

Calcutta High Court

Nitya Gopal Sadhu And Anr. vs Emperor on 8 June, 1934

Equivalent citations: AIR 1935 Cal 120

ORDER

1. The petitioners were on the unanimous verdict of the jury before whom their trial was held convicted by the learned Assistant Sessions Judge of Burdwan, under Section 120-B, I.P.C., and were sentenced to rigorous imprisonment for one year each. The jury found the petitioners not guilty under two other charges for which the petitioners were tried under Section 379 and Section 477, I.P.C., and the Judge accepting the verdict of jury, acquitted the petitioners of these charges. The sentences passed on the petitioners were appealable ones, and as such there was an appeal by the petitioners to the learned Sessions Judge of Burdwan. The Sessions Judge by his judgment dated 2nd December 1933, allowed the appeal before him accepting the argument for the defence that if the jury disbelieved that the petitioners committed theft, there was no remaining evidence on which a verdict of conspiracy to commit theft could possibly be based. The Sessions Judge held definitely that the verdict returned by the jury under the separate section of the Indian Penal Code "were entirely incompatible." The Sessions Judge's judgment however contained a direction for retrial of the petitioners, the appellants before him "if the Crown desire to proceed the charges." There was after the delivery of the judgment of the Sessions Judge, an order recorded by him on 8th December 1933, containing direction as to the effect of the order for retrial passed on 2nd December 1933. In that order the Sessions Judge gave the direction that the effect of his order setting aside the verdict of the jury and ordering a retrial was to order a retrial of the appellants before him, on all the charges which were before the jury, including the charges in regard to which there was an order of acquittal by the Assistant Sessions Judge, in accordance with the unanimous verdict of the jury.

2. The rule issued by this Court in the case was directed against the order of retrial of the petitioners as passed by the Sessions Judge, and it must, in our judgment, be made absolute on the grounds on which it was issued. In our opinion the Sessions Judge could not direct a retrial of the petitioners, under the law, in respect of the offences of which they were acquitted by the Assistant Sessions Judge. The Sessions Judge came to the definite conclusion in his judgment dated 2nd December 1933, that after the acquittal of the petitioners under Section 379 and Section 477, I.P.C., their remained no material on the record to connect them with an agreement to commit those offences; on the conclusion arrived at by the Sessions Judge the order for retrial of the petitioners as passed by the Judge could not be justified under the law. The rule is made absolute. The orders for retrial of the petitioners, passed by the Sessions Judge on 2nd December and 8th December 1933, are set aside, and the petitioners are acquitted. If on bail, let the petitioners be discharged from bail bond and set at liberty.