SamaruddIn and Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/881385

Court : Kolkata

Decided On : Oct-04-1912

Reported in : 17Ind.Cas.565

Judge : Chitty and ;Richardson, JJ.

Appellant : SamaruddIn and

Respondent : Emperor

Judgement :

1. In this case, the appellant Samar-ud-din has been convicted by the unanimous verdict of a Jury of offences under Section 304/149, Indian Penal Code, and Section 147, Indian Penal Code, and has been sentenced by the Additional Sessions Judge of Dacca to two years' rigorous imprisonment on each count, the sentences to run concurrently. The appeal is, therefore, open to him only on the questions of law relating to the charge of the Additional Sessions Judge.

2. The first point that has been urged before us is that the Judge was in error in putting before the Jury what he calls 'a third alternative.' It should be stated that before the trial began in the Sessions Court, the charge was amended and, as eventually framed, the common object alleged was 'in order to take forcible possession of complainant Pandab's land and hut and to assault Pandab, Joydeb, Chandra Kissore and Karam Ali.' The Judge suggested to the Jury that the case might not be precisely as the prosecution alleged and at the same time might not

be what the defence endeavoured to set up, but something between the two, namely, that the complainant's party might have gone to turn Madhumala out of possession, that they were resisted and driven out of the land by the Kusamhati Sardars that up to that point the Kusamhati Sardars, might have been acting within their rights but that they went further and intoxicated with success or anger or both determined to teach the complainant's party a lesson and assaulted them, Reliance was placed on the case of Banga Hadua v. King-Emperor 11 C.L.J. 270 : 5 Ind. Cas. 771 : 11 Cr. L.J. 245 and also on the cases of the Queen v. Sabed Ali 20 W.R. Cr. 5 : 11 B.L.R. (F.B.) 347 and Wafadar Khan v. Queen-Empress 21 C. 955. But these cases are quite distinguishable on their facts. We can see no reason why the Judge should not have made this suggestion to the Jury. He left it entirely open to them as to whether they would accept it or not and we cannot agree in the contention of the learned Pleader for the appellant that, if it was accepted, it would entirely destroy the prosecution case, The Full Bench case of Queen v. Sabed Ali 20 W.R. Cr. 5; 11 B.L.R. (F.B.) 347 cited above, was quite different from the present as was also the case of Wafadar Khan v. Queen-Empress 21 C. 955. There the charge was altered at the end of the case for the prosecution and a totally different common object was alleged. Here, there has been one common object alleged throughout and it cannot be suggested that the accused did not know exactly what they had to meet.

3. In the second place, it is argued that the learned Judge's explanation of Section 147, Indian Penal Code, is faulty and that violence cannot mean violence against inanimate objects. No authority has been cited for such a proposition and we see no reason for restricting the meaning of the word violence' in the manner stated. It could hardly be said that if an unlawful assembly came together for the purpose, say, of pulling down a man's house and they proceeded to carry out the object, they could not be said to have used violence. Then it was urged that, as regards the appellant, Samaruddin, the Judge did not point out to the Jury exactly what the evidence against him was. We do not see that there is any force in this contention. The Judge has discussed the whole of the evidence to the Jury and this man's name is mentioned on more than one occasion. He has told the Jury that they must be satisfied as against each of the accused (there were four others tried along with Samaruddin who were found not guilty) and that their verdict must be

independent as against each. The next argument that the Judge should have asked the Jury, when they returned their verdict, as to which common object they held proved has no force in this particular case because, only one common object was alleged. In the case of Wafadar Khan v. Queen-Empress 21 C. 955 cited above, there were two distinct common objects which had been alleged and had been mentioned in the charges. It is said, that, in his charge in this case, the Judge, has failed to give advice to the Jury on most important particulars; but the particulars to which the learned Pleader has referred are minor details in the evidence which the Jury had heard and which they were asked to take into consideration. It was not, in our opinion, necessary for the Judge to go into the minutest details; but even if it were, there is nothing to show in this case that these particular minor points were not mentioned to the Jury inasmuch as we hare only the heads of the charge before us.

4. Then it was argued that the Court witness Hossain Bukhsh's evidence should have been explained by the Judge. It is difficult to say what precisely is meant by this. The evidence was commented upon by the Judge and the Jury were left to form their own opinion of it.

5. Lastly, it was argued that the evidence which was inadmissible was admitted and that prejudiced the accused. This evidence consisted of a statement of the prosecution witness No. 5, Sanu, who stated that he had brought a case under Section 107, Criminal Procedure Code, against some of the accused including the appellant and that they had been bound down while a cross-case under the same section brought against himself by the accused had been dismissed. This was pot, so far as we can see, introduced, as suggested here, for the purpose of proving the bad character of the accused but as part of the res gest, the events which had transpired before, and which eventually led up to, the riot which was investigated in the present case.

6. We think, on the whole, that the charge of the learned Sessions Judge was both full and impartial and that the whole case was put before the Jury by him. We accordingly dismiss the appeal.