

Raja Ram Vs. Emperor

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Court : Allahabad

Decided On : Mar-22-1935

Reported in : AIR1934All691

Appellant : Raja Ram

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. This application has been argued by Mr. Kapildev Malaviya on the ground that the trial Court and the lower appellate Court have both given a value to two statements admitted under Section 288, Criminal P.C. to which they are not entitled by law. The facts of the case are given fully in the judgment of the lower appellate Court.

2. The principal evidence for the prosecution was that of the complainant, Suggan, who was poisoned and the two bakers Ram Chander and Khazan, who were attracted to the dharamshala by the cries of the poisoned man, and who testified to finding the present applicant Raja Ram, who is a boy of 16, in the dhasamshala, together with the complainant Suggan, while the other person who had accompanied the applicant to the dharamshala ran away. The case for the prosecution was that the applicant was in league with this person who had

escaped to administer poison to Suggan in order to rob him. The argument is that if the statements admitted under Section 288, Criminal P.C. are ignored, there is no evidence to prove that the applicant himself had any guilty knowledge.

3. The case on which Mr. Malayiya has relied is that of Emperor v. Jehal Teli 1925 Pat 51, in which it was remarked (p. 794):

I think therefore that the principle is quite clearly settled by this line of cases that unless there is clearly present, besides the evidence given before the Magistrate, evidence which will show that the evidence given before the Magistrate should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Magistrate cannot be effectively utilised in support of a conviction.

4. If the meaning of this sentence is that evidence admitted under Section 288, Criminal P.C. invariably require some independent corroboration in the same manner as the statement of an accomplice, I am with due respect not yet satisfied that the general practice of the Courts substantiates the principle laid down. Under Section 288, Criminal P.C. evidence admitted under that section may be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, of 1872, and a Bench of this Court in the case of Emperor v. Behari 1927 All. 479, has discussed the meaning of this section without giving any indication that it would be proper to limit the use of such evidence in the manner laid down by the Patna High Court.

5. It is not however necessary for me to come to a decision on the wider question, for in the present case it appears to be quite clear that there was other evidence on which the Court relied and which proved the guilt of the applicant in addition to the statements admitted under Section 288. The learned Judge has remarked that the two bakers Ram Chander and Khazan appeared to have altered their statements in the Sessions Court in favour of the applicant on three points: They said that they found the applicant sitting down, whereas one of them at any rate said in the Magistrate's Court that he was ready to run away, but was arrested. (2) One of them, Ram Chander, was ambiguous as to whether the purse was found in the bundle or on the person of the sweeper. (3) They said that the bundle which

contained some of the poisoned sweetmeats was lying on the ground whereas in the Magistrate s Court both had said that the bundle was in possession of the applicant.

6. The appellate Court has found however that according to the Urdu record Khazan Singh said in the trial Court not that the bundle was lying on the ground near the applicant, but that the applicant had it in his possession while the English record of the trial Court shows that Ram Chander said that the applicant had a bundle and that crushed sweets were found in that bundle. It appears therefore that there was sufficient evidence given by these witnesses in the trial Court to corroborate the statements made before the Magistrate, though in some details their statements in the two places were not consistent. I have examined the evidence and I find that there are circumstances in the case that justified the Courts in giving preference to the statements of these two witnesses which were made in the Magistrate's Court to their statements in the Sessions Court, where the two differ, and I am therefore not satisfied that the Courts were wrong in relying on the statements admitted under section 288, Criminal P.C. or that they acted illegally in convicting the applicant.

7. The application therefore is dismissed. The applicant is on bail and must surrender to his sureties.