

APPELLATE CRIMINAL.

1936
June 17.

Before Cunliffe and Henderson JJ.

YAJNESHWAR GHOSH

v.

EMPEROR.*

Trial—Trial by assessors, if the normal procedure—Conspiracy—Code of Criminal Procedure (Act V of 1898), s. 269—Indian Penal Code (Act XIV of 1860), s. 120B.

By virtue of s. 269, Code of Criminal Procedure, the normal procedure under the Code is trial by assessors and it is only when the Local Government publish an order in the Gazette that an offence becomes triable by jury. Such order may be made or revoked at any time. In the absence of any notification by the Local Government, the offence under s. 120B, Indian Penal Code, is triable by assessors.

CRIMINAL APPEAL.

The material facts appear sufficiently from the judgment.

Jitendra Chandra Banerji for the appellant.

The Deputy Legal Remembrancer, Khundkar, Anil Chandra Ray Chaudhuri and Nirmal Chandra Chakrabarti for the Crown.

HENDERSON J. This appeal raises a point which had not yet come before us, although it might be expected to be raised every week, if not every day. The appellants with certain other persons were put on their trial, charged with offences punishable under ss. 395 and 399 of the Indian Penal Code. They were further charged with conspiracy to commit both those offences. The jury brought in a

*Criminal Appeal, No. 118 of 1936, against the order of Bishnu Pada Ray, Assistant Sessions Judge of Faridpur, dated Jan. 16, 1936.

unanimous verdict of "not guilty". The learned Judge acquitted all the accused persons of the main charges and then proceeded to convict them of an offence punishable under s. 395 read with s. 120B, holding that the jury were assessors and that he was entitled to take a contrary view.

1936
*Yajneswar
 Ghosh*
 v.
Emperor.
Henderson J.

The first point taken on behalf of the appellants was that these gentlemen were not assessors but jurymen and that the learned Judge had no jurisdiction to convict them in the face of the verdict of acquittal. In view of the provisions of s. 269 of the Criminal Procedure Code, there can be no doubt that the normal procedure under the Code is trial by assessors and it is only when the Local Government publish an order in the Gazette that the trial of an offence becomes triable by jury. Such orders may be made or revoked at any time. The offence of which the appellants have been convicted is one triable under Chap. VA of the Indian Penal Code. The learned advocate who has appeared on behalf of the appellants has not been able to show to us any notification of the Local Government directing that such an offence is triable by jury. We must, therefore, overrule this preliminary objection.

The only remaining question is whether we can uphold the convictions. It would certainly be a most extraordinary thing if, when the main part of the case is disbelieved and an order of acquittal passed, the accused persons should be convicted on the substratum, if any, which remains. The learned Judge in this case has taken the remarkable course of convicting the appellants on his own view of the facts without giving any reason whatsoever. The learned Deputy Legal Remembrancer with his usual fairness stated that he could not support this and that the evidence in the case is not such that we ought to say that a finding of guilty is the only reasonable or proper finding. We are certainly not prepared to accept the opinion of the learned Judge as opposed to

1936

*Yajneswar
Ghosh
v.
Emperor.*

Henderson J.

the unanimous opinion of the jury sitting as assessors, when no reasons for that opinion are assigned at all. We, accordingly, allow this appeal, set aside the convictions and sentences.

The appellants, who are on bail, are discharged from their bail-bonds. The fines, if already paid, will be refunded to them.

CUNLIFFE J. I agree.

Appeal allowed. Accused acquitted.

A. C. R. C.