

*Before Mr. Justice Macpherson and Mr. Justice Morris.*

QUEEN *v.* SHAM BAGDI AND OTHERS.\*

1873  
Oct. 8

*Criminal Procedure Code (Act X of 1872), s. 263—Verdict of Jury.*

THE judgment of the Court was delivered by,

MACPHERSON, J.—The evidence against the prisoners, in whose interest the Judge has referred this case to the High Court under s. 263, is certainly not very strong, inasmuch as it consists solely of the statement of the prosecutrix. Nevertheless the evidence is quite sufficient, if believed. The Jury did believe it: and how can we say that they were wrong in doing so? It is as likely as not that they were right. And is the High Court to set aside a verdict in such a case?

See also  
14 B. L. R.  
Ap 1.

I think we ought not to interfere with a verdict, unless we can say decidedly that we think that it is clearly wrong. If we are to interfere in every case of doubt,—in every case in which it may with propriety be said that the evidence would have warranted a different verdict,—then, we must hold that real trial by Jury is absolutely at an end, and that the verdict of a Jury is of no more weight than the opinion of Assessors. I presume that if this were the intention of the Legislature, it would have said so. But the Legislature has not said so.

As it is, I consider that the Court should exercise the powers vested in it by s. 263 only in cases in which it finds the verdict of the Jury clearly and undoubtedly wrong. This is not such a case, although I may admit that there may be room for doubts being entertained as to the facts. Therefore I think the verdict of the Jury should remain undisturbed, so far as this Court is concerned, and that the Sessions Judge must pass sentence on the prisoners.

\* Reference to the High Court under s. 263 of Act X of 1872 of the Criminal Procedure Code by the Officiating Sessions Judge of Hooghly, dated the 13th September 1873.