

Sadasiv Singh Vs. Emperor

Sadasiv Singh Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/854786

Court : Kolkata

Decided On : Jul-03-1913

Reported in : AIR1914Cal834,(1914)ILR41Cal299

Judge : Woodroffe and ;Sharfuddin, JJ.

Appellant : Sadasiv Singh

Respondent : Emperor

Judgement :

Woodroffe, J.

1. In this case the three appellants, Sadasiv Singh, Bhabuti Singh and Suambar Singh, have been tried and convicted of murder. According to the evidence, another man, Tulshi Singh, was present at and took part in the alleged crime. The Public Prosecutor, however, elected not to proceed against him, for no reason that I am aware of except that this man surrendered after the trial had commenced in the Magistrate's Court, and it was not thought worth-while to charge him and recommence the trial. However this may be, no other reason appears on the record.

2. In the order-sheet of the 16th April, on which date the case was taken up, learned Counsel who appeared on behalf of the appellants asked that he might cross examine the witnesses on the day following, as he was not prepared to

cross-examine that day. This application was refused, the learned Judge ordering 'that the eye witnesses and mother important witnesses should be examined on the 17th, and that the examination of the other witnesses should be taken up on that day,' i.e., the 16th. On the following day, the 17th April, learned Counsel, who had appeared for the appellants on the preceding day, did not appear. We have been informed by Mr. J.N. Roy who appears on behalf of the appellants in this Court, that, as counsel for the appellants in the lower Court was not granted the application which he had made, he was unable to accept the responsibility of conducting the case on their behalf. Certain pleaders, however, did appear on behalf of the appellants. This application by learned Counsel appears to me to have been a reasonable application and one which, under the circumstances, should have been granted. The case is a capital one in which every reasonable opportunity should be given to the appellants to clear themselves of the charge if they can. It is not as if an adjournment of the trial itself had been asked for, No inconvenience, it seems to me, would have been suffered if the request had been granted, or even if the witnesses, or some of them, had been examined-in-chief and their cross-examination postponed. It may be, as learned Counsel for the Crown has pointed out to us, that this would not have been the right of the appellants. But I know no reason why the Sessions Court if it thinks the case a proper one, should not show such an indulgence. However this may be, this was not asked for, but something less than this, namely, that the cross-examination might be only postponed until the following day.

3. The result of this refusal has been that the first six witnesses have not been cross-examined in the Sessions Court by either counsel or pleader; and, of these, four at least are of importance. And the other witnesses do not appear to have been very efficiently cross-examined, possibly owing to the circumstances under which the gentlemen who defended them undertook their defence.

4. I think that the appellants have been prejudiced, in that they have lost the opportunity of cross-examination in the Sessions Court.

5. We have heard the case at considerable length, and owing to the inefficient manner in which the Sub Inspector Dwarka Nath was examined, we had to

examine him ourselves under the provisions of Section 428 of the Code of Criminal Procedure. His evidence was left in such an ambiguous state that, for the reasons which we gave in our order directing his examination before us, it was not possible, without further enquiry, to determine upon the evidence.

6. We have now heard the whole case, and we are unable to accept the responsibility of adjudging it when the appellants had not, as I have stated, proper opportunity of cross-examination. For, on a review of the whole case, we find that there are matters which might, and probably would have been, cross-examined into, if due opportunity had been given.

7. In this case it is not sufficient to direct the cross-examination merely of the first six witnesses, as it is possible that, at their cross-examination, it may appear that there are matters as to which the other witnesses might have been, but were not, in fact, cross-examined, and the appellants lost the benefit, which they would have had, of being represented by counsel, had the Court not refused the application in respect of the cross-examination. The learned pleader for the appellants asks us for an opportunity of fully examining the witnesses; and to this I think he is entitled.

8. I would, therefore, set aside the conviction and sentence and direct that, the appellants be re-tried. The trial should commence de novo, and a certified copy of the evidence taken by us of the Sub-Inspector Dwarka should be returned with the record to the Sessions Court. Under the circumstances, I would direct that the case be re-tried by another Sessions Judge, and would transfer the case to the Sessions Judge of the Patna District. A certified copy of the deposition of the Sub-Inspector may also be furnished to the appellants.

Sharfuddin, J.

9. I agree.