REVISIONAL CRIMINAL

Before Mr. Justice Collister and Mr. Justice Bajpai
EMPEROR *v.* BANSI AND OTHERS*

1938
February, 2

Criminal Procedure Code, section 307—Reference by Sessions Judge disagreeing with verdict of jury—Powers of High Court in the matter of reversing the verdict—Difference of approach according to whether the verdict is one of guilty or of not guilty—Practice.

In a reference under section 307 of the Criminal Procedure Code it is the duty of the High Court in the interests of justice to reverse the verdict of the jury when it considers that the prosecution has failed to establish the charge and that the verdict of guilty is not sustainable upon the evidence, even though it cannot be said that the evidence is of such a character that a verdict of guilty based upon it is demonstrably wrong.

In cases where there has been a verdict of not guilty it is the practice of this High Court and also of other High Courts not to reverse such verdict unless it is perverse or palpably wrong; but, on the other hand, where the jury has returned a verdict of guilty the matter stands on a different footing, and even if the verdict is not perverse or palpably erroneous the High Court should act according to its own appreciation of the evidence and acquit a person in respect to whose guilt it entertains grave doubts.

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

Mr. *Kumuda Prasad*, for the opposite parties.

COLLISTER and BAJPAI, JJ.:—This is a reference under section 307 of the Criminal Procedure Code. Six persons, Bansi, Jagan, Sajwa, Hariwa, Saikwa and Sheoraj, all Pasis by caste, were tried before the Assistant Sessions Judge of Allahabad on a charge under section 457 of the Indian Penal Code. It was a jury trial and the jury returned a unanimous verdict of guilty. The Judge disagrees with that verdict and has referred the matter to this Court.

* * * * *

*Criminal Reference No. 765 of 1937.

1938

EMPEROR v. BANSI

The learned Judge has pointed out many discrepancies, inconsistencies and improbabilities in the case presented by the prosecution. Some of the discrepancies and inconsistencies are unimportant, but there are improbabilities in the story which, so far as we are concerned, deprive it of all claim to credibility. Whatever the real facts may be and whatever opinion may be held as regards the credibility of the defence story which has been set up by the accused, it was for the prosecution to establish the charge, and for reasons which we are about to give we are not satisfied that the story which is given by the prosecution is true.

* * * * *

On behalf of the Crown it is contended that the apparent improbabilities in the case are the result of stupidity or excess of caution or both on the part of the station officer. If so, it is unfortunate; but, so far as we are concerned, the whole story is suspect from start to finish, and we have no hesitation in agreeing with the view which is taken by the learned Judge of the court below. In particular we find it very difficult to appreciate the station officer's conduct in taking practically the whole force at his disposal, in leaving behind an illiterate constable and in locking up the office, which contained the diary.

The next matter which we have to consider is what are the powers of this Court under section 307 of the Criminal Procedure Code. In *Emperor* v. *Shera* (1) it was held by a Full Bench that the powers of this Court are not limited by the provisions of sub-section (2) of section 423 of the Code. Now, it is obvious that section 307(3) gives wide powers to the High Court. It provides that: "In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the

(1) (1928) I.L.R. 50 All. 625.

jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and if it convicts him, may pass such sentence as might have been passed by the court of session."

In cases where there has been a verdict of not guilty, however, it is the practice of this Court and also of other High Courts not to reverse the verdict of a jury unless it is perverse or manifestly wrong. On the other hand, where the jury has returned a verdict of guilty, we think that the matter stands on a different footing. It is true that the jury are judges of fact; it is open to them to believe or to disbelieve a witness, and in the present case they have chosen to believe the witnesses for the prosecution. We realise that the verdict of a jury, especially when it is unanimous, should not be lightly displaced, and it cannot be said that the evidence in the case before us is of such a character that a verdict of guilty based upon it is demonstrably wrong. But, having regard to the language of section 307 and having regard to the duty which is enjoined upon us and the powers which are conferred upon us thereunder, we cannot accept the view that, so long as the verdict is not perverse or palpably erroneous, the High Court must act against its own judgment, and in the teeth, as it were, of its own appreciation of the evidence must convict a person in respect to whose guilt it entertains grave doubts. It is unreasonable to suppose that after being enjoined with the duty of "considering the entire evidence and giving due weight to the opinions of the Sessions Judge and the jury", this Court should be thus fettered to the prejudice of the accused. In our opinion it is the clear duty of this Court in the interests of justice to reverse the verdict of a jury when it considers that the prosecution has failed to establish the charge and that the verdict of the jury is not sustainable upon the evidence.

1938

EMPEROR v. BANSI

In the result we accept this reference and acquit the six accused of the offence with which they were charged. They will be forthwith set at liberty unless they are required for any other matter.

Before Mr. Justice Allsop

SHYAMA CHARAN *v.* ANGURI DEVI*

1938
February, 3

Criminal Procedure Code, section 488(3)—*Non-payment of maintenance allowance ordered by Magistrate*—"*Sufficient cause*"—*Insolvency of person ordered to pay*—*Insolvency, by itself, not a* "*sufficient cause*" *exonerating from liability to pay*—*Provincial Insolvency Act* (*V of* 1920), *section* 31—*Protection order passed*—*No immunity from sentence of imprisonment for failure to pay the maintenance.*

Where a person, ordered by a Magistrate under section 488 of the Criminal Procedure Code to pay a maintenance allowance to his wife, subsequently became an insolvent and obtained a protection order under section 31 of the Provincial Insolvency Act:

Held, that the protection order was no bar to the passing of an order of imprisonment under section 488(3) of the Criminal Procedure Code for failure to comply with the order to pay the maintenance. The terms "arrest or detention" used in section 31 of the Provincial Insolvency Act do not apply to arrest in execution of a criminal court process or detention under a sentence of imprisonment passed by a criminal court, e.g. under section 488(3).

Held, also, that the mere fact of adjudication as an insolvent did not prove inability to pay the maintenance allowance or constitute "sufficient cause" for non-payment. If the insolvent was prepared to do work and earn a salary, a considerable part of it would be exempt from attachment under section 60 of the Civil Procedure Code and he would be in a position to pay the maintenance allowance.

Mr. *S. N. Seth,* for the applicant.

Mr. *B. S. Darbari,* for the opposite party.

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

ALLSOP, J.:—This is a reference made by the learned Sessions Judge of Agra recommending that an order

*Criminal Reference No. 830 of 1937.