

Emperor Vs. Panchanon Sarkar

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Court : Kolkata

Decided On : Dec-09-1932

Reported in : AIR1933Cal404

Appellant : Emperor

Respondent : Panchanon Sarkar

Judgement :

ORDER

1. We are both of opinion that in the circumstances the reference must be rejected. The accused Panchanon was tried by a jury for offences punishable under Section 467 and Section 477-A, I.P.C. The record shows that at the conclusion of the trial after deliberation lasting for more than half an hour the jury in answer to the questions put to them replied that they were unanimous and that they found the accused not guilty on all the charges. The accused was a tahsildar of the Cossimbazar estate and it was alleged that in one case he had collected rent from a tenant and had put the proceeds into his own pocket, and that in another case he had collected rent from another tenant and had only credited a portion of the rent so collected to the estate and misappropriated the balance, and further that in order to conceal his dishonesty he had made certain false entries and alterations in the books of the estate containing counterfoil receipts. He was charged under both the sections.

2. I have mentioned in respect of a counterfoil receipt which was marked as Ex. 6, and which, it was suggested, was used to take the place of the counterfoil which would have ordinarily come into existence in respect of the rent receipt granted to the tenant the whole of whose rent had been misappropriated. He was also charged under both the sections in respect of a counterfoil which was a counterfoil in respect of the rent receipt granted to that tenant, whose rent was partly paid into the account of the estate with the Imperial Bank, and partly misappropriated. It was the prosecution case that these documents and certain other documents were in their entirety in the handwriting of the accused, and evidence to prove this was called, the witness being persons who were familiar with the handwriting of the accused and had actually seen him write and also a handwriting expert Mr. Benett. It is not quite plain to what extent the accused admitted that the documents were written by him, but undoubtedly a suggestion was made on his behalf that he might have been the victim of conspiracy on the part of other employees of the estate, who succeeded in getting him into trouble by means of rent receipts which bore his signature in blank. This summary of the case is sufficient to enable us to deal with the reference.

3. When we turn to the letter of reference we find it irregular in more than one respect. Section 307, Criminal P.C, requires not only that the Judge should disagree with the verdict of the jurors, but also that he should be clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court. The learned Judge in this case states that he is unable to agree with the unanimous verdict of the jury, and is of opinion that the verdict is not only not in accordance with the weight of evidence, but is also perverse.

4. I myself feel some difficulty in appreciating exactly what is intended by the words necessary for the ends of justice to submit the case.' If the words merely mean that the Judge should be in complete disagreement with the verdict, I should be inclined to hold that he has sufficiently indicated the completeness of his disagreement in this case by the use of the word "perverse.' While it is not necessary to decide the point the language appears to me to mean something more than this and I am inclined to think that the necessity of submitting a case should depend on the gravity of the offence and its prevalence and considerations

of a similar nature. As I say, it is not necessary to go more fully into that aspect of the matter because we do not think that when the letter of reference is examined, the learned Judge purports to disagree with the verdict of the jurors at all in the sense contemplated by Section 507. After giving a summary of the facts the learned Judge makes the following observations:

The verdict not being one of giving accused benefit of doubt, it seems that the opinion was that it was Dukhaharan who had altered the counterfoils and wrote the register 3 at the time or soon after the collection. This could only be if he was entrusted with the collections in question, which conclusion the evidence does not justify.

5. The learned Judge appears to have taken the view that the position would have been different if the jury had given their verdict in the form that they give the accused person the benefit of the doubt.' We need hardly point out that is not a verdict which is known to the law though jurors sometimes do express a verdict of not guilty in that way. A verdict of not guilty covers every degree of mental condition from mere hesitating doubt as to the guilty of the accused to a complete conviction of his innocence. It appears to us that the learned Judge had no warrant for supposing that the verdict of the jury meant that they accepted the suggestion of the defence or that they considered that the suggested conspiracy against the accused had been established. Their verdict might perfectly well mean that they considered that Exs. 6 and 6-T and the other documents had not been proved to be in the handwriting of the accused. Unless the learned Judge was prepared to disagree with the opinion of the jury on this interpretation of their verdict he was not justified in referring the case.

6. We certainly gather from his language that it was largely because he construed the verdict of the jury as an acceptance of the suggestions of the defence that he referred the case to this Court, and we are not satisfied that he would have felt justified in disagreeing with the verdict of the jury taking that verdict to mean, as it may very well have meant, that in the opinion of the jurors the prosecution had not succeeded in establishing their case beyond reasonable doubt. We may also observe that the learned Judge did not as the section requires of him, state the

offence which he considered had been committed although from the body of his letter of reference it is quite clear that he was not of opinion that an offence under Section 467 had been committed, but thought that the accused should have been convicted under Section 477-A. We are not prepared to say that on the mere omission to state the offence we should be prepared to reject the reference, but we base our decision on the other grounds which I have stated. In the circumstances the reference is rejected and the accused is acquitted and discharged from his bail bond.

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