

CRIMINAL REVISION.

Before Greaves and Panton J.J.

SHIB DAS KUNDU

v.

EMPEROR.*

1924

Jan. 28.

Insanity—Inquiry into question of unsoundness of mind at the time of the trial—Onus of proving mental soundness and capacity to understand the proceedings—Criminal Procedure Code (Act V of 1898), s. 465 (1), (2).

In an inquiry under s. 465 (1) of the Criminal Procedure Code the onus is on the prosecution to show that the accused is at the time of sound mind and capable of making his defence

Reg. v. Davies (1) referred to.

THE petitioner Shib Das was committed to the Howrah Sessions on a charge of rape, under s. 376 of the Penal Code, and was placed on trial before the Additional Sessions Judge and a jury. Objection was taken on behalf of the prisoner, under s. 465 (1) of the Criminal Procedure Code, that he was of unsound mind and incapable of making his defence. Lt.-Col. McGilchrist, I.M.S., Civil Surgeon of Howrah, was examined for the defence, and stated that he had the prisoner under observation for a week, and had come to a definite conclusion that he was unfit to understand the proceedings in Court or to stand his trial, and that he was mentally unsound. No other evidence was adduced on the point. The Judge then charged the jury as follows :—

Does Shiboo Kundu appear to you to be of unsound mind and consequently incapable of making his defence? It is for the defence to satisfy

* Criminal Miscellaneous, No. 126 of 1923, against the order of A. A. Patterson, Additional Sessions Judge, Howrah, dated Sep. 25, 1923.

you on this point. The only evidence to be considered is that of the Civil Surgeon.

The jury returned a verdict in these terms:—“ *We find he can stand his trial. The evidence of the Civil Surgeon is to our minds insufficient.*” The Judge then passed the following order:—

The verdict appears to be honest. I should have accepted a verdict to the contrary effect, but I consider that, on the whole, the jury were justified in finding that they were not satisfied that the accused is unfit to stand his trial.

The petitioner then obtained a Rule from the High Court on the grounds (i) that the Judge misdirected the Jury in placing the *onus* on the accused, and (ii) that the Judge ought not to have accepted the verdict, but should have referred the case to the High Court.

Babu Anil Chandra Roy Chaudhuri, for the Crown, took a preliminary objection that no revision lay in the case. Under s. 465 (2) the question of unsoundness of mind at the time of the trial is a part of the trial. The petitioner should have allowed the trial to proceed on the merits, and then filed an appeal from the verdict, including that given on the above question, and the verdict could then be set aside only for misdirection.

Babu Prabodh Chandra Chatterjee, for the petitioner. There is no provision in the Code preventing such an application. The Judge misdirected the jury in telling them that the *onus* of proving unsoundness of mind was on the accused: *Reg v. Davies* (1). The prosecution did not rebut the evidence of the Civil Surgeon.

Babu Anil Chandra Roy Chaudhuri was not called upon to reply.

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GREAVES AND PANTON JJ. The accused in this case is a boy of 16, and he was charged with having committed rape. It is not suggested that he was of unsound mind at the time the offence was committed, but a petition was put in on his behalf showing that since his apprehension he had become a person of unsound mind. Accordingly, under the provisions of section 465 of the Code of Criminal Procedure, a jury were empanelled for the purpose of trying the fact of his unsoundness of mind and incapacity to make his defence. The only witness examined before the jury was Lt.-Col. A. C. McGilchrist of the Indian Medical Service who was the Civil Surgeon at Howrah. He was examined as a witness on behalf of the accused, and he stated that he did not think that the accused was in a fit state to understand the proceedings in Court or to stand his trial. He was cross-examined, and stated that he considered the accused mentally unsound, and that his actions were those of a person of unsound mind. The jury, after hearing the evidence and the charge of the Sessions Judge, delivered a unanimous verdict finding that the accused could stand his trial, and adding that the evidence of the Civil Surgeon was to their mind insufficient.

A preliminary objection was taken that we could not deal with the matter in revision, having regard to the unanimous verdict of the jury and the provisions of sub-section (2) of section 465, but we have gone into the evidence, and it is better that we should decide the matter on its merits. On behalf of the accused it is said that the learned Sessions Judge was wrong in stating that it was for the defence to satisfy the Court with regard to the accused's capacity to stand his trial; and, secondly, it is said that there was no direction to the jury as to what they were to do if they

felt any doubt. In support of the contention that the charge on the first point to which we have referred was wrong, we were referred to the case of *Reg. v. Davies* (1). We do not think that the learned Judge should have charged the jury as he did, so far as this point was concerned, but taking the charge as a whole we are not prepared to say that there was sufficient misdirection on this point and non-direction on the other point as to justify us in not accepting the verdict of the jury. After all, the verdict of the jury was unanimous, and it was open to them, we think, to say that they were not satisfied with the evidence that had been laid before them and to find, as they have done, that the accused was capable of standing his trial, and we do not think that we should be justified on the facts before us in interfering with the unanimous verdict of the jury that the accused was fit to stand his trial.

The Rule is accordingly discharged, and with the discharge of the Rule the stay of the hearing of the case goes.

E. H. M.

Rule discharged.

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