

# **Mohammad Wasi And Anr. vs State on 6 September, 1950**

**Equivalent citations: AIR1951ALL441, AIR 1951 ALLAHABAD 441**

## JUDGMENT

Agarwala, J.

1. Mohammad Wasi and Shubrati were tried for offences under Sections 451 and 380 read with Section 75, I. P. C.

2. The prosecution case was that on 10-11-1948 at about 8-30 A. M. these persons had committed house-breaking at the house of one Gulab Rai and committed theft of clothes and cash. Gulab Rai was coming to his house and saw the accused, whereupon the accused took to their heels. Gulab Rai raised a hue and cry and pursued them and the accused were arrested by him with the help of other persons. Lajpat Rai head constable also arrived on the spot and took the accused in his custody and certain stolen property was recovered from their possession. They were convicted of the offences for which they were charged and it was held that both of them had committed offences previously and that their sentences could be enhanced under Section 75, I. P. C. Accordingly Mohammad Wasi was sentenced to 7 years' R. I. and Shubrati to 5 years' R. I. under the aforesaid sections.

3. Jail appeals were filed by Shubrati and Mohammad Wasi in this Court. They came up before me in Chambers. I dismissed the appeal of Shubrati without sending for the record and admitted the appeal of Mohammad Wasi. The appeal of Mohammad Wasi then came up for hearing before Hon. V. Bhargava J., who found that there was no evidence to bring Section 75, I. P. C. into operation. Accordingly he dismissed the appeal but reduced the sentence to 4 years' R. I., and recommended that the record may be put up before me so that I may examine the appeal of Shubrati which had been dismissed by me.

4. I have examined the case of Shubrati and I find that there is no evidence to bring the case under Section 75, I. P. C.

5. The question is whether I can now modify my previous order, I think I have power to do so under the provisions of Section 561A. This is a case in which upon the record, as it stands, the accused could not be punished with reference to Section 75, I. P. C. at all. Where a Court discovers that an order has been passed which upon the face of the record is erroneous and unjust, and the defect is of such a glaring nature that it could be said that having regard to the materials on the record, the Court had no jurisdiction to pass it or that it failed to exercise a jurisdiction vested in it by law, the Court may, and, indeed is bound to, review its own order and modify or set it aside, in order to "secure the ends of justice."

6. On the merits, of course, there is no force in this appeal.

7. I, therefore, modify my previous order to this extent that while maintaining the conviction of the appellant, I reduce the sentence passed on him under Sections 380 and 451, I. P. C. to 4 years' R. I.