

**Manjia Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/454230](http://sooperkanoon.com/454230)

**Court :** Allahabad

**Decided On :** Oct-29-1936

**Reported in :** AIR1937All195

**Appellant :** Manjia

**Respondent :** Emperor

**Judgement :**

1. This is a criminal appeal from an order of the Additional Sessions Judge of Cawnpore, convicting the accused under Section 452, I.P.C., in pursuance of the jury's verdict of guilty. The accused were charged of several offences which were triable with the aid of assessors and only the offence under Section 455, I.P.C., was triable by a jury. The learned Judge came to the conclusion that the accused should have been given the benefit of doubt as regards the other offences and he acquitted them. As to the offence under Section 455 he came to the conclusion that the facts constituted an offence under Section 452, I.P.C., and upholding the verdict of the jury convicted them under that section. But what happened was that the learned Judge in his own mind was not satisfied that the complaint was false; nor was he satisfied that the accused were innocent. He felt some doubt in his mind and, if the accused had been triable with the aid of assessors, he would most probably have given the benefit of the doubt to the accused. The actual words used by him are:

As I am not of opinion that the complainant's case is false and my opinion is simply that the case is doubtful, I think I cannot refer the case to the Hon'ble High Court and therefore must agree with the majority of the jurors that the accused are guilty under Section 452, I.P.C.

2. Towards the end of the judgment he has again remarked:

So far as the jurors' view is concerned, I have said above that I cannot but agree with them, and therefore I hold the accused guilty under Section 452, I.P.C.

3. It is, therefore, obvious that the learned Additional Sessions Judge thought that unless he were of the definite opinion that the complaint was false and that the accused were innocent, he had no power whatsoever to disagree with the verdict of the jury and refer the case to the High Court under Section 307, Criminal P.C.,. He apparently thought that in a case where he was doubtful and would himself be prepared to give the benefit of the doubt to the accused, it could not be said that he disagreed with the verdict of the jury and had therefore no jurisdiction to refer the case to the High Court. In this view he was certainly wrong. All that Sections 306 and 307 provide is that the Judge should disagree with the verdict of the jury, that is to say, if the jury's verdict is that the accused is guilty or not guilty and the Judge is of a contrary opinion, he can refer the case to the High Court unless he does 'not think it necessary to express his disagreement. Where a Judge is doubtful and is distinctly of the opinion that the benefit of the doubt should be given to the accused, then certainly he is of the opinion that the verdict of the jury should be that he is not guilty. If, therefore, the jury returns a verdict of guilty, he is disagreeing with the verdict of the jury even though he may not be certain in his own mind of the absolute innocence of the' accused and the complete falsity of the complaint. As the learned Judge took an erroneous view of the sections and felt that he had no power to refer the case to the High Court, the accused have been prejudiced.

4. Of course, where the Judge is doubtful and nevertheless he does not think it necessary to express disagreement with the verdict of the jury, then the case would come under Section 306, Criminal P.C., and he is bound to give judgment according to the verdict. In such a case the learned Judge labours under no

misapprehension as to his jurisdiction to refer the case to the High Court but merely considers that having regard to all the circumstances it is not necessary in that case for him to express disagreement with the verdict of the jury. The present case was not one of that kind as the learned Judge does not appear to have applied his mind to this aspect of the case and has not said that he does not consider this a fit case where it is necessary to express disagreement. He has merely held that he is helpless in the matter and cannot refer the case to the High Court and must agree with the verdict of the jury. The difficulty that arises in this case is one of procedure. Had the reference come to us under Section 307, Criminal P.C., we would have jurisdiction to exercise all the powers conferred by the Code on an appellate Court including the power to set aside the verdict of the jury and substitute another verdict for it or order a re-trial or discharge the accused. But the case has not come up before us under Section 307 but has come up by way of an appeal under Section 418, Sub-section (1) on a matter of law, namely that the learned Judge has erroneously supposed that he had no jurisdiction to disagree with the verdict.

5. But the powers of an appellate Court are governed by Section 423, Sub-section (2), which provides that nothing in that section shall authorize the Court to alter or reverse the verdict of a jury unless it is of opinion that such verdict 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 by him. Obviously in the present case there has neither been a misdirection by the Judge nor a misunderstanding on the part of the jury of the law as laid down by the Judge. It, therefore, follows that the appellate Court has no power to alter or reverse the verdict of the Jury. The reason is obvious. In cases coming under Section 307 the Judge who heard the evidence is in the first instance of the opinion that the verdict is wrong and, if the appellate Court is also of the same opinion, it is empowered to set aside that verdict. But when the case comes by way of an appeal under Section 418 where the Judge himself has not differed, the Legislature has provided that there should be no interference by the appellate Court with the verdict of the jury, unless there has been either a misdirection or misunderstanding mentioned therein. The question is whether, if we not only set aside the convictions and sentences but also set aside the verdict of the jury and order a re-trial, we would be altering or reversing the

verdict. The word 'altering' might mean substituting another verdict for the verdict of the jury, but the word 'reversing' would include the setting aside of that verdict or making it null and void. If a re-trial de novo were ordered, then the necessary effect would be to, reverse the verdict of the jury. We, therefore, think that as an appellate Court we cannot set aside the verdict of the jury and order a retrial. It is unnecessary for us to consider whether revisional power conferred by Section 439 is subject to the same restriction, because there is nothing to prevent this Court from setting aside the convictions of the accused and the sentences imposed on them by the Additional Sessions Judge who accepted the verdict of the jury. If the case is sent back to the Sessions Court, the learned Additional Sessions Judge would re-examine the matter carefully and then come to the conclusion whether he should or should not disagree with the verdict of the jury. If he thinks that he should not disagree with the verdict or that it is not a case in which it is necessary to Express disagreement, he would forthwith convict the accused accordingly. If, however, he is of the opinion that the case should be referred to the High Court under Section 307 because he disagrees with the verdict and the case is so referred, we would have power to reconsider the case on its merits and pass suitable orders. The new Section 561-A amply justifies the order which we propose to make.

6. We, therefore, set aside the convictions of the accused and the sentences passed on them and send the case back to the Court of the Additional Sessions Judge to re-admit the case to its original number on the file, and after hearing the arguments consider whether he would express disagreement with the verdict or not and, if so, make a reference under Section 307 to the High Court or uphold the verdict and convict the accused and pass suitable sentences.