

K.B. Deboo (Daboo) Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/856222

Court : Kolkata

Decided On : May-25-1945

Reported in : AIR1945Cal423

Appellant : K.B. Deboo (Daboo)

Respondent : Emperor

Judgement :

Henderson, J.

1. The appellant has been convicted of an offence punishable under Section 13 of Ordinance 35 of 1943. Briefly, the prosecution case is that the appellant sold a case of whisky to P.W. 1 for Rs. 560. The proprietor of the business is the appellant's father who was also sent up but was acquitted. There are disputed questions of fact. Apparently it was admitted that P.W. 1 paid Rs. 560 to the appellant. The defence however say that this was arranged by the appellant's father as the price of the whisky and certain other things. Of course, if that version is true, there is an end of the case. Before the appellant could be convicted, it would have to be shown that either he is a dealer within the definition of Section 3 of the Ordinance or that his act amounted to an abetment of an offence by his father. As his father has been acquitted, it would be very difficult to establish facts making the appellant liable as an abettor. I am told that the appellant is a student reading in the Bangabashi College.

2. That being the position, the appellant is entitled to ask me to go into the facts and say that the offence has not been proved. There is no evidence whatever on the record. It appears by the amendment of Section 14A that a Presidency Magistrate is absolutely forbidden to record the evidence unless for reasons to be recorded in writing by him, he considers it advisable to do so. All these convictions can be challenged either in appeal or in revision as the case may be and nobody has been able to suggest to me what useful purpose is served by this amendment. It is obviously impossible for me to decide questions of fact when I do not know what the evidence was. I suggest that unless frequent retrials are to be ordered, the Magistrates should record as a reason that they propose to make an order which is liable to be challenged in this Court. Mr. Chatterjee stated that he was unable to give up the case but he is not in a position to tell me what exactly the evidence is. The appeal is accordingly allowed, the conviction and sentence are set aside and I direct that the appellant be retried. The fine, if paid, will be refunded.