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Dastarali Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/880976

Court : Kolkata

Decided On : Aug-25-1930

Reported in : AIR1931Cal625

Appellant : Dastarali

Respondent : Emperor

Judgement :

Suhrawardy, J.

1. The accused Dastarali was tried with six others, charged under Section 467/34, 193/34 and 471, I. P.C. The case for the prosecution was that the deed in question was fabricated by all these persons. It was executed in favour of the first three accused Dastarali, Wafiz Sheikh and Bhadurali and written and witnessed by the other accused. In the course of the trial the learned Judge found that nothing had been proved against accused 2 and 3, Wafiz Sheikh and Bhadurali, and directed the jury, under Section 289, Criminal P.C., to return a verdict of acquittal in respect of them. As regards the remaining accused, the jury brought in a verdict of guilty under Sections 467 and 193, Part. 2, I. P.C., against the appellant Dastarali and acquitted the other accused persons. The learned Judge accepted the verdict and sentenced the accused to two years' rigorous imprisonment under each head, sentences to ran concurrently.

2. The only point worth considering in this appeal is, whether the convictions under Sections 467 and 193, I. P.C., are correct in law in view of the fact that they were charged with offences under those sections read with Section 34.

3. It has been argued that i a person is charged with an offence read with Section 34, ho could not be convicted of the 'substantive' offence. The view does not appear to be correct. By using the words 'substantive offence' it is suggested that the offence under Section 34 is a constructive offence. Under Section 34, a person is charged with having committed the offence along with other persons. If it is proved that the other persons had no hand in committing the offence, but it was committed [by the accused himself, or if the prosecution fails to prove that the other persons committed the offence, but succeeds in proving that one of the accused did it or had a part in committing it there does not seem to be any reason why he cannot be convicted for committing the offence himself. As has been observed in the case of Emperor v. Profulla Kumar Mazumdar A.I.R. 1923 Cal. 453 Section 34 does not create a new offence but is a rule of law and applies only when a criminal act is done by several persona of whom the accused charged thereunder was one. A person is charged with committing an offence read with Section 34, when he himself commits the offence along with others. In this particular case, the charge ran in these words:

That you, on or about the month of Pous 1333 B.S., forged a certain document purporting to be a valuable security, etc.

4. The charge of forgery was made against all the persons and Section 34 was added because the offence was said to have been committed by all of them jointly. If Section 34 creates a different offence, the accused may still be convicted of an offence when charged with that offence read with Section 34: vide Section 236 read with Section 237, Criminal P.C. In our opinion, this appeal fails and is accordingly dismissed.

Mallik, J.

5. I agree.

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