

Mast Ram Vs. Basant Ram

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Court : Himachal Pradesh

Decided On : Aug-20-1954

Reported in : 1955CriLJ697

Judge : Ramabhadran, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 439

Appeal No. : Criminal Reference No. 7 of 1954

Appellant : Mast Ram

Respondent : Basant Ram

Advocate for Def. : Party in person

Advocate for Pet/Ap. : Thakar Dass, Adv.

Disposition : Reference rejected

Judgement :

ORDER

Ramabhadran, J.C.

1. This is a reference by the learned Sessions Judge of Mahasu, wherein he has recommended that the order of the Magistrate First Class, Solan, acquitting the opposite party, Basant Ram, of an offence under Sections 323 and 504, I. P. C.,

be set aside and the case sent back for retrial. The reference arises under the following circumstances.

2. There were two connected cases before the Magistrate First Class, Solan. (1) 'State v. Mast Ram and two others', under Sections 354 and 457, I. P. C. The allegations in that case were that the accused persons broke into the house of one Mt. Dharmi in village Nahri and they outraged her modesty. (2) A complaint filed by Mast Ram against Basant Ram, as already stated, under Sections 323 and 504, I. P. C., with the allegations that the accused gave him three blows with a 'danda'.

3. The former case ended in conviction. The convicted persons went up in appeal to the Sessions Judge of Mahasu, who set aside their conviction and ordered a retrial. The second case ended in acquittal. The learned Sessions Judge recommends that the acquittal be set aside and a retrial ordered, mainly, on the ground that the defence version in one case formed the prosecution case in the other and, therefore, it was expedient that the two cases should be tried afresh to avoid conflicting decisions. He has also expressed his opinion that in the Magistrate's decision in case (2), the evidence was not properly discussed and the judgment was perfunctory.

4. I have heard learned counsel for the petitioner and the opposite party in person. In my opinion, no case is made out for ordering a retrial of the case under Sections 323 and 504, I. P. C., against Basant Ram. As was pointed out in--'Bakshi Sita Ram v. Lachhmi Chand', AIR 1954 Him-P 4 (A):

'Where the lower appellate Court has acquitted the accused on ground that the evidence against him is conflicting, the High Court, in revision at the instance, of a private complainant, would not order a re-hearing of the appeal, after reappraising the evidence and thereby holding that the findings of fact arrived at by the lower appellate Court, were wrong. To do so would, be to exceed the powers of revision vested in High Court under Section 439, Cr. P. C., for an order to the lower appellate Court to rehear would, in such circumstances, amount, in effect, to an order to that Court to convict the respondent. In fact, even the commission of an error of law would, not, by itself, justify interference in revision against acquittal at the instance of a private party, unless interference is clearly called for to prevent a

gross miscarriage of justice.'

Had there been a serious procedural defect, it might have been possible to order a retrial. The learned Sessions Judge has not pointed out any such flaw. The result is: I see no reason to order a retrial of the case, which has ended in acquittal, therefore, reject the reference. The trial Magistrate will, however, not allow himself to be influenced by the fact that this reference has not been accepted because the case, which will be retried by him, must be heard and decided on its merits.

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