

Harendra Pal and anr. Vs. Emperor

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Court : Kolkata

Decided On : Aug-03-1910

Reported in : 7Ind.Cas.915

Judge : Chatterjee and ;Teunon, JJ.

Appellant : Harendra Pal and anr.

Respondent : Emperor

Judgement :

1. The two appellants before us were tried by jury before the Court of Sessions of Murshidabad and have been Convicted of the murder of one Debendra Mandal.
2. On behalf of the appellants it is contended I hat the trial has been vitiated by misreception of evidence and by misdirection in the learned Sessions Judge's summing up to the jury.
3. That there has been serious misrecoption of evidence cannot be questioned, and for the purposes of this judgment it will be sufficient to indicate some of the more prominent instances.
4. It appears that the occurrence in question took place so long ago as the 23th of July 1909, that in the first instance the appellants and their co-accused were discharged, and that after an order in revision made by the Sessions Judge before whom at a later stage this trial was held, further inquiry was made and the

commitment of the accused directed in his order in revision the learned Sessions Judge thought it necessary to make certain observations on the proceedings of the Magistrate who had discharged the prisoners. The reasons given by the Magistrate for the action taken by him and the contents of the Sessions Judge's order in revision, that is to say, the opinions of these two officers have alike been improperly admitted in evidence.

5. Again in the order of commitment, the committing Magistrate, it appears, complained of certain results which in his opinion had followed the delay that had attended the proceedings. The complaints of the committing Magistrate, that is to say, his opinions, have been placed before the jury.

6. But the error to be next noticed is of even graver importance. The appellants were tried with a co-accused named Gonesh, who had made a confession which he subsequently retracted. In this connexion it was given in evidence that not only Gonesh but also two others, apparently the two appellants, were sent up in order to have their confessions recorded, and further when questioned as to the inducements, if any, held out to Gonesh, the Investigating Sub-Inspector was permitted to state that it was not Gonesh but the appellant Boto whom he had proposed to make an approver, and that Boto on a certain date had agreed to become King's evidence but had subsequently resiled from that position. This in effect is to inform the jury that the appellant Boto, and apparently the appellant Harendra also, had made confession to the Investigating Police Officer.

7. In his summing up to the Jury, the learned Sessions Judge has placed before them, and indeed has laid some stress on, all this inadmissible evidence and he has further misdirected them in other particulars.

8. In dealing, for instance, with the discrepancies in the statement of witnesses, and with possible lapses of memory, the Judge was, no doubt entitled to refer to the period that had elapsed between the date of the crime and the date of the trial, but his observations go much further than this and tend to convey the impression that by reason of the delay, the action of the Sub-Divisional officer, and the possible effect of that action on the minds of the Subordinate Police Officers concerned in the investigation, the Jury might properly rest satisfied with a lower

standard of evidence than would otherwise have been reasonably demanded.

9. He has then failed to set out clearly the nature of the defence of the several accused and in dealing with the retracted confession of the accused, Gonesh, he has failed to warn the Jury that if they found they could not act upon it as against Gonesh himself, they must wholly disregard it as against others.

10. We next find that the Judge has misdirected the Jury on an important question of fact. As against the appellant Harendra it was the case for the prosecution that he had produced from his house a bamboo which on examination was found to correspond with, or to be a part of, the blood-stained bamboo found near the body of the murdered man. It is conceded that at a certain stage in the case it was discovered that the two pieces of bamboo did not then correspond. Now at the close of his charge the learned Sessions Judge appears to make to the Jury a positive statement that the appellant did in fact produce the bamboo in question and that when so produced it did in fact correspond with the blood-stained bamboo found near the body. No doubt, the Judge was entitled to express his opinion on this question as on other questions of fact, but we are of opinion that in dealing with this important matter, he should also have placed carefully before the Jury the evidence bearing on this question and made it clear that whatever his own opinion be, it was for the Jury to say on that evidence whether the appellant did in fact produce the bamboo in question and whether at that time the two pieces of bamboo did in fact correspond.

11. Lastly we have to observe that, in our opinion, the learned Sessions Judge in addressing a Jury should endeavour to speak in a manner more simple and direct. In this case the charge is so involved and the language used so extravagant that in a number of passages we have found a difficulty in appreciating the Judge's true intention and meaning, and we cannot suppose that the Jury did not experience similar difficulties.

12. For these reasons we set aside the conviction and sentence and as we think that in this case there are materials which should properly be considered by a Jury, we order that the appellants be re-fried.

13. Under all the circumstances, we think, it proper to direct that the re-trial be held before the Sessions Court of Burdwan.

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