

In Re: Periaswami Nadar

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SooperKanoon Citation : sooperkanoon.com/798536

Court : Chennai

Decided On : Jul-31-1948

Reported in : (1948)2MLJ411

Appellant : In Re: Periaswami Nadar

Judgement :

Govinda Menon, J.

1. Agreeing with the majority verdict of 3 to 2 of the jury the learned Assistant Sessions Judge of Tinnevely division at Tuticorin, convicted the appellant of an offence under Section 392 read with Section 397, Indian Penal Code and sentenced him to rigorous imprisonment for a period of seven years. Having carefully gone through the learned Judge's charge to the jury, the learned Counsel for the appellant, the Public Prosecutor and myself were not able to find any circumstance vitiating the charge. The learned Judge has clearly and concisely put before the jury the law on the point and explained to them the sections of the Penal Code which have application to the case. Then the learned Judge analysed the evidence of the witnesses, brought out the salient points for and against the prosecution and left, as he ought to do, the final decision to the jury. On a reading of the charge it would seem that if he were trying the case himself without a jury but with the aid of assessors, he would certainly not have accepted the evidence of the prosecution witnesses. The learned Judge has made it clear that there are very many infirmities in the case as put forward by the prosecution and such of

those infirmities as tend very favourably to the accused has been placed before the jury in the forefront, as it were. In these circumstances, the jury would have been well advised if they had returned a verdict of not guilty, but the jury by a majority came forward with a verdict of guilty against the prisoner.

2. It is when circumstances like the present arise that Section 307 of the Criminal Procedure Code has to be applied. The learned Judge would have been well advised if, consistently with the expression of opinion which he gave in the charge to the jury, he had disagreed with their verdict and referred the matter to the High Court and nothing could have been said against such a procedure but he has not chosen to do so and there is no provision of law under which this Court can now go into the merits of the case since there is concurrence in the opinion of the jury by the learned Judge. As there are no misdirections or instances of serious non-direction, this Court's limited power in appeals against the verdict of jury cannot be exercised. I would therefore confirm the conviction and the sentence which is the minimum that could be imposed under Section 397, Indian Penal Code in the circumstances.

3. In my opinion, this is eminently a fit case where the Provincial Government might take up the matter and exercise their power under Section 401, Criminal Procedure Code and release the appellant by the remission of the sentence.