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Sadhu Vs. State

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Court : Allahabad

Decided On : Jul-17-1980

Reported in : 1981CriLJ67

Judge : P.N. Goel, J.

Appellant : Sadhu

Respondent : State

Judgement :

P.N. Goel, J.

1. Sadhu alias Ram Dhan and Lalji, appellants have been convicted and sentenced under Section 307/34, I.P.C. to undergo R. I. for 6 years by order dated 23-12-1974 passed by IV Additional Sessions Judge, Allahabad.

2. The occurrence took place on 7-6-1969 at about 2.30 P. M. in the grove of Kali Charan within the limits of village Jhusi. One Masuriadin was mercilessly assaulted by the 2 appellants with lathis and two other persons Sheo Baran and Nanku. 33 injuries caused by blunt weapons were found on the person of Masuriadin. Bones of his right and left fore-arms were fractured. Report of the occurrence was lodged at 5 P. M. at the police station Sarai Inayet which is 4 miles from the scene of occurrence.

3. Sheo Baran and Nanku were prosecuted and tried along with the appellants. They were acquitted by the learned trial Judge because there was discrepancy in the evidence of the prosecution witnesses in respect of the weapon which they used in the assault on Masuriadin.

4. The prosecution examined Masuriadin, Phool Chand and Baladin to prove its case on facts. Bala Din was, however, declared hostile.

The applicants and their companions did not admit the allegation of the prosecution. The learned trial Judge believed the evidence of Masuriadin, Phool Chand and Baladin and convicted the appellants.

5. The lower court record has been burnt in a fire which broke out in the civil courts at Allahabad. The record could not be reconstructed. The question is whether the appellants should be retried.

6. It is obvious that without going through the record, the appellants cannot be acquitted nor their appeal can be dismissed. It is so because of the provisions of Section 386 of the Code of Criminal Procedure. This Court can pass an order of retrial in its inherent powers under Section 482, Cr. P.C. with a view to secure the ends of justice.

7. Learned counsel for the parties have been heard and the judgment of the trial court has been perused carefully. Sheo Baran and Nanku have been rightly acquitted. No doubt the occurrence took place about 11 years ago. But Masuriadin received quite a large number of injuries in broad daylight. He knew the appellants from before the occurrence. There was enmity between him and the appellants. His testimony was at least supported by Phool Chand, In these circumstances it is not desirable that the appellants who assaulted Masuriadin mercilessly should go unpunished. Therefore, it cannot be said that it is not a fit case for retrial. In fact the ends of justice require that there should be retrial. The appellants' counsel Sri D.S. Tewari had to concede this position.

8. In view of the above, the order dated 23-12-1974 passed by IV Additional Sessions Judge, Allahabad, convicting and sentencing the appellants under

Section 307/34 I.P.C. is set aside. The appellants shall be tried again by the Sessions Judge, Allahabad himself or by any other Additional Sessions Judge to whom the case will be transferred by the Sessions Judge, Allahabad. The appellants shall appear before the Sessions Judge, Allahabad on 10-9-1980. A copy of this judgment order shall immediately be sent to the Sessions Judge, Allahabad for information and necessary action.

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