

APPELLATE CRIMINAL.

Before Rankin C. J. and Ameer Ali J.

HAFEZ MOLLA

v.

EMPEROR.*

1933

Jan. 17.

Jury—Foreman—Bribery—Conviction of foreman—Verdict if sustainable.

Where some of the accused were convicted, the others being acquitted and the foreman of that jury was subsequently tried and convicted of having taken a bribe in connection with the trial,

held that the verdict of guilty could not be sustained.

CRIMINAL APPEAL by some of the accused.

The facts of this case appear in the judgment.

While finding the four appellants guilty under section 326 of the Indian Penal Code by a majority of 4 to 1. the jury unanimously found the other six co-accused not guilty under the same section and they were acquitted by the learned Session Judge. It was admitted in the High Court that the foreman of this very jury was thereafter tried and convicted of having taken a bribe in the trial of the appellants.

Fazlul Huq for the appellants. The foreman of this jury was charged with taking a bribe in this case and has been convicted. My clients say that the six acquitted co-accused were let off by this jury for having given them a bribe, while my clients were convicted for not giving the jury a bribe.

The Deputy Legal Remembrancer, Khundkar, for the Crown. The bribe was given to let off the accused, but it turned out the other way.

[RANKIN C. J. If the jury let off only six out of ten accused, the chances are that these four appellants did not offer the bribe.]

*Criminal Appeal, No. 607 of 1932, against the order of S. Basu, First Additional Sessions Judge of Bakarganj, dated June 11, 1932.

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It is curious that the verdict was divided, four to one.

RANKIN C. J. In this case, it appears, that ten persons were put on their trial on charges under sections 304, 326, 324 and 365 of the Indian Penal Code, certain charges being against some and not against the others. In the result, six were acquitted and the four appellants before us have been convicted under section 326, Indian Penal Code and sentenced, three of them to seven years' rigorous imprisonment each and one to three years' rigorous imprisonment.

It appears that the foreman of the jury was subsequently convicted of having taken a bribe in connection with this very trial and, in these circumstances, as that fact is not disputed and as he has been convicted formally of the offence, we have to consider whether it is possible to let the verdict against the four appellants stand. I am of opinion that it is quite impossible. There is no saying how to the corrupted mind of a juryman, who had taken a bribe, the receipt of money from certain accused might not be an influence, which tempted him to convict the other accused. Under the circumstances, the verdict cannot be sustained, and there must be an order that the conviction of and the sentences on the four appellants be set aside and that the appellants be retried.

AMEER ALI J. I agree.

Appeal allowed : retrial ordered.

G. S.