JURY REFERENCE

Before Dhavle and Rowland, JJ.

RAMJANAM TEWARI

v.

KING-EMPEROR.*

1935.

March, 5.

Trial by Jury—Judge, whether can accept the verdict on one charge and differ from Jury on another charge—reference incompetent—question whether the charge under a particular section is "proper", whether is one of law—criminal conspiracy—object to commit cognizable offences punishable with rigorous imprisonment for more than two years— sanction, whether necessary for a charge under section 120B of the Penal Code, 1860 (Act XLV of 1860)—Code of Criminal Procedure, 1898 (Act V of 1898), sections 196A(2), 298 and 307.

It is not open to a court of session to accept the verdict of the jury on one charge and disagree with the jury on another charge, and to refer the matter to the High Court under section 307 of the Code of Criminal Procedure, 1898, limiting the reference to the charge on which it has disagreed.

King-Emperor v. *Hazari Lal*(1), followed.

The question whether a charge under a particular section is or is not "proper" is one of law, and under section 298 of the Code it is the plain duty of the Judge to decide that question himself instead of leaving it to the Jury.

Where the object of the criminal conspiracy was to commit cognizable offences punishable with rigorous imprisonment for more than two years, no sanction for a charge under section 120B of the Penal Code is necessary.

Reference under section 307 of the Code of Criminal Procedure.

The facts of the case material to this report are set out in the judgment of Dhavle, J.

No one in support of the reference.

Assistant Government Advocate, against the reference.

* Jury Reference no. 2 of 1935. Reference made by K. P. Sinha, Esq., I.C.S., Additional Sessions Judge of Shahabad in his letter no. 129, dated the 17th January, 1935.

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DHAVLE, J.—This is a reference under section 307 of the Code of Criminal Procedure made by the Additional Sessions Judge of Shahabad in a case which was committed to the court of session under sections 366, 420 and 120B of the Indian Penal Code. It appears that on the assurance of the Assistant Public Prosecutor that there was authority for adding a charge under section 498 of the Indian Penal Code, the learned Judge framed an additional charge under this section, even though there had been no complaint up to that stage by any person competent under section 199 of the Code of Criminal Procedure to make one. The charges under sections 366 and 498 were tried by jury, and the jury brought in an unanimous verdict of guilty under section 498 against four of the accused persons and of not guilty under that section against the other accused persons, and of not guilty under section 366 in respect of all the accused persons. The learned Judge told the jury that the Assistant Public Prosecutor had not been able to satisfy him that section 199 of the Code of Criminal Procedure did not prevent the Court from taking cognizance of an offence under section 498 of the Indian Penal Code, and he left it to them to consider whether the charge under section 498 of the Indian Penal Code was proper. The verdict of the jury shows that they considered that the charge was " proper " (to use the language of the learned Judge), and as this was not his view he has made this reference under section 307 of the Code of Criminal Procedure.

On the face of it the reference is incompetent. Section 307 is clear enough, and has been interpreted in several cases, including *King-Emperor* v. *Hazari Lal*(1) which was decided in this Court not long ago and which points out how it is not open to a court of session to accept the verdict of the jury on one charge and disagree with the jury on another charge and

(1) (1932) I. L. R. 11 Pat. 395.

refer the matter to the High Court under section 307 of the Code of Criminal Procedure. The learned Judge has apparently accepted the verdict of the jury in respect of these four persons on the charge under section 366, for he has limited his reference to the charge under section 498 and says that the verdict on it is " contrary to law ". Limiting the reference in this manner is, however, not the only error that the learned Additional Sessions Judge has fallen into. Whether the charge under section 498 of the Indian Penal Code was or was not " proper ", as the Judge called it, was a question of law; and under section 298 of the Code of Criminal Procedure it was his plain duty to decide that question himself instead of leaving it to the jury. Why he should not have called upon the Assistant Public Prosecutor to produce his authorities then and there and looked into them before proceeding with the trial instead of acting on his assurance and framing the charge does not appear any more than why he should finally have left to the jury what it was for himself to decide. If the learned Additional Sessions Judge was not really satisfied that the additional charge was not " proper ", there was no reason whatsoever why he should have treated it as a question of fact and left it for the jury to deal with. But the rejection of the reference as incompetent is not the only order that we are called upon in the circumstances of this case to make. We think we ought to point it out to the court below that the charge under section 498 was clearly framed and tried without any jurisdiction at all, having regard to the terms of section 199 of the Code of Criminal Procedure, and that all the proceedings that have followed upon that charge are equally without jurisdiction. It is in fact impossible to do anything with that charge in the absence of a complaint under section 199, so far as the trial referred to us is concerned.

It appears from the record that the learned Judge has also fallen into another error. The charge under

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section 120B of the Indian Penal Code was dropped on the ground that no sanction was obtained. But the object of the conspiracy was to commit cognizable offences punishable with rigorous imprisonment for more than two years, and it should have been obvious to the Assistant Public Prosecutor and the Additional Sessions Judge, from a mere perusal of section 196A(2) of the Code of Criminal Procedure, that in such a case no "sanction" was necessary.

ROWLAND, J.—I agree.

Reference rejected.

SPECIAL BENCH.

Before Khaja Mohamad Noor, James and Agarwala, JJ.

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March, 5, 6.

MAHARAJ KUMAR RAM RANBIJAY PRASAD SINGH

v.

RAMGIRHI RAI.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *sections* 30(*b*) *and* 32—*decennial periods—court, whether bound to exclude the period preceding the date when the current rent was fixed—shorter periods, when can be substituted—"practicable", meaning of.*

The rise contemplated in section 32(*b*) of the Bengal Tenancy Act, 1885, is the rise over the price which was prevailing at about the time when the current rent was fixed.

There is nothing in sub-clause (*a*) of section 32 of the Act which enjoins upon the court not to take, for purposes of comparison, a period preceding the date when the rent was last fixed or settled. Rather it may be more equitable to compare the prices of the decennium just before the institution of the suit with the prices which prevailed in the decade just before the settlement of the rent.

* Appeals from Appellate Decrees nos. 1008 to 1021 of 1931, from a decision of A. C. Davies, Esq., I.C.S., District Judge of Shahabad, dated the 11th February, 1931, reversing a decision of Maulavi Muhammad Yahia, Munsif of Buxar, dated the 5th February, 1930.