(1879) 07 AHC CK 0005

Allahabad High Court

Case No: None

Empress of India		APPELLANT
	Vs	
Murli		RESPONDENT

Date of Decision: July 17, 1879

Citation: (1880) ILR (All) 339

Hon'ble Judges: Spankie, J

Bench: Single Bench

Judgement

Spankie, J.

The petitioner, convict No. 21013, Murli, is undergoing sentence of transportation for life in the penal settlement of Port Blair. He was convicted on the 27th April 1875, by Mr. H.G. Keene, the Sessions Judge of Agra, on a charge of dacoity, u/s 395 of the Indian Penal Code. Six other persons, Harphal, Dipa, Bhawani, Dhan Singh, Bhima, and Jhentar were tried at Agra with him. Jhentar was discharged by the Sessions Judge, and the others, including Murli, were transported for life. The five persons appealed to this Court, and on the 26th June 1875, were acquitted, and it was directed that they should be released. Murli did not appeal at the time, but does so now in a petition received through the Chief Commissioner of the Andaman and Nicobar Islands, and Superintendent of Port Blair and Nicobars, that officer following the instructions conveyed to him in the letter of the Secretary to the Government, Home Department.* Murli states that he was undergoing imprisonment for two years, on conviction of the offence of being in possession of stolen property, knowing the same to have been acquired by theft, when he was named by Pita, an informer, as having been one of the persons concerned in dacoity. He was put on his trial before the Sessions Judge of Agra, and convicted and sentenced to transportation for life. Five persons appealed and were released. But he (Murli) was unable to represent his case at that time, having neither funds nor friends. Since his arrival in the penal settlement he has succeeded in obtaining a copy of the judgment of the Sessions Judge of Agra, and now appeals from the order passed by him. The prisoner ought to have appealed to this Court in sixty days

from the date of the sentence, the 27th April 1875. The period of limitation has so long expired, and the explanation of the delay in appealing, though there may be some truth in it, is not altogether satisfactory, that I feel compelled to disallow the appeal. It is the case that all convicts have a right of appeal once, but that right is subject to the law of limitation, and I think that it would be unwise so to apply Section 5 of this law as to encourage the idea amongst the convicts of a penal settlement that they can at any time, as in this case, five years after the date of their conviction, appeal to this Court. At the same time, being well acquainted with the facts of the case, as I decided the appeal of the five other persons who had been transported for life, I am quite prepared to admit the petition as one for revision of the proceedings.

2. The case of Murli is on all fours with that of Harphal and others, and the same reasons which influenced my decision with respect to those appellants, lead me now to say that there is no satisfactory evidence to justify the conviction of Murli, and he ought to be released. My reasons will appear from the copy of my judgment in the case of Harphal and others which I have directed should be put up with this proceeding. I cannot at this time remember how it happened that I did not consider, as a Court of Revision, the case of the petitioner. I can only attribute my not having done so to the uncertainty that prevailed in this respect as to whether the Court was at liberty to interfere with the conviction of a prisoner who had not appealed (when dealing with the case of any person tried with him who had appealed) simply on a question of credibility of evidence. Later decisions both of this and of other Courts for years past have not tended to remove this uncertainty as to what is or is not a material error in a judicial proceeding. I am myself inclined, indeed I have acted in other cases in this view, to regard great laxity in weighing and testing evidence as a material error in a judicial proceeding, and looking at the trial in this case, it would seem to me that there had been great indifference and laxity on the part of the Sessions Judge in this respect. Accepting, however, the judgment of this Court in Full Bench in the matter of Hardeo ILR All. 139 I believe that I have the power of interfering now with the conviction of Murli. If we are not precluded by a judgment of acquittal from exercising the power of revision u/s 297 of Act X of 1872, we cannot be precluded from doing so, where there has been a conviction on evidence which has received no sifting, and which in many respects is so transparently false that, if it had been at all tested, its falsehood could not Have escaped notice. And in this opinion I am fortified by the amended new Code of Criminal Procedure of 1879. It seems that the dubious character of Section 297, Act X of 1872, has now been fully admitted. Section 439 of the amended Code, if it stand in the Act when passed, provides that the High Court as one of Revision may exercise all the powers of an Appellate Court with regard to appeals from convictions. Being of the opinion that I have the power of revision in this case, in which opinion my honourable colleagues, to whom the papers have been circulated, acquiesce, I have no hesitation in saying that the conviction of Murli ought not to be maintained, but that he ought to be at

once released. I therefore annul the conviction of Murli and the sentence passed upon him and direct his release.

----------Foot Note----------

* Mr. Officiating Secretary Bernard, C.S.I., dated 14th April 1879, to Superintendent of Port Blair and Nicobar Islands.