

Emperor Vs. Panna Lal

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Court : Allahabad

Decided On : Jan-03-1924

Reported in : (1924)ILR46All265

Judge : Stuart and ;Mukerji, JJ.

Appellant : Emperor

Respondent : Panna Lal

Judgement :

Stuart and Mukerji, JJ.

1. This is a reference by the Sessions Judge of Benares under Section 307 of the Code of Criminal Procedure submitting a case in which a certain Panna Lal was unanimously acquitted by a jury on a charge of attempted rape Before we proceed to a consideration of the facts, we deem it advisable to state what powers are given to us under the law to deal with such references and the manner in which we consider those powers should be used. Under the provisions of Section 307 a High Court has very full powers to re-open all matters in connection with a verdict of acquittal of a jury with which the Sessions Judge has disagreed and which he has referred to the court under the provisions of that section. But it does not follow that because powers have been given to the court, the court should feel justified in using those powers to the full. There have been two schools of thought, both before and after the amendment of the law which took place in 1896, as to the

correct legal principles to be adopted in such circumstances, One school has considered that a High Court should not interfere with a verdict unless it is perverse and clearly and manifestly wrong. The other school has held the opinion that in such cases the High Court should re-open the matter ab initio and apply an independent mind to the evidence and form its own conclusions thereon. It cannot be suggested that the view taken by the first school is an improper one. The High Court may exercise any of the powers which it may exercise on appeal, but it is perfectly within its rights in considering that in cases such as these, interference should only be permitted in cases of perversity or clear and manifest error and that where a jury has arrived at a verdict which is not perverse and not clearly and manifestly wrong, such verdict should not be interfered with although it is perfectly possible to form a not unreasonable opinion contrary to the opinion taken by the jury. The advantage of adopting this course is that it secures the object of the legislature in creating juries. If the other view be taken and the case is re-opened ab initio, it is somewhat difficult to see what useful function is performed by a jury. For in every case in which the Judge does not agree with their verdict, the case can be referred to the High Court which then proceeds to try it de novo. We have no hesitation in adopting the view that we should not interfere unless the verdict is perverse or clearly and manifestly wrong. This is the view which was adopted prior to 1898 by the Bombay High Court in the case of *Reg v Khanderao Bajirao* (1875) 1 L.L., 1 Bom. 10, and the principles were laid down as aptly as they could be laid down by WEST, J., at page 13:

Trial by jury is a recent institution in India; the Judge may differ from the jury as to the facts, and the duty of dealing with a case of that kind is then cast upon the High Court. On a reference by the Sessions Judge, the whole case is opened up. The section we have quoted lays down that the court may acquit or convict without reference to the charges made against the accused. In other words, the functions both of the Judge and jury are cast upon the court, and this differentiates our position very widely from that of the courts in England.

Notwithstanding this difference, however, and the more onerous duties devolving in consequence on the High Courts in India, we still desire to be guided, as far as may be, by the analogies of the English law. It is a well recognized principle that

the courts in England will not set aside the verdict of a jury, unless it be perverse and patently wrong, or may have been induced by an error of the Judge. We adhere generally to this principle, notwithstanding our large discretionary powers, first, on the constitutional ground of taking as little as possible out of the hands to which it has been primarily assigned by the legislature, and secondly, because any undue interference may tend to diminish the sense of responsibility which it is desirable that a jury should cherish.

2. The same view was taken by a Bench of this Court in *Emperor v. Chirkua* (1905) A.L.J. 475. This being our opinion as to the principles of law which should guide us, we now turn to the facts of the case.

3. The acquitted man Panna Lal was charged with having in company with another man enticed on to the roof of a deserted building standing in a small garden in the heart of Benares city a young low caste Hindu married woman of some 14 years of age. The two men, according to the girl complainant, having obtained her presence in this place, proceeded to throw her down and commit acts which could undoubtedly be only considered, if they really happened, to be acts committed preparatory to the commission of a rape. The Magistrate who committed the case and the Judge who heard it believed the girl to be telling the literal truth. There was certain corroborative evidence, which the Judge believed, to the effect that on the roof where the offence was said to have been committed were found the fragments of broken glass bangles of a pattern similar to the pattern which the girl was wearing at the time she made her first complaint. There was further evidence of neighbours who stated that their attention was attracted by the outcries of the girl so that they arrived upon the scene of the occurrence and saw Panna Lal and his companion running through a gap in the wall of the garden. If upon this evidence the jury had arrived at a verdict of 'guilty', it certainly would have been difficult to criticize that verdict. But, in our opinion, we cannot say that their verdict of 'not guilty' was perverse or clearly and manifestly wrong. It is a common-place to those experienced in the administration of criminal law that in no cases is it more difficult to arrive at a confident verdict as to whether evidence is false or true than in cases in which women allege that they have been outraged or that outrage has been attempted upon them. Not only has one to consider the possibility of

deliberate falsehood, but those who have to arrive at a verdict have to consider the possibility of unintentional mis-statements produced by hysterical conditions which are apt to be found in cases of this nature. The difficulties are increased when from the nature of the charge there can be no physical trace of outrage such as in a case of attempted rape. There are peculiarities about this case and there are distinct discrepancies in the evidence. Panna Lal may be guilty of the offence or he may not. But this much we are able to say with certainty. We see no reason to suppose that the jury did not give an honest and a not unreasonable verdict, and, in these circumstances, we find it impossible to interfere with that verdict. We accordingly acquit the accused of the offence upon the charge framed and direct that he be at once released from custody.

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