

APPELLATE CRIMINAL.

Before Sanderson C. J. and Walmsley J.

KASIMUDDIN NASYA-

v.

EMPEROR.*

1920

Feb. 27.

Trial by Jury—Charge to the Jury—Record of heads of charge—Directions on the law actually given to be embodied in the record—Verdict of Jury justified by the evidence—Retrial not ordered—Criminal Procedure Code (Act V of 1898), s. 367 (5) proviso.

A mere statement by the Judge, in the record of the heads of charge, that he referred to certain sections of the Penal Code, and explained the law relating thereto, is insufficient. The record must itself embody the directions on the law actually given so as to enable the High Court on appeal to determine whether the constituent elements of the offence or offences charged were correctly and fully explained to the Jury.

The Court, however, refused to direct a new trial for such defect in the record when the Jury were justified in convicting on the evidence in the case.

The appellants were tried by the Sessions Judge of Pabna with the aid of a jury on charges under s. 395 of the Penal Code. The Judge, agreeing with the unanimous verdict of the jury, convicted and sentenced the appellants to various terms of imprisonment, on the 12th November 1919.

On the night of 4th July 1919, a dacoity was committed in the house of the complainant, Rahis Pramanick. The dacoits entered his premises, beat and tied him up on his refusal to hand over his money and other valuables, and the appellants were arrested. Information was sent to the thana. Kasimuddi made

*Criminal Appeal No. 670 of 1919, against the order of K. N. Chaudhuri, Sessions Judge of Pabna and Bogra, dated Nov. 12, 1919.

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a statement to the police sub-inspector admitting his complicity. He further, on the same day, made a statement to the Committing Magistrate implicating himself and the other accused.

The material portions of the record of the heads of charge are stated in the judgment of the High Court.

The prisoners appealed to the High Court.

Babu Atulya Charan Bose (with him *Babu Manindra Nath Roy*), for the appellants. The Judge should have stated the particular directions he gave on the law, so that this Court might see if they were correct. Refers to *Biru Mandal v. Queen-Empress* (1). The Judge was wrong in putting the statement of Kasimuddin, which was not a confession, to the Jury as evidence against the co-accused.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The Jury were justified in convicting on the evidence. The appellants have not been prejudiced by the defect in the record. There was no misdirection with regard to the alleged confession.

SANDERSON C. J. In this case three of the convicted men are represented by the learned vakil. Those three are Ladu Pramanick *alias* Nadir, Kanchu *alias* Bajiruddin Shaik, and Ossimuddi Molla *alias* Kana. There is an appeal by Kasimuddin Nasya who is not represented by any learned vakil.

The first point taken by the learned vakil is that the learned Sessions Judge did not give sufficient direction to the jury on the questions of law. The record of his charge is as follows. "Upon the above facts, the accused have been charged with having committed the offence under section 395 of the Indian

“Penal Code. The offence is here explained to the jury with reference to sections 395, 391, 390, 383 and 378 as also sections 23 and 24 of the Indian Penal Code. They have now been told, what constitutes the offence of dacoity. The first thing they have to decide is, whether there was a dacoity committed in the house of the complainant Rahis in the night of the 4th July last. In the second place they have to decide whether the four accused persons took part in that dacoity.” I need not read any more. In this case we do not direct a retrial upon this ground, because we are of opinion that if the jury accepted the evidence which was put forward on behalf of the prosecution there is no doubt that they were entitled to convict the accused of the offence of which they were convicted, namely, an offence under section 395 of the Indian Penal Code. But we desire to say that, in my judgment, the record of the learned Judge’s charge on the questions of law is not sufficient. It is not sufficient for the learned Judge who tries a case to state in his record of the heads of charges that he referred to certain sections of the Indian Penal Code and explained to the jury the law with regard to the offence. He should set out the direction which in fact he gave to them in respect of the law, in order that, if the case comes up on appeal, this Court may not be hampered by having to speculate as to what he said. The heads of charge should contain a record of the explanation of the law as the learned Judge gave it to the jury so that this Court may be in a position to judge whether the elements constituting the particular offence in question have been properly and fully explained to the jury. I hope that the learned Judges will pay attention to this. A great deal of time, trouble and expense will be saved if they observe our direction in this respect.

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With regard to the other point which the learned vakil has raised as to the alleged confession of Kasimuddin, we are of opinion that the learned Judge was right in leaving that alleged confession to the jury, having regard to the statements which that alleged confession contained; and I do not find any misdirection in the learned Judge's charge either with regard to the accused Kassimuddin who made the alleged confession or with regard to the other three accused who were charged along with him in respect of the same offence.

For these reasons, we dismiss the appeal.

WALMSLEY J. I agree.

Appeal dismissed.

[*Note.* See also Circular Orders of the High Court (Crim.) Chap. I, Order 63; *Panchu Das v. Emperor*, I. L. R. 34 Calc. 698; *Fanindra Nath Banerjee v. Emperor*, I. L. R. 36 Calc. 281; *Biru Mandal v. Queen-Empress*, I. L. R. 25 Calc. 561; *Abbas Peuda v. Queen-Empress*, I. L. R. 25 Calc. 736, 738; *Emperor v. Ikramuddin*, I. L. R. 39 All. 348; and *Eknath Sahay v. King-Emperor*, 1 Pat. L.J. 317.]

E. H. M.