Ashutosh Das Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/864672

Court : Kolkata

Decided On : Apr-08-1921

Reported in : 66Ind.Cas.513

Judge : Teunon and ;Ghose, JJ.

Appellant : Ashutosh Das

Respondent : Emperor

Judgement :

1. In this case the accused before as has been directed, under the provisions of Section 110, read with Section 118, Criminal Procedure Code, to executes a bond of Rupees 200, with two sureties each in like amount, to be of good behaviour for one year, in default to suffer rigorous imprisonment for the same period. The allegation against him was that he was by habit a receiver of stolen properties knowing the same to be stolen.

2. We have been taken over a considerable portion of the record, and we cannot but come to the conclusion that the trial or enquiry in the present case has been vitiated by the admission of much inadmissible evidence; for instance, a person of the name of Gayaram, who says that he and sertain others committed docoity at a place sailed Hirabiti, save evidence to the effect that he had made over the ornaments stolen in the course of that dacoity to the accrued That, of course, is admissible. He was further permitted to say that he heard from certain other

persons that articles stolen in three other dasonities were also made over to the accused. His informants have not been examined. That portion of his evidence on which the Magistrate lays stress is dearly inadmissible. Then, at a search of the house of the petitioner, it is stated that a certain tee-ring was found in his house and that leering, it is suggested, was one of the properties stolen in the course of a dacoily at the house of one Satis Ganguly in the village of Jagadanga. With regard to this toe-ring the Police Officer were permitted to slate in the course of their investigation before the said Police Officers that the wife of Satis and the wife of his brother Sasadhar identified this toe-ring as belonging to Satis' wife. Neither of there two ladies was examined. Obviously, the evidence of the Police Officers with regard to the statements made to them by these two ladies is inadmis. sidle. Further, the statement supposed to have been made is the investigating Police Officer by the witness Sasadbar, the brother of Satis, has been obviously relied upon by the Magistrate as substantive evidence against the accused, while it should have been need in order merely to contradict or corroborate, as the case may be, the statement made by Sasadhar in the Court of the Trying Magistrate.

3. We next find that the statement said to have been made by a Pleader of the name of Snjoy Das to the investigating Inspector has evidently been treated by the Trying Magistrate as substantive evidence against the petitioner while the statement supposed to have been made, if the Inspector was to be believed, should have been used at most in order to contradict Snjoy Das as regards the statement mane by him in the Court of the Trying Magistrate. With regard, further, to the witness Gayaram, it is clear that be was a witness of where evidence corroboration was necessary. What corroboration, then, is of his evidence as to what he knew of his own personal knowledge the Magistrate has not indicated. We find, further, that even in the evidence of the witnesses who speak to the reputation of the petitioner much bearsay evidence has been admitted.

4. For these reasons we mast sot aside the order now complained of and direst that there be a retrial of this matter in the Court of a Magistrate of the First Class at the bead-quarters of the District of Bankura. Such Magistrate to be nominated by the District Magistrate of Bankura, and be one other than the Magistrate in whose Court the order now set aside was made.