

Emperor Vs. Chandra Krishna

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Court : Mumbai

Decided On : Jun-18-1908

Reported in : (1908)10BOMLR632

Judge : Batchelor and ;Knight, JJ.

Appeal No. : Criminal Reference No. 19 of 1902

Appellant : Emperor

Respondent : Chandra Krishna

Judgement :

Batchelor, J.

1. It is urged by Mr. Wadia that it is no longer open to us to admit this reference in view of the judgment of the Division Bench on the 29th January last. But when reference is made to that judgment, it will be seen that it is obiter and proceeds on a hypothetical and unascertained state of facts. We think, therefore, that the point is still open to us, especially as we can see no way in which the accused could be prejudiced by this opinion, and it was the accused themselves who in the Court below objected to the Sessions Judge disposing of the case. We hold that the interlocutory judgment of the former Bench does not debar us from accepting this reference. That being so, it is clear to us that we ought to accept it. We should do so even if it were irregular. Acting under the authority of Queen-Empress v.

Jeyram Haribhai ILR (1895) 20 Bom. 215 we have no reason to suppose that the present reference is irregular.

2. What has happened is this. The Jury were seised of the case in respect of the charge of dacoity, and upon that charge it was competent to the Jury, as a Jury-not assessors-to return a verdict of theft : see Section 238 of the Criminal Procedure Code and compare *Queen-Empress v. Devji* ILR (1899) 23 Bom. 696. But the Jury by their verdict have acquitted the accused simply and entirely on the charge of dacoity including the involved charge of theft, and the learned Sessions Judge quoad this charge of theft disagrees with the verdict so completely that he has felt himself bound to refer the case to us under Section 307 of the Criminal Procedure Code. We think, therefore, that the reference is in order; and the result is that the whole case is now thrown open to us, and we must decide it for ourselves, after giving due weight to the opinions of the Sessions Judge and the Jury.

3. We have considered the verdict returned by the Jury, and we have paid great attention to the very careful summing up of the learned Sessions Judge. Though the result may suggest that we have gone as against the prisoners even beyond the point reached by the Sessions Judge, yet it will be seen that our opinion is based entirely upon the footing that only those facts are proved which the Sessions Judge himself accepted as proved. Beyond that we do not go.

4. What then are those facts They are that a large mob of persons together exceeding a hundred, and including these accused, some of them being armed with sticks, others being armed with axes, went on to this 'kurun' which for some months had been the scene or the subject-matter of bitter controversy between the various parties.

5. Many possessory suits had been filed and in the previous September proceedings had been taken under Section 145 of the Criminal Procedure Code, the disputants being the complainant Appaya on the one hand and the Desai of Nipani on the other. The accused No. 8 had been summoned as a witness for the Desai. But the case went off on the Desai's recognising Appaya's claim to possession, and Appaya was consequently put into possession.

6. It was then upon this 'kurun' that the mob, whom we have described, descended and removed the stacks. It is shown that their numbers, their demeanour and their conduct were such as would naturally cause in any ordinarily constituted person fear of instant hurt, and did in fact cause that fear to the two watchmen who were employed by Appaya to defend his property, and to the Police-men who subsequently repaired to the scene with the intent of checking the removal of the stacks but abandoned that intent and came away for no other reason than that they were intimidated by this mob.

7. All this shows an open defiance of the law carried through by means of an overwhelming show of force which was sufficient to terrify and did in fact terrify those whose business it was to protect this property. That constitutes dacoity, and it cannot assist the accused, or reduce the gravity of their offence, that no actual hurt was caused for the reason that no one dared to resist. 8. The essentials of the crime are that the theft should be perpetrated by means either of actual violence or of threatened violence. And here the facts show that it was perpetrated by means of threatened violence. That was implied in the conduct and character of the mob. It is not necessary that the force or menace should be displayed by any overt act. Upon this point reference may be made to Taplin's case (1789) 2 East P.C. 712 and other similar cases will be found collected in the Vol. II of Russell on Crimes.

8. There remains the plea offered on behalf of the eighth accused that he was acting under an honest belief that he was entitled to this property which he removed from the 'kurun'. Upon the most careful consideration which we can give to this plea, we have reached the conclusion that the learned Sessions Judge is right when he pronounces it to be a mere excuse designed in order to evade the consequences of a crime and not a bona fide claim honestly entertained.

9. It seems to us clear that the accused No. 8 was perfectly aware that Appaya was in lawful possession of this 'kurun', and we cannot doubt that accused No. 8 had full knowledge of the proceedings in September 1905 which we have noticed. He was cited as a witness to appear on behalf of the Desai who was then the person making opposition to Appaya, and in whose house the Accused No. 8 was living at that time. No difficulty is created by the circumstance that Appaya bore the

expenses of having the accused No. 8 educated and married. These circumstances are amply explained without recourse to the theory that the accused No. 8 was joint with Appaya.

10. Then Appaya has produced certain deeds of partition upon which the learned Sessions Judge has placed reliance. And with regard to these deeds, it is not, of course, for us to attempt to forecast their fate if at any time they are submitted to the arbitrament of a Civil tribunal. We must judge of them as they appear in this case on the materials at present available to us. And upon those materials we can only reach the conclusion that there is at present no valid reason why we should dis. trust those instruments. They are supported by Exhibit 42, an admission made by the accused No. 8's father so far back as 1875.

11. Upon these grounds, therefore, we think that the plea of a bona fide claim fails, and that is the only point in the case upon which we feel any difficulty as to the guilt of accused No. 8. With the accused No. 8 are the accused Nos. 1,2, 3, 9 and 13, who are not represented before us, but whose case we have duly considered.

12. The result, therefore, is that the six accused whom we have named, i.e. Nos. 1, 2, 3, 8, 9 and 13 are in our opinion guilty of dacoity, and we convict them of that offence under Section 395 of the Indian Penal Code. We do not think that any of them ought to be brought within the operation of Section 398. of the Indian Penal Code, because we feel grave doubt upon the evidence as to how any particular accused was armed.

13. It remains to pass sentences for the offence, and that is a question which has caused us considerable' anxiety. On the one hand it is clear that-as we have said-this was an open defiant breach of the law committed in reliance upon mere numbers. On the other hand there are circumstances which lead (sic) to think that a severe sentence would not be justified in the (sic) We are of opinion that no actual violence is show (sic) been used, and we are by no means certain that we have before us now the real author and organiser of this crime. It may be that the persons whom we are called upon to punish are rather the tools and instruments of some one who is not before us, and that is a possibility which we must bear in mind.

14. Upon the best consideration which we can give to all circumstances, we direct that the accused No. 8 do suffer rigorous imprisonment for a term of eighteen months. The accused 1 and 13 do each suffer rigorous imprisonment for one year and the accused Nos. 2, 3 and 9 do each suffer rigorous imprisonment for a term of three months. And the remaining accused we direct be acquitted and discharged.

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