

In Re: Nanni Kudumban and ors.

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Court : Chennai

Decided On : Jul-11-1923

Reported in : 76Ind.Cas.289; (1923)45MLJ406

Appellant : In Re: Nanni Kudumban and ors.

Judgement :

Walter Salis Schwabe, K.C., C.J.

1. In this case very property at the suggestion of Mr. Adam the case was adjourned so that the accused's interests might be presented by an amicus curiae and his attendance has been very useful to the Court in calling its attention to certain decisions on the construction of Section 307 Criminal Procedure Code. Speaking for myself I agree with the view expressed in Emperor v. Lyall I.L.R. (1901) C. 128 and Emperor v. Anandacharan Thakur I.L.R. (1901) C. 629 as to the functions of the Court where Section 307 has been brought into operation. I think that the intention of the legislature has been clearly expressed by the section itself and it comes to this : where a judge hears a case with a jury and disagrees with the jury and disagrees to such an extent that he feels that he can not accept their verdict he is entitled to refuse to accept that verdict and then submit the case with his reasons to the High Court and the High Court then has thrown upon it the burden of examining for itself the entire evidence in the case deriving such assistance as it can by giving what is described as due weight to the opinion of the Sessions Judge and the Jury. The opinion of the Sessions Judge is the opinion as expressed in the reference or at the hearing. The opinion of the Jury might

possibly be expressed in some other way, but it will usually be found expressed in the verdict; and I agree with what was said by Benson, J. in *Emperor v. Chellan* I.L.R. (1905) M. 91 namely, 'The so-called 'verdict' does not bind him. It becomes for all legal purposes a mere 'opinion' and this, I take it, is what Section 307 refers to when it speaks of the 'opinion' of the jury.' I however do not think it necessary to go as far as Davies, J. in the same case when he suggested that the opinion must be something other than a verdict. I think the result is that this Court, when faced with that duty, had to make up its own mind realising of course that it has a disadvantage in not having seen the witnesses, but has a freer hand than the Court of Appeal generally has; and I think that if the Court comes to the conclusion on that evidence that it should not convict if the case came before it in the capacity of a trying Judge, and in arriving at that conclusion it must give due weight to the fact that other persons have taken other views and have seen the witnesses, in such a case it is the duty of this Court to acquit the prisoner.

2. Now turning to the facts of this case, my own feeling is that having read all the evidence and having given such weight as I can to the fact that the jury were ready to convict while the Judge thought that it would be perverse if they did convict, I am not in the least satisfied that in this case the right persons have been convicted; and I think one must, as in all criminal cases when one is in that state of mind, give the benefit of any doubt to the prisoner. My reasons for saying that are that a long time passed between the occurrence and the identification of any of the accused coupled with the fact that the assault and the cattle raid took place at night. I should be prepared to say if I had had the evidence before me that there was nothing very astonishing in the witnesses being able to identify by star light the assailants in those circumstances, especially when the witnesses are men whose duty is to guard cattle or sheep by night. But I do not think that it is human nature on such a night to get a very clear impression of the features of persons seen at a short distance, which would be so impressed upon the mind, that on seeing those persons again many months afterwards there would be any certainty of recognition. In this case after the lapse of some months the accused were brought up on different occasions for identification and if one could be absolutely certain that the identifying witnesses had no opportunity of seeing these accused before the parade, the fact that these witness picked out the same persons would

be strong corroboration of the prosecution case. But one cannot shut one's eyes to the fact that these identification parades do require the most careful scrutiny, because if a witness has before the parade seen the person that he is going to identify, it does not matter in what order you put this person for such a witness will no doubt identify that man. I am not saying that in this case there was anything of that kind. It may be that these persons are particularly lucky to escape. It may be that the identification parades were conducted in such a way that there was no loophole and no possibility of any kind of unfairness. But I must say on the evidence in this case I should not be satisfied to convict the accused. In these circumstances they must be acquitted.

Wallace, J.

3. I agree. I wish to say one or two words on the legal question under Section 307, Cr.P.C. It is there clearly laid down that, when a case comes up under that section to the High Court, the question whether the verdict in the case is to be for acquittal or for conviction is entirely open to the High Court, and left open to it to decide after considering the evidence and the opinions of the Judge and the Jury. The Court is bound in no way by these opinions, any more than a Judge trying a case with assessors, though he must give due weight to the opinion of the assessors, is bound to follow their opinion. I think we are as a Court bound to decide for ourselves whether the evidence on which the jury based their verdict of 'guilty' is in our eyes sufficient to justify such a verdict. I agree with the Chief Justice, for the reasons given by him that in this case the evidence is not sufficient to justify such a verdict. I therefore agree with the order proposed by the Chief Justice.

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