

Garibulla Shekh and ors. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/862321

Court : Kolkata

Decided On : Jun-16-1933

Reported in : AIR1933Cal722

Appellant : Garibulla Shekh and ors.

Respondent : Emperor

Judgement :

1. These appellants were charged with three others under Sections 148, 324, 304, Part 2 (two counts), and Section 304, Part 2 read with Section 149, I.P.C., and tried by the Additional Sessions Judge of Mymensingh and a jury. Garibulla was found guilty under Sections 324 and 304, Part 2, the latter for causing the death of two persons. They also found him guilty under Section 148. The other six appellants were found guilty under Sections 148 and 304, Part 2, read with Section 149. The remaining accused were found not guilty. The learned Judge sentenced the appellants to various terms of imprisonment. The trouble which occasioned this trial arose, as so often happens, over the possession of a particular piece of land claimed by opposite parties. Both parties gave information about the fight and the only question which the jury had to decide was, who were the aggressors. This turned on the question of possession. According to the prosecution, their witnesses were engaged in transplanting paddy on the land when the opposite party came up and attacked them with daos, lathis, etc. The result was that two men died and others were seriously injured. Garibulla was the man who attacked one of the witnesses, Fateh Ali, with a dao so that he seriously

injured him, and Misrer Bap and Abdul Jabbar on the head with a plough so that they both died, the first soon afterwards and the second two months afterwards in hospital.

2. The learned advocate who appears for the appellants has raised various points of criticism of the charge. Firstly, he says that the learned Judge, has stated as follows: 'Proved' defined and 'reasonable doubt' explained: Section 3, Evidence Act. His argument is that the learned Judge ought to have stated in extenso what he said to the jury on these points. Immediately before this sentence the Judge has stated, that if a reasonable doubt remains in the minds of the jury, they are bound to give the accused the benefit of the doubt. With regard to 'proved,' I can never understand why it is thought necessary for the Judge to read out, or explain definitions of words used in the various Codes to the jury. It is quite unnecessary to explain to the jury, or to lecture the jury upon abstract principles of law or abstract theories of proof. Such matters are fit for law students and others who wish to make a study of the law. The Judge's duty is to apply these principles and theories to concrete instances which arise in trials. Thus, instead of explaining to the jury the theoretic principles of proof, it is his duty to deal with specific pieces of evidence, and facts given in evidence, and tell the jury whether or not they are evidence which the jury must consider in that particular case,

3. To start off in a charge with a long disquisition on abstract principles is sure to confuse the jury. Moreover if such a practise is encouraged, it leads learned Judges to rely upon such theoretical explanations of the law, and fail to give that guidance about concrete facts and instances in the trial, which it is so necessary for them to give to the jury if they are to be of any use to them in arriving at their verdict. Obviously, though the Judge need not explain to the jury abstract principles of law, he must explain those particular sections of the Indian Penal Code which apply to the particular case which the jury are trying, and he ought to set out in the copy of the charge which is sent up with the record, his explanation in sufficient detail to enable us to ascertain whether he has properly explained the law about the offences with which the accused are charged to the jury. It is not for us to say how this is to be done, and we cannot fail to recognize the difficult position in which the Judges in the moffusil are placed when they have to deliver

their charge orally to the jury, possibly in the vernacular, and afterwards have to prepare in English what is supposed to be an exact reproduction of what they said to the jury. The only remedy for this state of affairs will be when it becomes possible to employ shorthand writers in all the Courts, who will be able to take down either in English or Bengali, or whatever the vernacular tongue may be, the exact words with which the Judge charges the jury.

4. The other point raised by the learned advocate is that the law with regard to private defence of self or property has not been fully explained. We cannot agree with this criticism. The learned Judge has referred to this point at several places in his charge, and has explained how a party when attacked must defend himself, or when he is in possession of the property and is attacked, may protect his own property. But that he must not inflict more harm than is necessary for the purpose of defending himself or his property, and that if he does exceed it he loses the benefit of this defence. This is a sufficient note of what the Judge said to the jury and we find no misdirection in this charge. Consequently this appeal must be dismissed.

5. Appellants 2 to 7 who are on bail must surrender to their bail and serve out the unexpired portion of the sentences imposed upon them.