

Ram Sundar Vs. Emperor

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Court : Allahabad

Decided On : Jul-26-1929

Reported in : AIR1929All904

Appellant : Ram Sundar

Respondent : Emperor

Judgement :

Sen, J.

1. Ram Sundar was convicted under Sections 379 and 426., I.P.C., by a Special Magistrate of Mirzapur and sentenced to two months' rigorous imprisonment and to a fine of Rs. 4 under Section 426 I.P.C.
2. The charge against the accused was that he with certain confederates had stolen a male goat belonging to Sukhdeo and had killed it.
3. The charge was framed against the accused on 21st February 1929. On that date the Magistrate did not ask the accused if he wished to cross-examine any of the witnesses for the prosecution who had already been examined.
4. It was argued before the learned District Magistrate on appeal that the provisions of Section 256, Criminal P.C., were mandatory, that the said provisions had not been complied with and that this was a defect which vitiated the trial.

5. The learned District Magistrate did not accede to this contention on the ground that no authorities were cited before him. There are two reported decisions of this Court which deal with the provisions of Section 256 and there is no real conflict between the two. In *Queen Empress v. Henry C. Kaps* [1902] A.W.N. 5, it was held by Blair, J. that where a Magistrate who tried the case against the accused under Section 353, I.P.C., after framing the charge, omitted to ask the accused whether he wished to cross-examine any of the prosecution witnesses whose evidence had been taken, and in consequence of that omission an application had been made for the recalling of the witnesses for cross-examination and that application was rejected on the ground that it was made too late, it was impossible to say that the accused by being debarred from cross-examining the witnesses called against him did not suffer a substantial injury.

6. The right of cross-examination is a very important right. It will be extremely difficult to say that where the witnesses for the prosecution already examined are not offered for cross-examination after the framing of the charge the accused has not thereby suffered any substantial injury in the course of the trial. No hard and fast rule can be laid down in this respect because the answer to the question as to whether the accused has been prejudiced will be different according to the varying posture of each case.

7. In the case referred to above, the test applied by Blair, J. was as to whether substantial injustice has been done to the case.

8. In *Emperor v. Chhajju* : AIR1927 All217 , Kendall, J. held that the provisions of Section 256, Cr. P.C. are not provisions relating to the mode of trial and failure to follow those provisions strictly amount to no more than an irregularity in the procedure and would not be a ground for setting aside a conviction, unless the irregularity had caused the failure of justice.

9. It cannot be said with certainty that the accused has not been prejudiced by reason of non-compliance of the provisions of Section 256, Criminal P.C.

10. This is not a fit case in which a retrial ought to be ordered. The learned Sessions Judge recommends that no retrial should be directed in the present case

inasmuch as the accused had already undergone over two weeks' imprisonment and incurred some expenses in this case. I accept the reference, set aside the order of Special Magistrate and of the learned District Magistrate on appeal and direct that Ram Sundar be set at liberty.

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