

Emperor Vs. Shera and ors.

Emperor Vs. Shera and ors.

SooperKanoon Citation : sooperkanoon.com/447629

Court : Allahabad

Decided On : Jan-19-1928

Reported in : AIR1928All207; 108Ind.Cas.225

Appellant : Emperor

Respondent : Shera and ors.

Judgement :

Walsh, J.

1. The following question has been referred by a Bench of two Judges, who were considering a reference under Section 307, Criminal P.C., where the Sessions Judge had referred the matter because he disagreed with the verdict of acquittal by the jury:

Where a jury has given its verdict on the facts of the case, is it open to this Court to revise that verdict on a reference by the trial Judge made under Section 307, Criminal P.C., where it is not alleged that there has been any misdirection by the Judge or any misunderstanding by the jury of the law as laid down by the Judge.

2. The reason for the appointment of the Full Bench constituted to answer that question is given in the opinion delivered by the two Judges. They felt a difficulty owing to the presence of the word 'subject thereto' in Section 307, Criminal P.C., referring, as these words undoubtedly do, to the powers which a High Court, may

exercise on an appeal. Finding that in hearing an appeal, an appellate Court is governed by the provisions of Sub-section 2, Section 423, Criminal P.C., which provides that the Court shall not alter or reverse a verdict of a jury, unless it is of opinion that it is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down, they felt a grave doubt as to whether a High Court, to which a case is referred under Section 307, Criminal P.C., could arrive at a decision other than the verdict of the jury on a question of fact, unless one or other of these conditions had been fulfilled.

3. The first point to be observed is that the High Court sitting under Section 307, Criminal P.C., is not sitting as a Court of appeal, and in strict phraseology, is not asked to reverse or alter the verdict of a jury.

4. The second point to be noted is that this difficulty appears to have been felt, or at any rate raised, for the first time. A reference to the authorities will show that both before 1896 (a material date as will appear in a moment), and since 1896 the practice of the High Courts has been consistent in deciding these cases, and if they saw fit High Courts have arrived at a definite decision on a question of fact inconsistent with the verdict of the jury. That is shown by reference to *Wafadar Khan v. Queen-Empress* [1894] 21 Cal. 955 which was before 1896; *Emperor v. Lyall* [1902] 29 Cal. 128 which was after 1896; *Reg. v. Khandrav Bajirav* [1876] 1 Bom. 10 which was before 1896; *Emperor v. Chellan* [1905] 29 Mad. 91 which was in 1905; *Emperor v. Bhulotan Singh* A.I.R. 1921 Pat. 191 which was in 1921 and in our own High Court to the case of *Emperor v. Panna Lal* A.I.R. 1924 All. 411 as recently as 1924.

5. Moreover Mr. Justice Boys in his well-known work on the Criminal Procedure Code adopts the relevant portions of the judgment in the case of *Reg. v. Khandrav Bajirav* [1876] 1 Bom. 10 and states that on a reference the whole case is opened out, and the functions of both Judge and jury are cast upon the Court, and that this differentiates the position very widely from that of the Courts in England.

6. A further point to be noted is that a change took place in 1896. By an amending Act this section was altered, and although it was not changed in substance, these

words 'subject thereto' appeared for the first time in Sub-section 3. Nobody would contend, and the referring order does not suggest, that without the words 'subject thereto' there would be any difficulty at all, and therefore it must be taken that down to 1896, there was no doubt about the existence of this special power of dealing with a case on the merits, and finding facts on the evidence inconsistent with the verdict of a jury, on reference by the trial Court to the High Court. It would be strange if a statutory provision of an exceptional character unknown to the English criminal law, specially provided in India and acted upon in all High Courts, were intended by the legislature to be taken away completely by a sort of indirect introduction of two small words into a section, the substance of which they were not altering.

7. As, however, the point has been raised in a concrete form, and has not been precisely raised before, we think we ought to give our reasons by reference to the section itself for disagreeing with the view suggested in the referring order.

8. It must be admitted that if the words 'subject thereto' are to be read as incorporating Section 423 and as a consequence imposing upon the High Court, in hearing a reference, the limitation contained in Section 423, Sub-section 2, it would destroy substantially the elaborate provisions of Section 307 itself, and defeat the object which we think the language of the section makes quite clear and for which the section was enacted. As we have already said, Section 307 creates a special power of reference turning the High Court for the moment into a Court exercising powers of reference or of a referee, and gives general directions as to how the Court is to be guided in exerting that function. In other words, it deals with the creation of a power independent altogether from the function of an appellate Court, and, except by implication, makes no provision for procedure. It says that in a case where the Judge disagrees with the verdict and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall do so recording the grounds of his opinion, and (here, it is to be observed, is a provision which throws an important light on the object of the section), when the verdict is one of acquittal, stating the offence which he considers to have been committed. That language is totally inappropriate and inconsistent with a limited power, as suggested of a High Court, when dealing with a reference where there

has been an unsatisfactory verdict by a jury so as to restrict its consideration to some question of law or misapprehension of law.

9. The third sub-section of Section 307, which finally prescribes the function to be exercised by the High Court in dealing with such a reference, provides that after considering the entire evidence, and after giving due weight to the opinions of the Sessions Judge and the jury, it shall acquit or convict the person charged of any offence of which the jury could have convicted him upon the charge as framed. That language is entirely meaningless, if it was not, at any rate, intended to give the High Court, not merely a power, but a direction to reconsider the entire evidence and what has happened in the Court below, and to arrive at an independent conclusion of its own on the question of fact, as well as of law, in the interests of justice.

10. The question, therefore, is whether the words 'subject thereto' are strong enough and clear enough, as is suggested in the referring order, to override and destroy the other provisions of the section, which, as we have pointed out, are wholly inconsistent with the limitations contained in Section 423, Sub-section 2. It is true to say that in the interpretation of every section of a statute a reasonable construction must be given to every word contained therein. Speaking for myself I feel no difficulty whatever in interpreting the words 'subject thereto' consistently with the operation of Section 307 as it has always been hitherto understood and worked. When it is once borne in mind that the section itself deals with the functions to be exercised, and does not attempt to deal specifically with the procedure to be followed, all difficulty to my mind disappears. The High Court is not acting as a Court of appeal, but it is to be clothed with the powers of a Court of appeal as regards its procedure. If the legislature had intended to limit its function in the way suggested, nothing was easier than to say: 'Subject to the limitations or provisions contained in Section 423, Sub-section 2.' It does not even refer to any section. What it says is that the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall exercise the following functions. I think the emphatic word there is the word 'any,' and that the object of that part of the sub-section was simply to clothe the High Court, when acting under Section 307, with all the powers as regards procedure of a Court of appeal, if for

good reasons it desires to exercise any of them. The exercise of such powers may be illustrated by reference, not merely to Section 423, which requires that it shall hear the appellant or his pleader, if he appears and provides for other matter, but it would include such a provision as Section 426, where, if there has been a conviction and the referring Court thought it was wrong, the person charged could be released on bail, or, to give another illustration, Section 428, where the High Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Court of Session. We are clearly of opinion that if it were not for the provision which has caused this reference, it would not be possible for a High Court, adjudicating upon a reference to ask for or direct additional evidence to be taken, and therefore, it follows that the introduction of these words was made in order to empower the High Court to take that or any other step which it would take if it were in fact an appellate Court hearing an appeal.

11. It is suggested in the referring order that it would be anomalous for the accused to be deprived of a right of appeal against an adverse verdict on the facts, while the Sessions Judge is given what is called 'an unrestricted right of appeal against a finding by the jury on the facts in favour of the accused person.' I do not think there is any anomaly. The power of reference under Section 307 applies whether the verdict is one of 'guilty,' or of 'not guilty.'

12. For these, reasons I think that the question must be answered in the affirmative.

Lindsay, J.

13. I agree and only wish to add that I consider that the words 'subject thereto' in Sub-section (3), Section 307 should be taken to refer not merely to the word 'powers' which precedes them but to the exercise of the powers. That is to say, the High Court, after resort to such of the powers of an appellate Court as it may think fit to exercise, shall proceed, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, to acquit or convict the accused.

Banerji, J.

14. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com