

Emperor Vs. G.C. Wilson

Emperor Vs. G.C. Wilson

SooperKanoon Citation : sooperkanoon.com/883622

Court : Kolkata

Decided On : May-05-1926

Reported in : AIR1926Cal895

Appellant : Emperor

Respondent : G.C. Wilson

Judgement :

Suhrawardy, J.

1. This is an appeal by the Crown against the order of acquittal of the respondent in respect of a charge under Section 304, I.P.C. The prosecution story is that the respondent, who is the manager of a tea estate, known as Madhabpur Tea Estate in the district of Sylhet in Assam, went out on a round of inspection of the garden in the forenoon of the 30th June 1925. He was not satisfied with the work of the deceased cooly Dasarath Gowala. He called the cooly to his presence and ordered him to proceed with the work of hoeing, but being dissatisfied with the manner of his work, seized the deceased by the neck and struck him with his clenched fist and the deceased fell down, whereupon the accused kicked him. The deceased expired shortly after the assault. On these allegations the accused was placed before the committing Magistrate charged with an offence under Section 304, I.P.C., and was subsequently committed to the Court of Sessions on that charge.

2. In the Court of Sessions the charge framed by the committing Magistrate under Section 304, I.P.C., was maintained and the trial proceeded until after the case for the prosecution was closed and the Public Prosecutor had finished his address, During the course of the address by the respondent's pleader, a further charge under Section 352, I.P.C., was added in these words: 'That you slapped Dasarath cooly and thereby used criminal force to him.' The jury consisting of three Europeans and two Indians brought in a majority verdict of guilty against the accused under Section 334, I.P.C., only. The following questions were put by the Judge and the answers given by the jury:

Q.--Are you unanimous?

A.--No.

Q.--In what proportion are you divided?

A.--3 to 2 on one charge, unanimous on the other.

Q.--What is your verdict?

A.--Not guilty under Section 304, I.P.C., unanimous verdict.

Q.--And for the rest?

A.--We find the accused guilty under Section 334, I.P.C., by a majority of 3 to 2, namely, that the accused voluntarily caused hurt on grave and sudden provocation.

3. On the face of it the verdict of the jury is ambiguous. They acquitted the accused unanimously of the charge under Section 304, I.P.C., and said nothing about any finding of a charge manor to it. The only other charge that remained against the accused was one under Section 352, I.P.C. and under that charge he could not be convicted under Section 334, I.P.C., which is not a minor offence to the offence under Section 352, I.P.C. The verdict, as it stands, means that the jury found that the accused was not guilty of an offence under Section 304, I.P.C., as he did not cause such injuries to the deceased as would likely cause death nor did the accused know that they were likely to cause death; but they believed that he caused hurt to the deceased (it is not clear whether by the slap or the kick) and

therefore he committed an act which would be an offence under Section 323, I.P.C.; but the hurt having been caused under grave and sudden provocation he was guilty of an offence under Section 334, I.P.C.

4. Though they had found him not guilty under Section 304, I.P.C., they could have convicted him under Sections 325, 323 or 334, I.P.C., as a minor offence to one under Section 304, I.P.C., but they were asked by the Judge to give their verdict in respect of the second charge, namely the charge under Section 352, I.P.C. Even if it be conceded that the verdict of guilty under Section 334, I.P.C., was brought in under the first charge, then there is no verdict in respect of the second charge, namely, the one under Section 352, I.P.C. The verdict of the jury being thus confused and unintelligible it was the duty of the learned Judge to obtain from them a proper and correct verdict before accepting the verdict given: *Khirode Kumar v. Emperor* : AIR1925 Cal260 . On this ground, alone it cannot be said that there was a proper trial.

5. There is also another irregularity committed in the trial, which has been the cause of the unsatisfactory verdict of the jury. In his written heads of charges to the jury the learned Judge observes that 'when the jury were retiring they were supplied with a copy of the Indian Penal Code.' This practice has always been disapproved: *Jaspath Singh v. Queen-Empress* [1886] 14 Cal. 164 and *Queen-Empress v. Bharmia* [1895] 6 Bom. L.R. 258. Under the law of procedure it is the duty of the Judge to explain to the jury the law applicable to the case and it is the duty of the jury to accept the law as laid down by the Judge without any extraneous aid. If the jury is unable to understand the law fully and clearly it is the duty of the Judge to explain it to them afresh, but in doing so he cannot place before them the Code or any legal treatise for the purpose of finding out the law; if he does so he fails in his duty. Under the second charge under which the jury brought in the verdict of guilty against the accused, he could not have been convicted under Section 334, I.P.C.; but if the jury believed that the offence was committed under grave and sudden provocation the proper section applicable was Section 358, I.P.C.

6. I am further of opinion that the summing up of the learned Judge as placed before us has not been satisfactory. The learned Judge merely indicates the points which he must have developed in his oral address to the jury, but they were not given with sufficient fullness to enable us to ascertain that his summing up was proper and free from any misdirection. It is true that under Section 367, Criminal, P.C., the Judge is not to write a judgment but to record the heads of the charges to the jury, but as an appeal lies to this Court in jury trials, it is necessary that the charge recorded should be such as to convey sufficient information to this Court as to the explanation of the law by the Judge and about important questions of fact. The necessity for this has been consistently insisted upon by this Court: *Panchu Das v. Emperor* [1907] 34 Cal. 698 and *Abdul Gafur v. Emperor* A.I.R. 1922 Cal. 192. Certain expressions too in the charge appear to me to verge on politics--expressions much to be regretted. It will be an evil day for the administration of justice if political considerations are to influence the judicial mind of the Judge which should be free from all taint of bias on political, racial, social or personal grounds.

7. There are other irregularities in the Judge's charge which need not be dilated upon, as the points which I have mentioned are sufficient to induce me to set aside the trial in the Sessions Court. Then as to what order we should pass. I may mention that the present appeal is under Section 417 and not under Section 449, Criminal P.C. Though in the petition the Crown asked for either a conviction under Section 325 or a re-trial, the learned Deputy Legal Remembrancer mainly argued for a re-trial and this course, I think, will be the more satisfactory. I would therefore order that the order of the Sessions. Judge appealed against acquitting the accused of an offence under Section 304, I.P.C., and the conviction of the accused under Section 334, I.P.C., be set aside and that he be re-tried with a fresh jury in accordance with law. At the re-trial it will be open to the Sessions Judge to frame fresh charges under proper heads if necessary. I do not express any opinion on the merits of the case and on the points of fact urged before us. If he so desires, the fine, if paid by the respondent, should be refunded to him. The accused will remain on the same bail until further orders by the Sessions Judge.

8. A petition in revision has also been filed on behalf of the Crown praying for an 'enhancement of the sentence passed on the accused if his conviction under Section 334, I.P.C., is maintained. As we have set aside his conviction under that section and ordered a new trial no order is necessary on the application.

Duval, J.

9. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com