

**In Re: Sowrirajan**

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**Court :** Chennai

**Decided On :** Jan-04-1950

**Reported in :** AIR1950Mad639

**Judge :** Govinda Menon and ; Basheer Ahmed Sayeed, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) 1898](#) - Sections 307; [Indian Penal Code 1860](#) - Sections 392

**Appeal No. :** Reference No. 4 of 1949

**Appellant :** In Re: Sowrirajan

**Advocate for Def. :** The Crown Prosecutor for the Public Prosecutor

**Advocate for Pet/Ap. :** J.R. Gundappa Rao, Adv.

**Judgement :**

**Govinda Menon, J.**

1. This is a reference by the learned Assistant Sessions Judge of East Tanjore at Mayurathm, under Section 307 Criminal P. C., wherein the learned Judge after differing from the unanimous verdict of guilty by the jury wants the Court to accept his opinion that the accused is not guilty of any offence whatever. In his letter of reference the learned Judge has given reasons for making the reference and a perusal of the same shows that he does not agree with the opinion of the jury

regarding the credibility of the prosecution witnesses. In para. 4-the learned Judge says that it is very doubtful whether P. W. 1 knew prior to his giving the complaint on 9th January 1949 that it was the accused who committed the robbery. He goes on to state that it is also doubtful if P. W. 2 who professes to be an eye-witness was there on that afternoon. Dealing with the testimony of P. Ws. 9 and 4, the learned Judge was inclined to conclude that their evidence cannot be accepted. In short, the reasoning of the learned Judge for differing from the jury and making the reference is that he would have come to a different conclusion on the evidence from that arrived at by the jury.

2. Their Lordships of the Judicial Committee in Ramanugrah Singh v. Emperor have authoritatively laid down the principles and rules that ought to guide and govern a Sessions Judge in making a reference under Section 307, Criminal P. C., when he disagrees with the verdict of the jury. Their Lordships also state what the powers of the High Court are on such references. At page 607 of the report the following observations of Sir John Beaumont may be recapitulated:

'The Legislature no doubt realised that the introduction of trial by jury in the mofussil would be experimental, and might lead to miscarriages of justice through jurors, in their ignorance and inexperience, returning erroneous verdicts. Their Lordships think that the section was intended to guard against this danger, and not to enable the Sessions Judge and the High Court to deprive jurors, acting properly within their powers of the right to determine the facts conferred upon them by the Code. If the jury have reached a conclusion upon the evidence which a reasonable body of men might reach, it is not necessary for the ends of justice that the Session Judge should refer the case to the High Court merely because he himself would have reached a different conclusion upon the facts, since he is not the Tribunal to determine the facts. He must go further than that and be of opinion that the verdict is one which no reasonable body of men could have reached upon the evidence. The powers of the High Court in dealing with the reference are contained in Sub-section (3). It may exercise any of the powers which it might exercise upon an appeal, and this includes the power to call fresh evidence conferred by Section 428. The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict

the accused. In their Lordships view the paramount consideration in the High Court must be whether the ends of justice require that the verdict of the jury should be set aside. In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial Court, and if the jury take one view of the evidence and the Judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded.'

3. In *Thiagaraja v. Emperor*, , the Privy Council has again reiterated the self-same principle. We may also remark that it was on the self-same basis that this Court had been proceeding ever since the Full Bench decision in *Veerappa Goundan, In re*, 51 Mad. 956 : A.I.R. 1928 Mad. 1186: (1928) Cri. L. J. 317.

4. Applying the principles enunciated above, we have to find out whether on the evidence taken as a whole, the conclusion arrived at by the jury is such that no reasonable body of men could have arrived at the decision.

5. [Going through the evidence his Lordship proceeded]: It may be that the decision may be erroneous looked at from the point of view of persons who are critically inclined but men of ordinary commonsense like the members of the jury are entitled to take the view which they deemed best on the evidence. In these circumstances we do not agree with the learned Judge that the case is one in which it can be said that the opinion expressed by the jury is perverse on the evidence. We, therefore, are of opinion after having carefully perused the entire evidence in the case, that P. W. 1 had been robbed by the accused. But it seems to us that so far as the use of a dangerous weapon is concerned, the evidence is not sufficient to justify the conclusion that in committing the robbery a dangerous weapon was used. The only offence with which the accused could be convicted is, therefore, under Section 392, Penal Code. We, therefore, agree with the jury's

verdict and convict the accused of an offence under Section 392, Penal Code. Considering the fact that the appellant is only a young man of 23 years and that no injury was caused to the complainant we feel that the interests of justice would be satisfied if a sentence of rigorous imprisonment for six months is imposed upon him and we accordingly sentence him to rigorous imprisonment for six months under Section 392, Penal Code.

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