

Emperor Vs. Dipu and ors.

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SooperKanoon Citation : sooperkanoon.com/482020

Court : Allahabad

Decided On : Dec-07-1934

Reported in : AIR1935All850; 158Ind.Cas.424

Appellant : Emperor

Respondent : Dipu and ors.

Judgement :

Rachhpal Singh, J.

1. This is a revision application on behalf of the Local Government against an order of the Sessions Judge of Ghazipur allowing the appeals of the three respondents in a case under Section 110, Criminal P.C.

2. Proceedings under Section 110, Criminal P.C., were taken in the trial Court against Jagrup, Girdhari, Dipu, Raghunath and Harnandan. They were all bound over to be of good behaviour for a period of one year by the learned Deputy Magistrate. Against that order appeals were preferred by the above named persons in the Court of the Sessions Judge of Ghazipur. He came to the conclusion that the case was established against Harnandan and. Jagrup and their appeals were dismissed. As regards Dipu, Raghunath and Girdhari, he found that the prosecution evidence did not justify their being bound over, and he, therefore set aside order of the trial Court and discharged these three persons. The revision application has been made against the order of the learned Sessions Judge so far

as it relates to Dipu, Raghunath and Girdhari. Girdhari is still absconding and so his case will be considered by this Court, when he is served with a notice of this revision application. We have only to consider the case of the other two respondents, Dipu and Raghunath. After hearing the learned Counsel appearing on both sides we are clearly of opinion that the order of discharge passed by the lower appellate Court is wrong and cannot be sustained.

3. It appears that 59 witnesses were examined on behalf of the prosecution. Out of these 21 were police officials, 2 were Mukhias and 1 a Sarpanch. The learned Sessions Judge expressed the view that the evidence of the police officials, and of Mukhias and of Sarpanch, whom he styled as 'Quasi police witnesses' should be ignored altogether as they could not be considered to be quite independent. In our opinion this is an altogether wrong view to take. Mukhias and Sarpanches are respectable persons and they are appointed to these offices because of their respectability. It is totally wrong to describe them as 'quasi police witnesses.' On account of the position held by these men in villages in which they reside, they are in a far better position to know about the bad characters residing in their villages. It is altogether absurd to start with a presumption against them. The proper way of judging the evidence of a witness is to consider the statement made by him and then to arrive at a conclusion whether he has given true evidence or not. No presumption, should be made against him merely on the ground that he happens to be a Mukhia or a Sarpanch. The learned Sessions Judge has discarded from consideration the evidence of a large number of police officials solely on the ground that they belong to that department. This view is also utterly wrong and wholly unjustified. All that we need say is that it possesses the merit of novelty. The police officials very often are in a far better position to depose about the character of a man than witnesses who may be living in different villages and who may have been examined in defence by the accused. The right way of judging the evidence of police officials is to consider their statements on merits and then to determine whether they have given true evidence or otherwise. There is no justification whatsoever for discarding the evidence of a police official simply on the ground that he belongs to the police. There are and there may be a large number of cases in which the evidence of the police official may be more convincing and which an accused person may not be able to rebut by the

production of a large number of witnesses.

4. It is to be borne in mind that it is the duty of the police officials to keep under surveillance suspected persons, and in many cases they can give evidence as regards the character of an accused person, which may be found to be far more satisfactory than the evidence of witnesses, who do not belong to the police department. Then it is possible that some of the police officials examined in this case might have given evidence to prove certain points against the respondents from their personal knowledge. Or they might have been eye witnesses to certain events. In such a case it would be absurd to brush aside their evidence on the ground of their belonging to the police department. We have therefore no doubt whatsoever in our mind that the learned Judge did not act rightly in discarding the evidence of the police officials on this ground. It appears to us that the learned Judge has not made an attempt to approach the case in a proper manner. Both sides had produced evidence in the case and the right course for the learned Judge was to consider the evidence of the party on the merits. If after a consideration of the evidence produced in the case the learned Judge had come to the conclusion that there were good reasons for not accepting the prosecution evidence, then he would have been perfectly entitled not to place any reliance on it. But we find that in the case before us no such attempt was made by him at all. He mentions the number of the witnesses examined by the prosecution and the defence respectively, and as he found that the number of the defence witnesses was larger than that of the prosecution, witnesses so he has given finding in favour of the accused. This can hardly be said to be a judicial method of approaching a case. The decision of a case should not depend on the number of the witnesses a party is able to produce.

5. It is possible that in a particular case the evidence of 4 witnesses examined by the one party may be far more convincing than the evidence of the 50 witnesses whom the opposite party may produce. The proper and the judicial method of deciding a case is to consider the evidence produced on both sides regardless of the number of witnesses examined and then to come to conclusion whether the prosecution or the defence has established its case. We are of opinion that the learned Judge should have taken into consideration the evidence produced by

both sides in the case and should have then given his finding as to which party's case in his opinion was true. The judgment of the learned Sessions Judge does not show that he approached the case in the manner in which it should have been approached. When parties have produced evidence they are entitled to ask that that evidence should be considered and then a decision should be given. In the case before us the learned Judge went wrong in discarding the evidence of a large number of witnesses merely on the ground that some of them were police officials and others were 'quasi police witnesses.' He was also wrong in holding that because the defence was able to produce a large number of witnesses than the prosecution therefore the prosecution has not been able to make out a case. In our opinion the case was not considered by the Sessions Judge as it should have been.

6. We do not propose here to go into the evidence produced in the case. In our opinion the appeal has not been properly tried by the learned Sessions judge and it is therefore necessary that we should set aside his order and send back the case for a re-hearing of the appeal. The evidence produced by both sides should be considered by the learned Sessions Judge afresh, and then he should come to a finding as to whether or not the prosecution has been able to make out a case against Dipu and Raghunath. For the above mentioned reasons we allow this application, set aside the order of the lower appellate Court so far as it relates to Dipu and Raghunath, and direct that their appeals be re-heard and then disposed of according to law.