

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1890.

November 21.

QUEEN-EMPRESS v. BASTIANO BIN ALEXANDER SILVA.*

Assessors—Trial with the aid of assessors—Commencement of the trial with the aid of assessors—Criminal Procedure Code (Act X of 1882), Secs. 268, 272, 284, 285.

The accused was committed for trial to the Sessions Court on a charge of murder. He pleaded not guilty to the charge, and claimed to be tried. Thereupon the Sessions Judge chose two assessors; but as one of them was ill, his attendance was at once dispensed with, and the Sessions Judge proceeded with the trial with the aid of the other assessor only.

Held, that this procedure was illegal and contrary to sections 284 and 285 of the Code of Criminal Procedure (Act X of 1882).

The attendance of one of the assessors having been dispensed with before the commencement of the trial, the Sessions Judge ought to have chosen another assessor in his place.

A trial in the Sessions Court "with the aid of assessors" does not begin with the reading of the charge, as the assessors are chosen under section 272 of the Code of Criminal Procedure (Act X of 1882) only if the accused does not plead to the charge or claims to be tried.

THIS was an appeal by the Local Government against an order of acquittal in the case of *Queen-Empress v. Bastiano bin Alexander Silva*.

The accused was committed for trial to the Court of Session on a charge of murder under section 302 of the Indian Penal Code.

The accused pleaded not guilty to the charge, and claimed to be tried.

Thereupon two assessors were chosen, but as one of them was ill, his attendance was at once dispensed with, and the Sessions Judge proceeded with the trial with the aid of the other assessor alone. The Sessions Judge, agreeing with the assessor, found the accused not guilty of the offence charged, and acquitted him.

Against this order of acquittal, the Local Government appealed to the High Court,

Shāntārām Nārāyan, Government Pleader, for the Crown.

Shāmrāv Vithal for the accused.

PER CURIAM:—We are of opinion that the order of acquittal must be reversed and the accused re-tried. After the accused had claimed to be tried, the Sessions Judge chose two assessors. The record shows that, as one of them was suffering from fever, the Sessions Judge at once dispensed with his attendance, and proceeded with the trial with the aid of the other only. This proceeding was clearly opposed to sections 234 and 285 of the Code of Criminal Procedure. It cannot be said that in this case the assessor who was suffering from fever was prevented “in the course of” the trial from attending throughout it, for his attendance was dispensed with before the commencement of the trial with the aid of assessors. It is only when proceedings are commenced at which the assessors can give their aid that the trial with their aid, as contemplated in sections 268 and 284, can be said to have commenced. As the assessors are chosen under section 272 only if the accused has refused to or does not plead to the charge or claims to be tried, it is clear that in a Court of Session the trial “with the aid of assessors” does not commence with the reading of the charge. When the Sessions Judge found that one of the assessors chosen by him could not attend at the trial, he clearly ought, in compliance with section 284, to have chosen another in his place.

We set aside the proceedings of the Sessions Judge as illegal, and direct that the accused Bastiano be retried by the Court of Session. As the present Sessions Judge has already expressed an opinion on the merits of the case, we think it advisable that the accused be tried before another Sessions Judge.

Order of acquittal set aside.

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