

Emperor Vs. Charles John Walker

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Court : Mumbai

Decided On : Apr-30-1924

Reported in : (1924)26BOMLR610; 83Ind.Cas.932

Judge : Norman Macleod, Kt., C.J. and ;Fawcett, J.

Appeal No. : Criminal Reference No. 19 of 1924

Appellant : Emperor

Respondent : Charles John Walker

Judgement :

Norman Macleod, C.J.

1. This a reference under Section 307, Criminal Procedure Code, by the Sessions Judge of Poona in the case of one Private C.J. Walker belonging to the King's Shropshire Light Infantry who was charged before a jury with culpable homicide under Section 304, Indian Penal Code, and was acquitted by a unanimous verdict of the jury. There is no dispute with regard to the facts which preceded the unfortunate death of a villager. Three soldiers in company with the accused went out of Poona on a shooting expedition. At the village of Lohogaon there was a dispute over a bird which had been shot by one of the soldiers. They asked a villager to take it out of the tank where it had fallen. The villager refused. In consequence one of the soldiers, Sharman, got annoyed and struck the villager on the chest and face. The villagers became threatening, so that his companions

advised Sharman to run away. He went off, while the villagers asked the remaining soldiers to give their names and addresses. As, however, no one could produce any writing materials that could not be done, and the soldiers proceeded to make their way towards Poona. In the meantime Sharman had been caught, and hearing of this the other soldiers made attempts to find out where he was. Apparently the information given to them with regard to the whereabouts of Sharman was wrong, so they determined to go back to Poona. They were being followed by the villagers when the accused turned round and fired his rifle from the hip killing a man about eighty feet away. There were three alternatives to be considered. Either the accused intended to pull the trigger, and in that case he might either have known that the rifle was pointing in the direction of the man who was hit, and that the bullet would most likely hit him, or he did not know that the rifle was pointing at any of the villagers and only intended to frighten them, or thirdly as he swung round his finger may have pressed against the trigger with the result that the rifle went off without any intention on his part. There is nothing in the evidence to point conclusively to any one of these alternatives. I should say that it was most unlikely that the accused would have pointed the rifle at one of the villagers knowing that the consequence of such action would be most disastrous. It seems to me also that, as the accused had fired in the air some time previously in order to frighten the villagers, it was unlikely that later he would have intentionally fired a shot with his rifle held level from the hip, because if he did so he must have known how great the risk was of hitting one of the villagers, considering how close they were. There are no circumstances from which we can presume that the accused either deliberately intended to hit, fatally or otherwise, one of the villagers who were following the party, or took the risk of firing a shot in such a manner in the hope that it would frighten the villagers and not hit one of them. I think it may be presumed that before going out on a shooting expedition, soldiers are given instructions that they must avoid disputes with the villagers, and that in no case should they intentionally fire off their weapons with the likelihood of any of the villagers being hit, except in the very last extremity in order to save their lives from a murderous assault. Considering therefore that there are three alternatives, and certainly the probabilities of the case are rather more than equally balanced in favour of the last alternative that the gun went off by accident, it would be

impossible for us, on a reference under Section 307, Criminal Procedure Code, to interfere with the unanimous verdict of the jury. The Judge may have thought that the verdict was manifestly wrong. He ought not to have made the reference unless he thought so. But considering all the circumstances, we cannot possibly say that the verdict of the jury was so wrong in this case that it amounted to a perverse verdict, and that is what the words 'manifestly wrong' were held to mean in the case of Emperor v. Swarnamoyee Biswas. I.L.R. (19131) Cal. 621 It is only when as a matter of fact the Court can be of opinion that the verdict of the jury is perverse that this Court is entitled in a reference under Section 307, Criminal Procedure Code, to place its own opinion on the evidence against the opinion of the jury.

2. A point was taken in the argument that the reference was not competent because the accused had not been charged with an offence under Section 304 A, and the answer to that depends upon whether the accused could have been convicted under Section 304 A although the charge framed and placed before the jury was under Section 304, Indian Penal Code. There is direct authority that a reference in such circumstances is competent in the case of Emperor v. Ramava Channappa : AIR1915 Bom297 . The accused was there charged with murder, and in the course of his charge to the jury, the Judge pointed out that although there was no separate charge under Section 304 A, Indian Penal Code, it was open to the jury to find a verdict of 'guilty' of an offence under Section 304 A, and an acquittal under the charge of murder. With that direction in their minds the jury came to the conclusion by a majority of three to two that the accused women were not guilty of any offence whatever. The case, therefore, was on all fours with the present case where the Sessions Judge directed the jury that they could convict the accused under Section 304 A. On the reference the Judges in that case were of opinion that there was no doubt that the deadly stuff' was deliberately administered to the man by his wife with the connivance of her mother, and it seemed to them that to deal in that way with a most deadly form of poison as a love potion was to act both rashly and negligently in whatever walk of life the person so doing might be. Then it was argued, as it was argued in this case, whether Section 307, Criminal Procedure Code, permitted the High Court to convict under Section 304 A, because of the fact that there was no charge under

that section at the trial and the Judges held that, as it was open to the prosecution to bring the accused to trial on charges under Section 304 and under Section 304 A, it followed from the provisions of Section 237, Criminal Procedure Code, that, although the charge under Section 304 A was not formally made, it was open to the Court to convict under that section. Here, in this case, as I have pointed out, assuming that the accused intended to pull the trigger, the shot was either aimed or un-aimed and the offence would come under Section 304 if it was aimed and under Section 304 A if it was unaimed. Therefore it would be competent to this Court, if it agreed with the Sessions Judge, to convict the accused under Section 304A.

3. For the reasons given we agree with the unanimous verdict of the Jury of 'not guilty.' The accused will now be released.

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