

Basanta Kumar Ghattak Vs. Queen-empress

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Court : Kolkata

Decided On : Jul-07-1898

Reported in : (1899)ILR26Cal49

Judge : O'Kinealy and ;Henderson, JJ.

Appellant : Basanta Kumar Ghattak

Respondent : Queen-empress

Judgement :

O'Kinealy and Henderson, JJ.

1. This is an appeal from a decision of the Sessions Judge of Jessore, who tried the case with the aid of a jury.

2. It has been argued before us that there have been several misdirections in the charge. The only misdirection, however, that we can find in it is in regard to a petition of complaint, and an order on the back of it, which was put in evidence and is called Exhibit III. It was a complaint made in another proceeding altogether, and all the evidence given in regard to it is that the order on the back of it is in the handwriting of a certain Deputy Magistrate. There is no evidence to show that this complaint was ever put in by the present appellant, and that being so, we think that the evidence that the handwriting On the back of it is the handwriting of a Deputy Magistrate, is not sufficient. The Sessions Judge in charging the jury

pointed out this as one of the material circumstances from which the intention of the appellant would be apparent, and the document itself was read out. We think under these circumstances there has been a misdirection.

3. It has also been pointed out by Counsel on behalf of the appellant that the statement of the appellant was taken under Section 342, and, so far as we can see, he Has properly objected to the reception of that evidence. The object of that section is not to fill up a gap in the evidence for the prosecution, but to enable the prisoner to explain any circumstances appearing in the evidence against him. At that time this statement was not properly in evidence against him, and we think the Judge was wrong in asking the accused about it.

4. The result is that the conviction and sentence are set aside, and the case remanded to the Sessions Judge for a retrial.

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