

PRIVY COUNCIL.

Before Viscount Haldane, Lord Sumner and Lord Sinha.

MADAT KHAN AND ANOTHER—Appellants,

versus

THE KING-EMPEROR—Respondent.

1926

Nov. 11.

Privy Council Appeal No. 72 of 1926.

(High Court Criminal Appeal No. 774 of 1925.)

Criminal Law—connected cases—Evidence in one case imported into another—Appeal by special leave—Absence of failure of justice—Privy Council Practice.

Two parties of Pathans who had engaged in an armed fight, resulting in the death of a member of each party, were separately charged and tried for murder and causing grievous hurt. The Sessions Judge, as well as the High Court on appeal, dealt with both cases in one judgment. The appellants, members of one party, obtained special leave to appeal from their convictions, on the ground that in the consideration of the charges against them evidence given in the case against the other party was referred to. On the hearing of the appeal it appeared that there was a body of evidence adduced in the case against the appellants which warranted their convictions and that no injustice had arisen from the technical irregularity.

Held, that in accordance with the practice of the Judicial Committee the appeal should be dismissed.

Appeal by special leave from a judgment of the High Court (Shadi Lal, C. J., and Campbell, J.), dated October 24, 1925, affirming convictions of the appellants by the Sessions Judge of Attock.

The appellants, who were brothers, were Pathans, whose family had long been at enmity with another family of Pathans living in the same village. In April 1925, an armed encounter took place between the appellants and the members of the other family. In the encounter three men were wounded on each side, and one man of each side died of wounds.

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Members of the other family were charged with murder and causing grievous hurt, and were tried by the Sessions Judge on July 20 and 21, 1925. The appellants were similarly charged afterwards and were tried on July 21 and 22.

The Sessions Judge delivered one judgment in both cases on July 24, 1925, convicting the appellants. The defence raised by them was that they were attacked by the other party but the Sessions Judge found that the fight had been a pre-arranged affair, both sides being similarly armed.

The appellants appealed to the High Court.

The learned Judges, dealing with both cases in one judgment, confirmed the convictions and sentences.

The appellants were granted special leave to appeal to His Majesty in Council, on the ground that both the Sessions Judge and the High Court in considering the case against the appellants had referred to certain evidence which had been adduced, not in the case against them, but in the case against the other party to the encounter.

WALLACH, for the appellants.

DUNNE, K. C. and KENWORTHY-BROWN, for the Crown.

The judgment of their Lordships was delivered by:—

VISCOUNT HALDANE—In this case their Lordships advised His Majesty that special leave to appeal should be granted, because of the apprehension that it might turn out that evidence which was given in one trial had been improperly imported into a quite separate trial. Now that the case has been fully and fairly put by Mr. Wallach on its merits, it turns out that the apprehension was not well founded.

Two parties were charged for their attacks on each other in the same occurrence, and the charges were tried separately at two distinct trials. But, naturally, as the occurrences were common to both

cases, the evidence given for the prosecution was similar to a substantial extent in each case. Each party no doubt was a witness against the other, but, on the other hand, there was also independent evidence. In a case of that kind it is almost impossible to keep the cases wholly separate. Although they were tried separately, the High Court gave one judgment, but treated the cases as two cases which had been separately tried. It is said that they imported considerations from one case into the other. When one looks at it, to some extent that was inevitable and to some extent it did so happen. There was, however, a body of separate evidence which was applicable to each case, and that in itself was enough for the convictions; so that, although technically it might have been better to keep the evidence entirely distinct and to have delivered two separate judgments, no injustice has followed from what was done. There is no doubt that in substance the learned Judges had material on which to come to the conclusion to which they did come. They have come to a conclusion which in substance appears to their Lordships to be the right one, and it is only on technical grounds that that conclusion could be questioned.

In those circumstances their Lordships see no good reason for advising His Majesty to interfere in this case and the appeal should be dismissed.

A. M. T.

Appeal dismissed.

Solicitor for appellants: *T. L. Wilson and Co.*

Solicitor for the Crown: *Solicitor, India Office.*

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