APPELLATE CRIMINAL.

Before Macpherson and Allanson, JJ.

1928.

August, 16.

RAMDAS RAI

v.

KING-EMPEROR.*

Trial by Jury—verdict of guilty—disagreement with verdict—reference to High Court, when permissible—Code of Criminal Procedure, 1898 *(Act V of* 1898*), sections* 306 *and* 307 *—High Court, whether should interfere with Judge's discretion—Misdirection—whether statement as to judge's experience is.*

It is not in every case where a judge disagrees with the verdict of the jury that he should make a reference under section 307, Code of Criminal Procedure, 1898. A reference should be made only when the verdict of the jury is manifestly wrong, and this is equally so whether the verdict with which the judge disagrees is one of acquittal or one of conviction. Section 306 does not impose an obligation on the judge to refer a case to the High Court except where the conditions set out in section 307 are satisfied.

King-Emperor v. *Bajit Mian*(1), referred to.

The Government of Bengal v. *Mahaddi*(2) and *Queen-Empress* v. *Guruvadu*(3), distinguished.

Where the judge is not clearly of opinion that he should submit a case under section 307, and does not do so, the High Court, in appeal by the accused, will not interfere with his discretion..

King-Emperor v. *Bajit Mian*(1), followed.

It is not improper for the judge to tell the jury, " Form my experience this explanation is not an impossible one and you ought to consider it."

In a case where the judge accepts the verdict of the jury he is bound to assess the punishment as if he agreed with it though he may entertain a doubt as to the correctness of the verdict.

---

*Criminal Appeal no. 114 of 1928, from a decision of A. C. Davies, Esq., I.C.S., Sessions Judge of Shahabad, dated the 8th of May, 1928.

(1) (1927) I. L. R. 6 Pat. 817. (2) (1880) I. L. R. 5 Cal. 871.

(3) (1900) I. L. R. 13 Mad. 348.

The facts of the case material to this report are stated in the judgment of Macpherson, J.

Sir Ali Imam (with him *Hyder Imam*) for the appellants.

C. M. Agarwala, Assistant Government Advocate, for the Crown.

MACPHERSON, J.—The seven appellants named above have preferred this appeal against their conviction by the Sessions Judge of Shahabad under section 395 of the Indian Penal Code and the sentence of 9 years' rigorous imprisonment passed upon each of them. Along with eight others they were tried with the aid of a jury. The presiding Judge charged for acquittal but the jury convicted the appellants and acquitted their co-accused.

Sir Ali Imam on behalf of the appellants first contends that the learned Sessions Judge had no jurisdiction to convict the appellants because of the following observations in his judgment—

> "I do not agree with the verdict. In my opinion none of the dacoits was recognised at the time and all the prisoners should be acquitted. At the same time the verdict of the majority is a reasonable verdict on the evidence and I accept it without hesitation."

After these observations the learned Sessions Judge convicted the appellants and acquitted their co-accused. It is not contended that the expression "verdict of the majority" does not mean the verdict of the jury.

Counsel contends that the Judge could not convict the accused because under section 306(*1*) of the Code of Criminal Procedure it is only where the Judge does not think it necessary to express disagreement with the verdict of the jurors or a majority of the jurors that he shall give judgment in accordance with the verdict, and, in the present case, he expressed not merely doubt or misgiving but emphatic disagreement with the verdict of the jurors. Counsel is not concerned to deny that it is not in every case where a

1928.

RAMDAS RAI v. KING-EMPEROR

MACPHERSON, J.

Judge disagrees with the verdict of the jury that he should refer the case under section 307 and indeed it is a common-place that a reference should be made only when the verdict of the jury is manifestly wrong and not in every case of doubt nor in every case in which a different view from that of the jury can be entertained. There is of course no difference in this regard between the case where the jury acquits and the case where the jury convicts and the Judge disagrees with the verdict. But section 306 must be read along with section 307. Under the latter section, if the Judge, in a case tried before the Court of Session, disagrees with the verdict of the jurors or a majority of the jurors, it is only where he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he shall submit the case accordingly, recording the grounds of his opinion. Manifestly section 306 does not, as learned Counsel urges, impose an obligation on the Judge to refer a case to the High Court except when the conditions set out in section 307 are satisfied. The disagreement referred to in section 306 is the same disagreement as impels the Judge to take action under section 307.

It has been frequently laid down that the High Court will not interfere with the verdict of the jury if the verdict has turned merely upon the appreciation of oral evidence capable of being viewed either way but only where the evidence is so coercive that it is impossible to draw a conclusion except the one adverse to the verdict. The observations of the learned Sessions Judge can only mean that though he himself took a view unfavourable to the prosecution nevertheless the view taken by the jury, though opposed to his own view, was one which could in his opinion reasonably be taken on the evidence. As has been laid down in *King-Emperor* v. *Bajit Mian*(1) the decision as to whether a case tried by a jury should or should not be referred to the High Court under

(1) (1927) I. L. R. 6 Pat. 817.

section 307 of the Code of Criminal Procedure is a matter entirely within the discretion of the Judge and it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he should submit it. In the present instance, recognising that the verdict was one at which reasonable men might arrive on the evidence, he not only did not submit it to the High Court but accepted it, as he expressly states, without hesitation. Therein he was clearly correct in all respects. As is manifest from his judgment he could not possibly have recorded valid reasons for an opinion that it was clearly necessary for the ends of justice to refer the case, which opinion he did not hold.

Sir Ali Imam has referred to the decision in *Queen Empress* v. *Guruvadu*(1) and to the decision in *Government of Bengal* v. *Mahaddi*(2). The decision of the Madras High Court has been considered in *Bajit Mian* v. *King Emperor*(3). The statement that the discretion of the Judge should always be exercised when he thinks that the verdict is not supported by the evidence was obviously provoked by the observation of the Sessions Judge that he did not refer the case to the High Court on the view that it was not incumbent upon him to do so " since probably there would be an appeal ". And the observation also went beyond what was required for the case and beyond the provisions of section 307. In the Calcutta case the Sessions Judge, disagreeing with the verdict of the jury, which was a good and legal verdict, had requested them to retire to reconsider their verdict, and the High Court, in restoring that verdict, remarked, incidentally, that if he disagreed with a legal and unanimous verdict, the proper course for the Sessions Judge to adopt was not that which he had taken but to refer the case under the provision corresponding to the present section 307. There is no suggestion that he was bound to refer if the provisions

(1) (1900) I. L. R. 13 Mad. 343. (2) (1880) I. L. R. 5 Cal. 871.
(3) (1927) I. L. R. 6 Pat. 817.

1928.

RAMDAS RAI v. KING-EMPEROR.

MACPHERSON, J.

of that enactment were not satisfied. In the present case the Judge having found that the verdict far from being perverse was a reasonable decision on the evidence, would emphatically have been wrong in referring the case. The contention that he acted without jurisdiction is unfounded and we see no reason whatever for accepting the invitation of learned Counsel to treat the present appeal as a reference under section 307 even if such a course were contemplated by law. As was held in *Bajit Mian* v. *King Emperor*(1), where the Judge is not clearly of opinion that he should submit a case under section 307 and does not submit it, this Court in appeal will not interfere with his decision. It may here be pointed out what a very serious position would be created if it was necessary for the Sessions Judge to suppress his own opinion adverse to the verdict of the jury except in cases where he was impelled to take action under section 307. Cases readily occur to one's mind where it is advantageous to the cause of justice to know his opinion even if from consideration of law it cannot prevail. The first contention has therefore no substance.

Though acknowledging that the charge of the learned Sessions Judge to the jury was favourable to the appellants, learned Counsel next contends that it nevertheless contains two misdirections. Now, under section 423(*2*) of the Code of Criminal Procedure this Court is not authorised to alter or reverse the verdict of a jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by him. It is not suggested that the jury misunderstood the law as laid down by the Judge, and the question, therefore, is, whether the verdict of the jury is erroneous owing to either or both of the alleged misdirections.

(1) (1927) I. L. R. 6 Pat. 817.

1928.

RAMDAS RAI v. KING-EMPEROR.

MACPHERSON, J.

The first of these relates to the appellants Ramdas Rai and Ganga Sonar. A paragraph of the charge reads—

"Two of the prisoners Ramdas and Ganga suggest another sort of enmity, namely, that Mahadeo Sonar has concocted this case against them because Sawarath Rai, uncle of Ramdas, has driven Mahadeo out of the village owing to an intrigue. There is no evidence that there ever was any quarrel or dispute between Sawarath and Mahadeo. There is no evidence that Sawarath is the uncle of Ramdas Rai."

But Mahadeo stated in his deposition:

"I had a quarrel with Sawarath Rai. The quarrel was about money he owed me."

So that the statement in the charge that there is no evidence that there ever was any quarrel or dispute between Sawarath and Mahadeo is a misdirection on a point of fact. But there is no ground whatever for holding that the verdict of the jury is erroneous owing to this misdirection. There is nothing on the record to connect Sawarath with any of the appellants. Not only is it a fact that there is, as the learned Sessions Judge indicated in his charge to the jury, no evidence that Sawarath is the uncle of Ramdas, but there is the positive evidence of Mahadeo that he is not. Obviously, if these appellants have no close, if any, relationship or other connection with Sawarath, a quarrel between Sawarath and Mahadeo would not affect the verdict of any reasonable man in respect of these appellants. It is not shown that the error in the charge has in fact occasioned a failure of justice and it is clear that it has not.

The second misdirection is alleged to be contained in the following paragraph of the charge:

"It is suggested that the reason why all the witnesses make the statement which, if their evidence that they recognised dacoits is true, is obviously false that they never mentioned the name of any dacoit to anybody until the Sub-Inspector came is that these witnesses know that, if they said they had told certain other of the witnesses and those other witnesses should happen to forget the fact, as witnesses might easily do when they would hear twenty or thirty persons speaking about the identification, then in argument the defence would make capital out of these quite honest contradictions and inconsistencies, and, to prevent such capital from being made, most of the witnesses have

1928.

RAMDAS RAI v. KING-EMPEROR.

MACPHERSON, J.

combined to say that they never told anybody and thus to shut out the possibility of further cross examination on this point. From my experience this explanation is not an impossible one and you ought to consider it.'

The argument is that the Judge ought not to have said to the jury

"From my *experience* this explanation is not an impossible one."

It is contended that whereas it is certainly open to a Judge to express his opinion to a jury, he has no right to place before them the result of his experience, thus making himself a witness. I can discern no substance in this contention and least of all in this particular instance where the trend of the charge is in favour of the accused and the Judge most carefully told the jury that they were not bound by his opinion and if, after considering everything, their opinion was different from his, they were to be guided by their own opinion and not by his. It appears to me that it was by no means improper for the learned Sessions Judge to have indicated in cautious language his experience on the Bench that the explanation offered was one which deserved the consideration of the jury.

It is next urged that the Judge has in the above paragraph erred in law in assuming that there was a combination of the witnesses to deny that they had mentioned the names of dacoits with a view to saving themselves from harassing cross-examination. I do not so read it. It would appear that the defence had alleged a combination on the part of most of the prosecution witnesses in respect of a statement made by them on a particular point and that the Judge was giving the reply of the prosecution to that suggestion. I can discern no misdirection in this regard still less the suggested prejudice to the accused.

Accordingly neither the charge to the jury nor the judgment of the learned Sessions Judge can be successfully assailed. The conviction of the appellants must be affirmed.

1928.

Ramdas Rai v. King-Emperor.

Macpherson, J.

Counsel then questions the propriety of the sentences. But the Judge in passing sentence upon the appellant after conviction was clearly right in giving no weight to whatever doubts he personally entertained as to the propriety of the verdict of the jury or mitigating the sentence on that account. Having accepted the verdict he was bound to award punishment as if he agreed with the verdict and he has done so and has assessed the term of imprisonment on entirely sount consiterations. The sentence passed is in my opinion not excessive in the district of Shahabad for a midnight dacoity in a bazar by a gang of forty or fifty persons armed with lathis.

I would accordingly dismiss this appeal.

ALLANSON, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Ross, JJ.

PRINCE RANJIT SINGH

v.

JHORI SINGH.*

1928.

November, 1.

Ejectment—defendant, failure of, to establish better title—plaintiff entitled to succeed, if previous possession proved.

In a suit for ejectment, although the plaintiff may not be able to establish any title in himself, he is entitled to succeed if he can prove that he was in possession of the property in dispute until he was forcibly ousted by the defendant, provided the defendant does not establish a better title in himself.

---

*Appeal from Appellate Decree no. 1248 of 1926, from a decision of M. Saiyid Hasan, Subordinate Judge of Ranchi, dated the 31st of May, 1926, reversing a decision of Babu Narendra Nath Banerji, Munsif of Giridih, dated the 12th of March, 1925.