

that section 147 provided for a citation to appear and if it had intended that an unnatural construction should be put upon the word "citation," namely that it involved legal liability to attend, it would naturally have inserted also the word "citation" in section 193.

For these reasons we hold that the issue of a citation to an alleged defaulter under section 147 of the United Provinces Land Revenue Act does not involve him in any legal liability to attend, that the opposite party here was, therefore, not guilty of an offence punishable under section 174 of the Indian Penal Code and was rightly acquitted by the learned Sessions Judge. The appeal is, therefore, dismissed.

Appeal dismissed.

Before Mr. Justice Banerji.

EMPEROR *v.* ENAYAT HUSAIN.*

Criminal Procedure Code, section 297—Charge to jury—Misdirection—Appeal.

An Assistant Sessions Judge in trying a case under section 377 of the Indian Penal Code with a jury, when he came to sum up, apparently did not give a summary of the evidence, but only told the jury that there were discrepancies in the evidence, without pointing out what these discrepancies were. Further, the Judge in charging the jury more than once used the expression: "If you are morally convinced, your verdict should be that of guilty."

Held, that this amounted to a misdirection, and that the conviction should be set aside.

This was an appeal from a conviction and sentence which had been passed by the Assistant Sessions Judge of Bareilly in a case under section 377 of the Indian Penal Code, tried with a jury. The facts of the case, so far as they are necessary for the purposes

* Criminal Appeal No. 325 of 1926, from an order of C. Deb Banerji, Assistant Sessions Judge of Bareilly, dated the 7th of April, 1926.

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of this report, appear from the judgement of the Court.

Maulvi *Mushtaq Ahmad*, for the appellant.

The Government Pleader (*Mr. Sankar Saran*), for the Crown.

BANERJI, J. :—Enayat Husain has been convicted under section 377 of the Indian Penal Code and sentenced to five years' rigorous imprisonment. The trial was before an Assistant Sessions Judge with a jury.

The only question is whether there was a misdirection in this case. The heads of charge, as noted down by the learned Judge, do not give a summary of the evidence nor does it show at all whether the learned Judge did or did not do anything more than say to the jury that there were material discrepancies; and whether those discrepancies were brought to the notice of the jury or whether the Judge simply told the jury that there were discrepancies does not appear from the record. Further, the Judge in charging the jury has more than once used the expression : " If you are morally convinced, your verdict should be that of guilty." Then the Judge records that he agrees with the unanimous verdict of the jury as regards Enayat. He goes on to say : " There are some doubts, no doubt, but then the doubts are not strong enough to impel me to make a reference to the High Court."

The first point to consider is whether there has been or has not been a misdirection. I am of opinion that there has been a misdirection in this case. Under section 297 of the Code of Criminal Procedure, it is the duty of the Judge to sum up the evidence for the prosecution and the defence. In this case there was no evidence for the defence. I am of opinion that a Judge should explain to the jury the

issues of fact which the jury has to determine upon the charge upon which the prisoners are being tried, and, having made the jury understand these issues, the more convenient mode of summing up the case for him to adopt is, in my opinion, to present to the jury, as materially and impartially as he can, a summary of the evidence and the considerations and inferences to be drawn from the evidence and as they appear both on the negative and the affirmative sides of the case. It is impossible, of course, for any Judge to state every item of the evidence or to draw the attention of the jury to every fact which has been deposed; but he can without difficulty give a summary of the leading points of the evidence and the considerations and inferences to be drawn from it on the one side or on the other. Merely telling the jury that there are material discrepancies without telling them about those discrepancies is, in my opinion, a clear misdirection. Further, telling a jury, in a case under a section like section 377, over and over again about the moral conviction as to the guilt of the accused is also, in my opinion, a misdirection. The jury has not to return a verdict of guilty upon their moral belief of a case, but upon the legal proof of the facts constituting the offence. I am, therefore, of opinion that the misdirection by the Judge has occasioned failure of justice. I, therefore, set aside the conviction and sentence, and direct a re-trial of Enayat Husain by the Assistant Sessions Judge and a jury.

Conviction quashed.

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