

Dhup Lal and Others Vs. Emperor

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Court : Privy Council

Decided On : Nov-20-1945

Reported in : AIR1946PC43

Judge : Viscount Simond, Lord Thankerton & Sir John Beaumont

Appeal No. : Privy Council Appeal No. 19 of 1945 (From Oudh)

Appellant : Dhup Lal and Others

Respondent : Emperor

Advocate for Pet/Ap. : S.P.M. Khambatta and H.J. Umrigar for Appellants; B.J. MacKenna for the Crown. Solicitors for Appellants Hy S.L. Polak and Co.; Solicitors for the Crown; Solicitors India Office.

Judgement :

Viscount Simon:

This is an appeal, by way of special leave to appeal, from the judgment of the Chief Court of Oudh, at Lucknow, confirming the conviction of murder and the sentence of death passed upon the three appellants. Special leave was given in order that, in the light of fuller information, the Board might hear the argument, which has been very clearly and candidly advanced by Mr. Khambatta this morning, to the effect that there was some irregularity in the proceedings which would constitute a grave miscarriage of justice unless the appeal were allowed.

There are two proposed witnesses for the defence named in the case. As regards Bhagwan Dass, he was properly included in the list of witnesses whom the defence wished to summon and, after the date of the trial had been fixed by the Sessions Court for 1st August to 3rd August, the last of those days being allotted in advance for the defence, Bhagwan Dass was properly served by a summons issued by the committing Magistrate to appear on 3rd August. However the summons did not reach this gentleman's hands at his residence some fifty miles off, until the afternoon of 2nd August, owing to his having been away when the effort was first made to serve him. He at once communicated by telegraph to the Sessions Court, informing the Court that he had only just been served and that the time was too short, especially as there was no vehicle available, to enable him to appear, as the summons called upon him to do, at 10 A. M. on 3rd August. The next morning that fact was mentioned by the Court when the case was being dealt with, and we must proceed on the basis, which everybody accepts, that the time was too short for Bhagwan Dass to appear at the time and date mentioned in the summons. As it happened, the trial of the case was postponed until 7th August - it may very well be not on this account, but because of some arrangement already made. That being so, the practical thing to do was to let Mr. Bhagwan Dass know that it was on 7th August that he would be needed. The Court asked the defence to let him know this. The defence did not do so; they preferred to drop the witness.

In these circumstances, as it appears to their Lordships, there is nothing whatever to complain about in the case of the witness Bhagwan Dass. At one time it almost appeared that the point arose under S. 216, Criminal P. C., which directs what the committing Magistrate has to do in relation to summoning witnesses; but, as has been pointed out during the argument, the committing Magistrate had exhausted all his powers and duties under that section, and it is not suggested that the committing Magistrate was in any way in fault; he was completely *functus officio*, so far as this was concerned. If anybody was in fault, it would be the Sessions Court; but there was not really any fault there. The Court did not proceed high handedly. It was glad, no doubt, that there would be plenty of time for this gentleman to appear, and it gave the defence the opportunity telling him so. It does not seem that there is any other ground for complaint as regards that witness.

As regards the other gentleman, Sardar Bahadur, he was not on the defence's list at all. There was no right in the defence to have him brought before the Court. That appears to their Lordships to follow from S. 291, Criminal PC. The defence could have applied, if it had thought right to do so, under S. 540, Criminal P. C., to the Sessions Judge; but they did not do so. In these circumstances, it appears to their Lordships that there is no good ground for thinking that there has been a miscarriage of justice in this matter at all. There does not appear even to have been any irregularity. The consequence is that their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.

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