

Ambar Ali Vs. Emperor

Ambar Ali Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/867618

Court : Kolkata

Decided On : Aug-03-1928

Reported in : AIR1928Cal769,117Ind.Cas.684,117Ind.Cas.684

Judge : Charu Chunder Ghose and ;Jack, JJ.

Appellant : Ambar Ali

Respondent : Emperor

Judgement :

C.C. Ghose, J.

1. This case has been argued at considerable length by the learned advocate, Mr. Talukdar, but after giving our best consideration to the arguments which have been advanced on behalf of the appellant we are of opinion that this appeal must be dismissed and for the following reasons:

The case for the prosecution, shortly stated, was as follows : On the afternoon of 3rd October 1927, the deceased Kala Mia found two heads of cattle belonging, to the accused Ambar Ali straying into his field just to the north of the bari of the accused and damaging his paddy crop. He took them into custody with the object of impounding them and refused to let them off at the request of the accused Ambar Ali. After some altercation the accused is said to have struck him on the head with a lathi. Almost simultaneously Ambar's nephew Abdul Aziz who is not an

accused in this case gave a blow on his head with a dao, with the result that he fell down unconscious on the field. He was removed to an ail by some of the men who came to the spot on hearing the row and was ultimately taken to Feni in a bullock cart. He died shortly before sunrise when the cart reached Feni. His dead body was taken to the thana at Feni and the deceased's brother Mohamed Faiz made a statement before the Sub-Inspector of Feni as to the cause of death. The statement in question was sent to the Sub-Inspector, Chhagalnaya, for investigation, as the place of occurrence was stated to be within the jurisdiction of the last mentioned thana. The post mortem examination was held by the Sub Assistant Surgeon of Feni and it was found that the cause of the death was a blow on the head by means of a blunt weapon such as a lathi. Investigation followed thereafter with the result that the accused Ambar Ali and two other men, Muja Mia and Nural Huq, were seat up for trial.

2. The accused Ambar Ali has been convicted by the jury under Part I, Section 304, I.P.C. The learned Judge was of opinion that the conviction should properly have been under the second part of Section 304; and taking that view he has sentenced the accused Ambar Ali to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs. 200 or in default, to suffer rigorous imprisonment for one year more. He has also directed that out of the fine, if realized, a sum of Rs. 150 should be paid to the heirs of the deceased Kala Mia as compensation.

3. The learned Judge's charge to the jury has been assailed before us in one particular. The passage in the charge to which exception has been taken runs as follows;

As there is a presumption of innocence in favour of the accused, so there is a presumption of truthfulness in favour of the witnesses. The presumption is rebutted if it is shown that the witness has told an untruth. But that would not justify you in rejecting his evidence in toto. You will have to carefully scrutinize his evidence and should accept it only to the extent to which it is supported by the evidence of other trustworthy witnesses and circumstances and probabilities of the case.

4. The learned advocate starts off with the broad proposition that it is entirely incorrect to say that there is a presumption of truthfulness in favour of witnesses; in other words, he contends that there is no presumption whatsoever in favour of the veracity of testimony adduced in Court. So far as this contention is concerned, we have been at some pains to find out whether the contention has any substance or not. It appears that from very early times it has always been laid down in England that testimony given in a Court of justice is presumed to be true until the contrary appears. Reference may be made in this connexion to Section 352 of the well-known work of Best on Evidence. The passage in Best is reproduced by Woodroffe, J., in his edition of the Indian Evidence Act (Edn. 8) at p. 795 with approval. It also appears that the view now sought to be put forward by the learned advocate was the subject of consideration in this Court in Criminal Appeal No. 607 of 1926, decided by Cuming, J., and Graham, J., on 21st February 1927. The learned Judges in that case accepted the view enunciated in Best on Evidence; and they were of opinion that there was no authority which took a view contrary to what was laid down in Best on Evidence. Of course, the learned advocate is right in saying that the way in which the learned Judge in this case has put it is open to exception. The language of the learned Judge may lead to misconstruction and in our opinion he should not have put together the presumption of innocence in favour of an accused and the presumption in favour of the veracity of testimony adduced in a Court of justice. The two presumptions are in their nature different and should not be classed together in the manner in which it has been done by the learned Judge in this instance.

5. The learned advocate further contends that the learned Judge was in error in saying that the presumption, if any, in favour of the veracity of testimony adduced in a Court of justice can only be rebutted if it is shown that the witness in question has told an untruth and argues that the presumption can be rebutted in various other ways, e.g., by showing that the witness was a person who was not disinterested, that the witness demeanour in Court was such as was not calculated to inspire confidence; that he was keeping back something which it was in his power to impart. One of the arts of the cross-examiner in a trial is to show that little credit can be attached to the testimony of a witness, and the cross examiner, if he is skilful and accomplished, does that not only, if I may quote a common

expression, by means of a direct attack but by means of eliciting from the witness mouth answers calculated to show that the witness is not a person who has spoken the truth.

6. But the real question is whether the jury were prejudiced or misled by what the learned Judge said in this case in the course of his charge to the jury. We have examined the charge with care and we are bound to say that we can discover no traces whatsoever in this record of the jury having been misled in any way by what the learned Judge stated in the course of his charge to the jury. It is no doubt essential that in the general observations which a Judge makes in the course of his charge to the jury he should be accurate and within the limits of what has always been allowed from time to time in criminal trials. The learned Judge's charge to the jury can no doubt be criticized, but the verdict of the jury ought not to be interfered with except where the charge taken as a whole cannot be supported. In this view of the matter we think this appeal must fail.

7. Mr. Talukdar has, however, addressed to us an argument in mitigation of the sentence passed on the accused in this case. The sentence that the learned Judge passed in this case shows that he has taken into his full consideration everything that could legitimately be urged on behalf of the accused; and as that sentence does not err on the side of severity, we think we ought not to interfere in any way with the learned Judge's order in this case.

8. The result is that this appeal must stand dismissed.

Jack, J.

9. I agree.

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