

Surja Kurmi Vs. Queen-empress

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Court : Kolkata

Decided On : Jan-10-1898

Reported in : (1898)ILR25Cal555

Judge : Hill and ;Stevens, JJ.

Appellant : Surja Kurmi

Respondent : Queen-empress

Judgement :

Hill and Stevens, JJ.

1. The appellant was committed to the Court of Session for trial on the charge of having committed an offence punishable under Section 240 of the Indian Penal Code. At the sessions the case was tried by a jury, which by a majority of four to one found the appellant not guilty and returned a verdict accordingly.
2. The learned Sessions Judge records that he was about to refer the case to this Court under the provisions of Section 307 of the Code of Criminal Procedure when it was brought to his notice that the case was triable, not by a jury, but with the aid of assessors.
3. The course which the Sessions Judge then adopted was to treat the verdict of the jury as the opinions of assessors and to record a judgment convicting the

appellant under Section 241 of the Indian Penal Code and sentencing him to be rigorously imprisoned for two years.

4. The appellant has now appealed against the conviction so had.

5. We are of opinion that the conviction, as it stands, cannot be supported. The case was 'tried by a jury' within the meaning of Section 536 of the Code of Criminal Procedure, and under the provisions of that Section the trial was not invalid on the ground only that the case had been so tried, although the offence in question was triable with the aid of assessors. The trial by the jury was complete when they had returned their verdict, and the Judge was bound to act either under Section 306 or under Section 307 of the Code of Criminal Procedure, that is, he was bound either to give judgment in accordance with the verdict, or to submit the case for orders of this Court, if he disagreed with the verdict, and was clearly of opinion that reference to this Court was necessary for the ends of justice.

6. We are supported in this view by the decision in the case of *In the matter of Bhootnath Dey*, (1879) 4 C. L. R., 405.

7. We set aside the conviction and remand the case to the Sessions Judge in order that he may deal with it according to law by passing an order under either Section 306 or Section 307 of the Code of Criminal Procedure.