

Matleb Sk. and ors. Vs. the King

Matleb Sk. and ors. Vs. the King

SooperKanoon Citation : sooperkanoon.com/858555

Court : Kolkata

Decided On : Feb-09-1949

Reported in : 1949CriLJ1001

Judge : Harries C.J. and; Das Gupta, J.

Appellant : Matleb Sk. and ors.

Respondent : The King

Judgement :

Harries, C.J.

1. This is an appeal by ten persons who were tried by a learned Assistant Sessions Judge and a jury upon a charge under Section 304, Penal Code, read with Section 149 Penal Code. It is to be noted that there was no charge framed under either Section 147 or Section 148, Penal Code.

2. Eventually the jury returned a verdict of guilty of an offence under Section 325 read with Section 149, Penal Code against all the appellants, and an offence under Section 328, Penal Code against appellants Nos. 6, 7, 8 and 9. The learned Assistant Sessions Judge accepted this verdict and sentenced each of the appellants to 4 years' rigorous imprisonment for the offence under Section 125 read with Section 149, Penal Code, and passed no separate sentence against the four appellants convicted under Section 823, Penal Code.

3. The case for the prosecution was that at about 10 p. m. on 9th March 1948, the appellant Apel Shaikh rushed into the house of the complainant Ainal Shaikh driving before him a heifer belonging to Ainal. At that time Aziz, Ainal's son, was attending to cattle. When Apel saw Aziz he told him that his heifer had damaged Apel's gram. A quarrel arose between the parties, and it is said that Apel became furious and called to other persons to come with lathis to deal with Aziz. Upon this, it is said, the other appellants armed with lathis rushed to the house of Ainal and chased Aziz who entered the inner part of the house and took shelter in a room facing west. On hearing the uproar Majid who was asleep inside a room facing east came out on the verandah. He was attacked by the appellants and injured. Other members of Ainal's house came to defend Majid and there was a general marpit.

4. It was found that Majid was seriously injured and remained unconscious during the night. On 11th March a complaint was made to the Sub-Divisional Magistrate who examined the complainant and took cognizance of an offence under Section 323, Penal Code and issued process. Majid however unfortunately died and the matter was reported to the police and a first information report was recorded. The police conducted an investigation and finally submitted a charge sheet for an offence under Section 304 read with Section 149, Penal Code. The trial by a Judge and a jury resulted as I have already indicated.

5. After the Judge had charged the jury they retired, and it is clear from the order sheet in this case that when they returned they were obviously in a state of confusion, The order in the order sheet dated 20th August 1948, is in these terms:

Further hearing is resumed. Charge is delivered to the jury. The jury retired and on their reappearance returned a majority verdict of 4 to 1 guilty under the charges. But when I proceeded to read the verdict it seemed to me that the jury may possibly have some confusion regarding charges. I therefore charged the jury again on points of charge and law and asked them, to retire and give me their verdict afresh.

6. It is not clear from this order in the order sheet what the confusion was into which the learned Judge thought the jury had fallen. They seemed to have

returned a majority verdict upon, the charges. The learned Judge had summed up and pointed out to them that they could convict under Section 304 read with Section 149, Penal Code, or upon the lesser offences under Section 325 or 3. 323 read with Section 149, Penal Code. Presumably, when the jury returned a majority verdict of guilty upon the charges it was not clear what charges they held to be proved.

7. A learned Judge is entitled to explain matters afresh to a jury, but what he told the jury on the second occasion is of vital importance to this Court sitting in appeal. What he said in re-charging the jury is quite as important if not more important than his original charge, because in re. charging the jury we have the Judge's last words to the jury and what he said is important and we cannot possibly come to any conclusion 'about the validity or otherwise of this verdict without knowing what the Judge said when he re-charged the jury. All we have are the heads of charge which he delivered to the jury before they retired in the first place. What he said to them on re-charging the jury is not known.

8. The jury on being recharged retired and when they returned the Judge again thought that they were confused. The fact that they appeared to have been confused shows how necessary it is for this Court to know what was said in recharging the jury. Apparently on the second appearance of the jury something more was said' to them, but there is no record of that. The jury then retired and returned a verdict as I have stated earlier in this judgment.

9. Mr. Sudhansu Mukherjee who has appeared on behalf of the appellants has pointed out that this Court cannot possibly decide this appeal upon the materials before it. We have the heads of charge, but we also know that those heads were supplemented by something the learned Judge said when, to use his own phrase, he 'recharged the jury'. We have no record of that and a record should have been kept) as required by the proviso to Sub-section (5) of Section 867, Criminal P. O. In fact we have only part, of the charge before us, and that being so we cannot possibly maintain the conviction.

10. Mr. Sen who has appeared on behalf of the Crown has frankly conceded that the verdict cannot be sustained in the absence of a complete record of the charge

to the jury. It appears to me that this case therefore was not tried properly and must be retried.

11. That being so I would allow this appeal, set aside the verdict of the jury and the convictions and sentences passed in consequence, and direct that the appellants be retried before another Judge sitting with a jury.

12. I should like to point out in conclusion that there was no charge under either It' or Section 148, Penal Code against the appellants. Usually, persons are charged firstly with rioting and then with some other offence read with Section 149, Penal Code. The non-inclusion of a charge of rioting, either Simple rioting or with deadly weapons, may have led to the confusion which undoubtedly arose in this case.

13. In my view the appellants whilst awaiting their retrial should be released on bail. We therefore direct that they be released as soon as possible on bail to the satisfaction of the District Magistrate of Burdwan.

Das Gupta, J.

14. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com