

State Vs. Anjani

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Court : Karnataka

Decided On : Aug-12-1957

Reported in : AIR1958Kant34; AIR1958Mys34; 1958CriLJ395; ILR1957KAR93; (1957)35MysLJ228

Judge : Hombe Gowda and ;Malimath, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 297, 307, 307(1) and 307(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 436

Appeal No. : Criminal Referred Case No. 6 of 1956

Appellant : State

Respondent : Anjani

Advocate for Def. : M.V.N. Raj, Adv.

Advocate for Pet/Ap. : Addl. Asst. Adv. General

Judgement :

ORDER

1. This is a reference under Section 307 of the Code of Criminal Procedure made by the Additional Assistant Sessions Judge, Bangalore in Bangalore Sessions Case No. 12 of 1956 in the following circumstances:

2. The accused Anjani was put on his trial for an offence under Section 436 of the Indian Penal Code on the allegation that he intentionally committed mischief by setting fire to the dwelling house (hut) belonging to one Poojamma in A.K. Hatti attached to Thimmasandra village, Nelamangala Taluk on 24-5-1956, before the Additional Assistant Sessions Judge, Bangalore. The case was tried with the aid of Jury. The Jury returned an unanimous verdict of not guilty. The learned Additional Assistant Sessions Judge disagreed with the verdict of the jury. He was of the opinion that the accused was guilty. He has therefore made this reference under Section 307 of the Code of Criminal Procedure to this Court for such orders as this Court may deem fit in the circumstances of the case.

3. It may at once be stated that the reference made by the learned Additional Assistant Sessions Judge is not a proper reference as the letter of the learned Judge does not set out the grounds of opinion of the Judge. It is doubtless that a reference made under Section 307 of the Code of Criminal Procedure should be so complete and self-contained that it ought not to be necessary for this Court to refer to the evidence or charge to the Jury or to the order-sheet for passing suitable orders.

In the letter of reference the learned Judge ought to have stated the facts of the case, the Verdict of the Jury and also the ground or grounds on which he differed from the verdict of the Jury and found it necessary in the interests of justice to submit the case to this Court for suitable orders. He should have categorically stated what material portions of the evidence he believes to be true, his opinion about the credibility of witnesses examined in the case and his reasons for arriving at his conclusions so as to enable this Court to appreciate and give due weight to them. He was bound to disclose the reasons for his Opinion in as clear a manner as he would have done if the case had not been a jury case and he had to write out a judgment in the case. The order of reference of the learned Judge is abnormally short and is as follows:

'I find no grounds to agree with the unanimous verdict of the Jury that the accused is not guilty. The charge delivered to the Jury warrants the verdict that the accused is guilty for offence under Section 436 I. P. C. I. therefore, disagree with the verdict

for acquittal. The case in respect of the accused shall therefore be submitted to High Court under Section 307 Cr. P. C. for suitable orders.'

It is clear beyond doubt that the order of reference made by the learned Additional Assistant Sessions judge does not satisfy the requirements of the law. He has neither set out the facts of the case nor expressed his clear opinion as to the credibility of the witnesses and disclosed the grounds on which he holds that the verdict of the Jury is manifestly unreasonable. The result is, in the absence of the opinion of the learned Judge it is not possible for this Court to say that the verdict is against the weight of evidence without examining the evidence and the charge to the Jury. The verdict of the Jury, particularly when it is unanimous should not be disturbed unless it can be demonstrated beyond a peradventure that it is manifestly perverse or unreasonable. Section 307 of the Code of Criminal Procedure is intended to provide against a clear case of miscarriage of justice at the trial and is not meant for indiscriminate use of over-zealous judges to make references. This power must be sparingly used.

It is only in cases where the judge thinks that it is absolutely necessary for the ends of justice to submit the case to the High Court he must do so after recording the grounds of his opinion. It is highly regrettable that the learned Judge has not understood the scope of Section 307 of the Code of Criminal Procedure and has made this imperfect reference to this Court.

4. It was suggested by Sri Shankara Chetty, the learned Additional Assistant Advocate-General for the State that the records may be remitted to the learned Additional Assistant Sessions Judge for making a proper reference in accordance with the provisions of law and that the matter may be dealt with on merits by this Court after receipt of further reference in the matter. He urged that in the absence of proper reference this Court cannot go into the merits of the case or into the evidence or look into the charge to the Jury and arrive at any conclusion and that this Court was bound to remit the matter to the trial Court for the needful being done. He was unable to cite any decision in support of his assertion. We have carefully considered this argument. We are of the opinion that the circumstances in this case do not compel us to the necessity of remitting the records to the trial

Court.

No doubt, there are cases in which references of the type on hand were remitted to the trial Court by some of the High Courts for making proper references. There are also cases in which courts have proceeded to pass final orders either accepting the verdict of the Jury or rejecting the verdict of the Jury even though the letter of reference was defective and was not in accordance with law (viz., Emperor v. Taribullah Shekh, AIR 1921 Cal 252 (A), Emperor v. Irya Doddappa 6 Bom LR 599 (B); Emperor v. Chandra Krishna 7 Cri LJ 192 (C); Dattatraya Sadashiv v. Emperor ; Emperor v. Abul Hossain Sikdar : AIR1936 Cal451 and Emperor v. Dyama Naik Annappa Naik 8 Bom LR 519 (F).

So long as it is conceded that this Court has, when dealing with a reference under Section 307 of the Code of Criminal Procedure all the powers of an appellate court and there is no specific provision in the Code of Criminal Procedure compelling the court to remit the case to the trial court whenever such defective references are made by the trial Judge, we feel that this Court can proceed to consider the entire matter as it is before us and pass necessary orders. We, therefore, proceed to pass orders on the materials before us.

5. The charge delivered by the learned trial Judge to the jury is full of misdirections and is almost in the nature of a direction to the Jury to return a verdict of guilty, against the accused. It betrays the anxiety of the learned Judge to help the prosecution and his inexperience in the principles of criminal procedure. It is necessary, in a case tried with the aid of a Jury, that the learned trial Judge should present the evidence to the Jury in as dispassionate and impartial manner as is expected of a presiding officer without expressing his personal opinion on questions of fact of which the jury are the judges, or in any way indicating that they should return a particular verdict for or against the accused persons. The charge in the present case talk short of the standard prescribed. (Their Lordships considered the evidence of the alleged eye-witnesses and rejecting their evidence proceeded;)

The gentlemen of the Jury in the circumstances were perfectly justified in coming to the conclusion that the accused is not guilty of the charge of which he was tried.

Jurors are the judges of fact and so far as their findings of fact are concerned, they are entitled to weight. The unanimous verdict of the Jury in this case cannot be characterised as manifestly perverse or unreasonable so as to call for interference by this Court. The reference made by the learned Additional Assistant Sessions Judge, Bangalore is, therefore, rejected. The unanimous verdict of the Jury is accepted and the accused is acquitted and is directed to be set at liberty forthwith.

6. Reference rejected.

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