

Jhandu Singh Vs. Emperor

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Court : Allahabad

Decided On : Jul-05-1923

Reported in : 75Ind.Cas.733

Judge : Daniels, J.

Appellant : Jhandu Singh

Respondent : Emperor

Judgement :

Daniels, J.

1. This is an application by Jhandu Singh who has been bound over under Section 110 of the Code of Criminal Procedure and sentenced to rigorous imprisonment on the failure to give security. An appeal was filed to the District Magistrate who in a very brief judgment dismissed the appeal. The learned District Magistrate says that he has read the evidence that the Magistrate has written a fair and convincing judgment and that he fails to see how the Trying Magistrate could have come to any other conclusion with regard to the guilt of the appellant. I regret to say that the judgment of the Trying Magistrate produces an entirely opposite impression on me from that which it has produced on the learned District Magistrate. The applicant was admittedly at enmity with the Mukhia Nawab Singh and was a witness for the prosecution in a case in which the Mukhia was accused of murder. The applicant was tried with eight other persons as forming one gang.

The Magistrate expressly finds that the evidence that they did form one gang is unworthy of credit. He had also acquitted several of the accused on the ground that they were implicated through enmity. His chief reason for convicting the applicant is that he believes that certain evidence goes to show that the applicant took part in a dacoity which was committed in December 1922 shortly after the murder case. Now, the applicant was actually arrested in connection with the dacoity in question, but the Police considered the evidence against him of so little value that he was released under Section 169 of the Criminal Procedure Code without even being placed before the Court. It is contrary to all accepted principles to make use of this evidence as a ground for binding the accused over on a charge of being a bad character. If the evidence was insufficient to implicate the accused in the offence to which it relates it was equally insufficient to be used for influencing the Court against him on a question of his general character. It was equally not open to the Magistrate to act on information not given in evidence but obtained from a perusal of the Special Diary. (Although the Magistrate says at the conclusion of his judgment that there is some evidence against the accused and; the other persons who have been convicted of cutting crops. It is clear from the judgment that the main grounds on which he has convicted the accused are the evidence tendered to show that he took part in the dacoity case and a perusal of the special diary. The order of the Court below cannot, therefore, be upheld. I allow the application and setting aside the order passed against the accused direct his immediate release.