APPELLATE CRIMINAL

Before Costello and S. K. Ghose JJ.

RAFAT SHEIKH

v.

EMPEROR.*

1933

Jan. 13.

Jury—Inconsistent verdict—Procedure—Re-charging by judge—Reference to High Court, when to be made.

Where a Sessions Judge is not minded to accept what was obviously and admittedly an inconsistent verdict with regard to section 147, Indian Penal Code, he is competent to make a further charge to the jury and need not deal with the matter by referring the case to the High Court for consideration.

Hamid Ali Haldar v. *King Emperor* (1) followed.

APPEAL by the accused.

The party represented by the accused and the party represented by the witnesses for the prosecution claimed possession of a certain plot of land. On the 1st of October, 1931, there was a free fight between both factions, in which some of the accused received injuries, about which they lodged a first information at the *thânâ*, following it up with a petition of complaint in court stating that the third appellant was lying in hospital as a result of the injuries he had received. But, in the meantime, a formal first information report had been given by one Siddique, who claimed to be in possession of the disputed land to the effect that, when he was returning home on the 1st of October, he was attacked by two of the appellants and, upon raising a hue and cry, his father and others came to his assistance, whereupon the said two appellants, Rafatulla and Sonaulla, hit his father, Atabulla, on the head with *lâthi* and he died in

*Criminal Appeal, No. 698 of 1932, against the order of S. Rahaman, Assistant Sessions Judge of Pabna, dated June 18, 1932.

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consequence. All the accused were tried and convicted, some under section 304, Indian Penal Code, read with section 34 and some under section 304 read with section 149 and sentenced to various terms of imprisonment, the sixth accused alone being acquitted. Thereupon they preferred this appeal to the High Court.

Deeneshchandra Ray for the accused.

The Deputy Legal Remembrancer, Khundkar, for the Crown.

COSTELLO J. In this case six persons were put upon their trial before the learned Assistant Sessions Judge of Pabna on charges under section 304 read with section 34, Indian Penal Code, section 304 read with section 149 and section 147 of that Code. The first appellant, Rafat Sheikh, was convicted by the jury under section 304 read with section 34 and on that charge he was sentenced to 7 years' rigorous imprisonment, the second appellant, Sonaulla, was convicted under section 304 read with section 34 and on that charge was sentenced to 5 years' rigorous imprisonment; the third appellant, Bhasa Sheikh, was convicted under section 304 read with section 149 and sentenced upon that charge to 4 years' rigorous imprisonment and the fourth and fifth appellants, Kefat Sheikh and Mianullah Sheikh, were convicted under section 304 read with section 149 and upon that charge sentenced to three years' rigorous imprisonment. The sixth accused, Moyezuddin Sheikh, was acquitted. Upon the charge under section 147, Indian Penal Code, all the accused were in the first instance acquitted by the jury in that the jury upon that charge, when they were asked to say what was their verdict under section 147, said "all are not guilty under section 147." It appears that the learned judge at the trial immediately appreciated the fact that that verdict of the jury with regard to section 147 was inconsistent with the verdict which they had already given with regard to the other charges. It appears that he thereupon invited the

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learned counsel for the prosecution and for the defence to make their submissions to him on the question, whether or not he ought to re-charge the jury in order that they might arrive at a proper verdict as regards the charge under section 147. In the petition of appeal before us in paragraph 8 it is represented that, after the jury had given their first verdict upon the charge under section 147, the judge held a discussion with the government pleader, Mr. Bhaumik, for an hour. The paragraph further states that certain authorities were quoted—*Hamid Ali Haldar* v. *King-Emperor* (1) and other cases were placed before the court—and that thereafter the learned judge re-charged the jury, who again retired to consider their verdict. It is further complained in this petition of appeal that the Hindu jurors knew English and the appellants had the grievance that those of the jurors, who knew English, followed and understood the discussion that took place between Mr. Bhaumik and the learned judge. Now that paragraph manifestly is not an accurate account of what in fact took place at the trial and it is now conceded by Mr. Ray, who appears for all the appellants before us, that what in fact took place was that both the learned counsel, that is to say, the advocate for the prosecution and the advocate for the defence took part in the argument before the learned judge and the proceedings as regards that part of the matter was in proper form of law. Mr. Ray has founded an argument upon the basis of paragraph 8 of the petition in the nature of a preliminary objection. Mr. Ray has invited us to hold that, because the learned judge was not minded to accept what was obviously and admittedly an inconsistent verdict with regard to section 147, he ought not to have made any further charge to the jury, but to have dealt with the matter by referring the case to this Court for consideration. It appears to me that there is an authority of this Court, which is very much in point, and indeed it disposes of the argument put forward by Mr. Ray—the case of

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Hamid Ali Haldar v. *King-Emperor* (1). In that case the learned Chief Justice in dealing with an analogous situation said this—

> If he (the judge trying the case) thought it fairer and clearer and simpler to re-charge the jury on certain specific points and to tell them to go and get their heads clear on the subject and give a proper verdict, there is nothing in the Code against that. The judge put the matter in a much better position than it would have been if he had endeavoured to cross-examine the jury, which, as matter of fact, means cross-examination of the foreman.

In the present instance Mr. Ray has frankly admitted that the verdict of the jury with regard to the charge under section 147 was in point of fact obviously inconsistent with the decision, which the jury had already expressed in connection with the other charge against the accused. We are of opinion that the learned judge adopted a reasonable and proper course in order to prevent having on the record a verdict which in the circumstances of the case would be an absurd one.

[His Lordship then dealt with the merits of the case.]

Looking at the charge as a whole, we are quite satisfied that there is no such material misdirection as would justify us in interfering with the verdict of the jury. The appeal must, accordingly, be dismissed. Those of the appellants who are on bail must surrender to their bail and serve out the sentence imposed upon them.

GHOSE J. I agree.

Appeal dismissed.

G.S.

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