

Before Mr Justice L. S. Jackson and Mr. Justice Markby.

THE QUEEN v. GAJRAJ AND ANOTHER.

Document—Evidence—Misdirection.

1869  
July 20.

Upon a plea of *alibi* by the prisoners that they had left the place on the 12th of April 1869, and reached Port Canning on the 20th of the same month and were not at Patna on the 30th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper, one bearing the endorsement of the stamp vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prove that the prisoners had signed it. The Judge drew the attention of the Jurors to this document, and adverted to its in these terms: ‘If the written statement was drawn up on an earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was bought, *i. e.* the 18th.’

*Held*, that the document should not have been received in evidence; and that there was a misdirection which contributed materially towards the jury finding the prisoners guilty.

JACKSON, J.—I think the objection taken by the *vakeel* for the prisoners in this case must prevail. The objection is that the Judge in his direction to the Jury has drawn their attention to a certain paper which was put in as evidence for the prosecution, and which purported to be a written statement on the part of the two prisoners and other persons. That statement the Judge has adverted to in these words: ‘The prosecutor has put “in a written statement filed in the Sudder Moonsiff’s Court, on “20th April 1868, which is verified at foot by Gajraj under “his own hand. The verification for Anigri is under another “hand. The date of the statement is the 20th, and it is engrossed on two stamps, one purchased on the 13th, and one on the “18th. If the written statement was drawn up on an earlier “date than the date it bears, it could not have been prepared “earlier than the day on which the principal stamp was bought “*i. e.*, the 18th.’

This document was apparently relied upon by the prosecution as an answer to evidence adduced on the part of the prisoners to prove an *alibi*; namely, that the prisoners on and for some time before the date of the murder, had been far away from Patna, that is to say, at Port Canning, in the neighbourhood of Calcutta. The murder took place on the 30th May, and the case

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made for the prisoners was, that they had left Patna on the 5th Baisakh, and reached Port Canning on the 25th Baisakh. Those dates correspond with the 12th and 22nd April 1868. Now the way in which this document was put in, was that a person named Feuzal Huq, who describes himself as a mohurrir of the Sudder Moonsiff's Court, appeared at the trial, and gave evidence in these words: "This written statement of Ram Tohel Sing, "Rang Lal Sing, Gajraj Sing, Pratap Sing, Anigri Sing, and "Gandowri Sing, was filed by Munshi Durga Charan, on the "20th April 1868, and it is dated the same day. The stamp "appear to have been purchased on the 13th and 18th April, "as shown by the stamp vendor's endorsements. The statement "bears the verification of the defendants."

It is quite clear that nothing that is in evidence in any degree connected this written statement with the prisoners. The Judge therefore, if he drew the attention of the Jury to this document at all, which he ought not to have done, and ought not to have received it, should have pointed out, in the first place, that there was nothing to show that it had been signed by Gajraj, or had been signed by any body on behalf of and at the desire of Anigri the other prisoner; but that, also supposing it to have been so signed and presented, it would be quite consistent with the prisoners being, as they alleged, at Port Canning on the 22nd April. They might have signed this document on the 18th, and could very well have been at Port Canning on the 22nd April; and even supposing that they had not arrived at Port Canning on the 22nd April, that would not be to my mind a very material contradiction of their statement that they had been at Port Canning for a considerable time before the murder took place. I think it is impossible to say that the production of this document in evidence, and the terms in which the Judge has referred to it in his direction, have not produced a serious effect on the mind of the Jurors and contributed materially towards their finding the prisoners guilty. I think therefore that we are bound to use the power given to us by section 399 of the Code of Criminal Procedure and annul this conviction, and order a new trial of the prisoners upon the charges exhibited against them.

MARKBY, J.—I am of the same opinion.

*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

IN THE MATTER OF AMIRADDI AND 31 OTHERS.\*

*Penal Code, s. 188—Code of Criminal Procedure, s. 62.*

1887  
July 26.

A Magistrate issued an order warning owners of cattle to take proper care of them, and that in case of disobedience or neglect they would be punished according to law, and did punish them for disobedience under section 188 of the Penal Code.

*Held*, that the Magistrate was not competent, under section 62 of the Code of Criminal Procedure, to pass such an order. The order contemplated under this section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal.

That the conviction under section 188 of the Penal Code was illegal.

NORMAN, J.—These cases have been sent up by the Judicial Commissioner of Assam. It appears that the Deputy Commissioner of Seeksagor finding that great inconvenience and mischief were caused by cattle found straying on the high roads about the station and in the bazar, on the 13th of March last issued an order warning owners of cattle to take proper care of them; and that if they let loose their cattle, without any one to look after them, and caused such mischief, they would be punished under Act V. of 1861 and other Laws and Regulations relative to contempt of orders. Notwithstanding this order, people continued to allow cattle and horses to run at large on the roads. The Deputy Commissioner ordered that such cattle should be seized and impounded, and on the owners claiming their cattle caused proceedings to be taken against them for disobedience of the order of the 13th of March. The parties now before the Court have been fined in divers small sums, from one rupee to five rupees. The Judicial Commissioner, there being no appeal, sent the proceedings before this Court, under section 434. And the main questions appear to be, first, whether that order was one which, under section 62 of the Code of Criminal Procedure, the Magistrate was competent to pass; and, secondly, whether the parties now before the Court can legally be punished, under section 188 of the Indian Penal Code, for disobedience of that order. The Judicial Commissioner supposes that the defendants were

\* Reference under section 434 of the Criminal Procedure Code, from the Judicial Commissioner of Assam.

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punishable under Act III. of 1857, but that is not so. The preamble of that Act recites, that "loss and injury are suffered by cultivators and occupiers of land, for damage done to crops and other produce of land, by the trespass of cattle, and that damage is done to the sides and slopes of public roads and embankments by cattle trespassing thereon, and that it is expedient to make provisions for the disposal of cattle found straying," and makes provisions for such cases. But it contains no enactment providing for the punishment of persons causing nuisance to the public and interruption of traffic by allowing cattle to stray in public roads and bazars.

On a careful consideration of the 62nd section, we have come to the conclusion that the order of the 13th of March is not one which a Magistrate is competent to make under the provisions contained in it. The order in question is of the nature of a bye-law—an attempted exercise of a supposed power of legislation on the part of the Deputy Commissioner. The Code of Criminal Procedure was passed, as appears by its preamble, to simplify the procedure of certain Courts of Criminal Judicature. It certainly would be very extraordinary to find in such a Code powers given to Magistrates to make regulations or bye-laws for the government of Municipalities. It is clear that the order contemplated by section 62 is a particular and specific order addressed to a particular persons or particular person to do or abstain from a particular act or particular acts. An order in short of the nature of an injunction or command which the Magistrate is to make in a judicial capacity as the Judge in a Criminal Court, is not a regulation or a law.

We think therefore that the parties in question could not be convicted under section 188 of the Indian Penal Code of disobedience of the order of the Deputy Commissioner, by allowing their cattle to stray about the roads. We therefore quash the conviction. The Deputy Commissioner seems to have supposed that he could have proceeded against the offenders under section 34, Act V. of 1861. That seems to be a mistake. But probably some of them might have been properly punished under section 283 of the Indian Penal Code.