

Emperor Vs. Jukhan

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Court : Allahabad

Decided On : Feb-08-1929

Reported in : AIR1929All338

Appellant : Emperor

Respondent : Jukhan

Judgement :

1. This is a reference made by the learned Sessions Judge of Bareilly under Section 307, Criminal P.C.

2. Jukhan was committed to sessions on a charge under Section 394-75, I.P.C. The trial proceeded with the aid of five jurors. A verdict of 'not guilty' was returned by a majority of 3 to 2. The learned Sessions Judge disagrees with the verdict of the majority and is clearly of opinion that it is necessary for the ends of justice to submit the case for the consideration of this Court. The Judge has stated his opinion on the evidence and given his reasons for differing from the majority of the jury. The reference to this Court fulfills the requirement of Section 307, Criminal P.C.

3. Ordinarily the verdict of the jury to whom the decision of the case was primarily entrusted by law is entitled to very great weight and their verdict is not liable to displacement upon the mere ground that upon a consideration of all the evidence, a Judge would have arrived at a conclusion different from that arrived at by the

jury: Emperor v. Chirkua [1905] 2 A.L.J. 475. But where the verdict of the jury is perverse and patently erroneous and it is established that the verdict amounts to a gross miscarriage of justice, this Court is entitled to draw its conclusions from the evidence as to the guilt of the accused.

4. Maya Ram complainant was proceeding from his native village Khera to a neighbouring village Kerka on 2nd August 1928. It was a lonely road. The time was about nightfall. He was carrying on a stick a bundle containing clothes for his son. When he reached a bridge near Kurtara, he was suddenly attacked by three persons, who were armed with lathis. Upon his shouting for help two of his assailants ran off to a maize field with his bundle. He caught the third assailant but the latter managed to escape into a rice field. Maya Ram's cries for help attracted two chamars who were returning from their singara cultivation and also a third man, kurmi by caste, who was on his way to his field. They ran to help Maya Ram and caught Jukhan in a rice field, A report was lodged at the police station without any delay and Jukhan was placed into the custody of the police. Two days later, the complainant was medically examined His injuries were slight.

5. The case of the prosecution rests upon the statement of Maya Ram, the complainant, who is corroborated in essentials by the three persons who came to his rescue, viz., Dulloo, Sadho and Jai Sukh. The statements of these witnesses appear to be perfectly natural and straightforward and no facts have been elicited to their discredit.

6. The three witnesses saw the assault from a distance. They saw two of the assailants running away with a bundle of clothes. The accused was caught at the spot with a lathi. The prosecution witnesses state that they never knew Jukhan before.

7. Jukhan pleaded not guilty. He was produced before a Magistrate on 8th August 1928 but he refused to make any statement. On 12th September 1928 he made the following statement before the Committing Magistrate:

I was returning from Fatehganj Bazar, I had a bundle of thread. Maya Ram and Sadho were quarrelling. Many others were present. This was at culvert, near

Kurtara. Maya Ram and Sadho said 'catch him' I was caught and my bundle was taken. All accused knew me before.

8. It is difficult to conceive a story more absurd and unconvincing than this. In the Court of Session he improved upon this story with this addition that he had seen Maya Ram and had quarrelled with him and other witnesses and that he had bought the thread from a bania of Fatehganj bazar whose name he did not know. Jukhan produced no evidence in support of his story. His presence near Kurtara about nightfall is not accounted for. The police have searched the house of the accused but no stolen property was found. The majority of the jurors were influenced by the fact that Maya Ram's injury was of a trivial character and that no property was recovered from the house of the accused.

9. The verdict of the majority did not proceed upon a consideration of the evidence for the prosecution which was all one way and absolutely free from any taint. The verdict was clearly perverse and the learned Sessions Judge was justified in reporting this case to this Court under Section 307, Criminal P.C.

10. We hold on the evidence that Jukhan committed robbery of a bundle belonging to Maya Ram and voluntarily caused hurt in committing the said robbery and that therefore he is guilty of an offence under Section 394, I.P.C.

11. Jukhan is about 60 years old. The learned Sessions Judge has noted against him a long record of previous convictions, out of which, those under Section 193, I.P.C. or under Section 110, Criminal P.C., cannot be taken into account. He admits the following convictions:

(1) 17-1-1903 Sections 457/75 4 years' R.I. (Jukhan says he got 3 years under this).

(2) 13-2-1920 Sections 457/75 2 years' R.I.

(3) 28-7-1925 Sections 457/75 3 years' R.I.

I convict Jukhan under Sections 394/75, I.P.C., and sentence him to 4 years rigorous imprisonment, and it is to count from 22nd November 1928.

