1928

CORPORATION OF CALCUTTA v. ANANTA DHAR.

somewhat drastic power. In my judgment the result of a consideration of the Calcutta Municipal Act is that I am satisfied that the view taken by the Magistrate is not only consistent with authority but is correct, and I think that this Rule ought to be discharged.

GHOSE J. I agree.

S. M.

Rule discharged.

CRIMINAL REFERENCE.

Before Rankin C. J. and Mukerji J.

EMPEROR

v.

NAGAR ALI.*

1928

April 3.

Reference—Jury, trial by—Reference to High Court against verdict of the jury, when should be made—Interference by the High Court, when justified.

Mere disagreement between the Sessions Judge and the jury on findings of fact is not a sufficient ground for a Reference to the High Court.

The Sessions Judge will not, as a rule, be justified in making a Reference to the High Court in disagreement with the verdict of the jury, in a case in which it cannot be said that the jury unreasonably came to a verdict on the evidence in the case.

Interference by the High Court in a case of this description would render trial by jury useless.

CRIMINAL REFERENCE.

This was a Reference by Mr. N. L. Hindley, Sessions Judge of Tippera.

Nine persons were tried by him and a jury of five the accused being charged under sections 399 and 402, I. P. C. The verdict of the majority of the jurors amounted to a unanimous verdict in the case of two accused in favour of "not guilty" and a verdict of

*Jury Reference, No 54 of 1927, by N. L. Hindley, Sessions Judge of Tippera, dated Sept. 13, 1927.

four to one in favour of "not guilty" in respect of the other seven, under both the sections charged. The Sessions Judge was of opinion that all the accused should be convicted and referred the case to the High Court for its interference with the verdict of the jury.

The Deputy Legal Remembrancer (*Mr. Khundkar*), for the Crown.

Mr. Narendra Kumar Basu (*with him Babu Shailendra Mohan Das*), for the accused, not called on.

RANKIN C. J. In this case nine accused persons were tried before a jury and the Sessions Judge on charges under sections 399 and 402, I. P. C., that is to say, making preparations to commit dacoity and assembling for the purpose of committing the dacoity. Of a jury of five, all thought that the accused Nos. 3 and 8 were not guilty, but the verdict acquitting the other seven accused was by a majority of four as against one. The learned Sessions Judge has made this Reference, thinking that all the accused should be convicted.

The story for the prosecution is that one Manohar Ali, prosecution witness No. 22, who was notoriously a bad character, told the police that a dacoity was about to be committed and that the people were going to assemble in the house of one Sabdar. Thereupon the police got an armed force and went to this man's house at the time of the preparation of the dacoity. When they went there they found a number of torches and other articles, on the strength of which it is said that these people were guilty under sections 399 and 402, I. P. C. In answer to that, the defence says first of all that this man Manohar was put up by another man Ananga, who had a cause of enmity with Sabdar, about a *bainapatra* and Manohar had been set up by Ananga to cause trouble to Sabdar. It is stated further that the accused Nos. 1, 2 and 3 are brothers and along with the accused No. 7, who is a nephew of the accused No. 8, were living together,

1928

EMPEROR v. NAGAR ALI

BANKIN C. J.

in any case, in that house which is the scene of this occurrence; that of the accused persons five are people who ordinarily would be in that house in any case. Then it is said that accused Nos. 4, 5 and 6 were men of a place called Shedlai, some thirteen or fourteen miles away, and the accused No. 9 was of a place called Balina, also some miles away. As regards that, the defence case is that these people were casual labourers, hired labourers of a neighbour and were being allowed by Sabdar to use the outer house, because the man who had employed them had no accommodation for them.

The learned Judge has summed up the matter at very great length and with great ability, as though it was a matter of some difficulty, and in the end, when the jury gave their verdict, he asked them some questions to find out the basis of their verdict. Before we come to that, we see that the learned Judge cross-examined everyone of the accused persons under section 342, Cr. P. C., a very elaborate cross-examination, putting all sorts of specific points to these accused people and the accused people were within the hearing of the jury and in that way they gave a good deal of explanation or evidence, whichever it may be called, with which the jury were entitled to be impressed, if they thought fit. The learned Judge cross-examined them in much detail. The result may have been that the jury found that the answers given were reasonably satisfactory and sufficed to shake off the prosecution case. The jury were asked by the Judge on what basis they came to their verdict and they said that the case was concocted by Ananga and Manohar Ali. They were asked about the *alamats* or pieces of evidence and they said that it was possible to introduce the things into the house. As regards the men from Burichang, they found that the men came as labourers to work for Jiamuddin. All I have to say on that basis is this that the matter went to the jury, they considered it and they may have taken a lucky or favourable view of these accused persons. But with evidence

in this condition, why this Court should be troubled with a matter like this, I am entirely unable to discover I do not see why on evidence such as in this case the High Court should be asked to try the case all over again. If this Court were to interfere in a case of this description it would mean that trials by jury would be rendered useless. There is no doubt that the jury were entitled to come to the verdict to which they did come. I see no reason whatever why this Court should throw aside the verdict of the jury which cannot be said to be unreasonable. In my judgment this Reference is an unprofitable employment of public time. I think that the jury's verdict should be accepted and the accused should be acquitted. If they are on bail, they should be discharged from their bail bonds.

MUKERJI J. I entirely agree.

S. M.

LETTERS PATENT APPEAL.

Before Rankin C. J., Suhrawardy and Graham JJ.

BRAJAGOPAL RAY BURMAN

v.

AMAR CHANDRA BHATTACHARJEE.*

1928

April 18.

Appeal—Letters Patent Appeal, competence of—"Judgment"—how far technical use of the word "judgment" applicable in India—Letters Patent, 1865, cl. 15.

A Second Appeal being presented out of time, the appellants obtained a Rule calling upon their opponents to show cause why the appeal should not be registered. The two Judges composing the bench who heard the Rule, differed in opinion. The Rule was made absolute in accordance with the opinion of the senior Judge. From this order an appeal was lodged under cl. 15 of the Letters Patent.

Held, that a Letters Patent Appeal did not lie.

* Letters Patent Appeal, No. 1 of 1928, in Civil Rule No. 994 (S) of 1927, against the order of Mr. Justice C. C. Ghose, Kt., dated December 2; 1927, disagreeing with that of Mr. Justice Buckland, Kt.