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ment obtained against a wrong person, or to set aside an order irregularly obtained by abuse of legal process though under colour of the law. This, however, is not the case now before us. The suit here brought is to set aside a decision upon the ground that a Court of competent jurisdiction has come to a wrong conclusion, both sides having had full opportunity to plead and be heard, and the Legislature not having seen fit to allow an appeal.

I must hold that such a suit is not maintainable and dismiss this second appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

1885. August 27.

QUEEN-EMPRESS

against

LAKSHMANA AND OTHERS.*

Criminal Procedure Code, s. 269—Jury wrongly treated as assessors by Judge—Unanimous opinion of jury treated as assessors accepted as formal verdict.

L and N were tried by a Sessions Court on charges of dacoity and murder. The jury returned a verdict of guilty on both charges. The Judge, contrary to the provisions of s. 269 of the Code of Criminal Procedure, treated the jury as assessors in respect of the charge of murder, and, convicting L and N of dacoity, acquitted them of murder:

Held, that the irregular procedure of the Judge could not deprive the verdict of the jury of its proper legal effect.

THIS was a case submitted to the High Court, under s. 307 of the Code of Criminal Procedure, by W. F. Grahame, Sessions Judge of Cuddapah.

The case was stated by the Sessions Judge as follows :—

" The prisoners were charged with dacoity, murder in committing dacoity, and murder. The jury have acquitted prisoners Nos. 2 and 3 and convicted Nos. 1 and 4. I overlooked the provisions of s. 269, para. 2, and took the verdict of the jury on the first head of charge, while I looked on them as assessors on the second and third heads. Therefore, as regards the dacoity I resolved to submit the matter to the High Court, but acquitted all prisoners on the charges of murder in dacoity and murder, omitting to notice that, as all charges ought to have been tried by jury under s. 269,

* Criminal Appeal 294 of 1885.

I ought not to have recorded a judgment of acquittal on any of the charges. My own opinion is that the evidence must be taken as a whole against all four prisoners together. If it fails against any one of them, it must fail against all. None of them can be separated from the others. I think that the jury are wrong in their verdict of guilty as regards prisoners Nos. 1 and 4 on the second and third heads of charge, and wrong as to the acquittal of Nos. 2 and 3 on the first head of charge. I think that all four prisoners are guilty of the dacoity charged against them and not guilty of murder in dacoity or of murder."

Mr. *Subramanyam* for prisoners Nos. 2 and 3.

Mr. *Powell* (Acting Government Pleader) for the Crown.

The judgment of the Court (Muttusámi Ayyar and Hutchins, JJ.) was delivered by

HUTCHINS, J.—In this case there is no doubt that the woman Subbammá was killed and robbed of her jewels. Her death is shown by the medical evidence to have been caused by suffocation. The end of her cloth had been thrust ("plugged") into her mouth, and another cloth or jacket tied tightly over this gag, as if to keep it in its place, and over the nose. Those who gagged and secured her in this way must have been aware that their act was likely to cause death, unless her death had been caused by previous throttling or similar violence.

Five persons were accused of robbing her and causing her death. Of these, one is the approver, witness No. 9. The other four were charged before a jury with dacoity (Indian Penal Code, s. 395), with conjointly committing a dacoity, in the course of which one or more of their number committed murder (s. 396), and with murder (s. 302). The jury returned a verdict that prisoners Nos. 1 and 4, Lakshmana and Naráyana, were guilty on all the three heads of charge, but that Nos. 2 and 3, Seshayya and Gangireddi, were not guilty. The Sessions Judge overlooked the provisions of s. 269 of the Criminal Procedure Code, cl. 2, under which the first head of charge being triable by jury, the other heads should also be so tried, and treated the jury as assessors in regard to the second and third counts. He stated that he differed from them as assessors in regard to these counts, though in point of fact he only differed as regards prisoners Nos. 1 and 4 and concurred in respect of Nos. 2 and 3; and he recorded an acquittal of all the prisoners on those counts. He further

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stated that he differed from that part of the verdict which declared Nos. 2 and 3 not guilty of dacoity, and, therefore, referred the case to this Court under s. 307.

Various questions have been raised in consequence of this irregular procedure, but upon the view which we take of the merits of the case it is not necessary to determine them all. In our judgment the unanimous opinion of the jury on the second and third heads of charge must be treated as a formal verdict; the law made them the proper judges of the evidence and the facts, and the irregularity on the part of the Court could not deprive them of that power, or their opinion of its proper legal effect.

APPELLATE CIVIL—FULL BENCH.

Before Sir Charles A. Turner, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, and Mr. Justice Brandt.

1881. September 30. 1883. May 5. 1885. April 24.

VAYIDINÁDA (PLAINTIFF), APPELLANT,
and
APPU (DEFENDANT), RESPONDENT.*

Hindú law—Custom—Bráhmans—Adoption of daughter's and sister's sons.

In Southern India the custom which exists among Bráhmans of adopting a sister's or daughter's son is valid.

THIS was an appeal from the decree of M. Cross, Subordinate Judge at Kumbakónam, reversing the decree of H. Krishna Ráu, District Múnsif of Mannargudi, in suit 189 of 1880.

The plaintiff, Vayidináda Ayyan, a minor, represented by his natural father, sued the defendant, Appuváyyan, his alleged adoptive father, to recover Rs. 399 for the cost of his upanáyanam ceremony which the defendant had failed to perform, and for a decree that defendant should pay him Rs. 5 a month for maintenance during his minority.

It was alleged, in the plaint, that the family property was worth Rs. 1,50,000.

The defendant denied the adoption, alleging that, though he had intended to adopt plaintiff and had executed a will stating that he had adopted him, he had given up the intention on being informed that the adoption of a brother's daughter's son was contrary to the Hindú law and the decision of the High Court.

* Second Appeal 328 of 1881.