : Dukhu

Judgement :

1. This is an application under Section 339(3), Criminal P.C. by the Public Prosecutor for sanction for the prosecution of one Dukhu or Dukha to whom pardon was tendered by a Magistrate and against whom the Public Prosecutor now desires to bring a charge of giving false evidence in respect of two contradictory statements. The first argument that was advanced by the learned Counsel for Dukhu was to the effect that the pardon was irregular because the Magistrate did not record his reasons for granting the pardon under Section 337(1)(a), Criminal P.C. The Magistrate has recorded reasons to the following effect in his order dated 10th November 1927:

The accused Dukhu an under-trial in this case has stated before me that if he is to be given a pardon he would make a full and correct disclosure of the facts of the case as they happened. The Court, therefore, in exercise of its powers under Section 337, Criminal P.C. tenders a pardon to the said Dukhu on condition etc.

2. The reason has been fairly stated by the Magistrate in the first sentence and we do not agree with the argument of the learned Counsel that first sentence contains a condition and not a reason. We may note that it would not have been sufficient for the learned Counsel to show that the Magistrate had omitted to record his reason. It would also have been necessary for the learned Counsel to Show that the omission of the Magistrate to record his reason had in effect occasioned a failure of justice; otherwise the alleged defect would have been cured by the provisions of Section 537, Criminal P.C. The next argument that was addressed to us was that there was in effect no contradiction between the two statements of Dhukhu. The learned Government Advocate has quoted the two statements and from those statements we make the following selection:

I then took my bed under the Nim tree. My mother, Mahadeo, Dhaneshri Rajkalia and myself were there. At mid-night Mahadeo woke me up and said that Mt. Rajkuli must be killed as she is very quarrelsome. I refused to do so. He then took me there by force. Mahadeo went ahead. Aliyar and Dhaneshri had also gone there. Mahadeo had brought Aliyar there. I had also accompanied them. Rajkulia was asleep. Mahadeo gagged her mouth. Dhaneshri pressed her hands. Aliyar had pressed her wrist by his hands and I was catching hold of her legs. She then died.

(a) I went to Kunuraya a kos from my village. I did not return that night. I came back the next morning at sunrise. Mt. Rajkalia was dead by that time. I did not see how she died.

3. We consider that these two quotations are directly contradictory and that sanction should be given for the prosecution of Dukhu on these grounds.

4. The final argument addressed to us was that a locus paenitentiae should be granted to Dhuku on the authority of Emperor v. Bodha [1913] 11 A.L.J. 964. The granting of locus paenitentiae is a matter for judicial discretion and we do not consider that we should grant the locus paenitentiae in the present case.

5. Accordingly we grant the sanction under Section 339(3), Criminal P.C. to prosecute Dukhu alias Dukha, son of Budhu Kahar, cultivator, resident of

Bichayan, thana Chandauli, district Benares for giving false evidence under Sections 193 and 194, Criminal P.C. for the two contradictory statements which we have quoted made in the course of the enquiry and trial, Emperor v. Mahadeo and others under Section 302, I.P.C., before the Committing Magistrate and the Sessions Court in Benares.

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