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Emperor Vs. Dhananjay Ray

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Court : Kolkata

Decided On : Sep-28-1923

Reported in : 81Ind.Cas.246

Judge : Asutosh Mookerjee and ;N.R. Chatterjee, JJ.

Appellant : Emperor

Respondent : Dhananjay Ray

Judgement :

1. This is a reference under Section 307 of the Criminal Procedure Code. The accused Dhananjay Kay was charged with an offence under Section 211, Indian Penal Code. The Jury unanimously found him not guilty. The Sessions Judge, however, was of opinion that the verdict was not in accordance with the-evidence and thought it necessary in the interests of justice to submit the case to the High Court.

2. The case against the accused may be briefly stated. On the 6th October 1922, the accused, who was the Tahsil-dar of the Khararia Zemindars, lodged a first information at Mollahat Police Station against Ramgachia, Premchand and eleven other persons. His story shortly was that on the 4th October, while proceeding in a boat, he was accosted by the accused persons. Two of them, Ramgachia and Premchand, threatened him with daos, forced him to unlock his box and stole Rs. 150. The Police Authorities made some arrests on the 9th October, but were not

as expeditious in the conduct of their enquiry as the accused desired. The result was that on the 31st October, he lodged a complaint before the Sub-Divisional Magistrate at Bagerhat. On the 16th November, the Police submitted a report that the case was false, and on the 13th December, the Sub-Divisional Magistrate dismissed the complaint as false under Section 203, Criminal Procedure Code. On the next day the present prosecution was instituted.

3. Witnesses were examined on behalf of the prosecution and the accused himself was examined under Section 342 of the Criminal Procedure Code. His defence in substance was that the information he had lodged was true. The Judge summed up the case fully and fairly. The Jury retired, and in a few minutes, brought in a unanimous verdict of not guilty. The Jxidge, as we have already stated, held that the verdict was inconsistent with a sober estimate of the evidence and made this reference. In his letter of reference, he states that 'the accused has connections of considerable influence and position, and I am constrained to the opinion that this has not been without its effect on the verdict returned at his trial.'

4. We enquired of the Deputy Legal Remembrancer what foundation, if any, there was for the opinion expressed by the Sessions Judge that the verdict of the Jury had been affected by the alleged circumstances that the accused has connections of considerable influence and position. The Deputy Legal Remembrancer, as might have been anticipated, stated with his usual frankness that there were no materials on the record to support the view expressed by the Sessions Judge. Such an imputation may perhaps influence the judgment of this Court by extra judicial considerations; but this could not have been possibly intended by the Sessions Judge. In any event, we are clearly of opinion that the imputation should not have been made. This Court is called upon under Section 307 to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the Jury, either to acquit or to convict the accused. The opinion of the Sessions Judge is his opinion on the merits of the case and does not include his speculations as to what external considerations, if any, might have affected the judgment of the Jury. An imputation of this character is not fair to the Jurors as they have no opportunity to defend their views and to repudiate the aspersions made against them. We find, moreover, that in this case there were five Jurors,

three Hindus and two Muhammadans: it has not been explained why they should all have combined to bring in a verdict of 'not guilty' with regard to the accused who is a Hindu.

5. We have carefully examined the evidence and we have come to the conclusion that the verdict of the Jury should not be disturbed. There can be no doubt that an .incident of the description alleged ly the accused did take place on the 4th October 1922. The theory of the prosecution is that the accused was in fact forcibly detained in order that he might be compelled to give receipts for moneys actually paid to him. The action taken by Ramgachia was illegal, and even according to the Sessions Judge amounted at least to wrongful restraint. The question consequently reduces to this, namely, whether the version given by the accused was or was not sub-stanially true. The Jurors were of opinion that the defence story was true, and on a perusal of the evidence we are not prepared to hold that this conclusion could not have been reasonably adopted on the evidence as it stands.

6. There has been some discussion at the Bar as to the true scope of Section 307, Criminal Procedure Code. On behalf of the Crown, our attention has been invited to Queen-Empress v. Itwari Saho 15 C. 269 : 7 Ind. Dec. (N.S.) 764, Empress v. Lyall 29 C. 128 : 6 C.W.N. 258, Emperor v. Annada Ctiaran Thakur 2 Ind. Cas. 497 : 36 C. 629 : 9 C.L.J. 638 : 10 Cr. L.J. 32 : 13 C.W.N. 757, Manindra Chandra Ghose v. Emperor 23 Ind. Cas. 1002 : 41 C. 754 : 18 C.W.N. 580 : 15 Cr. L.J. 402. On behalf of the accused, stress has been laid on the decisions in Queen v. Sham Bagdi 20 W.R. 73 : 13 13. L. Rule App. 19, King-Emperor v. Puma Hazra 2 C.L.J. 77, Emperor v. Surnamoyee Biswas 21 Ind. Cas. 900 : 41 C. 621 : 14 Cr. L.J. 660, Emperor v. Sheikh Neamatulla 21 Ind. Cas. 156 : 17 C.W.N. 1077 : 14 Cr L.J. 556, Emperor v. Annada Charan Roy 39 Ind. Cas. 695 : 21 C.W.N. 435 : 18 Cr L.J. 551, Emperor v. Asgar Mandal 48 Ind. Cas. 500 : 22 C.W.N. 811 : 20 Or L.J. 20, Emperor v. Chhanoo Lal Bania 49 Ind. Oas. 783 : 22 C.W.N. 1028 : 20 Or L.J. 223, Emperor v. Pramatha Nath 55 Ind. Oas. 285: 30 C.L.J. 503 : 21 Or L.J. 266, Emperor v. Sristidhar Mozum-dar 81 Ind. Gas. 236;,37 C.L.J. 30; (1923) A.I.K. (C.) 97, Emperor v. Nritya Gopal Roy 75 Ind. Cas. 145 : 38 C.L.J. 1 : 24 Or L.J. 897 and Emperor v. Sukhu Bewa 76 Ind. Cas. 389 : 38 C.L.J. 155 : 25 Or. L.J. 195. No

useful purpose would be served by an analysis of the facts of each of these cases and the reason assigned by the Court in each case for its preference of the opinion of the Judge or of the Jury. The terms of the section are fairly clear. This Court is first called upon to consider the entire evidence. The Court has then to give clue weight to the opinion of the Sessions Judge and to the opinion of the Jury. The opinion of the Jury, as explained in Emperor v. Tarapada Naskar 22 Ind. Cas. 175 : 18 C.L.J. 522 : 15 Or. L.J., 31 : 18 C.W.N. 615, signifies the verdict of the Jury. The measure of the relative weight to be attached to these two factors, cannot be crystalised into an inflexible formula. The answer must depend upon the circumstances of each case. But the trend of judicial opinion has been in favour of preference of the unanimous verdict of Juries on whom the duty is imposed by Section 299 to decide which view of the facts is true. The weight to be attached to the verdict of the Jury is, however, necessarily diminished when the verdict is not unanimous. On the other hand when the Judge accepts the verdict of the Jury as to some of the accused and not as to the others, his opinion is weakened in a corresponding measure. But as we have said, the view propounded in the case of Queen v. Sham Bagdi 20 W.R. 73 : 13 13. L. Rule App. 19 still holds the ground, namely, that this Court should not interfere with a unanimous verdict of the Jury, unless we can say decidedly that we think that it is clearly wrong. This, no doubt, is a survival of the well-established tradition of English Criminal Jurisprudence; but notwithstanding this, due weight must be given to the opinion of the Judge as required by the Statute. We are of opinion that the verdict of the Jury in the present case should be accepted and that the accused should be discharged from his bail. We order accordingly.

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