## APPELLATE CRIMINAL.

*Before Suhrawardy and Page JJ.*

JABANULLA

*v.*

EMPEROR.*

1929

Dec. 11.

*Jury trial—Charge—Multiplicity of charges—Explanation of law—Reported cases.*

Variety of charges in simple cases and elaborate explanation of law to the jury by reading reported decisions are apt to confuse the jury and should be avoided.

APPEAL by some of the accused.

In this case Jabanulla and eighteen other persons were accused and charges were framed against them under sections 304, 147, 148, 323, 324, 304/149, 304/109, 323/109, 324/109, 304/114 and 147/114 of the Indian Penal Code.

The jury returned unanimous verdict of guilty under sections 304 and 148 against Jabanulla, under section 147/114 against Sundarimohan Deb and Pyarimohan Deb and under section 147 against the rest. On that the learned Additional Sessions Judge passed different sentences on different persons.

All the accused except Pyarimohan Deb appealed against that conviction.

*Mr. J. Camell* and *Mr. Hemendrakumar Das*, for the appellants.

*Mr. Satindranath Mukherji*, for the Crown.

SUHRAWARDY J. In this case, the appellants, who are 18 in number, were tried, along with another accused, on various charges, which are too numerous to mention. They were convicted by the unanimous verdict of the jury and sentenced to different terms of imprisonment by the judge. The accused who has not appealed before us was sentenced to pay a fine

*Criminal Appeal, No. 390 of 1929, against the order of Pashupati Basu, Second Additional Sessions Judge of Sylhet, dated April 30, 1929.

which has been paid. There are various grounds taken before us on behalf of the appellants, but it is necessary to refer to a few of them in order to show that the trial has not been conducted in the way in which it should have been. The first is with regard to the charges framed against the accused. There were 11 charges framed in this case and each accused was charged with not less than eight of the offences covered by the charges. The charges were under sections 304, 147, 148, 323, 324, 304/149, 304/109, 323/109, 324/109, 304/114 and 147/114. This impressive array of charges is enough to confuse any jury. The case for the prosecution was that the accused in a body attacked the party of the deceased who were said to have been in possession of the land in dispute, and in the course of the riot the first accused struck a blow on the head of the deceased which ultimately proved fatal. The case as made out by the evidence was a simple one and it was not necessary to charge the accused with so many offences, some of which it is difficult to distinguish from some others. We have on several occasions condemned the practice of having a long series of charges in a case triable by jury, as it is likely to confuse them. In the present case, the learned Judge has devoted eight pages of his charge to the explanation of the several sections of the Indian Penal Code. Now, to refer to some of those charges, the accused have been charged under section 304/109 and they have also been charged under section 304/114. There is not enough explanation of the fine distinction between sections 109 and 114, with the result that the jury have convicted one of the appellants (accused No. 2) under section 147/114. The case against that accused is that he is the landlord of the deceased and he took men with him to the place of occurrence and gave order to beat the deceased and his party. On these facts, he could either be convicted under section 147/109 or under section 147, being member of an unlawful assembly. This indicates that the jury were not able very well to appreciate the law as propounded by the judge.

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Then there is the more serious defect in the charge, which it is difficult for us to overlook. The defence argued that if the jury believed that the deceased was dispossessed the day previous to the occurrence and the accused reaped the paddy on the field and stacked it and on the day of occurrence the deceased with a number of men came to snatch the paddy away, the accused had the right of private defence to resist force by force, and the offence they would have committed would be one of trespass but not of rioting. The learned Judge in his charge mentioned this argument on behalf of the defence and then it appears he referred to some decisions of the High Court which are not before us and which we cannot say are how far applicable to the facts of this particular case. He gives no further direction on the question raised by the defence. It is the duty of the judge to tell the jury how to apply the law to the facts found by them. In a case like this he would be wanting in the proper discharge of his duty to the jury if he placed the proper facts to the jury without telling them how they should decide the guilt or otherwise of the accused on the law. In the case of *Meher Sardar* v. *The King-Emperor* (1), the practice of referring to reported decisions has been condemned. It is not necessary for me to go so far as to say that there is any bar to the judge, in explaining the charge to the jury, referring to what particular view was taken by the highest court of the land as a correct exposition of law, but he must tell the jury how to apply the law laid down by the decisions of this Court to the facts of the particular case. The learned Judge, in the case before us, has not helped the jury to apply the law if they found that, as a matter of fact, the deceased was dispossessed the day previous to the date of occurrence. This seems to me to be a very serious matter because we do not know what view of the facts the jury took. It may be that they believed that the deceased was all along in possession in spite of the rent decree. It may be that they believed that

(1) (1911) 16 C. W. N. 46.

the landlord, who had obtained this decree against the deceased, by getting symbolical possession through the civil court, had succeeded in dislodging the deceased from the land previous to the occurrence or some day previous to it, but still as the accused in a body attacked the deceased and committed murder, they thought that they should be convicted of the offences with which they were charged.

We should also refer to the way in which the charge was delivered to the jury. As we have observed, the case is not a very difficult one, though the evidence is voluminous. The charge should have shortly stated the salient points in the case, the evidence adduced in it and the points for determination to the jury with reference to the law. The learned Judge, it seems, delivered a very long charge, which, though a careful one may have the effect by its length of confusing the jury as to the way in which the law should be applied to the case. We find that the trial was a very protracted one and entailed a great deal of time and expense, but we regret that we have to interfere in this case because of the defects in the charge we have pointed out.

We accordingly set aside the conviction and sentences of the appellants and direct that they be retried. The appellant will remain on the present bail until further orders from the Sessions Judge.

PAGE J. I am of the same opinion, and I think that it is desirable to emphasise one aspect of this case. From an examination of the proceedings it appears that the ultimate cause of this mistrial was the multiplicity of charges upon which the accused were put on their trial. The mere enumeration of the offences, with which the accused were charged, and which the jury had to take into consideration, is in itself sufficient, in my opinion, to justify this Court in holding that a summing up, such as that delivered by the learned Judge, was bound to confuse the minds of the jury as to the issues which they had to determine before they could bring in a verdict in respect of the

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accused or any of them. It is of the utmost importance that proceedings in a criminal trial should be as simple as possible and that the judge and the jury should not be compelled to wade through a morass of confused and varied charges. The practice in the *mofussil* appears to be to lump together and to try the accused upon as many charges as the ingenuity of those whose duty it is to frame them can devise. This practice has repeatedly been condemned, and for the reason that where an accused person is put upon his trial the charges against him should be so clear and so readily capable of explanation by the trial judge that the jury will have no difficulty in appreciating the law which they have to apply to the facts of the case before them. In this case, the nature of charges against the accused has been referred to by my learned brother, and the trial judge, in his summing up, proceeded apparently to give an exposition of the law at inordinate length upon each of these intricate and confused charges. Having regard to the nature of the charges and the manner in which the learned Judge endeavoured to explain their meaning, I do not believe that the jury could have understood the law which was to be applied to the facts of the very simple case before them. It would be a much better practice, I think, that those responsible for framing charges against an accused person should make them not as numerous, but as few as possible, for, such a course would obviate what otherwise must often result in a misunderstanding of the law on the part of the jury. The learned Judge in this case, however, notwithstanding his lengthy exposition of the law, does not appear adequately to have discriminated between the different charges preferred against the accused, and not content with leaving to the jury all these charges with an insufficient explanation of their meaning, the learned Judge, after expounding what he himself stated to be an intricate matter of law relating to the right of private defence, proceeded to read to the jury the head notes of a number of cases decided in this Court, with

a view apparently to enable the jury the better to appreciate the meaning of the doctrine of the right of private defence in relation to the particular facts of the case before them. Of course, it is often useful to illustrate the meaning of a legal doctrine by relevant example culled from the books or stated by the learned judge in his own words, but the practice of reading out head notes or other portions of the report of a case not before them to the members of the jury is a dangerous practice, which is to be discouraged as more likely to mystify than enlighten the jurors. In the present case, the effect of so doing must have been to plunge the facts of the case still more deeply into a legal morass, and make confusion worse confounded.

The result is that the time spent upon this case has been wasted, and it is to be hoped that when the retrial takes place this simple case will be placed before the jury in a manner and in a proceeding where the issues before them are clearly defined and the jury need have no difficulty in applying their minds to the facts of the case in order to ascertain whether the accused are guilty or not guilty of the charges which are framed against them.

N. G. *Retrial ordered.*