

Foijuddi and ors. Vs. Emperor

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Court : Kolkata

Decided On : Feb-24-1920

Reported in : 58Ind.Cas.922

Judge : Lancelot Sanderson, C.J. and ;Walmsley, J.

Appellant : Foijuddi and ors.

Respondent : Emperor

Judgement :

Lancelot Sinderson, C.J.

1. This appeal has been based by the foamed Counsel who appeared for the appellants on the grounds stated in paragraphs 3 and 4 of the petition. It appeared that there were four witnesses whose names had been included in the list of persons whom the accused wished to be summoned to give evidence on their behalf, and the list had been banded in to the Magistrate's Court on behalf of the accused. These four persons did not attend the trial at the Sessions to which the accused had been committed, notwithstanding that summonses had been served upon them. The trial began on the 27th of October 1919, the prosecution case was concluded on the 29th and the defence ease began on the same day, the 29th. On the 30th it appears that a petition was filed on behalf of the accused applying to have the four willnesses summoned to give evidence on their behalf. The learned Judge refused the, application. This refusal was not based upon the ground that

the learned Judge was satisfied that their evidence would be immaterial, but it was solely upon the ground that the application ought to have been made at an earlier date the learned Additional Sessions Judge said: 'There was no such prayer on the 1st date of trial, i.e., 27th October 1919, nor on the 2nd date nor on the 3rd, but on the 4th date when all the defense witnesses have been examined and the case is ready for hearing arguments, this petition for adjournment has been filed.' There is nothing before us to enable us to judge whether the evidence of the four witnesses would be material or not, except the 'statement in the fifth paragraph of the petition that those witnesses, if examined, would have proved that the disputed bari was in possession of Badaruddi and that the complainants party were the aggressors.' In view of that statement I find it impossible to say that the evidence of these witnesses, if they had attended the trial, would not have been immaterial. Inasmuch as the trial took four days and the learned Counsel for the Crown says it was a heavy case and the facts of the case, so far as they were represented to the Jury, were enquired into and a verdict was given. I regret that we have to allow the appeal and set aside the verdict and the sentence. On the other hand, however, it is a matter of importance that the accused should have their witnesses (whose names they had mentored before the Magistrate and who had been summoned but did not attends present at the trial in the Sessions Court. The learned Counsel for the Crown has pointed out that if an application such as this, which is not made until the last moment, is granted, considerable inconvenience and unnecessary expense and delay may be caused and for (hat reason this appeal ought not to be allowed. I quite appreciate the force of the learned Counsel's remarks--in fact the matter had occurred to me before he mentioned it, but I think that if proper precaution is taken by the learned Judges who are presiding over the trial at the Sessions Court, this kind of thing may be avoided. Steps may be taken by the learned Judges to see that the parties, at a sufficiently early stage of the trial, make any application with regard to the attendance of witnesses, which they desire. If they do not comply with the direction of the learned Judge to make their application with regard to the attendance of witnesses within a reasonable time, they cannot complain after wards, if they make an application at the last moment, and such application is rejected.

2. For these reason, in my judgment, this appeal must be allowed, the verdict and the sentence should be set aside and the matter should be remanded to the Sessions Court to be re-tried.

Walmsley, J.

3. I agree.

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