REVISIONAL CRIMINAL.

Before Mr. Justice Boys and Mr. Justice Ashworth.

1927 December, 12.

EMPEROR *v.* SHEO DIN AND OTHERS.*

Criminal Procedure Code, section 307—Acquittal by a jury—Reference to the High Court—What the order of reference should contain.

In making a reference under section 307 of the Code of Criminal Procedure, the Judge should, in effect, show the reasons for convicting the accused in as clear a manner as he would have done if the case had not been a jury case and he had had to write a convicting judgement.

THIS was a reference under section 307 of the Code of Criminal Procedure made by the Sessions Judge of Cawnpore. The circumstances under which the reference was made and the reasons which led the Court to reject it are sufficiently stated in the judgement of BOYS, J.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

Pandit *Brijmohan Lal Dave* and Babu *Hem Chandra Mukerji*, for the opposite parties.

BOYS, J.—This is a reference by Mr. Raja Ram, Sessions Judge of Cawnpore, of a case in which a jury have found nine men not guilty of the dacoity which they were alleged by the prosecution to have committed. Section 307 of the Code of Criminal Procedure gives the learned Judge power to refer a case like this, but directs him, when referring it, to record the grounds of his opinion that it is necessary for the ends of justice to submit the case. We have read the referring order, and it gives us no information at all beyond that there are two witnesses, Banjari and Tulsi, for the prosecution, who state something unspecified, and the evidence of a Sub-Inspector, Amanul Haq, who speaks to the absconding

*Criminal Reference No. 444 of 1927.

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of one of the accused. The rest of the referring order is confined to brief statements that there is no evidence to support this or the other allegation made by the accused. The learned Judge's referring order should certainly have been in the nature of a judgement which would give this Court a proper summary of the evidence for the prosecution and the reasons of the learned Judge for holding it to be credible. The charge to the jury obviously cannot supply this Court with the necessary information as to the evidence and as to the opinion of the Judge in regard thereto. In directing the jury it is, of course, open to the Judge to state his opinion of the value of that evidence; but when he disagrees with the verdict of the jury, it is obviously desirable that he should state his reasons much more fully. Against eight out of nine of the present accused persons we have the evidence of Banjari and Tulsi, and against the ninth Tulsi gives no evidence. Banjari is an approver, and we do not find that there is any suggestion at all that his evidence was corroborated except by the evidence of Tulsi, and in the case of some of the accused, identification of them in jail by some witnesses. It is manifest that Tulsi is in the position of an accomplice himself. He declares that he was present in the gang that was going to commit this dacoity, and that he only left it because it was postponed on the night on which it was originally intended to commit it. He also says that he had agreed to commit a dacoity in another place with the same gang two or three nights later, but some members of the gang failed to turn up. If the learned Judge had endeavoured to examine, for the purpose of informing this Court, the evidence for the prosecution, he would have seen that the evidence of identification in jail was utterly worthless. One or other of the accused, and sometimes batches of them, were put up on several occasions for identification by one or other of the prosecution witnesses. A

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sample of the worthlessness of the identification is to be found in the record of the identification proceedings of the 7th of April when Musammat Rampiari, Rajaram and Kasim were invited to identify Sheodin, Sheoram, Mania Singh, one Ramlal and Bala. Musammat Rampiari identified only Mania Singh, i.e., one person alleged to be one of the dacoits, and another person wrongly. Rajaram is said to have identified three rightly, but also identified two wrong persons. Kasim failed to identify a single right person and identified four wrong persons. Yet the evidence of this latter witness, Kasim, was put to the jury as being of some weight against Subhani. It is manifest that an examination of these identification proceedings would have given the Judge reason to pause before he referred this case. It is quite superfluous to examine it in greater detail. It would be most unjust to the jury who heard this evidence to say that their verdict was in any way perverse, and it even appears to us the only possible verdict at which they could arrive.

ASHWORTH, J.—I fully concur. The words in section 307 of the Code of Criminal Procedure "recording the grounds of his opinion" mean, in my view, that the Judge making a reference should, in effect, show the reasons for convicting the accused in as clear a manner as he would have done if the case had not been a jury case and he had had to write a convicting judgement. The High Court has not got the witnesses before it, and it appears to me impossible in many cases for it to convict on evidence that it has not heard, unless it is assisted in examining that evidence by a judgement written by the Judge who heard that evidence. In referring a case under section 307, the Sessions Judge takes on himself the responsibility of requiring this Court to "consider the entire evidence" [as stated in section 307(3) of the Code of Criminal Procedure]; and if the Sessions

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Judge fails to write what is in effect a judgement, as stated above, there is a risk that he may too lightly put this Court to the trouble of considering the entire evidence.

BY THE COURT:—The reference is rejected.

Reference rejected.

FULL BENCH.

Before Mr. Justice Lindsay, Mr. Justice Boys and Mr. Justice Iqbal Ahmad.

EMPEROR *v.* LAL BAHADUR.*

1927 December, 15.

Criminal Procedure Code, section 422—Jail appeal—Right of accused, where notice has been given, to appear in person at the hearing of his appeal.

Where a convict has appealed from jail, and notice of the hearing of the appeal has been sent in the terms of section 422 of the Code of Criminal Procedure, the appellant has a right, if he so desires, and if he is not represented by any legal practitioner, to appear in person at the hearing of his appeal. *Queen-Empress* v. *Pohpi* (1) and *Ram Prasad* v. *Emperor* (2), dissented from.

This was an application in revision against an order of the Sessions Judge of Cawnpore refusing to procure the attendance, for the purpose of arguing his appeal in person, of an accused person who had appealed from jail and to whom notice of the hearing of the appeal had been given under the terms of section 422 of the Code of Criminal Procedure. The case came before BOYS, J., who, being of opinion that the appellant had a right, if he so desired, to be present in person at the hearing, asked for a reference to a Full Bench, in view of the decision of the Court in *Queen-Empress* v. *Pohpi* (1).

*Criminal Revision No. 828 of 1927, from an order of Abdul Halim, Sessions Judge of Budaun, dated the 21st of November, 1927.

(1) (1891) I.L.R., 13 All., 171. (2) (1927) 103 Indian Cases, 407.