

Queen-empress Vs. Jacquiet

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Court : Kolkata

Decided On : Dec-08-1884

Reported in : (1885)ILR11Cal85

Judge : Mitter and ;Norris, JJ.

Appellant : Queen-empress

Respondent : Jacquiet

Judgement :

ORDER

Norris, J.

1. This case has been referred to us by the Sessions Judge of Burdwan under the provisions of Section 307 of the Code of Criminal Procedure. The facts are briefly these: The prisoner was committed for trial under Sections 302 and 304 of the Penal Code. At the trial the Sessions Judge of his own motion added a charge under Section 325 of the Penal Code. Evidence was adduced in support of all three charges, and at the close of the case for the prosecution and the speeches for the prosecution and defence, the Judge proceeded to charge the jury. He began his charge by telling the jury that the counsel for the defence had endeavoured to bring the case within Section 325; in other words, had endeavoured to save his client's life. The Judge then goes on to point out to the jury what evidence there is in favour of the charge under Section 302, and what

evidence there is against it. Similarly, the Judge points out what evidence there is for and against the charge under Section 304. Then the Judge goes on to say: 'As to the charge under Section 325, I need hardly tell you that it is a very minor one, and was added in order to meet the doubtful testimony of the medical officer as to the cause of death when he was deposing in the Court below. If for any good reasons you can say that the case does not come under either Section 302 or Section 304, and you hold that a minor offence was committed, there is ample evidence to show that grievous hurt was voluntarily caused.' Now, if the Judge in the Court below was of opinion, as he appears to be according to his letter of reference, that this case resolved itself simply into the question whether the prisoner was guilty of murder or of culpable homicide not amounting to murder, instead of directing the jury, as he has done, that they might convict under Section 325, he should have struck out the charge under this section, even if the prisoner had been originally charged thereunder. He should have said: 'Gentlemen, there was a charge under Section 325; I have taken it upon myself to strike out that charge, as the crime of the prisoner cannot possibly be brought under that section,' Instead of doing that, the learned Judge invites the jury, if they fail to find a verdict either under Section 302 or 304, to return a verdict under Section 325. This being the way that he has charged the jury, it is unreasonable for the Judge to complain of the verdict that the jury have returned and thrown upon us the responsibility of dealing with the case under Section 307 of the Code of Criminal Procedure. We decline to interfere with the verdict of the jury. We convict the prisoner of the offence charged under Section 325, and sentence him to be rigorously imprisoned for seven years.

Mitter, J.

2. I concur. It is clear upon the authority of decided cases that this Court will not interfere unless the verdict of the jury be found to be manifestly erroneous. In his charge to the jury the Sessions Judge directed that, in the event they found the other charges unsustainable, they might find the accused person guilty under Section 325, if that offence, in their opinion, has been established upon the evidence. The Sessions Judge heard the evidence, and after recording it, he expressed his opinion, in his charge to the jury, that they might upon that evidence

find the accused person guilty Under Section 325. That being so, I am not prepared to say, upon the bare perusal of the recorded evidence, that the verdict of the jury is manifestly erroneous.

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