

**Emperor Vs. Chandra Krishna**

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**SooperKanoon Citation :** [sooperkanoon.com/327880](http://sooperkanoon.com/327880)

**Court :** Mumbai

**Decided On :** Jan-20-1908

**Reported in :** (1908)10BOMLR173

**Judge :** Chandavarkar and ;Knight, JJ.

**Appeal No. :** Criminal Reference No. 77 of 1907

**Appellant :** Emperor

**Respondent :** Chandra Krishna

**Judgement :**

**Curiam, J.**

1. We cannot accept the reference as it stands because, as has been pointed out by Mr. Branson, the learned, counsel for accused No. 8, the learned Sessions Judge has not complied with the requirements of Section 307 of the Criminal Procedure Code. This has fairly been admitted by the learned Advocate General who appears before us for the complainant. In the first place the learned Sessions Judge does not say in this reference in clear and unambiguous terms what is the offence which has, in his opinion, been committed by the accused, and on what grounds in that respect, he differs from the Jury. We think that, when a reference of this kind is made by a Sessions Judge, he should state with some fulness his view of the evidence and the credibility of the more important witnesses, because,

not being in a position to pronounce any opinion upon the demeanour of the witnesses this Court has to attach more or less weight to the opinion of the Judge who of and heard the witnesses.

2. Secondly, the learned Sessions Judge says in his reference that one reason for referring the case is that he is not at all satisfied that the Jury have come to a sound conclusion in convicting so many of the accused, because in his opinion, the evidence of identity is not above suspicion. And then he asks this question. Why should accused Nos. 5, 10, 11, 12 be favoured more than accused Nos. 467? That again, leaves, the whole matter in some obscurity. It is impossible to gather from it with certainty which of the accused persons were and who were not in his opinion guilty. Thirdly, the learned Sessions Judge does not state whether in his opinion the accused are guilty of theft or of dacoity or of robbery. We cannot therefore accept the reference as it stands. When the case goes back to the learned Sessions Judge he must deal with it according to law. If he thinks he does not agree with the Jury and is of opinion that there has been the offence of robbery or dacoity committed, then he must give reasons fully so as to enable this Court to come to a clear conclusion upon the point. If, on the other hand, he thinks that no such offence has been proved, but that there has been a theft committed, then he must deal with the case as if it were tried with the aid of the assessors. If he is of opinion that no dacoity or robbery has been committed, then no reference will lie to this Court. We direct that the papers be returned to the learned Sessions Judge on the ground that no reference lies and that he must dispose of the case according to law with reference to the foregoing observations.