

State Vs. Abbasbhai Vajesing

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Court : Mumbai

Decided On : Feb-28-1956

Reported in : AIR1956Bom503

Judge : Dixit and ;Chainani, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 307; Arms Act - Sections 19E; [Indian Penal Code \(IPC\), 1860](#) - Sections 395

Appeal No. : Criminal Jury Ref. No. 137 of 1955

Appellant : State

Respondent : Abbasbhai Vajesing

Advocate for Def. : Y.M. Thakore and ;C.G. Shastri, Advs.

Advocate for Pet/Ap. : H.M. Choksi, Government Pleader

Judgement :

Chainani, J.

1. This is a reference made by the Additional Sessions Judge, Baroda, under Section 307, Criminal P. C. recommending that the verdict of the jury finding accused 1 guilty under Section 19(E), Arms Act, should not be accepted and that this accused should be acquitted of this offence. Accused 1 was also tried on the

charge of dacoity.

That charge was tried with the aid of assessors. The learned Judge has, however, not passed orders with regard to this charge, as he felt that both the charges arose out of the same facts and the decision with regard to them depended upon the appreciation of the same evidence. In order to avoid two conflicting judgments on the two charges, the learned Judge decided to make this reference without recording his judgment on the charge under Section 395, Penal Code.

2. As held in '*Mhasku Malu v. Emperor*', 1935 Bom. 165 (AIR V 22) (A), in the case of offences, arising substantially out of the same set of facts one triable by a Judge and jury and the other by the Judge with assessors, it is open to the Judge to act on his own view of the evidence, notwithstanding that that view differed from the view which the jury had taken on substantially the same evidence and upon which their verdict had been based.

In such cases the two portions of the judgment, one with regard to the offence tried by the jury and the other tried by the Judge with the aid of assessors, might be based on conflicting views of the same evidence. This is occasioned by the fact that the law imposes upon different authorities the duty of appreciating the evidence on the respective charges.

The learned Judge need not, therefore, have postponed the delivery of his judgment on the charge of dacoity, which he tried with the aid of assessors, merely because the jury had taken a different view on the same evidence with regard to the charge under the Indian Arms Act.

3. In '*Emperor v. Vyankatsing*' 9 Bom. L. B. 1057 (B), where the Sessions Judge had made a reference without passing orders on the charge tried by him with the aid of assessors, the case was sent back to him for passing orders on that charge, see also '*Emperor v. Chanbasappa*' AIR 1932 Bom. 61 (c). This undoubtedly is the more desirable procedure to follow in such cases. If the Sessions Judge delivers his judgment on the charge tried by him with the aid of assessors and then makes a reference with regard to the charge tried by a jury, any party, which is dissatisfied with his decision on the assessor charge, can appeal to this Court.

Both the appeal and the reference can then be heard together. On the other hand, if the High Court first disposes of the reference and then asks the Sessions Judge to record his judgment on the assessor charge it will be difficult for the party, which is dissatisfied with the decision on the latter charge, to appeal to this Court.

4. We are informed that the learned Judge, Mr. Advani, who tried this case, has been transferred from Baroda to Nadiad, that he is at present on leave, but that he will return from leave on 9th March. As he has tried the case, it is necessary that the case should be sent to him for recording the judgment.

5. Accordingly, we direct that the case should be sent back to the learned trial judge, Mr. Advani, who has made the reference and he should be asked to record his judgment on the charge of dacoity, which he tried with the aid of assessors. After he has recorded the judgment, he should send a copy of it to this Court, after which this reference will be further heard. If the learned trial Judge decides to acquit accused 1 on the charge of dacoity, he should release him on bail pending the disposal of this reference.

6. Mr. Advani should be requested to dispose of this case as soon as he can after he returns from

7. Order accordingly.