

APPELLATE CRIMINAL.

1912
October, 24.

Before Mr. Justice Sir George Knox and Mr. Justice Muhammad Rafiq.

EMPEROR v. BADRI PRASAD.*

Jurisdiction—Practice—Evidence in criminal case recorded by Assistant Sessions Judge—Judgement pronounced by Sessions Judge without re-hearing the evidence.

Where a Sessions Judge decided a case upon evidence taken, not before him, but before an Assistant Sessions Judge, it was held that the Sessions Judge's judgement was *ultra vires* and a fresh trial was ordered.

In this case the applicant Badri Prasad was committed to the Court of Session at Mainpuri on charges under sections 467 and 471 of the Indian Penal Code. The case was transferred to the Assistant Sessions Judge. The Assistant Sessions Judge recorded the evidence in the case; but did not proceed to judgement, on the ground that one of the issues in the case was at the same time awaiting decision under appeal in the court of the District Judge. After some interval the case was taken up by the Sessions Judge, who did not hear the evidence at all, but proceeded to judgement upon the evidence recorded by the Assistant Sessions Judge, and convicted the accused. Badri Prasad thereupon appealed to the High Court, contending, *inter alia*, that the judgement of the Sessions Judge was in the circumstances passed without jurisdiction.

Babu Satya Chandra Mukerji, for the appellant.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

KNOX and MUHAMMAD RAFIQ, J.J.:—Badri Prasad has been convicted of an offence under section 471 of the Indian Penal Code and sentenced to a term of rigorous imprisonment and payment of a fine. He has appealed. We do not go into the facts of the case in view of the order which we propose to make. There has been unfortunately in the trial an irregularity which compels us to set it aside and to order a new trial. Badri Prasad was committed to the court of sessions at Mainpuri. The case was transferred by the court of sessions to the court of an Assistant Sessions Judge. The Assistant Sessions Judge heard the case so far as the evidence

* Criminal Appeal No. 440 of 1912 from an order of E. C. Allen, Sessions Judge of Mainpuri, dated the 23rd of May, 1912.

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was concerned; but did not proceed to judgement, on the ground that one of the issues in the case was at the same time awaiting decision under appeal in the court of the District Judge, and we are told that the case remained pending for a year, when it was taken by the Court of Sessions at Mainpuri sitting at Etawah. The learned Sessions Judge did not hear the evidence at all, but proceeded to judgement upon the evidence recorded by the Assistant Sessions Judge. He had no jurisdiction to do this. The judgement and sentence are a judgement and sentence passed without jurisdiction and must be set aside. We notice what is apparently a mistake of law into which the learned Sessions Judge has fallen. He says that it is settled law that in such a case the accused cannot be convicted at one and the same time of forging a document and using that document as forged and the charges under sections 467 and 471 must, therefore, be regarded as alternative. We know of no authority to this effect and none has been pointed out to us.* It must be distinctly understood that we pronounce no opinion whatever upon the evidence relating to either of these charges. Moreover, we wish to point out that it is most inexpedient for a sessions trial to be adjourned. The intention of the Code is that a trial before a court of sessions should proceed and be dealt with continuously from its inception to its finish. Occasions may arise when it is necessary to grant adjournments, but such adjournments should be granted only on the strongest possible ground and for the shortest possible period. With these remarks we allow the appeal so far that we set aside the conviction and sentence and send back the case for trial before the Court of Sessions at Fatehgarh.

Record returned.

* [But see *Queen-Empress v. Umrao Lal*, I. L. R., 23 All., 84, Ed.]