

Tuka Mia Vs. King-emperor

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SooperKanoon Citation : sooperkanoon.com/880873

Court : Kolkata

Decided On : Jan-27-1927

Reported in : AIR1927Cal936a,101Ind.Cas.606

Appellant : Tuka Mia

Respondent : King-emperor

Judgement :

C.C. Ghose, J.

1. In this case we are of opinion that the only course open to us hiving regard to what is stated below, is to set aside the verdict of the jury and the sentence passed upon the accused and to order that the accused be retried according to law. The course that has been forced upon us in this case is one which we adopt with very great regret.

2. On a previous occasion the present appellant's case had come before this Court and it was then ordered that the accused should be retried, the conviction and sentence being set aside. That was sometime early last year. There has been a retrial in accordance with the previous order of this Court and the present accused has been convicted under the second part of Section 304. I.P.C., and sentenced to suffer rigorous imprisonment for ten years.

3. On the present appeal it has been contended before us that it is impossible to make out from the charge itself it being so scrappy and insufficient as it appears on the record before us with any degree of certainty that the charge is not open to the comment of misdirection. The charge as appears from the record consists of heads of what was stated to the jury. No doubt the law requires that the heads of a charge to the jury should be recorded, but it is equally clear that as the law allows an appeal in cases of trial by jury on the ground of mis-directions the charge should be in such a form as to enable the Court of appeal to be satisfied that it was delivered with sufficient fullness to the jury and that it is such as to enable the Court of appeal to say that all points of law and fact were clearly and correctly explained to the jury having regard to the evidence adduced in the case. What we have said above is no more than what was laid down by a very eminent and experienced Judge of this Court - Mr. Justice Rampini - in 1907, in the case of Panchu Das v. Emperor [1907] 34 Cal. 698. We have been through the heads of the charge as recorded by the learned Sessions Judge and, in our opinion, it is impossible for us to say that the heads of the charge to the jury have been recorded with sufficient fullness and clearness as required under the ruling cited above. It should be the duty of presiding officers in criminal trials to see that the requirements of law as laid down in the Criminal Procedure Code and as insisted upon by this Court from time to time are complied with fully and satisfactorily. That has not been done in this case and we are, therefore, left, there being no other alternative, to adopt the course indicated above.

4. The result, therefore, is that the present conviction and sentence must be set aside and the accused should be retried. We direct that such re-trial should take place as soon as possible. In the circumstances which have happened in this case we direct that the re-trial should take place before the learned Sessions Judge of Comilla.

5. Let the record be sent down as soon as possible.