CRIMINAL REFERENCE.

Before Mookerjee and Chatterjea JJ.

1923.
Sep. 28.

EMPEROR
v.
DHANANJOY RAHA.*

Jury Reference—Imputation against jury—Preference of unanimous verdict of jury—Unanimous verdict not to be interfered with—Criminal Procedure Code (Act V of 1898), s 307, true scope of

Where in a case the jury returned a unanimous verdict of not guilty against the accused, the Sessions Judge without any materials on the record to support his view, stated in his letter of reference to the High Court that "the accused has connections of considerable influence and position, and I am constrained to the opinion that this has not been without its effect on the verdict returned at his trial":

Held, that this imputation should not have been made.

The measure of the relative weight to be attached to the opinions of the Sessions Judge and the jury cannot be crystallised into an inflexible formula It depends on the circumstances of each case Preference is to be given to the unanimous verdict of the jury. The weight is diminished when the verdict is divided. When the Judge accepts the verdict of the jury as to some of the accused and not as to the others, his opinion is weakened.

The High Court should not interfere with a unanimous verdict of the jury unless it can say decidedly that it is clearly wrong.

Queen v. *Sham Bagdee* (1) followed:

THE accused, Dhananojoy Raha, was charged under section 211 of the Indian Penal Code for laying a

* Jury Reference No. 53 of 1923.

(1) (1873) 20 W. R. 73; 13 B. L. R. App. 19.

1923.

EMPEROR
v.
DHANANJOY
RAHA.

false charge before the Police against thirteen persons for committing dacoity. The accused alleged that while he was going in a boat on the 4th of October, 1922, thirteen persons attacked and robbed him of some money. The police started enquiry and arrested several persons. Eventually the case was declared to be false and the accused was prosecuted under section 211. The defence was that the charge laid before the Police was true.

The accused was tried by the Sessions Judge of Khulna with a jury. The jury unanimously found the accused not guilty. The Judge rejected the verdict of the jury and referred the case to the High Court under section 307 of the Criminal Procedure Code.

The Officiating Deputy Legal Remembrancer (*Mr. Camell*), for the Crown. As regards the passage in the letter of reference, there is nothing on the record to shew that the Judge could base his remark on any particular material except that the accused is a *tasildar* of some zamindars. There was an incident on the alleged day of occurrence which was greatly magnified by the accused. Judicial enquiry followed and nothing was found to be correct. You sit as a Court of Appeal and consider the whole of the evidence. The verdict of the jury is not to be disturbed unless it is manifestly wrong. If your Lordships cannot agree with the Judge, you can acquit the accused. Refers to *Queen Empress* v. *Itwari* (1) and the other cases mentioned in the judgment of the Court.

Babu Narendra Kumar Basu (*with him Babu Banku Behary Mallik Chaudhury and Babu Satindra Nath Rai Chaudhury*), for the accused.

(1) (1887) I. L. R. 15 Calc. 269.

Section 307, Criminal Procedure Code read and explained. Your Lordships are to see if there is anything in the evidence to justify the learned Judge to pass a remark like that in his letter of reference. It is rather speculative. Whenever the Judge differs from the jury, he may question them under section 303 of the Criminal Procedure Code. Sections 298 and 299 of the Criminal Procedure Code lay down the different functions of the Judge and jury. The jury are the sole judges of fact. They gave due weight to the evidence of different witnesses and came to their conclusion which is represented in their verdict. They must have believed the defence version: *Queen* v. *Sham Bagdi* (1) and the other cases mentioned in the judgment of the Court.

MOOKERJEE AND CHATTERJEA JJ. This is a reference under section 307 of the Criminal Procedure Code. The accused Dhananjoy Raha was charged with an offence under section 211 of the Indian Penal Code. The jury unanimously found him not guilty. The Sessions Judge, however, was of opinion that the verdict was not in accordance with the evidence and thought it necessary in the interest of justice to submit the case to the High Court.

The case against the accused may be briefly stated. On the 6th October, 1922, the accused who was the *tahsildar* of the Khararia zamindars, lodged a first information at Mollahat police-station against Ramgachia, Premchand and eleven other persons. His story shortly was that on the 4th October, while proceeding in a boat, he was accosted by the accused persons. Two of them, Ramgachia and Premchand, threatened him with daos, forced him to unlock his box and stole Rs. 150. The police authorities made some arrests on

(1) (1873) 13 B. L. R. App. 19; 20 W. R. 73.

1923.

EMPEROR v. DHANANJOY RAHA.

the 9th October, but were not as expeditious in the conduct of their enquiry as the accused desired. The result was that on the 31st October, he lodged a complaint before the Sub-divisional Magistrate at Bagerhat. On the 16th November, the police submitted a report that the case was false, and on the 13th December, the Sub-divisional Magistrate dismissed the complaint as false under section 203, Criminal Procedure Code. On the next day the present prosecution was instituted.

Witnesses were examined on behalf of the prosecution and the accused himself was examined under section 342 of the Criminal Procedure Code. His defence in substance was that the information he had lodged was true. The Judge summed up the case fully and fairly. The jury retired and in a few minutes brought in a unanimous verdict of not guilty. The Judge, as we have already stated, held that the verdict was inconsistent with a sober estimate of the evidence and made this reference. In his letter of reference he states that " the accused has connections of considerable influence and position, and I am constrained to the opinion that this has not been without its effect on the verdict returned at his trial. "

We enquired of the Deputy Legal Remembrancer what foundation, if any, there was for the opinion expressed by the Sessions Judge that the verdict of the jury had been affected by the alleged circumstance that the accused has connections of considerable influence and position. The Deputy Legal Remembrancer, as might have been anticipated, stated with his usual frankness that there were no materials on the record to support the view expressed by the Sessions Judge. Such an imputation may perhaps influence the judgment of this Court by extra-judicial considerations, but this could not have been possibly

intended by the Sessions Judge. In any event, we are clearly of opinion that the imputation should not have been made. This Court is called upon under section 307 to consider the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury either to acquit or to convict the accused. The opinion of the Sessions Judge is his opinion on the merits of the case and does not include his speculations as to what external considerations, if any, might have affected the judgment of the jury. An imputation of this character is not fair to the jurors as they have no opportunity to defend their views and to repudiate the aspersions made against them. We find moreover that in this case there were five jurors, three Hindus and two Mahomedans; it has not been explained why they should all have combined to bring in a verdict of "not guilty" with regard to the accused who is a Hindu.

We have carefully examined the evidence and we have come to the conclusion that the verdict of the jury should not be disturbed. There can be no doubt that an incident of the description alleged by the accused did take place on the 4th October, 1922. The theory of the prosecution is that the accused was in fact forcibly detained in order that he might be compelled to give receipts for moneys actually paid to him. The action taken by Ramgachia was illegal and even according to the Sessions Judge amounted at least to wrongful restraint. The question consequently reduces to this, namely, whether the version given by the accused was or was not substantially true. The jurors were of opinion that the defence story was true, and on a perusal of the evidence we are not prepared to hold that this conclusion could not have been reasonably adopted on the evidence as it stands.

1923.

EMPEROR
v.
DHANANJOY
RAHA.

There has been some discussion at the Bar as to the true scope of section 307, Criminal Procedure Code. On behalf of the Crown our attention has been invited to *Queen Empress* v. *Itwari* (1), *Emperor* v. *Lyall* (2), *Emperor* v. *Annadacharan* (3), and *Manindrachandra* v. *Emperor* (4). On behalf of the accused, stress has been laid on the decisions in *Queen* v. *Sham Bagdi* (5), *King-Emperor* v. *Purna Hazra* (6), *Emperor* v. *Swarnamoyee* (7), *Emperor* v. *Neamatulla* (8), *King-Emperor* v. *Annada* (9), *Asgar Mandal* v. *King-Emperor*(10), *Emperor* v. *Chanoo Lal*(11), *King-Emperor* v. *Pramathanath* (12), *King-Emperor* v. *Sristidhar* (13), *Emperor* v. *Nrityagopal*(14) and *King Emperor* v. *Sukhu Bewa* (15). No useful purpose would be served by an analysis of the facts of each of these cases and the reasons assigned by the Court in each case for its preference of the opinion of the Judge or of the jury. The terms of the section are fairly clear. This Court is first called upon to consider the entire evidence. The Court has then to give due weight to the opinion of the Sessions Judge and to the opinion of the jury. The opinion of the jury, as explained in *Emperor* v. *Tarapada* (16), signifies the verdict of the jury. The measure of the relative weight to be attached to these two factors cannot be crystallised into an inflexible formula. The answer must depend upon the circumstances of each case. But the trend of judicial

(1) (1887) I. L. R. 15 Calc. 269.
(2) (1901) I. L. R. 29 Calc. 128.
(3) (1909) I. L. R. 36 Calc. 629.
(4) (1914) I. L. R. 41 Calc. 754.
(5) (1873) 13 B. L. R. App. 19; 20 W. R. 73.
(6) (1905) 2 C. L. J. 77n.
(7) (1913) I. L. R. 41 Calc. 621.
(8) (1913) 17 C. W. N. 1077.
(9) (1916) 21 C. W. N. 435.
(10) (1918) 22 C. W. N. 811.
(11) (1918) 22 C. W. N. 1028.
(12) (1919) 30 C. L. J. 503.
(13) (1922) 37 C. L. J. 30.
(14) (1922) 38 C. L. J. 1.
(15) (1911) 38 C. L. J. 155
(16) (1913) 18 C. L. J. 522.

opinion has been in favour of preference of the u animous verdict of juries on whom the duty is in posed by section 299 to decide which view of the facts is true. The weight to be attached to the verdict of the jury is however necessarily diminished when the verdict is not unanimous. On the other hand, when the Judge accepts the verdict of the jury as to some of the accused and not as to the others, his opinion is weakened in a corresponding measure. But, as we have said, the view propounded in the case of *Queen* v. *Sham Bagdi* (1) still holds the ground, namely, that this Court should not interfere with a unanimous verdict of the jury unless we can say decidedly that we think that it is clearly wrong. This no doubt is a survival of the well established tradition of English Criminal Jurisprudence; but notwithstanding this, due weight must be given to the opinion of the Judge as required by the statute. We are of opinion that the verdict of the jury in the present case should be accepted and that the accused should be discharged from his bail. We order accordingly.

D.

B. M. S. *Reference discharged.*

(1) (1873) 13 B. L. R. App. 19 ; 20 W. R. 73.