

Rohimuddi and anr. Vs. the Queen-empress, on the Prosecution of Asiram Bibi

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Court : Kolkata

Decided On : Dec-01-1892

Reported in : (1893)ILR20Cal353

Judge : Prinsep and ;Ghose, JJ.

Appellant : Rohimuddi and anr.

Respondent : The Queen-empress, on the Prosecution of Asiram Bibi

Judgement :

1. The only ground upon which it was contended that the conviction and sentence should be set aside was that the judgment of the Sessions Judge was not a judgment in accordance with law, not being in conformity with the provisions of Section 367 of the Code of Criminal Procedure, and Mr. Gasper contended on the authority of the cases of Kamruddin Dei v. Sonatun Mandal I.L.R. 11 Cal. 449 and In the matter of the petition of Ram Das Maghi I.L.R. 13 Cal. 110, that he was entitled to have the conviction and sentence set aside and the case remanded to the Sessions Judge for a rehearing of the appeal.

2. The judgment of the High Court (Prinsep and Ghose, JJ.) was as follows:- In this case we have been required on revision to consider whether the judgment of the Sessions Judge of Rungpur on appeal is a judgment within the terms of

Section 367 of the Code of Criminal Procedure, or whether it is not so defective in substance as to demand a retrial of that appeal. The judgment runs as follows:(Their Lordships here read the judgment and continued.)

3. We have been referred by the learned Counsel who appears for the petitioners to the judgments of two Division Benches of this Court in *Kamrudin Dai v. Sonatun Mandal* I.L.R. 11 Cal. 449 and In the matter of the petition of *Ram Das Maghi* I.L.R. 13 Cal. 110, which followed the first-mentioned decision.

4. The reports of those two cases, which set out the judgments delivered, do not give in what respects the learned Judges held that the judgments of the Criminal Appellate Courts then before them were not judgments within the terms of Section 367. We observe, however, that in neither of those cases did the Courts of appeal in their final orders purporting to be their judgments state any of the points for determination, or expressly find on the evidence that the appellants had committed the particular offence, or the several acts which might constitute that offence, for which they were sentenced. We take it, therefore, that the ground upon which the judgments in the cases cited to us really proceeded was the omission of such a finding. We are not inclined, in the absence of any authority, to hold that merely because the form of a judgment does not exactly comply with all the requirements of Section 367, it is not a valid judgment. It seems to us that this is the object of the Legislature as expressed in Section 537*, in which it is provided that 'no sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the judgment **** during trial, unless such error, omission, or irregularity has occasioned a failure of justice.' The omission must be substantial. We would refer to the judgment of WHITE, J., in *Protab Chunder Mukerjee v. Empress* 11 C.L.R. 25, and also to the cases of *Kheraj Mullah v. Janab Mullah* 11 B.L.R. 33 : 20 W.R. Cr. 13, and In the matter of the petition of *Goomanee* (17 W.R. Cr. 59), also to In re *Shivappa v. Shidlingappa* I.L.R. 15 Bom. 11, in which the functions of a Court of Criminal Appeal are described. The judgment of the Appellate Court shows that the Sessions Judge appreciated the points which the prosecution had to establish, and that he had clearly in view the point for determination, viz., the credibility of the evidence of the witnesses for the prosecution, and he expressed his opinion on

that point. That evidence as set out in the judgment of the Magistrate established the particular offence of which the appellants had been convicted. It is not contended, nor does it otherwise appear that any other point was raised at the hearing of the appeal or submitted to him for determination. Under such circumstances we think there is no sufficient reason for us to interfere as a Court of revision.

5. The rule is accordingly discharged.

* Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

[Section 537 : Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under chapter XXVII or on appeal or revision on account:

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by Section 195, or

of the omission to revise any list of jurors or assessors in accordance with Section 324, or of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.]

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