

Mavsing Bechar and ors. Vs. Emperor

Mavsing Bechar and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/342159

Court : Mumbai

Decided On : Feb-25-1909

Reported in : 2Ind.Cas.480

Judge : Chandavarkar and ;Heaton, JJ.

Appellant : Mavsing Bechar and ors.

Respondent : Emperor

Judgement :

Chandavarkar, J.

1. The preliminary point urged in this appeal is that the trial having been as a matter of fact conducted by the Sessions Court as one with the aid of assessors, as far as the charges for the offences of which the appellants have been convicted are concerned, the learned Sessions Judge has erred in the law, in that he omitted to take the opinions of the jurors as assessors in the manner required by the Criminal Procedure Code and to write a judgment. It may be that, as Mr. Shah for the appellants states, throughout the trial both the Judge and the pleaders understood the trial to be one with the aid of assessors, for the purposes of the charges above mentioned. But, however that be, as a matter of fact, after the learned Judge had charged the Jury he asked for their verdict, on all the charges in the manner required by the provisions of the Code of Criminal Procedure relating to Jury trials. At that moment the appellants' pleader might have

intervened and asked the Judge to deal with the trial as to the specific charges with which we are concerned in this appeal as one by the Court with the aid of assessors and to take the opinions of the jurors as assessors in the manner provided by the Code. The law makes no distinction as to the procedure at the trial between a trial by a Jury and one with the aid of assessors except as to the summing up in the case of the former and the manner in which the verdict in the former and the opinions of the assessors in the latter are respectively taken. It is at this latter point that there is a departure of ways, and if the accused who is tried does not intervene at that crucial point, and get the procedure applicable to trials with the aid of assessors enforced, he cannot be heard to complain. But that was not done and the Judge was allowed to deal with the whole case as one tried by a Jury. Under these circumstances it is too late now for the appellants to urge successfully that the Judge's action should be corrected. We must deal with the appeal as one from the verdict of a Jury, to which the Full Bench decision in *King-Emperor v. Parbhushankur* 25 B. 680 : 3 Bom. L.R. 279 applies.

Heaton, J.

2. I have a few words to add as to the facts of this case. The question we have to determine is a question of fact whether the trial was by a Jury or with the aid of assessors. We find that the Judge charged the Jury on the case as a whole and directed them to give a verdict on each of the charges. He did not direct them to give a verdict on the charge of murder only and to give their opinions as assessors on the minor charges. This is the more apparent when we see, as the proceedings show, that the Judge had twice to question the Jury in order that he might obtain from them a specific verdict on charges as to which otherwise they would not have given a verdict at all. The record also shows that the verdict of the Jury was taken on each charge and that as to no charge at all was their opinion taken as if they were assessors. Then the Judge accepted the verdict of the Jury. He wrote no judgment, but merely sentenced the accused (the appellants) for those offences of which the Jury had found them guilty. That procedure seems to me to show conclusively that the trial was a trial by a Jury.

