APPELLATE CRIMINAL.

Before Rankin C. J. and C. C. Ghose J.

HAMID ALI HALDAR
v.
KING-EMPEROR.*

1929.
Feb. 20.

Jury—Verdict—Judge, duty of, in interpreting verdict—Criminal Procedure Code (Act V of 1898), s. 303—Procedure under.

In a criminal trial with the help of a jury, a judge is not obliged to accept an absurd verdict either as a verdict of guilty or as a verdict of not guilty.

It is no part of a judge's duty to accept and interpret for himself a verdict of an unintelligible character, when the members of the jury are there and can give a proper verdict.

When, in such a case, a judge thinks it better to recharge the jury on specific points, there is nothing in the Criminal Procedure Code to prevent him from doing so. In a matter like this, it is most unsatisfactory for a judge to cross-examine the jury, which, as a matter of fact, means cross-examination of the foreman of the jury.

CRIMINAL APPEAL, by the accused.

The facts out of which this appeal arose are briefly as follows:—

On the 30th April, 1928, the accused persons and some others had gone armed, on a piece of land in a *char* at Baburchar, within the jurisdiction of the Chandpur police-station, and attacked another body of persons erecting a hut there, and dealt several blows of *lathi* on the head of one Duda, who reeled and fell down and was carried away by his assailants. The accused were tried before the Sessions Judge of Tippera and were charged and convicted under section 147 of the Indian Penal Code and sentenced to rigorous imprisonment of two years and five of them were further charged and convicted under section 365 of the Indian Penal Code and sentenced to five years' further rigorous imprisonment, the two sentences under sections 147 and 365 to run concurrently. The trial was

*Criminal Appeal, No. 842 of 1928, against the order of N. L. Hindley, Sessions Judge of Tippera, dated Sep. 27, 1928.

held before the Sessions Judge of Tippera. Against this conviction and sentence this appeal was preferred to the High Court.

Mr. A. K. Basu (with *Mr. Satindranath Mukherji*), for the appellants. The mandatory provision of section 303 of the Criminal Procedure Code was not complied with by the learned Judge. It was illegal on his part to recharge the jury in respect of charges under sections 364 and 365 of the Indian Penal Code. The learned Judge was wrong in not leaving on the record the notes of what he told the jury under sections 364 and 365 of the Indian Penal Code. And he was wrong in getting an amended verdict from the jury, inasmuch as the first verdict of the jury was not a wrong one, either by accident or by mistake and, as such, his action does not come within section 304 of the Criminal Procedure Code.

The Deputy Legal Remembrancer (*Mr. Khundkar*), for the Crown, was not called upon to reply.

RANKIN C. J. In this case when the trial had proceeded to the end of the learned Judge's charge to the jury, the jury considered their verdict. There were eleven accused and the foreman read out the names of those eleven people and said that the jury found them all guilty under section 147 of the Indian Penal Code. So far as the learned Judge is concerned, the foreman was then heard to read out the names of five of those accused and to say that the jury found them guilty under section 364 and to go on to say that the others were not guilty under that section. Thereupon, the learned Judge recorded that as their verdict. He typed out a little judgment and sentence on that basis and he read it out in court, when, to his astonishment, the foreman said "No, "that is not what we said. What we said was that "these five people were guilty under section 364, but "we gave them the benefit of the doubt." Thereupon, the learned Judge has, I think, exercised a most admirable discretion. He recharged the jury, telling them particularly about the benefit of the doubt and

what section 364 meant and sent them back to consider and find out what their verdict really was. They came back. They delivered their verdict perfectly properly, finding the eleven accused guilty under section 147 and finding certain accused guilty under section 365. It is not said that there is anything wrong with the charge, and the verdict cannot be attacked upon that ground. It is said, first, that in this course there is something contrary to the Code and that the learned Judge had no right to recharge the jury at all; secondly, that he should have taken this absurd verdict as a verdict of not guilty; and, thirdly, that at all events he was confined to asking certain questions of the jury.

I desire to say that I protest against all three of these suggestions. The learned Judge was not obliged to accept an absurd verdict, either as a verdict of guilty or as a verdict of not guilty. He was quite entitled to tell the jury to consider that matter over again. In the case in which the jury have not considered the matter over again, a verdict of that character would doubtless be construed afterwards as a verdict of not guilty; but that there is any duty upon the Judge to accept and interpret for himself a verdict of that character, when the jury are there and can give a proper verdict, is to my mind a proposition which has no foundation. Again, the learned Judge could, if he liked, have asked questions of the jury. He was not obliged to do so. If he thought it fairer and clearer and simpler to recharge 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. That is generally a most unsatisfactory procedure.

Then it is said that, because the learned Judge has not treated as part of the record the piece of paper on which he typed out the foreman's verdict of guilty

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as the Judge understood him, which the foreman afterwards disclaimed as not being the verdict at all, that is contrary to the Code and ought to vitiate this trial. In my judgment, the intention of the Code has in this case been most scrupulously fulfilled. You cannot put down in black and white a misunderstanding, and if the learned Judge had allowed that record to remain, it would have been obviously wrong unless he coupled it with something to say that there was a discrepancy between what he took the verdict to be and what the foreman afterwards said it was. The learned Judge, accordingly, recorded in the greatest detail everything connected with this incident; and, in my judgment, there is no ground whatsoever for interference with the result of this trial.

The appeal must be dismissed. The applicants must now surrender to their bail and serve out the remaining periods of the sentences imposed on them.

C. C. GHOSE J. I agree.

Appeal dismissed.

O. U. A.