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**Kasem Ali Vs. King-emperor**

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**SooperKanoon Citation** : sooperkanoon.com/874523

**Court** : Kolkata

**Decided On :** Dec-03-1926

**Reported in** : AIR1927Cal949,101Ind.Cas.481

**Appellant** : Kasem Ali

**Respondent** : King-emperor

**Judgement** :

**Gregory, J.**

1. This is an appeal by one Kasem Ali who was tried before a jury in the Court of the Sessions Judge of Bakerganj and convicted and sentenced under Section 120-B, I.P.C.

2. The facts of the case may be stated briefly in view of the circumstances under which we consider it necessary to interfere with the conviction and sentence of the accused. The facts are shortly these : It would appear according to the prosecution that there was ill-feeling on the part of the accused Kasem towards Kagal Sardar his uncle the deceased on account of Kagal wishing to sell his properties and so deprive the accused Kasem of them, by reason of a misunderstanding that had arisen between them. The accused Kasem was living in the same bari as his uncle and the case is that on the 10th February 1926 the deceased Kagal Sardar whose murder is the subject of one of the charges, was sleeping in the eastern hut while his wife Sherjan Bibi slept in the western hut. One Jamila the wife of the accused

Kasem Ali slept in the southern hut. The case for the prosecution was that the accused Kasem Ali himself was not in the house that night but he had gone to Barisal. On the following morning it was discovered by Jamila, otherwise called Kuti, that both Kagal Sardar and his wife Sherjan Bibi were lying dead in their huts. The evidence shows that the death of both was due to strangulation.

3. The two accused namely one Elemaddi and the present appellant Kasem Ali were put on their trial in the Sessions Court on the following charges the character of which will be referred to hereafter. The charge against Elemaddi was one of a criminal conspiracy under Section 120-B, to commit the murder of Kagal Sardar and his wife Sherjan Bibi another charge against the same accused was under Section 302, I.P.C. in respect of the murder of Kagal Sardar. The charge against Kasem Ali the present appellant was only under Section 120-B, I.P.C. The verdict of the, jury as against Elemaddi was one of guilty, by a majority of 3 to 4, of the charge under Section 120-B, I.P.C. and of not guilty on the charge under Section 302, I.P.C. As against Kasem Ali the present appellant the verdict was one of guilty of the charge under Section 120-B, I.P.C. by a majority of 3 to 4. In consequence of the verdict of guilty against Elemaddi of the charge under Section 120-B the Sessions Judge was not satisfied with the propriety of it and. he made a reference under Section 307, Criminal P.C. to this Court and the ground of the reference was that there was no proper corroboration of the evidence of one Menajuddi who was called as a witness for the Crown and that therefore the conviction under Section 120-B, I.P.C. was not proper in his case. Apparently his view was upheld and Elemaddi on that reference was acquitted; in respect of the charge under Section 120-B, I.P.C. The effect of this is this-that the present appellant was 'left convicted of an offence under Section 120-B, I.P.C. and it is against this conviction that he has preferred the present appeal.

4. The charge under Section 120-B, I.P.C. against the two persons Elemaddi and the present appellant appears to us to be a charge of a conspiracy between themselves to murder Kagal Sardar and his wife Sherjan Bibi. It does not appear to us that it is a charge of conspiracy; between themselves and other persons. It is not stated that there were other: parties known or unknown to the conspiracy, and it would appear from the' grounds of commitment that the committing Magistrate

regarded the conspiracy as one between Kasem Ali and the other accused Elemaddi. In this view of the matter the objection taken by the appellant is that taking the charge against, the two accused persons on trial to be one of conspiracy between themselves when one of them namely, Elemaddi was acquitted of that charge, the other accused Kasim Ali the appellant cannot be convicted of that conspiracy. Mr. Khundkarfor the Crown agrees that the charge as drawn up is capable of being read as we construe it but he contends that it was the case for the prosecution supported by evidence that the conspiracy was one not confined to the two accused on trial only but extended to other parties also. We do not think, having regard to the charge as drawn that effect can be given to that argument. Neither can it be said fairly that the accused would not be prejudiced if, as contended by the Grown, an extended reading were given to the charge.

5. On our construction of the charge the appellant was not called upon to meet any case other than the one we have indicated.

6. On these considerations it appears to us that the objection raised by the appellant is fatal to the conviction, and it is unnecessary to consider any of the other objections which have been raised by the learned pleader who has appeared for the appellant.

7. This being so, the conviction of and the sentence passed on the present appellant must be set aside and the appellant acquitted.

**Cuming, J.**

8. I agree.

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