

Bal Mukundo Singh Vs. Emperor

Bal Mukundo Singh Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/877247

Court : Kolkata

Decided On : May-21-1935

Reported in : 165Ind.Cas.707

Judge : Lort-Williams and ;Jack, JJ.

Appellant : Bal Mukundo Singh

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. In this case the accused was tried in respect of unnatural offences alleged to have been committed upon three boys on three separate occasions. He was convicted by the Magistrate under each of the charges. On appeal the convictions with regard to two of the boys were set aside, and the third conviction with regard to one Shib Nath was upheld.

2. The offence against Shib Nath was to have been committed on March 12. The accused used to occupy a couple of rooms on the ground floor of premises No. 7, Paddapukur Road. Shib Nath had occasion to visit some one else in these premises and as he was going past the room occupied by the accused, he was invited to enter it. A friend of his was already in the room. The accused gave Shib Nath some pan and some intoxicating drink. Later on Shib Nath felt too intoxicated

to leave and stayed there for the night after having his meal with the accused. They occupied Separate rooms, but in the night it is alleged that the accused came to his bed and proposed carnal intercourse with him. Shib Nath refused, but he was overpowered, and this offence was committed. Shib Nath alleged that he was under the influence of drink and could not offer much resistance, but he offered as much as he could. No injuries were found upon him. The cloth which, it is alleged, the accused wiped himself with, was examined by the Chemical Examiner without result.

3. The next morning, Shib Nath reported the matter to a man named Karr who took him to the Police Station where he made a complaint against the accused. Unfortunately, Mr. Karr's evidence cannot be referred to, because he could not be produced for cross-examination. The learned Judge disbelieved the story of both the other boys, mainly upon the ground that they made no complaint to any one until they were accosted by the Police in connection with Shib Nath's case. The learned Magistrate found as a fact that Shib-Nath was a perfectly willing party-and was lured by the prospect of monetary payment otherwise he could not have so readily consented to dine and stay the night in a stranger's house. Further, he did not straggle otherwise there would have been injuries upon his person. He did not feel any pain or inconvenience while walking after the incident. It is doubtful whether, upon the evidence, the learned Magistrate was justified in drawing the inference that Shib Nath was a consenting party especially having regard to his allegation that he was intoxicated with drink supplied by the accused.

4. Nevertheless, we are not prepared to disagree with the finding of the learned Magistrate. That being so, Shib Nath must be regarded as an accomplice. In such circumstances, it would not be safe to convict the accused, unless Shib Nath's evidence is corroborated in material particulars impacting the accused. It is true that in law such corroboration, is not required, but as a matter of prudence, there ought to be no conviction without such corroboration, except in very exceptional cases, *Reg. v. Jellyman* (1838) 8 C. and P 604, *The King v. Tate* (1908) 2 K.B. 680 : 77 L.J.K. B 1043 : 99 L.T. 620 : 72 J.P. 391 : 52 S.J. 699 : 21 Cox C.C. 693 : 1 Cr. App. Rep. 39. In the latter case it was decided that where a prisoner is convicted upon the uncorroborated evidence of an accomplice, the Court of

Criminal Appeal may quash the conviction if the Judge at the trial omitted to caution the jury against convicting upon such evidence.

5. There does not appear to be any corroboration in this case. The learned Magistrate's opinion that the fact that boys like the present complainant had been seen visiting the accused's room gave some corroboration to the story told by the complainant is, in my opinion, incorrect. Such evidence would not amount to corroboration within the meaning of the rule to which I have referred nor would it be evidence against the accused. But the case of the accused was not assisted by the cross-examination made on his behalf, during; which, as is so often the case, a great deal of damaging evidence was elicited which otherwise could not have been admitted.

6. It does not seem to have occurred to the learned Sessions Judge that he ought to require corroboration before accepting Shib Nath's story. I think that if this aspect of the case had been present to his mind, he might have come to a different conclusion. In all the circumstances, I do not think that it would be safe to allow this conviction to stand upon this evidence. The conviction and sentence are, therefore, set, aside and the accused is acquitted. The accused, who is on bail, is discharged from his bail bond.

7. Jack, J.--I agree.