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Fulbash Sheikh Vs. Emperor

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Court : Kolkata

Decided On : Apr-17-1929

Reported in : AIR1929Cal448

Appellant : Fulbash Sheikh

Respondent : Emperor

Judgement :

1. The accused in this case Fulbash Sheikh has been convicted under Section 395, I.P.C., and sentenced to suffer rigorous imprisonment for a period of five years. There are two other accused but their appeals have been summarily rejected.

2. The short point that has been pressed upon our attention by Mr. Lalit Mohan Sanyal is that evidence which was clearly inadmissible has been admitted in this case and that that being so there has been misdirection.

3. It is not necessary to set out the facts at length. It appears that at the time of the search it was found that the accused Fulbash's wife was wearing certain ornaments. The ornaments are not of much value and were very ordinary ones. The prosecution alleged that these ornaments had been stolen during the progress of the dacoity. Fulbash and his wife on being questioned about these ornaments stated that they belonged to Fulbash's wife, that they had always been worn by Fulbash's wife, that they had not been stolen during the progress of the

dacoity. It appears that these ornaments were included in a second list handed to the Investigating Police Officer during the course of investigation. Mr. Sanyal thereupon contends that the list which was supplied to the Investigating Police Officer during the course of investigation was a statement in writing made to a Police Officer within the meaning of Section 162, Criminal P.C. and that therefore the list in question was inadmissible in evidence. We have examined the record and there is no doubt whatsoever that on the facts Mr. Sanyal's 'contention appears to be well-founded. If that is so there is no escape from the conclusion that the list in question should not have been admitted in evidence but the learned Deputy Legal Remembrancer had contended that the list was in no way responsible for the purpose of establishing the identity of the ornaments which had been stolen. In our opinion we must give effect to Mr. Sanyal's contention, and hold that inadmissible evidence having been let in, there was clearly misdirection. The question then arises as to what we should do in this matter. As stated above, the ornaments in question were of not much value and were such as are ordinarily worn by this class of persons. There is also the circumstance that as soon as these ornaments were noticed during the search, Fulbash and his wife stated at once that they were the property of Fulbash's wife and had always belonged to her, in other words, it is clear that no endeavour was made to conceal these ornaments at the time of the search or at any other time. In these circumstances we are of opinion that no useful purpose would be served by our directing a retrial. We accordingly set aside the verdict of the jury and with it the conviction and sentence and direct that accused Fulbash be discharged. If he is on bail his bail bond will be cancelled.

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