

(1904) 04 CAL CK 0019
In the Calcutta High Court

Emperor	Vs	APPELLANT
Luchmun Singh		RESPONDENT

Date of Decision : 27-04-1904

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 428(1)
Penal Code, 1860 (IPC) — Section 202, 213, 347

Citation : (1904) ILR (Cal) 710

Hon'ble Judges : Pratt, J; Handley, J

Bench : Division Bench

Judgement

Pratt and Handley, JJ.—Luchmun Singh, Head constable, was placed upon his trial before the District Magistrate of Puri on charges under Sections 213, 347 and 202 of the Indian Penal Code. With him were tried two chowkidars against whom charges were framed under Sections 341 and 213/109, in the result Luchmun Singh was convicted of the charge u/s 213 and acquitted of the other charges. With the result of the trial of the chowkidars we are not at present concerned.

On appeal by Luchmun Singh the learned Sessions Judge held that the conviction u/s 213 was not sustainable; because it was based merely upon the statements of, the co-accused and upon the inadmissible statement of the deceased Krupa Sahu. He, however, directed a retrial of both charges, viz., under Sections 847 and 213 on the following grounds:

(1) that the charge of wrongful confinement, of which accused had been acquitted, related to the alleged confinement at the Krishna proshad outpost, whereas the Magistrate should investigate the Confinement of the deceased by the chowkidars at other places;

(3) that from the evidence of the Inspector it would appear that there were at least three, other witnesses available, who were not examined owing to some defect in the conduct of the prosecution; Luchmun Singh moved this Court and obtained this Rule to show cause, why the order for retrial should not be set

aside. We have heard the learned vakil for the petitioner and the Deputy Legal Remembrancer in reply.

4. As regards allegations of wrongful confinement at places distant from the Krishnaproshad outpost, where the petitioner remained on duty, it is apparent that the petitioner's criminal responsibility for such acts is too remote to form the basis of any charge. The case is that the Head constable sent away Krupa Sahu in charge of two chowkidars to procure money. If in effecting this object the chowkidars subsequently confined Krupa Sahu, ducked him in a pond or even beat him, it would be impossible to hold the Head constable guilty of abetting such specific acts in the absence of proof (which of course can not be given) that he gave definite orders to that end.

5. As regards the examination of three further witnesses the Sessions Judge, if he thought their evidence necessary, should have proceeded under Clause (1) of Section 428 of the Criminal Procedure Code.

6. As the matter stands we find no reason for thinking they could give important evidence. The prosecution was conducted by a pleader and it has not been shown that he exercised an improper discretion in not calling the witnesses.

7. The Deputy Legal Remembrancer has contended that there was a misjoinder as the charge against the petitioner u/s 202 did not concern the chowkidars, who were tried jointly with him. On this ground he asks us to set aside the whole trial as illegal, and to direct a new trial. No such objection was taken before, and we do not think we ought to give effect to it, when dealing with the case on the application of the petitioner and not of the Crown.

8. We make the Rule absolute and set aside the order for retrial.