APPELLATE CRIMINAL.

Before Sanderson C.J. and Pantam J.

1923

March 7.

ERAN KHAN

v.

EMPEROR.*

Jury—Questioning the Jury to ascertain their verdict—Criminal Procedure Code (Act V of 1898) s. 303.

Where the Sessions Judge directed the Jury to give a clear verdict in respect of the offences under ss. 147, 148, 304, 326 and 325, of the Penal Code, and they returned a verdict of guilty under s. 147 against some of the accused and under s. 148 against the rest, and added that "none of them are guilty under section 149":—

Held, that their verdict was incomplete, and that the Judge was justified, under s. 303 of the Criminal Procedure Code, in putting them further questions to ascertain precisely their verdict as to the other offences, and that the finding of the Jury thereafter that the accused were guilty under ss. $\frac{325}{149}$, was legal.

Per SANDERSON C. J. Where there are more than one accused and several charges at a trial in the Court of Sessions, it would be a convenient course if the officer of the Court were to take the verdict against each of the accused upon the several charges separately.

Section 307 of the Code gives the Sessions Judge a discretion to refer the case or not. If he disagrees with the verdict, but is not clearly of opinion that it is necessary for the ends of justice to submit the case, the High Court will not interfere on appeal on the ground of his failure to do so.

THE appellants were tried before the Additional Sessions Judge of Faridpur and a Jury, on charges under ss. 147, 148 and $\frac{304}{149}$ of the Penal Code, and were convicted under ss. 147, 148 and $\frac{326}{149}$ and sentenced to various terms of rigorous imprisonment.

*Criminal Appeal, No. 639 of 1922, against the order of A. J. Dash, Additional Sessions Judge of Faridpur, dated Dec. 2, 1922.

1923

ERAN KHAN v. EMPEROR.

On 4th May 1922 one Kaimuddi and four others were ploughing a 6-cottah plot, which was in the possession of the former, when the appellants and others came on the land, variously armed, and interrupted the ploughing. An altercation ensued in the course of which Hossain Mirdha, of Kaimuddi's party, pushed the appellant Ramjan whereupon the latter ordered his men to beat Hossain. One Yasin, not on trial, struck Hossain on the forehead with an *akkala* (pointed spear), and two others beat him with *lathis*. Hossain died on the 20th May, and information was then sent to the police. A first information was lodged by the sub-inspector, and the appellants were sent up for trial.

At the close of his charge to the Jury, the Judge told them that he wanted a clear verdict in respect of the offences under ss. 147, 148, 304, 326 and 325 of the Penal Code as regards each of the accused. The verdict of the Jury was recorded as follows :—

Q. Are you unanimous ?

A. Yes.

Q. What is your opinion ?

A. We find Abdul, Ramjan, Baher and Sadulla guilty under s. 147 : Eran Dulal and Matbar guilty under s. 148. And none of them are guilty under s. 149.

Q. Do you find that Yasin wounded Hossain there?

A. Yes.

Q. I wish to know your reasons for finding accused not guilty under s. 149.

A. We think he did not give the blow with the intention of killing.

Q. But do you think he gave the blow knowing he would be likely to cause death or grievous hurt?

A. He did not know he would be likely to cause

1923

ERAN KHAN v. EMPEROR.

death. But he knew he would be likely to cause grievous hurt.

Q. Do you find that Yasin committed no offence?

A. Yes, he committed grievous hurt.

Q. Then do you find that none of the accused knew that this offence would be likely to be committed in prosecution of the common object?

A. Yes, they are guilty of an offence under s. 149 in conjunction with s. 326.

Q. You told me that none of the accused are guilty under s. 149; what am I to understand?

A. I meant not guilty in conjunction with s. 304.

In the statement of finding and sentence the Judge recorded that "my own opinion on the evidence is "that the prosecution witnesses, owing to their delay "in informing the police and the manner in which "they gave evidence, are not worthy of credit. But "the Jury are entitled to their view of the case. Conse- "quently, although I do not agree with the verdict, "I accept it".

The convicted persons appealed to the High Court.

Babu Dasarathi Sanyal (with him *Babu Asita Ranjan Ghose*), for the appellants. The verdict under s. 149 was unambiguous, and consistent with that under ss. 147 and 148. The Judge had no power, under s. 303 of the Criminal Procedure Code, to question the Jury further, and their verdict under ss. $\frac{326}{149}$ is illegal. Refers to *Queen Empress* v. *Dada Ana* (1). The Judge should have referred the case, under s. 307 of the Code, when he disagreed with the verdict as to the guilt of the accused. The summing up was defective. He should have put it more clearly that in his view the prosecution evidence was not credible.

1923

ERAN KHAN v. EMPEROR.

The Deputy Legal Remembrancer (Mr. Orr) (with him *Mr. B. M. Sen*), for the Crown, was not called upon.

PANTON J. This appeal is preferred by seven persons, all of whom have been convicted under s. 326 read with section 149, three under s. 148 and four under section 147, of the Indian Penal Code. These offences are alleged to have been committed in connection with a riot which occurred at what has been described as a 6-cottah plot which one Hossain Mridha was engaged in ploughing. Hossain Mridha, according to the evidence, was struck on the head, and received injuries from which he subsequently died.

The first point which has been urged by the learned vakil for the appellants is that the learned Sessions Judge was wrong in putting certain questions to the Jury at the time he was ascertaining their verdict. In leaving the case to the Jury the learned Judge said "I shall want you to give me a clear "verdict in respect of the offences under sections 147, "148, 304, 326 and 325 for each of the accused." When the Jury returned from a consideration of their verdict, the first question put to them was "Are you unanimous"?, to which the reply was "yes". The second question was "What is your opinion?," to which the reply was "We find that Abdul Gani "Khan, Ramjan Khan, Baher Khan and Sadulla "Sheik are guilty under section 147. Eran Khan, "Dulal Khan and Matbar Khan are guilty under "section 148; and none of them are guilty under section 149." Having regard to what the learned Judge had said to the Jury, before they retired for the consideration of their verdict, the answer given by the foreman of the Jury was, in my opinion, an

1923

ERAN KEAN v. EMPEROR.

PANTON J.

incomplete verdict, and it was necessary that the learned Judge should put further questions to the foreman in order to ascertain precisely what the verdict of the Jury was as regards the other offences which the learned Judge had mentioned, that is to say, as regards sections 304, 326 and 325. The learned Judge, as I have said, did put further questions and in the result he ascertained that the real opinion of the Jury was that these appellants were not guilty of the offence under section 304, but that they were guilty of the offence under section 326 by the operation of section 149 of the Indian Penal Code. In my opinion, the questions put by the learned Judge were quite legitimate and were in accordance with the provisions of section 303 of the Code of Criminal Procedure.

The next point urged is that the learned Judge was wrong in not referring the case to this Court under the provisions of section 307 of the Criminal Procedure Code. It is true that he expresses the opinion that he does not agree with the unanimous verdict of of the Jury; but section 307 quite clearly gives to the Judge a discretion in the matter, and it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he shall so submit it. If he is not clearly of that opinion, his failure to submit the case is not a subject for interference by this Court on appeal.

The third point urged by the learned vakil is that the summing up of the learned Sessions Judge was defective, inasmuch as he should have more clearly insisted upon his view that the evidence of the prosecution witnesses was defective. It may be that the learned Judge might have expressed himself in stronger language in his charge to the Jury; but at the same time, having read this charge and having

been taken through some of the evidence given in the case, my opinion is that it was an adequate and a fair charge, and that we should not be justified in interfering with the unanimous verdict of the Jury upon this ground. For these reasons, in my opinion, the appeal must be dismissed.

SANDERSON C.J. I agree. I desire to add a few words, not with regard to our decision upon this appeal, for my learned brother has already dealt fully with that matter, but from a general point of view: and, that is with regard to the manner in which the verdict of the Jury was taken in this case. The first question put was, "Are you unanimous"? The answer was "Yes". The second question was "What is your opinion"? Then the foreman of the Jury endeavoured to give the result of their deliberations, and the decision at which they had arrived: and, as my learned brother has pointed out, in our opinion, it was an imperfect and incomplete verdict.

In my judgment in a case like this, where there are more than one accused and where there are several charges, it would be a convenient course, if the officer of the Court were to take the verdict of the Jury upon each charge separately. Section 301 of the Criminal Procedure Code provides "When the Jury have con-"sidered their verdict the foreman shall inform the "Judge what is their verdict, or what is the verdict of "a majority". In this case, as my learned brother has pointed out, the learned Judge said, "I shall want you "to give me a clear verdict in respect of the offences "under sections 147, 148, 304, 326 and 325 for each of "the accused." In my opinion all the difficulty in this case, with regard to the verdict of the Jury, would have been obviated if, after ascertaining that the Jury were unanimous, the officer of the Court had put the

1923

ERAN KHAN v. EMPEROR.

SANDERSON C. J.

question "What is your verdict with regard to each "of the accused as regards the charge under section "147." He would then get a clear answer upon this charge. Then he would ask "What is your verdict "with regard to each of the accused as regards the "charge under section 148?" He would get a definite answer to that question. Then he would proceed in the same way and ask "What is your verdict with "regard to each of the accused as regards the charge "under section 304?" and so on. This is the practice which, in my experience, is always adopted at the Original Criminal Sessions of this Court, and I do not understand why such an obviously simple procedure should not be followed in the trial of cases in the muffussil. If this procedure had been adopted in this case, there would have been no difficulty whatever in ascertaining the real verdict of the Jury.

E. H. M. *Appeal dismissed.*

CRIMINAL REVISION.

Before Newbould and Suhrawardy JJ.

1923

March 7.

BAISNAB CHARAN DAS

v.

AMIN ALI.*

Judgment—Power of Magistrate transferred out of a district to exercise jurisdiction therein—Evidence heard in one local area in a district, and judgment written in and sent from another district after transfer thereto—Delivery of the judgment by a Magistrate in the former local area—Criminal Procedure Code (Act V of 1898), ss. 12 and 350.

A Magistrate who has heard the evidence in a local area in one district cannot, after he has ceased to possess jurisdiction therein, by reason of an order of transfer to another district, complete the trial by delivery of judgment before departure, or by forwarding a written judgment from

* Criminal Revision, No. 3 of 1923, against the order of C. G. G. Helme, Additional District Magistrate of Sylhet, dated Dec. 7, 1922.