

Hari Charan Das Vs. Emperor

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Court : Kolkata

Decided On : Aug-21-1925

Reported in : AIR1926Cal728

Appellant : Hari Charan Das

Respondent : Emperor

Judgement :

Mukerji, J.

1. The appellant, Hari Charan Das, has been convicted by the First Additional Sessions Judge of Dacca on charges under Sections 147 and 325 read with Section 149, Indian Penal Code, and sentenced to undergo rigorous imprisonment for six months Under Section 147, Indian Penal Code, no separate sentence having been passed under Section 325 read with Section 149, Indian Penal Code. The facts relating to the occurrence need not be narrated here as they are to be found in the charge of the learned Judge to the jury. The validity of the conviction of the appellant has been challenged on four grounds, and I propose to deal with them in the order in which they have been urged.

2. The first ground urged on behalf of the appellant is to the effect that one Majid Munshi Dafadar, who was tried with the appellant on similar charges framed against him was acquitted by the learned Judge while the trial was yet proceeding and the appellant has been prejudiced in consequence of such acquittal. In order

to appreciate the ground it is necessary to state a few facts The trial commenced on the 2nd of April 1925 and went on till the 6th of April 1925, on which date the examination of the prosecution witnesses came to a close. The learned Judge being of opinion that there was no evidence against the appellant's co-accused Majid Munshi Dafadar, acquitted him under the provisions of Section 289, Criminal P.C. Whether the learned Judge directed the jury to return a formal verdict of not guilty or not does not clearly appear on the record, but that is not the point of the appellant's objection. His objection, as far as I have been able to make out is this-- that the evidence against Majid Munshi Dafadar was precisely the same as against the present appellant, and inasmuch as the learned Judge acquitted Majid Munshi and proceeded with the trial as against the present appellant the course adopted by the learned Judge created in the minds of the jury a certain amount of prejudice against the appellant and the jury thought that if there was really no good evidence against the appellant the learned Judge could have also acquitted him instead of proceeding with the trial as against him. This contention to my mind is not well-founded. In the first place the evidence against Majid Munshi is not, as the learned vakil for the appellant states precisely the same as against the present appellant. Nextly, if the learned Judge in spite of the fact that there was no evidence against him proceeded with the trial as against him instead of acquitting, him under Section 289, Criminal P.C. he would have contravened the provisions of C1. (2) of Section 289. In my opinion the learned Judge adopted the right course in acquitting Majid Manshi at that stage; and having regard to the charge which he delivered subsequently to the jury in respect of the case as against the present appellant it cannot for a moment be suggested that the appellant was in any way prejudiced.

3. The next ground urged in support of the appeal is to the effect that the learned Judge should have made a reference to this Court under the provisions of Section 307. Criminal P.C., in view of the fact that in his opinion there was really no case as against the present appellant. The learned Judge's charge to the jury is what may be called in somewhat unforensic language as a charge for acquittal He was clearly of opinion that the appellant should not be convicted. The jury, however, came to a different conclusion and brought a unanimous verdict of guilty as against the appellant in respect of both the charges. The learned Judge disagreed

with the verdict but accepted the same presumably because he thought that it was not necessary, in the interests of justice, to make a reference under Section 307, Criminal P.C. It may be that in certain circumstances or in certain cases it is obligatory on the Judge, when he differs from the verdict of the jury to make a reference to this Court. With one of such cases I have had occasion to deal very recently and it is the case of *Saroda Charan Mistri v. Emperor* 0043/1925 : AIR1925 Cal795 where in the opinion of the learned Judge himself the acceptance of the verdict would amount to a miscarriage of justice. The present case, however, is not of that description; and, in my opinion, it cannot be contended that there was any obligation on the part of the learned Judge to make a reference to this Court.

4. The third ground is to the effect that certain witnesses whose names appear in the first information as witnesses to the occurrence were not examined in the case on behalf of the prosecution; and that the learned Judge did not draw the attention of the jury to that fact nor to the presumption contained in Section 114 of the Indian Evidence Act. Ordinarily the fact that witnesses named in the first information have not been produced by the prosecution at the trial and that no explanation has been offered by the prosecution for their non-examination should be brought to the notice of the jury and their attention should be drawn to the presumption which arises under the law from such non examination and from the fact that no such explanation has been offered. But on examining the record in connexion with this ground it appears that only one or two witnesses, whose names appear in the first information were not called as witnesses in the trial, while a very large number of witnesses whose names are to be found in the petition of complaint filed a few days after the occurrence have been examined. The mere omission on the part of the learned Judge in this respect in the present case cannot in my opinion be treated as a piece of non-direction such as would vitiate the verdict of the jury.

5. The last ground urged in support of the appeal is one which deserves very serious consideration. The learned Judge's charge to the jury is a very fair one, and as I have stated, it is a charge for acquittal.

6. Although the facts and circumstances which appear upon the record in favour of the appellant have been very carefully brought to the notice of the jury there is, unfortunately in the charge, a reference to the fact that one Keamuddi who was a co-accused of the appellant, was sent up on a charge-sheet and convicted on trial. It is not clear as to why this reference was made by the learned Judge of the fact of Keamuddi's trial and conviction. If however, there was any necessity to refer to this fact, it is clear to my mind that it was also absolutely necessary to warn the jury and warn them very carefully, not to take into account the conviction of Keamuddi at all. It was the duty of the learned Judge to ask the jury not to be influenced in any way by the fact that in a previous trial in connexion with the same occurrence another accused person had already been convicted. An omission on the part of the learned Judge to give such a direction to the jury when the fact of Keamuddi's previous trial and conviction was mentioned to them is an omission on a very vital point; and it must have prejudiced the accused person inasmuch as the jury were not asked to put out of their mind altogether the fact that the Court had already found the factum of the occurrence to have been proved in a previous trial. In my opinion the last ground to which I have referred is of considerable substance: and the verdict of the jury based upon a charge in which an omission of such vital character is noticed cannot be supported.

7. The conviction of the appellant and the sentence passed upon him must accordingly be set aside.

8. Now, there remains the question whether we should make an order directing a re-trial of the appellant. While on the one hand the jury were unanimously of opinion that the appellant was guilty of the offences the learned Judge very clearly stated in his charge to the jury the facts and circumstances which would reasonably entitle one to Come to an altogether different opinion. The learned Judge, in the order which he has passed has clearly stated that he accepted the verdict but disagreed with it. In view of these circumstances it would not be right to make an order for re-trial in this case. The result, therefore, is that the appellant is acquitted and will be released from his bail.

Cuming, J.

9. I agree.

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