REVISIONAL CRIMINAL.

Before Justice Sir Henry Scott-Smith and Mr. Justice Martineau.

1924

Dec. 8.

THE CROWN—Petitioner,

versus

BIMAL PARSHAD—Respondent.

Criminal Revision No. 1163 of 1924.

Criminal Procedure Code, Act V of 1898, sections 307, 449—Reference to High Court in case where Sessions Judge disagrees with verdict of jury in a trial held under Chapter XXXIII—Power of High Court to decide question of fact.

Held, that although in ordinary cases tried by a jury there is no appeal except on a matter of law, *vide* section 418 of the Code of Criminal Procedure, since the amendment of the Code by Act XVIII of 1923, an appeal is competent in cases tried by jury under the provisions of Chapter XXXIII "on a matter of fact as well as on a matter of law," *vide* section 449, and consequently the High Court in dealing with a reference made by a Sessions Judge in such a case under section 307 can go into the facts of the case.

The following authorities which lay down that the High Court will not interfere unless it is shown that the verdict of the jury is wholly unreasonable or perverse lose much of their force and have very little application:—

The Queen v. *Ram Churn Ghose* (1), *The Queen* v. *Sham Bagdee* (2), *Emperor* v. *Swarnamoyee Biswas* (3), *King-Emperor* v. *Golam Kader* (4), *Reg.* v. *Khanderav Bajirav* (5), *Emperor* v. *Walker* (6).

Emperor v. *Lyall* (7), was cited on the other side.

D. R. Sawhney, for the Crown—The verdict of not guilty returned by the jury is wrong. The evidence clearly establishes the guilt of the accused. The

(1) (1873) W. R. 33.
(2) (1873) 20 W. R. 73.
(3) (1913) I. L. R. 41 Cal. 621.
(4) (1924) 28 Cal. W. N. 876.
(5) (1875) I. L. R. 1 Bom. 10.
(6) (1924) 26 Bom. L. R. 610.
(7) (1901) I. L. R. 29 Cal. 128.

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High Court, dealing with a case referred under section 307 of the Criminal Procedure Code, should consider the entire evidence in the case. The opinions of the Sessions Judge and the jury are to be given due weight, but the High Court should form independently its own opinion. It is not necessary to show that the finding of the jury is perverse or clearly or manifestly wrong. The trial in this case was held under Chapter XXXIII as amended by Act XVIII of 1923. The High Court should hear the case on law as well as on the facts, *vide* section 449.

Moti Sagar (with him Amar Nath Chona and Sagar Chand) for the respondent—The facts in the present case are not inconsistent with the innocence of the accused. The evidence practically consists only of one witness Mr. Reaks. The jury here have rejected his evidence and returned a unanimous verdict of " not guilty ". The authorities lay down clearly that it is not in every case of doubt, nor in every case in which a view different from that of the jury can be entertained on the evidence, that reference under section 307 of the Code is to be made. The reference should be made only when the verdict is perverse or clearly and manifestly wrong. It cannot be said that this is the case here. The basic rulings are *The Queen* v. *Ram Churn Ghose* (1), and *The Queen* v. *Sham Bagdee* (2), followed in subsequent rulings—See *Emperor* v. *Swarnamoyee Biswas* (3), *King-Emperor* v. *Golam Kader* (4), *Reg* v. *Khanderav Bajirav* (5), and *Emperor* v. *Walker* (6). The Allahabad High Court has very recently taken the same view, *Emperor* v. *Panna Lal* (7). This case was decided

(1) (1873) 20 W. R. 33.
(2) (1873) 20 W. R. 73.
(3) (1913) I. L. R. 41 Cal. 621.
(4) (1924) 28 Cal. W. N. 876.
(5) (1875) I. L. R. 1 Bom. 10.
(6) (1924) 26 Bom. L. R. 610.
(7) (1924) I. L. R. 46 All. 265.

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subsequently to the amendment of the Code of Criminal Procedure by Act XVIII of 1923. In the case of *Emperor* v. *Lyall* (1), cited by the other side there is no mention of any case decided previously and cited by me.

D. R. Sawhney, replied.

Case referred by Lieut-Col. R. W. E. Knollys, Sessions Judge, Ambala, on the 27th July/2nd August 1924 for orders of the High Court.

The judgment of the Court was delivered by—

SIR HENRY SCOTT-SMITH J.—The accused Bimal Parshad *Jaini* was tried by the Sessions Judge, Ambala, and a special jury under the provisions of Chapter XXXIII of the Criminal Procedure Code on a charge under sections 161/116 of the Indian Penal Code for having offered a bribe of Rs. 200 in currency notes to Mr. R. Reaks, Assistant Chief Controller, Indian Stores Department, Simla, with the motive to induce the said Mr. Reaks to use his influence in obtaining a post for the accused in the Stores Department. The jury unanimously brought in a verdict of not guilty, and the learned Sessions Judge has referred the case to this Court under section 307 (1) of the Criminal Procedure Code on the ground that in his opinion the verdict is perverse and absolutely contrary to the evidence on the record which establishes the guilt of the accused beyond all reasonable doubt.

Before coming to the facts we find it necessary to deal with certain arguments which Mr. Moti Sagar on behalf of the accused has addressed to us upon the question as to the principles which should guide this Court in dealing with this reference under sec-

(1) (1901) I. L. R. 29 Cal. 128.

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tion 307 of the Criminal Procedure Code. His contention is that this Court should only interfere with the verdict of a jury when it considers that it is wholly unreasonable or perverse. Attention has been drawn to the following authorities:—

The Queen v. *Ram Churn Ghose* (1) in which Markby J. made the following remarks:—

"We entirely agree with the observations which have been made in similar cases by other Division Benches that we should not interfere with the verdict of a jury unless it were established in the clearest possible manner that they had wholly miscarried in their conclusion upon the case. They are the constituted tribunal upon questions of fact in the districts where the jury system has been introduced, and it will be wholly destructive of that institution if the greatest possible confidence is not placed in them."

The Queen v. *Sham Bagdee and others* (2) in which it was held that "the High Court will exercise the powers vested in it by section 263 (corresponding to section 307 of the present Code) only in cases in which it finds the verdict of the jury clearly and undoubtedly wrong."

Emperor v. *Swarnamoyee Biswas* (3) in which it was stated that the High Court would not interfere under section 307 in every case of doubt or in every case in which it might with propriety be said that the evidence would have warranted a different view. Their Lordships approved of the decision in *Queen* v. *Sham Bagdee and others* (2).

The King-Emperor v. *Golam Kader and others* (4) where it was held that the High Court would not interfere against the verdict of the jury unless it

(1) (1873) 20 W. R. 33.
(2) (1873) 20 W. R. 73.
(3) (1913) I. L. R. 41 Cal. 621.
(4) (1924) 28 Cal. W. N. 876.

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could be said that it was not possible for the jury to have arrived at the verdict at which they arrived.

Reg. v. *Khanderav Bajirav* (1), and *Emperor* v. *Walker* (2) (in which *Emperor* v. *Swarnamoyee Biswas* (3) was followed).

On the other side the Public Prosecutor referred to the case of *Emperor* v. *Lyall and others* (4) where such a strict view was not taken and it was held that it was not necessary for the prosecution to show that the opinion of the jury was perverse or clearly or manifestly wrong. It appears to us that the decisions in the cases cited by Mr. Moti Sagar were based upon the view expressed by Markby J. in the case of *The Queen* v. *Ram Churn Ghose* (5) to the effect that the jury are the constituted tribunal upon questions of fact. Moreover in ordinary cases tried by a jury there is no appeal except on a matter of law, see section 418 of the Criminal Procedure Code. Important changes have been introduced into the present Criminal Procedure Code by Chapter XXXIII. In section 449, which is in that chapter, it is laid down that " where a case is tried by jury in the High Court or Court of Session under the provisions of this chapter, then, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law." In a case, therefore, tried under this chapter the finding of a jury on a question of fact is no longer final, and under these circumstances we think that the authorities, which lay down that the High Court will not interfere in a case referred under section 307 unless it is shown

(1) (1875) I. L. R. 1 Bom. 10.
(2) (1924) 26 Bom. L. R. 610.
(3) (1913) I. L. R. 41 Cal. 621.
(4) (1901) I. L. R. 29 Cal. 128.
(5) (1873) 20 W. R. 33.

that the verdict of the jury is wholly unreasonable or perverse, lose much of their force and really have very little application. We consider that it is our duty in the present case to consider all the evidence and to give judgment after considering it as well as the opinions of the Sessions Judge and the jury.

The facts of the case are fully given in the report of the learned Sessions Judge. The case for the prosecution is briefly as follows :—

The accused, on the morning of Sunday, the 20th April 1924, went to interview Mr. Reaks in his room in the Catholic Club, Simla, where he was residing, and, after saying that he wished to apply for a post in Mr. Reaks' department, offered him 20 currency notes of Rs. 10 each saying, " I have brought this as a present for you." Mr. Reaks immediately caught hold of the accused, and, after getting the notes counted by his servant Kanhaya (P. W. 3), turned the accused out of his quarters and out of the compound.

The defence was that the accused accidently pulled these notes out of his pocket at the same time as his certificates which he wished to show to Mr. Reaks in support of his application and that he put the notes on the table and offered the original certificates for Mr. Reaks' perusal saying, " I present these to you for your perusal."

Only four witnesses were examined for the prosecution, and their evidence is given in full detail in the report of the Sessions Judge. Mr. Reaks is the only witness who gives evidence as to the offer to him of the bribe of Rs. 200. Kanhaya's evidence is not really very important because the accused himself admits that he put the notes on the table and that Mr. Reaks then and there seized hold of him. The evidence of Mr. Salt (P. W. 4) is, however, of im-

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portance. He states that he was standing in the porch of the Catholic Club after breakfast on the day in question when the accused followed by Mr. Reaks passed within two yards of him. As Mr. Reaks passed he held out his hand in which there were some papers and called out to the witness, "Here is another case." The accused subsequently came back and entreated Mr. Salt to intercede for him with Mr. Reaks. Mr. Reaks is an officer holding an important post, and the Sessions Judge states that he gave his evidence in a most straightforward and convincing manner. There is absolutely nothing against him, and *primâ facie* there is no reason whatever for disbelieving his evidence. Mr. Moti Sagar has suggested that he may have misunderstood the accused; but, having regard to his evidence and his clear statement that the accused offered the notes saying that he had brought them as a present, we do not see how it can be possible that the witness made any mistake. The accused put in a written statement in his defence in which he insinuated that Mr. Reaks had made up a false case against him because he was under a cloud and thought he would in this way exonerate himself in the eyes of his superior officers. He did not, however, clearly allege that Mr. Reaks was under a cloud and there is nothing on the record to show that there was anything against this witness, and we cannot find any reason whatsoever for disbelieving his evidence. The defence to the effect that the accused pulled out Rs. 200 in currency notes by accident with his certificates is, in our opinion, incredible. Mr. Reaks has distinctly stated that no certificates were produced and the accused did not up to the time of the trial produce any certificates at all and there is no evidence on the record that he possessed any. In our opinion the verdict of the jury is wholly unreasonable,

and we fully agree with the report of the learned Judge and the reasons given therein for his opinion. We, therefore, convict the accused of an offence under sections 161/116 of the Indian Penal Code. Considering his youth, we do not think it necessary to pass a very severe sentence upon him. We accordingly sentence him to three months' rigorous imprisonment and a fine of Rs. 200 or one month's further rigorous imprisonment in default.

A. N. C.

Reference accepted.
Accused convicted.

FULL BENCH.

Before Sir Shadi Lal, Chief Justice, Justice Sir Henry Scott-Smith, Mr. Justice Martineau, Mr. Justice Campbell, and Mr. Justice Zafar Ali.

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Dec. 15.

SARDAR KHAN AND OTHERS (PLAINTIFFS) Appellants,

versus

Mst. AISHA BIBI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 390 of 1924.

Suits Valuation Act, VII of 1887, section 11—Whether applicable to all cases of erroneous valuation.

S. K. and others sued *Mst.* A. B. and others for possession of agricultural land. The amount of revenue assessed on the land was correctly stated in the plaint as Rs. 177-14-0, but thirty times that amount was erroneously shown as Rs. 4,336-4-0, instead of Rs. 5,336-4-0, and on that erroneous valuation the suit was tried by a second class Subordinate Judge, whose jurisdiction was limited to suits not exceeding Rs. 5,000, in value. From the decision of the Subordinate Judge, which was in favour of the plaintiffs, the defendants appealed to the District Judge, and even before that officer no