

Jaisukh Vs. Emperor

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Court : Allahabad

Decided On : Jul-09-1920

Reported in : 59Ind.Cas.559

Judge : Grimwood Mears, C.J. and ;Ryves, J.

Appellant : Jaisukh

Respondent : Emperor

Judgement :

1. Jaisukh, accused, was charged before the Sessions Judge of Saharanpur with having brought about the death of one Udmi by administering arsenio. A great deal of evidence was taken, the assessors gave their opinion and the assessors were discharged and then it occurred to the learned Sessions Judge, when he was about to write his judgment, that he would like to put one or two questions to another man by name Jaisukh, son of Sahibu, who had originally been challenged with the accused but had been discharged by the Magistrate. The learned Sessions Judge thought he would like to put further questions to another witness who had already given evidence. This he, in fact, did and did so in the absence of the assessors and he justifies having done that by placing reliance upon a decision of Mr. Justice Walsh who, in the case of Emperor v. Birbal (Criminal Appeal No. 580 of 1915, decided on the 22nd of September 1916), decided that a Judge after having discharged the assessors could, nevertheless, take further evidence. Now, Mr. Justice Walsh could have arrived at that decision only by the

fact that the case of Queen-Empress v. Ram Lal 15 A. 136 : A.W.N. (1893) 50 : 7 Ind. Dec. (N.S.) 805 was not brought to his notice because that case is a distinct authority for the very salutary proposition that evidence must not be taken by a Sessions Judge unless that Sessions Judge has the two' assessors sitting with him, otherwise, if the Sessions Judge is sitting alone, he does not appear to be a Court, the Court being the Judge plus the assessors. We, therefore, think that the learned Sessions Judge was wrong in taking the evidence of Jaisukh, son of Sahibu, and the further evidence of Nanu Gara and, therefore, we are obliged to set aside the conviction and sentence, and we direct that the accused be tried de novo by the Sessions Judge of Saharanpur as soon as possible.

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