

In Re: Anipe Palladu

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Court : Chennai

Decided On : Sep-27-1916

Reported in : 36Ind.Cas.847

Judge : Oldfield and; Krishnan, JJ.

Appellant : In Re: Anipe Palladu

Judgement :

Oldfield, J.

1. The first argument in appeal is based on the following facts: On the day of the trial a sufficient number of Jurors summoned under Section 326 of the Code of Criminal Procedure was not present. The Sessions Judge, therefore, made up the Jury, which tried the accused, by election from the persons present in Court, choosing from them, according to the accused's Vakil, the whole, and according to the Public Prosecutor, part of the requisite number. It is not alleged that the accused made any objection to this course during the trial. It is urged that the trial is bad, because the Court was improperly constituted, since the Jury was not chosen by lot, as Section 276 of the Code of Criminal Procedure requires.

2. The Sessions Judge was entitled in the circumstances to choose Jurors from the persons present in Court under Section 276, proviso 2. It is argued, however; that even so, he was bound to choose them by lot with reference to the main provision of the section. That provision, however; insists on choice by lot only from

the summoned Jurors; and it is clear that it must be difficult, if not impossible, to choose by that method, when choice from the persons present, whose number and identity is unknown, is in question. For it would always be open to the Crown or the accused, if the result of the trial were unsatisfactory, to claim a new trial on the ground that the name of some person, alleged to have been present, had not been included in the lots drawn and it would be most difficult to verify such an allegation. I must respectfully dissent from the decision in *Bradshaw v. Emperor* 9 Ind. Cas. 278 : 8 A.L.J. 182 : 12 Cri. L.J. 46, in which it was held that, only three qualified Jurors being present, their inclusion in a Jury of five without their names being drawn, and when the drawing by lot could have made no difference to their inclusion, vitiated the constitution of the Court. I am further unable to follow that decision, in so far as it decided that the defect in procedure could not be cured by the application of Section 537. That section was applied in a somewhat similar case in *Mavsing Bechar v. Emperor* 2 Ind. Cas. 480: 10 Cri. L.J. 30 and in view of its provisions and those of Section 536, I think that the accused's failure to make timely use of the safeguards provided by the law, the rights of challenge and objection, debars him in any case from relying on this ground of appeal.

3. It is next urged that the charge was defective in various respects. The majority of the objections to it consist in allegations that particular passages of it were unduly dogmatic and dictatorial. I do not think that they were so; and the fact that all but one of the accused were acquitted goes far to negative the suggestion. There remains the fact that the failure of the Village Magistrate to send reports to the Police and Magistrate was referred to in the charge with reference not to the case of all the accused or of the first accused, the appellant, but to that of the accused Nos. 2 to 8 who were acquitted. I do not think that this amounted to misdirection or was calculated to mislead the Jury on any material point. For, the case against the first accused, who was arrested before the Village Magistrate's arrival, was affected only in an insignificant degree, if at all, by the latter's failure to report, since such failure could not affect the evidence as to the disputed point with reference to him, the place where he was arrested. In these circumstances I hold that there was no misdirection and dismiss the appeal.

KRISHNAN, J.

4. The first objection taken by the appellant is that the Court was not properly constituted as the Jurymen were not chosen by lot under Section 270 of the Code of Criminal Procedure but by the Judge himself, The Judge acted under the second clause of Section 276 and chose some or all of the jurymen from those present in Court. Section 276 does not say that the persons chosen under the second clause should be chosen by lot, that method applying in terms only to persons summoned as Jurymen. Section 279, Clause (2), indicates that the manner of choosing by lot provided by Section 276 applies only to Jurors attending in obedience to summons, and not to persons chosen from those present in Court. Moreover, under Section 277 the accused had ample opportunity to object to any Juror on any of the grounds mentioned in Section 278. Instead of so objecting, he expressly waived all objections and consented to be tried by the Jurymen selected. In these circumstances even if there was any error in the choice of the Jurymen, he cannot be permitted to raise the objection now, particularly as no prejudice has been shown. Any objection under Section 277, if taken at the proper time, would have been decided by the Sessions Court and its decision would have been final under Section 279. The case of *Bradshaw v. Emperor* 9 Ind. Cas. 278 : 8 A.L.J. 182 : 12 Cri. L.J. 46, is clearly distinguishable. There, in the first place, the number of Jurymen were only three, when there should have been five according to the notification referred to. This is a fundamental objection which does not exist in the present case. In the second place, the Jurymen in that case were chosen from the persons summoned. I think the objection fails on both the grounds stated above and I agree in disallowing it.

5. The learned Vakil for the appellant has mainly relied on what he says is a misdirection at the end of paragraph 6 of the lower Court's judgment and on the omission of the Judge to point out that no report was sent by the Village Magistrate to the Sub-Magistrate, in the case of the appellant as well. Taking the whole charge to the Jury I am satisfied that even if we assume that the points referred to are such as fall under Section 537, Clause (d), they have not in fact occasioned any failure of justice.

6. The sentence is not excessive. I agree, therefore, in dismissing the appeal.

