

Khyali Vs. Emperor

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Court : Allahabad

Decided On : May-24-1948

Reported in : AIR1948All430

Appellant : Khyali

Respondent : Emperor

Judgement :

ORDER

Seth, J.

1. Applicant Khyali was tried by a jury in the Court of the Assistant Sessions Judge of Kanpur of an offence under Section 375, Penal Code. The jury returned a unanimous verdict of guilty and the learned Assistant Sessions Judge convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to receive a punishment of 15 stripes under the Whipping Act. Khyali appealed against his conviction and sentence to the Sessions Judge of Kanpur and it was argued before the Court of appeal that the charge to the jury was vitiated on account of misdirections and omissions and that, therefore, the verdict of the jury should be set aside. The learned Sessions Judge did not accept this contention and dismissed the appeal, hence this application in revision,

2. Mr. Sri Narain Sahai, the learned Counsel for the applicant, has taken the same points before me. In particular, he has urged with considerable force that the

charge is bad inasmuch as the Judge did not point out to the jury that the applicant was entitled to the benefit of doubt. He has further urged that the charge is not a fair charge inasmuch as the learned Judge had expressed his opinion on evidence in a manner which left no option to the jury, but to convict the applicant.

3. In support of his first contention, learned Counsel has strongly relied upon the case in *Basil Ranger Lawsrence v. Emperor* 20 A.I.R. 1933 P.C. 218. There is no doubt that it is universally recognised as an elementary principle of natural justice that an accused person is entitled to the benefit of doubt and that a Judge charging a jury should point that out to them. In my opinion, the learned Assistant Sessions Judge has not been remiss in his duty in this behalf. After commenting on the evidence produced on behalf of the prosecution, the learned Judge observes as follows:

You have to consider if the depositions of Mt. Rup Rani and Piswa together with the medical evidence the Chemical examiner's report about the dhotis, the dhotis themselves, and the danda, prove the guilt of the accused beyond all reasonable doubt.

4. Learned Counsel contends that this is not the same thing as saying that the accused is entitled to the benefit of doubt. I am unable to accept this contention. To say that an accused person is entitled to the benefit of doubt and to say that the charge against him should be proved beyond all reasonable doubt is the same thing. It is only a difference of the manner in which it is expressed. Indeed, the very case relied upon by the learned Counsel supports this view. Lord Atkin delivering the judgment of their Lordships of the Privy Council observed as follows in the course of his judgment:

But, speaking generally it has to be remembered that it is an essential principle of our criminal law that a criminal charge has got to be established by the prosecution beyond reasonable doubt, and it is essential that the tribunal of fact should understand this. Unless the Judge makes sure that the jury appreciate their duty in this respect, his omission is as grave an error as active misdirection on the elements of the offence, and a verdict of guilty given by a jury who have not taken this fundamental principle into account is given in a case where the essential

forms of justice have been disregarded.

It would appear that what their Lordships say is that the tribunal of fact should understand that the criminal charge should be established beyond reasonable doubt. It is not required that the expression 'the accused is entitled to the benefit of doubt' should always be used. In my opinion the charge in the present case is not Open to attack on this ground.

4. The next contention of the learned Counsel has led me to read the entire charge, and I find that on more than one occasion in the course of that charge the learned Assistant Sessions Judge has impressed upon the jury that they were the judges of facts. After explaining the law to the jury, the learned Judge proceeds to observe as follows:

I have stated to you the legal position. You are masters of facts. You have heard the P.Ws. and have marked their demeanour. As regards facts you have to form your own opinion, on the basis of the evidence, real, oral, and documentary. You are not bound to agree with my opinion as regards the facts, and you have to form your own opinion without being influenced by mine own.

At the close of the charge, the learned Judge directed the jury by saying:

In case you think that after taking into consideration the entire evidence, real, oral and documentary which I have laid before you it is 'not proved' that the accused committed the offence on the girl, he should be held 'not guilty' and you should return a verdict in his favour.

I have already given another quotation from the charge in connection with the first point urged before me and that quotation also indicates that the learned Judge made it plain to the jury that the questions of facts were to be decided by them.

5. The contention of the learned Counsel appears to be that each time the Judge expresses his opinion on evidence to the jury, he should immediately warn them that they are not bound by his opinion. In support of this contention, a decision of the Calcutta High Court, reported in *Kamiraddi Shaik v. Emperor* : AIR1934 Cal77 is relied upon in which it was observed:..There is nothing wrong in the Judge

expressing his own opinion to the jury. On the contrary, if he has got an opinion, he ought to express it. But he must tell the jury that they are the sole judges of fact, that they must form their own opinion independently, after a consideration of the facts and circumstances in the case, and that they need not accept or follow his opinion but must follow their own. It is not sufficient for the Judge to give them this warning in a formal way either at the beginning or at the end of the charge. The warning must be given at the moment when he has forcibly or otherwise expressed his own opinion to the jury.

I consider that the rule has been too widely stated in this case. No hard and fast rule can be laid down with regard to the number of times and occasions when a Judge charging the jury should remind them that they are sole judges of facts and that they should not be led away by his opinion about evidence. It would be intolerable to require that each time a Judge expresses his opinion about any piece of evidence he should go on repeating that the jury are the sole judges of facts. What is required is that the Judge should thoroughly impress upon the jury that they are sole judges of facts and that he should do nothing to obliterate that impression or to disable them from arriving at their independent judgment. Whether a Judge has done that or not is to be inferred from a consideration of the charge as a whole. If upon such a consideration, it be found that the Judge had properly warned the jury in this behalf and has not overshadowed their judgment on questions of fact, the charge cannot be said to have been vitiated in any manner on the ground that Judge has misdirect, ed the jury.

6. I have carefully gone through the entire charge and in my opinion it is a fair charge and not open to any serious criticism. The verdict of the jury, therefore, stands and so does the conviction of the applicant.

7. The applicant as stated above has been awarded a sentence of three years rigorous imprisonment in addition to the punishment of whipping. At the time of the offence, he was 18 years old. He appears to be an ordinary village boy and there is nothing to suggest that he is mentally depraved. The crime appears to have been committed in the heat of the moment. No useful purpose can be served by keeping such a young person in jail for a long time. It is not likely to reform him,

but long association with other criminals may have the opposite result. The very suitable punishment of whipping has already been awarded. In my opinion the sentence of imprisonment awarded to the applicant should be reduced to a period of sixteen months. I had a mind to reduce the sentence to the period already undergone, but as I have been unable to ascertain with certainty the period during which the applicant had been in jail, I have thought it desirable to fix a period which would appoximately correspond with the period he would have served out if he had been in jail since the date of his conviction.

8. In the result, I maintain the conviction of the applicant and the sentence of whipping passed upon him and reduce the sentence of imprisonment from a period of three years to a period of sixteen months. With this modification in the matter of sentence, the application in revision is dismissed.

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