

Emperor Vs. Ramji Vala

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Court : Mumbai

Decided On : Jan-23-1940

Reported in : AIR1940Bom279; (1940)42BOMLR475

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Criminal Review No. 385 of 1939 in Criminal Appeal No. 396 of 1939

Appellant : Emperor

Respondent : Ramji Vala

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal by the accused against his conviction by the Sessions Judge of Surat under Section 326 of the Indian Penal Code, and on admission this Court gave notice to the accused to show cause why his sentence should not be enhanced.

2. The case was tried by the learned Sessions Judge with a jury, and Mr. Kantawala for the accused has claimed the right in this appeal to go behind the verdict of the jury on questions of fact. The question whether, on a notice to enhance sentence passed on an accused convicted on a trial with a jury, the accused can challenge the verdict of the jury on facts, does not seem: to have been considered by this Court.

3. Under Section 423, subs. (2), of the Criminal Procedure Code, it is provided that nothing therein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him. So that in an appeal against a conviction on the verdict of a jury, the Court cannot interfere with the verdict on questions of fact. But an Appeal Court has no power under Section 423 to enhance a sentence. That power is given in revision by Section 439, which provides in Sub-section (J) that in revision the High Court may exercise any of the powers conferred on a Court of Appeal and may enhance the sentence. Then in Sub-section (6) of Section 439 it is provided that notwithstanding anything contained in this Section, any convicted person to whom an opportunity has been given under Sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction. The opening words of that Sub-section 'notwithstanding anything contained in this Section' probably refer to Sub-section (5), which provides that where an appeal lies and no appeal is brought, proceedings in revision shall not lie at the instance of the party who could have appealed. That was the view taken by Mr. Justice Fawcett in *Emperor v. Jorabhai* (1926) I.L.R. 50 Bom. 783 : 28 Bom. L.R. 1051. Mr. Kantawala contends on behalf of the accused that he has a right to show cause against his conviction under Sub-section (6), and that that right is not curtailed by the provisions of Section 423, Sub-section (2). But, in my opinion, that is not the right view. The provision in Section 439, Sub-section (6), that the accused shall be entitled to show cause against his conviction, to my mind, means that he can show cause in accordance with law. He cannot claim, for example, in revision proceedings to call fresh evidence. He can only, in my opinion, challenge his conviction in accordance with law, and where the conviction is based on the verdict of a jury, he has no greater right of appeal than he possesses under Section 423, and cannot challenge the facts. That was the view taken by the Calcutta High Court in *Khodabux Hap v. Emperor* (1933) I.L.R. 61 Cal. 6 and I think that is the right view. We were referred to a decision of this Court in *Emperor v. Ramchandra* (1932) 35 Bom. L.R. 174 in which the Court was dealing with a notice to enhance the sentence in the case of a conviction on the verdict of a jury, and I gather from the report that the Court in

that case did go into the facts, but the Court does not seem to have considered whether it was entitled to do so, and the point of law was not discussed. As the Court in that case did not interfere with the conviction and did not enhance the sentence, the case is not an authority on the question.

4. In my opinion, the Court in considering whether the conviction was justified cannot go behind the verdict of the jury on facts ; but, of course, in considering the notice to enhance, the Court can look at the whole of the evidence in order to satisfy itself as to the exact nature of the offence in order to determine what sentence should be imposed. In the present case we are satisfied that there was no misdirection by the learned Judge and the conviction was justified. The sentence imposed was three years' rigorous imprisonment. The offence was a very serious one. The accused without any justification thrust into the back of the complainant, who is a school master, a vindhna, which is a pointed instrument used for tapping toddy trees and, according to the complainant's evidence, the point of the vindhnd, came out by his left nipple. The fact that there was one very serious stab penetrating right through the body is, I think, confirmed by the view of the Civil Surgeon (exhibit 16), who says that there was only one single blow. The Doctor (exhibit 11), who made a superficial examination of the complainant immediately after the attack, seems to have thought that there were two wounds. But I think the view of the Civil Surgeon, who made a more exhaustive examination, though twenty-four hours after the offence, is to be preferred. A wound of that nature might very easily have caused the death of the complainant. He was kept in the Civil Hospital for treatment for three weeks.

5. We think that three years' rigorous imprisonment is too light a sentence, and we therefore enhance the sentence to five years' rigorous) imprisonment.

Sen, J.

6. I agree.