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RAM AUTAB V.
RAM SAMUJH.

as a decree within the definition of it as given in Act V of 1908.

For the above reasons we are of opinion that the court fee of Rs. 2 paid on the memorandum of appeal is correct.

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza.

1931
February,
12.

MANGAL SINGH (APPELLANT) v. KING-EMPEROR
(COMPLAINANT-RESPONDENT).*

Criminal Procedure Code (Act V of 1898), section 298(2)—

Charge to Jury—Judge expressing his opinion with regard to certain witnesses and their evidence in his charge to Jury—Trial, if vitiated on account of expression of his opinion by Judge.

Where a Judge in his charge to the jury expressed his opinion with regard to certain witnesses and their evidence it cannot be said that the charge was defective merely for that reason and that the trial was vitiated. A Judge has a right to express in the course of his summing up his opinion and if he expresses his opinion which is an unfair opinion and which prejudices accused, the superior appellate court can and should interfere to remove the ill consequences of such action by finding misdirection, but to this clear sound rule of law it is not necessary to add the condition in effect that every word that the Judge says wherein he expresses his opinion should be qualified by most elaborate safeguards. It would not be in accordance either with usual or good practice to treat a case of misdirection, if, upon the general view taken, the case has been fairly left within the jury's province. If the Judge attempts to take the case out of the jury's province by something in the nature of imposing his own view upon the jury it is a case of misdirection, but if a Judge simply states his own opinion which the law allows him to state, in such a manner that intelligent jurymen should see for themselves that it is only his opinion and nothing else, it is not necessary for him to add as a safeguard a remark that it is only his opinion

*Criminal Appeal No. 545 of 1930, against the order of M. Mahmud Hasan, Additional Sessions Judge of Lucknow, dated the 10th of November, 1930.

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and that the jury are perfectly at liberty to form their own. On the question of fact Judge's opinion in no way binds the jury, but the Judge has a right to express it so that the jury may know what it is. *The Queen v. Nim Chand Mookerjee and another* (1), and *Desraj Singh v. King-Emperor* (2), relied on.

Dr. J. N. Misra and Mr. Sheo Dayal Singh, for the appellant.

The Assistant Government Advocate (Mr. Ali Mohammad), for the respondent.

RAZA, J. :—The appellants, Mangal Singh, Ram Sarup, Munnan and Jang Bahadur, have been found guilty by the unanimous verdict of a jury and sentenced to seven years' rigorous imprisonment, each. Mangal Singh, Ram Sarup and Munnan have been convicted under sections 366/368 of the Indian Penal Code. Jang Bahadur has been convicted under section 366 of the Indian Penal Code. One Jhegru, who was charged under section 366 of the Indian Penal Code, has been acquitted.

Mangal Singh, Ram Sarup and Munnan have filed their appeals through their Counsel. They had also submitted their appeals from jail. Jang Bahadur has submitted his appeal from jail.

An appeal may lie on a matter of fact as well as on a matter of law except where the trial is by a jury, in which case the appeal shall lie on a matter of law only. The alleged severity of a sentence shall be deemed to be a matter of law. (See section 418 of the Code of Criminal Procedure.)

In the memorandum of appeal filed on behalf of Mangal Singh, Ram Sarup and Munnan, some passages have been quoted from the Judge's charge to the jury, to show that he had expressed his opinion with regard to certain witnesses and their evidence. It should be noted that the charge was not challenged on any other ground. The appellants' learned Counsel has pointed out those passages and has also argued that

(1) 20 W.R., 41.

(2) (1928) 5 O.W.N., 497.

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the charge is defective and the trial is thus vitiated. I find that the appellants were defended by a Counsel in the lower court.

I have read the charge to the jury very carefully. The appellants' learned Counsel has put up as good arguments on behalf of the appellants as could be put up in this case, but I am not prepared to hold that the charge is really defective and that the case had not been fairly laid before the jury. It is true that the learned Judge had expressed his opinion on some points but he was not wrong in doing so. "The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding." See section 298(2) of the Code of Criminal Procedure. Though the learned Judge had used the expressions in question in his charge to the jury but he had at the same time said to them that they were not bound by his opinion in any way. He had made the following observations :—

"You have fully heard what the witnesses have stated in this Court. Their previous statements were also read to you. It is open to you to attach any value to those contradictions according to your choice."

"It is for you to believe the evidence of the prosecution or not. I may further tell you that my opinion is not binding on you and that it is for you to give your findings on each and every point of fact". . . .

"If you have any reasonable doubts in your mind, you should give their benefit to the accused". . . .

"I remind you again that my opinion is not binding on you".

The observations which a Judge would make to a jury, from the facts, would be determined by

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circumstances which must vary. They would vary to a great degree according to the intelligence of the jury whom the Judge was addressing; they would also vary very much according as the case had or had not been fully discussed both for and against the prisoner by Counsel prior to his addressing them. Had there been no discussion of a case by a Counsel it would undoubtedly be necessary for the Judge to point out many things which after the case had been fully discussed by both sides, both for the Crown and for the prisoner, might well seem to him unnecessary and on the other hand a Judge has very often to caution a jury against accepting without careful consideration some of the suggestions that are made to them. When we are called upon to say whether or not the Judge has done his duty in addressing the jury on the facts we must look to his summing up as a whole and see that the case has been fairly laid before them. See *The Queen v. Nim Chand Mookerjee and another* (1). I think it is impossible for any Judge to state every item of evidence or to draw the attention of the Jury to each and every fact which has been deposed to before them. He has of course to give them a summary of the leading points of the evidence and the considerations and inferences to be drawn from it on the one side and on the other. As pointed out in the case of *Desraj Singh v. King-Emperor* (2) "a Judge has a right to express in the course of his summing up his opinion and if he expresses his opinion which is an unfair opinion and which prejudices accused, the superior appellate court can and should interfere to remove the ill consequences of such action by finding misdirection but to this clear and sound rule of law it is not necessary to add the condition in effect that every word that the Judge says wherein he expresses his opinion should be qualified by most elaborate safeguards. It would not be in accordance either with usual or good practice to treat a

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APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava.

1931
March, 30.

AJODHIA PRASAD (PLAINTIFF-APPELLANT) v. MUSAMMAT

SANJHARI KUAR AND OTHERS (DEFENDANTS-RESPONDENTS).*

Hindu law—Transfer by a Hindu mother or widow without necessity is voidable and not void—Jus turtii—Judgment establishing right to a property between two parties—Third party, whether entitled to set up the right of losing party against the successful party.

Held that a transfer by a Hindu lady of a property held by her either as a Hindu widow or as a Hindu mother, in favour

*Second Civil Appeal No. 236 of 1930, against the decree of Pandit Krishnanand Pandey, Additional Subordinate Judge of Sultanpur, dated the 27th of May, 1930, confirming the decree of Babu Kali Charan Agarwal, Munsif, Sultanpur, dated the 11th of February, 1929.