

PRIVY COUNCIL

Nur Mohammad

Vs.

Emperor

P.C.A.No.21 of 1945

(Lord Thankerton, Lord Goddard and Sir John Beaumont JJ.)

10.07.1945

JUDGMENT

LORD THANKERTON J.

1. In the present appeal only one question has been raised and that, as stated in the order granting leave, is a contention that the trial Court "having held there was no evidence at all on which any conviction could be based a Court of Criminal Appeal is not justified in reversing the Court of first instance by placing reliance on the very evidence which had been entirely rejected by the Court of first instance."

2. Their Lordships were referred, rightly enough, to the decision of this Board in the case in *Sheo Swarup v. Emperor*¹ and in particular to the passage at p. 404 in the judgment delivered by Lord Russell. Their Lordships do not think it necessary to read it all again, but would like to observe that there really is only one principle, in the strict use of the word, laid down there; that is, that the High Court has full power to review at large all the evidence upon which the order of acquittal, was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. Then follows an expression, under four headings, of what would be the proper practice, and their Lordships think is the proper practice, for the High Court to follow in considering whether they should reverse the decision of the Sessions Judge. At the foot of the page there is a paragraph expressing a view which is quite common in such cases, that the Board will always assume that a Court has followed the proper practice unless something appears which proves the contrary.

3. In the present case the High Court judgment shows that they have been at pains to deal in detail with the reasons given by the Sessions Judge for disbelieving the group of witnesses, the Patwari and the other three alleged eye-witnesses. They have dealt in

de-tail with them, showing on the face of their judgment that there is no necessity to presume in this case that they have not done their duty, because on the face of the judgment they have been at pains to do so. In that view their Lordships are of opinion that there is no ground for invoking the assistance of this Board on account of any miscarriage of justice or the like matter, and that this appeal should be dismissed. Their Lordships will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

1.21 AIR 1934 PC 227: 61 IA 398: 56 All 645: 151 IC 322(PC),