Emperor Vs Jaisukh

None

Court: Allahabad High Court

Date of Decision: July 9, 1920

Citation: (1921) ILR (All) 125

Hon'ble Judges: Ryves, J; Grimwood Mears, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Grimwood Mears, Kt. C.J.

1. Jaisukh accused was charged before the Sessions Judge of Saharanpur with having brought about the death of one Udmi by administering

arsenic. A great deal of evidence was taken, the assessors gave their opinion and the assessors were discharged, and then it occurred to the

learned Sessions Judge when he was about to write his judgment that he would like to put one or two questions to another man by name Jaisukh,

son of Sahibu, who had originally been challaned with the accused, but had been discharged by the Magistrate. The learned Sessions Judge

thought he would like to put further questions to another witness who had already given evidence. This he in fact did, and did so in the absence of

the assessors, and he justifies having done that by placing reliance upon a decision of Mr. Justice WALSH, who, in the case of King-Emperor v.

Birbal and Ors. (1916) Cr. A. No. 580 of 1916, decided on the 22nd of September, 1916, decided that a Judge after having discharged the

assessors could nevertheless take further evidence. Now, Mr. Justice Walsh could have arrived at that decision only by the fact that the case of

Queen-Empress v. Ram Lal ILR (1893) All. 136 was not brought to his notice, because that case is a distinct authority for the very salubary

proposition that evidence must not be taken by a Sessions Judge unless that Sessions Judge has the two assessors sitting with him; otherwise, if the

Sessions Judge is sitting alone, he does not appear to be a Court, the Court being the Judge plus the assessors. We, therefore, think that the

learned Sessions Judge was wrong in taking the evidence of Jaisukh, son of Sahibu, and the further evidence of Nanu Gara, and therefore we are

obliged to set aside the conviction and sentence and we direct that the accused be tried de novo by the Sessions Judge of Saharanpur as soon as

possible.