

[APPELLATE CRIMINAL.]

Before Mr. Justice Norman, Offg. Chief Justice, and Mr. Justice Bayley.

THE QUEEN v. AMIRUDDIN (APPELLANT)

Summing up to Assessors by the Judge—Waging War against the Queen—¹⁸⁷¹ Conspiracy to wage War—Treason—Misprision of Treason—Limitation of ^{Feby. 25.} Period of Prosecution—Documents, admissibility of, in Evidence—Penal Code (Act XLV of 1860), s. 121—Code of Criminal Procedure (Act XXV of 1861), s. 379—7 Will. III, c. 3, s. 5.

Although the Code of Criminal Procedure does not expressly provide for summing up of the evidence in a trial with the aid of assessors, there is nothing in the Code to prevent a Judge from summing up the evidence to the assessors.

Where one of the two assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other assessor concurs with him, it cannot be said that the assessors have given no reason for their opinion.

The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the Queen, under section 121 of the Indian Penal Code, are offences under the Penal Code only, and are not treason or misprision of treason; and therefore the provisions of the Statute 7 Will III, c. 3, s. 5 (1), are not applicable.

The *Gazette of India*, or *Calcutta Gazette*, containing official letters on the subject of hostilities between the British Crown and Mahomedan fanatics on the frontier, were rightly admitted in evidence under sections 6 and 8

(1) 7 Will. III, c. 3, s. 5.—* * * done within the Kingdom of England, land, dominion of Wales, or town of Berwick-upon-Tweed, after the said March 1696, no person or persons whatsoever shall be indicted, tried, or prosecuted, for any such treason as aforesaid, or for misprision of such treason, that shall be committed or

land, dominion of Wales, or town of Berwick-upon-Tweed, after the said 25th day of March 1696, unless the same indictment be found by a grand jury within three years next after the treason or offence done or committed."

*Criminal Appeal, No. 784 of 1870, from an order of the Sessions Judge of Dinapore, dated the 27th August 1870

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of Act II of 1855 (1), as proof of the commencement, continuation, and determination of hostilities. Similarly, under section 6, a printed letter from the Secretary to the Government of the Punjab to the Secretary to the Government of India was properly resorted to by the Court for its aid as a document of reference.

"It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained.

THE prisoner was tried, before the Judge of Dinapore, upon seventeen different charges, under section 121 of the Indian Penal Code, of abetting the waging of war against the Queen, and was convicted by the Judge, concurring with assessors, on twelve of these charges, and was sentenced to transportation for life and forfeiture of all his property. Of these twelve charges it is necessary only to notice four,—*viz.*, the 6th, the 13th, the 14th, and the 15th.

6th—That he, in or about the years 1862-63, abetted the waging of war against the Queen, by engaging in a conspiracy with Ibrahim Mandal of Islampore, Abdulla of Patna, and others, for the purpose of waging such war, and in pursuance of such conspiracy, at divers times and places, instigated divers persons—*viz.*, Martaza, Manulla, and Baboo Sheikh—to the waging of such war; and that he has thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session.

(1) Act II of 1855, s. 6.—"All such Courts and persons aforesaid shall take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation and termination of hostilities between the British Crown and any other State, and also of the existence, title, and national flag of every Sovereign or State recognized by the British Crown. In all the above cases such Court or person may resort for its aid to appropriate books or documents of reference."

Section 8.—"All proclamations, Acts of State, whether legislative or executive, nominations, appointments, and other official communications of the Government appearing in any such Gazette" (any Government Gazette of any country, colony or dependency under the dominion of the British Crown) "may be proved by the production of such Gazette, and shall be *prima facie* proof of any fact of a public nature which they were intended to notify."

13th.—That he, in or about the years 1862-63-64-66-68, abetted the waging of war against the Queen, by entering into a conspiracy with Ibrahim Mandal of Islampore, Abdulla of Patna, and others, for the purpose of waging such war; and in pursuance of such conspiracy, at divers times and places, procuring divers persons,—viz., Shiki Mandal, Shariatulla Myatulla, Abdulla Mandal, and Salim Mandal,—to contribute money in order to the waging of such war; and that he has thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session.

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14th.—That he, in or about the year 1865, at or near Kamlabari, abetted the waging of war against the Queen, by entering into a conspiracy with Ibrahim Mandal of Islampore, Abdulla of Patna, and others for the purpose of waging such war; and in pursuance of such conspiracy, forwarding money to Ibrahim Mandal of Islampore, in order to the waging of such war; and that he has thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session.

15th.—That he, in or about the year 1868, at or near Narainpore, abetted the waging of war against the Queen, by entering into a conspiracy with Ibrahim Mandal of Islampore, Abdulla of Patna, and others, for the purpose of waging such war; and in pursuance of such conspiracy, collecting property for defraying the expense of such war in order to the waging of such war, and that he has thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Among the documentary evidence adduced and admitted against the prisoner, were the following:—

The Calcutta Gazette of the 16th of June 1858, containing a Despatch from the Deputy Adjutant-General of the Army, dated 27th May 1858, forwarding a Report from Major W. Middleton, 17th Madras Native Infantry, of the successful operations of the Column under his command, on the banks of the Jumna, near the village of Gharra, on the 9th May, published by the order of the Governor General.

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The Gazette of India of the 30th January, 1864, containing a General Order by the Governor General of India in Council, dated 29th January 1864, and several Reports and Despatches from the Commanding Officers, detailing military operations undertaken against the rebels on the North-Western frontier, and reporting their result, for the information of the Governor General in Council and the Commander-in-Chief.

The Gazette of India of the 9th November 1868, containing a letter from the Quarter-Master General, dated the 5th instant, forwarding, by direction of the Commander-in-Chief, copies of Despatches from Major-General A. T. Wilde, C. B., C. S. I., commanding the Hazara Field Force, detailing the operations of the force under his command, published by the direction of the Viceroy and Governor General in Council.

Also a printed official letter from the Secretary to the Government of the Punjab to the Secretary to the Government of India.

The prisoner appealed from the conviction and sentence.

Mr. M. Ghose for the prisoner.

The *Standing Counsel* appeared on behalf of the Crown, but was not called upon.

The arguments raised on behalf of the prisoner appear from the judgment of the Court, which was delivered by

NORMAN, J. (who after stating the conviction, and reciting the 6th, 13th, 14th, and 15th charges, continued):—

Mr. Ghose, as counsel for the prisoner, after making an objection to the validity of the conviction, on the ground of alleged irregularity in the conduct of the trial, and contending that certain classes of evidence admitted by the Judge had been improperly received, went into a most elaborate and careful examination of the evidence, both oral and documentary in detail.

The first point raised by him was that the trial was not conducted in accordance with the provisions of the Code of Criminal Procedure, inasmuch as it appears that the Judge, at the

conclusion of the reply of the Government prosecutor, and before calling upon the assessors to give their opinions, summed up the case to the assessors.

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No statement as to the terms in which the Judge summed up appears on the record. Mr. Ghose pointed out that while by section 379 of the Criminal Procedure Code, in trials by jury, the Court requires the Judge to sum up the evidence, no such provision is made for the case of trials by the Court of Session with the aid of assessors. He referred to some observations of Mr. Justice L. S. Jackson, in *The Queen v. Poly* (1), where this distinction is adverted to.

We may observe that although the Code of Criminal Procedure does not expressly provide for summing up the evidence in a trial with the aid of assessors, there is nothing in the Code to prevent a Judge from summing up the evidence which is in fact only a mode of going through and discussing it with the assessors. In a case like the present, where a prisoner was being tried on seventeen charges, where the evidence was very voluminous—fifty-five witnesses having been examined for the

(1) *Before Mr. Justice Lock and Mr.*

Justice L. S. Jackson.

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of that fact, section 336. The attestation of the Magistrate is *prima facie* proof of such examination, and it is to be presumed, until the contrary be shown, that the proceedings were regular.

The judgment of the Court was delivered by

JACKSON, J.—We think the prisoner has been properly convicted, and we see no reason to interfere with the sentence.

There are two points connected with the proceedings at the trial on which it is proper to remark.

One is that but for the prisoner's admission before the Court of Session that his statement before the Magistrate had been voluntarily made, the Judge would have required evidence

Secondly.—The Judge appears to have addressed the assessors in the way of summing up the evidence. This is not in accordance with the Procedure Code. The Assessors are members of the Court and are to give their opinions orally for the consideration of the Judge, who afterwards gives his decision. In the case of a Jury, who have the final decision on the facts, it is the duty of the Judge to sum up, and, when necessary, to direct them.

* Appeal No. 114 of 1869, from the order of the Sessions Judge of Dina-pore, dated the 25th January 1869.