

Kanchan Mallik Vs. Emperor

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Court : Kolkata

Decided On : Jun-18-1914

Reported in : (1915)ILR42Cal374

Judge : Sharfuddin and ;Teunon, JJ.

Appellant : Kanchan Mallik

Respondent : Emperor

Judgement :

Sharfuddin and Teunon, JJ.

1. In this case the petitioners were convicted under Sections 186 and 144 of the Indian Penal Code, and sentenced, petitioners Nos. 1 and 3, to three months-rigorous imprisonment and to pay a fine of Rs. 50 under each Section, and petitioner No. 2, Harmuz Ali, who is said to be a boy of 13 or 14 years of age, to pay a fine of Rs. 25 under each Section. The sentences of imprisonment on the petitioners Nos. 1 and 3 were to run concurrently. They obtained a Rule from this Court calling upon the District Magistrate of Khulna to show cause why the order complained of should not be set aside and such other or further order made as to this Court might seem fit and proper on the ground that, at the hearing of the appeal by the learned Sessions Judge, the learned Sessions Judge approached the consideration of the case from a wrong standpoint. On turning to his judgment we find that he opens his judgment as follows; 'The prosecution has examined

nine witnesses and the defence two (out of five in all) to prove the rival occurrences. The lower Court with the witnesses before it has believed the former, and unless reasonable ground is given me for differing I must accept that finding of fact.' That is to say he has practically called upon the appellants before him to establish to his satisfaction that the first Court has come to a wrong finding. This is not the standpoint from which an appeal in a criminal case is to be approached. In an appeal from a conviction and sentence, it is for the Appellate Court, as for the first Court, to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the appellants has been established beyond all reasonable doubt. We are therefore, of opinion, that the order of the Appellate Court must be set aside, and we Accordingly set it aside and direct, that the appeal be re-heard. At the rehearing of the appeal, it will be for the consideration of the Sessions Judge whether the cumulative sentences in the case of Harmuz Ali ought or ought not to be affirmed. In these terms we make the Hale absolute.

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