

Eran Khan Vs. Emperor

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Court : Kolkata

Decided On : Mar-07-1923

Reported in : AIR1924Cal47

Appellant : Eran Khan

Respondent : Emperor

Judgement :

Panton, J.

1. This appeal is preferred by seven persons, all of whom have been convicted under Section 326 read with Section 149, three under Section 148 and four under Section 147 of the Indian Penal Code. These offences are alleged to have been committed in connection with a riot which occurred at what has been described as a 6 cottah plot which one Hossain Mridha was engaged in ploughing Hossain Mridha, according to the evidence, was struck on the head, and received injuries from which he subsequently died.

2. The first point which has been urged by the learned vakil for the appellants is that the learned Sessions Judge was wrong in putting certain questions to the Jury at the time he was ascertaining their verdict. In leaving the case to the Jury the learned Judge said 'I shall want you to give me a clear verdict in respect of the offences under Sections 147, 148, 301, 326 and 325 for each of the accused.' When the Jury returned from a consideration of their verdict, the first question put

to them was 'Are you unanimous?', to which the reply was 'yes.' The second question was 'What is your opinion?' to which the reply was 'We find that Abdul Gani Khan, Ramjan Khan, Baher Khan and Sadulla Sheik are guilty under Section 147. Bran Khan, Dulal Khan and Matbar Khan are guilty under Section 148 and none of them are guilty under Section 149.' Having regard to what the learned Judge had said to the Jury, before they retired for the consideration of their verdict, the answer given by the foreman of the Jury was, in my opinion, an incomplete verdict, and it was necessary that the learned Judge should put further questions to the foreman in order to ascertain precisely what the verdict of the Jury was as regards the other offences which the learned Judge had mentioned, that is to say, as regards Sections 304, 326 and 325. The learned Judge, as I have said, did put further questions and in the result he ascertained that the real opinion of the Jury was that these appellants were not guilty of the offence under Section 304 Penal Code but were guilty of the offence under Section 326, by the operation of Section 149 of the Indian Penal Code. In my opinion, the questions put by the learned Judge were quite legitimate and were in accordance with the provisions of Section 303 of the Code of Criminal Procedure.

3. The next point urged is that the learned Judge was wrong in not referring the case to this Court under the Provisions of Section 307 of the Criminal Procedure Code. It is true that he expresses the opinion that he does not agree with the unanimous verdict of the Jury : but Section 37 clearly gives to the Judge a discretion in the matter, and it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he shall so submit it. If he is not clearly of that opinion, his failure to submit the case, is not a subject for interference by this Court on appeal.

4. The third point urged by the learned vakil is that the summing up of the learned Sessions Judge was defective inasmuch as he should have more clearly insisted upon his view that the evidence of the prosecution witnesses was defective. It may be that the learned Judge might have expressed himself in stronger language in his charge to the Jury; but at the same time, having read this charge and having been taken through some of the evidence given in the case, my opinion is that it was an adequate and a fair charge, and that we should not be justified in

interfering with the unanimous verdict of the Jury upon this ground. For these reasons, in my opinion the appeal must be dismissed.

Sanderson, C.J.

5. I agree. I desire to add a few words, not with regard to our decision upon this appeal, for my learned brother has already dealt fully with that matter, but from a general point of view : and that is with regard to the manner in which the verdict of the Jury was taken in this case. The first question put was, 'Are you unanimous?' The answer was 'Yes.' The second question was 'What is your opinion?' Then the foreman of the Jury endeavoured to give the result of their deliberations, and the decision at which they had arrived : and, as my learned brother has pointed out, in our opinion, it was an imperfect and incomplete verdict.

6. In my judgment in a case like this, where there are more than one accused and where there are several charges, it would be a convenient course, if the officer of the Court were to take the verdict of the Jury upon each charge separately. Section 301 of the Criminal Procedure Code provides 'When the Jury have considered their verdict the foreman shall inform the Judge what is their verdict or what is the verdict of a majority.' In this case, as my learned brother has pointed out, the learned Judge said, 'I shall want you to give me a clear verdict in respect of the offences under Sections 147, 148, 304, 326 and 325 for each of the accused.' In my opinion all the difficulty in this case, with regard to the verdict of the Jury, would have been obviated if, after ascertaining, that the Jury were unanimous, the officer of the Court had put the question 'What is your verdict with regard to each of the accused as regards the charge under Section 147.' He would then get a clear answer upon this charge. Then he would ask 'What is your verdict with regard to each of the accused as regards the charge under Section 148?' He would get a definite answer to that question. Then he would proceed in the same way and ask 'What is your verdict with regard to each of the accused as regards the charge under Section 304?' and so on. This is the practice-which, in my experience, is always adopted at the Original Criminal Sessions of this Court and I do not understand why such an obviously simple procedure should; not be followed in the trial of cases in the 3 mofussil. If this procedure had been r adopted

in this case, there would have j been no difficulty whatever in ascertaining the real verdict of the Jury.

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