

THE
OFFICIAL
ASSIGNEE OF
MADRAS
v.
SAMBANDA
MUDALIAR.

KRISHNAN, J.

Finding then that the mortgagee has failed to prove that his mortgage was made in good faith and for proper consideration it must be annulled under section 55 of the Act. But as it is admitted that the mortgagee paid Rs. 340 to Devarajulu, he must be allowed to claim Rs. 340 from the insolvent's estate. The proper order in such a case seems to be as held by WHITE, C.J., in *Official Assignee of Madras v. Annapurnammal*(1), to set aside the mortgage in toto and treat the mortgagee as an unsecured creditor for the amount advanced by him.

I would therefore allow the appeal and annul the mortgage (Exhibit H) and direct Sambanda Mudaliar's name to be retained in the schedule as an unsecured creditor for Rs. 340. He must pay the Official Assignee's costs in this appeal and in the first Court. We certify for two counsel in the lower Court, costs on original side scale.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer,

SUBBIAH THEVAN, ACCUSED,

v.

THE ASSISTANT SESSIONS JUDGE OF TINNEVELLY,
REFERRING OFFICER.*

Criminal Procedure Code (Act V of 1898), ss. 303 and 307—Verdict of jury—Reasons for their verdict—Power of Sessions Judge to question jury as to their reasons for their verdict—Question, if permissible, for determining whether Reference to High Court necessary.

A Sessions Judge is not entitled under section 303 of the Criminal Procedure Code, to question the jury as to the reasons for their verdict, even if he intended to make a reference to the High Court under section 307 of the Code.

Reference No. 30 of 1919, dissented from; *Emperor v. Siranadu*, (1907) I.L.R., 30 Mad., 469, and *Public Prosecutor v. Abdul Hameed*, (1913) I.L.R., 36 Mad., 589, followed.

Though a Sessions Judge is neither bound nor entitled to put such questions to the jury, still his having done so for the purpose of determining whether he should make a reference is not improper or a sufficient ground for not accepting the reference.

(1) (1913) 20 I.C., 901.

* Reference No. 7 of 1920.

REFERENCE under section 307 of the Code of Criminal Procedure (Act V of 1898), by C. S. MAHADEVA AYYAR, the Assistant Sessions Judge of the Tinnevely division, in Sessions Case No. 10 of 1920 (of his Calendar for 1920).

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SESSIONS
JUDGE OF
TINNEVELLY.

The material facts appear from the judgment.

V. L. Ethiraj for *Public Prosecutor* on behalf of the Crown.

SADASIVA AYYAR, J.—This is a reference by the Assistant sessions Judge of Tinnevely, the jury having returned a verdict of ‘not guilty’ against the accused by a majority. The charge was that at about 10 p.m. the accused committed theft of two cloths from the yard in the dwelling house of prosecution witness No. 1. No doubt the time is not very accurately spoken to by the witnesses, but there can be no question that it was after sunset and between (about) 8 and (about) 10 p.m. The accused examined no witnesses, and beyond wild insinuations made by him in cross examination, there is nothing to show that any of the prosecution witnesses was actuated by feelings of enmity towards the accused in giving evidence against him. As soon as the theft was discovered, the accused was pursued, and he was caught red-handed with the stolen cloths in his possession. On the whole, I think that the jury’s verdict is perverse.

One matter relating to the procedure of the Assistant Sessions Judge has to be considered. After the jury had pronounced their verdict that the accused was not guilty, he asked them to state briefly the reasons for their opinion. It has been held in *Emperor v. Siranadu*(1) and in *Public Prosecutor v. Abdul Hameed*(2) that the Sessions Judge has no power, under section 303 or section 307, Criminal Procedure Code, to question the jury as to the reasons for their verdict, unless he considers that there has been an accident or mistake or there is some ambiguity or doubt as to the nature and meaning of the verdict which has to be cleared. The Assistant Sessions Judge in this case however relies in justification of the course he took, on the decision of a Bench of this Court which dealt with Reference Case No. 30 of 1919, even though the verdict in this case cannot be said to be ambiguous. The decision relied on by him does seem

(1) (1907) I.L.R., 30 Mad., 469.

(2) (1913) I.L.R., 3 Mad., 585.

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to lay down that the Court, if it intended to make a reference to the High Court, should have asked the jury for their reasons for not believing the evidence of the witnesses for the prosecution, and the learned judges refer to section 305 of the Criminal Procedure Code. With great respect, I do not think that section 303 gives any power to the Sessions Court to call upon the jury to give their reasons for their verdict, unless the Court is unable to ascertain what the verdict of the jury really is; (section 307 is the section which deals with cases where the Sessions Judge disagrees with the verdict).

However, *Emperor v. Siranadu*(1) and *Public Prosecutor v. Abdul Hameed*(2) do not in my opinion lay down that for the purpose of coming to a conclusion satisfactorily to his own mind whether the case is a fit one for reference to the High Court, the Sessions Judge may not put questions to the jury and even to the individual members of the jury to ascertain the reasons for their verdict. It may be that after hearing these reasons he might change the view which he might have arrived at as to the necessity of a reference to the High Court or he might be confirmed in his opinion as to such necessity. He may not be entitled under those particular sections to put those questions, and the jury may not be bound to answer such questions, but I do not find anything to render it improper, for the particular purpose mentioned by me, for the Judge to put such questions. While I therefore differ from the ruling in Reference Case No. 30 of 1919, that under section 303 (1) the Sessions Judge should have asked the jury for their reasons for their not believing the evidence of the witnesses where he considers the verdict perverse, I do not think that his having asked such questions in this case is improper, or is a sufficient ground for not accepting the reference.

In the result, I convict the accused under section 380, Indian Penal Code, and sentence him to four years' rigorous imprisonment.

SPENCER, J.

SPENCER, J.—I agree in thinking that the accused is guilty and that he should be sentenced to four years' rigorous imprisonment.

(1) (1907) I.L.R., 30 Mad., 469.

(2) (1913) I.L.R., 36 Mad., 585, at 589 and 590.

As regards the questions that the Assistant Sessions Judge thought fit to put to the jury, I consider that section 303, Criminal Procedure Code, does not authorize him to question the jury as to the grounds for their opinion, although it would be convenient and even desirable when such references are made that the Court that makes the reference as well as the Court that disposes of it should know what is in the mind of the jury. *Emperor v. Siranadu*(1) and *Public Prosecutor v. Abdul Hameed*(2) have laid down that such questions should not be asked. I think that all Courts should follow those decisions, and I am of opinion that so long as the present wording of the Criminal Procedure Code is retained, a Sessions Judge is neither authorized to ask questions nor is the jury bound to answer questions, as to the reasons for their verdict, and that they can only be asked questions to make it clear what their verdict is when it is ambiguous.

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APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Moore.

THE OFFICIAL ASSIGNEE OF MADRAS (APPLICANT),
APPELLANT,

v.

S. R. M. M. R. M. RAMASWAMY CHETTIAR (GARNISHEE),
RESPONDENT.*

1920,
April, 12
and 14.

Presidency Towns Insolvency Act (III of 1909), sec. 115—Immunity of Official Assignee from stamp duty, whether applicable to his attorney—Nattukottai Chettis, whether bankers—Loans advanced on or without deposit of goods—Entry in same account—Banker's lien on goods for general balance of accounts—Indian Contract Act (IX of 1872), sec. 171.

An attorney representing the Official Assignee, is entitled to the same privileges as to stamp duty as the latter has under section 115 of the Presidency Towns Insolvency Act. Consequently, the attorney need not pay stamp duty for a copy of the order passed by a Judge of the High Court in the exercise of its insolvency jurisdiction.

(1) (1907) I.L.R., 30 Mad., 469.

(2) (1913) I.L.R., 36 Mad., 585, at 589 and 590.

* Original Side Appeal No. 63 of 1919.