

Kanai Sheet and ors. Vs. the State

Kanai Sheet and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/880139

Court : Kolkata

Decided On : Feb-07-1983

Reported in : 1984CriLJ527

Judge : B.C. Chakrabarti and ; Jitendra Nath Chaudhuri, JJ.

Appellant : Kanai Sheet and ors.

Respondent : The State

Judgement :

B.C. Chakrabarti, J.

1. This is an appeal from an order of conviction and sentence passed by the learned Additional Sessions Judge, Midnapore in Sessions Trial No. 4 of April, 1975. Nine accused-persons were tried under Sections 395, 397 and 412. I. P. C. and also under Section 6(3), Explosives Act. The learned Additional Sessions Judge found eight accused persons guilty under Section 395, I, P. C, and sentenced each of them to suffer rigorous imprisonment for five years and to pay a fine of Rs. 500/-each, in default to rigorous imprisonment for another five months.

2. Having heard the learned Advocates for the appellant and having perused the judgment under appeal, we are satisfied that the prosecution case rests principally if not entirely on the identification of the accused persons held in test identification parade as also in identification in Court. So far as the identification held by the

Magistrate in T. I, parade only one paper, namely exhibit 5, was brought into record. It appears, however, that T. I. parades were held on several occasions as well and the learned Judge in his judgment has referred to them, namely, the T. I. Parades held on 5-4-1974 and 14-10-1974. The document which has been accepted; namely exhibit 5 is the memo of the Magistrate dated 5-4-1974. This document again has not been formally proved. It appears that the learned Judge by his order dated 6-7-1977 indicated that the proof of the document was not necessary and in coming to that conclusion he has relied on a decision of the Allahabad High Court reported in 0043/1961 : AIR1961 All153 . This decision was, however, considered in. a subsequent decision of the same High Court in the ease of Ram Senehi v. State : AIR1963 All308 . This decision held that an identification memo is not a record of evidence of a witness; within the moaning of Section 80 and consequently does not prove itself and in arriving at the conclusion. their Lordships dissented from the view taken in 0043/1961 : AIR1961 All153 . The question again came to be considered by a Full Bench of the Allahabad High Court in the case of Sheo Raj v. State : AIR1964 All290 . The Full Bench has overruled the view taken in 0043/1961 : AIR1961 All153 and has held that the memorandum of identification proceeding held by a Magistrate acting under Section 164, Cr. P. C, is not [admissible without proof. Agreeing with the view thus expressed in : AIR1963 All308 and : AIR1964 All290 , we find that the learned Judge was wrong in accepting the memo of evidence without proof.

3. The case as we have already indicated depends mainly. if not entirely, on the result of the test identification parade. Therefore it is necessary that the evidence as to the test identification parade should come into the record in the formal way. Instead, however, of sending the case for re-trial, we think it expedient to send the record to the court of the learned Additional Sessions Judge for recording the additional evidence in regard to Exhibit 5 as also to the other memos of test identification parades which have not been exhibited but which have been referred to by the learned Judge in his judgment. The learned Judge shall record the evidence in the presence of the accused appellants with opportunity to cross-examine the witness or witnesses thus examined and the learned Judge shall thereupon certify the evidence to this Court. If it is felt necessary by the learned Additional Sessions Judge to further examine the accused appellants under

Section 313, Cr. P. C. after such additional evidence is taken, he shall do so and certify the same to this Court along with the evidence.

4. Let the records be sent down to the court below forthwith and the learned Additional Sessions Judge is directed to record the Additional evidence within a period of three months from this date, if not entirely impossible and transmit the same to this Court along with the records.

5. The appeal shall for the present go out of list with liberty to mention.

Jitendra Nath Chaudhuri, J.

6. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com