Before Mr. Justice Loch and Mr. Justice Glover.

1868
July 13.

THE QUEEN *v.* CHANDRAKANT CHUCKERBUTTY.*

Privileged Communications—s. 24 *of Act II. of* 1855—*Mookhtear and Client—Verdict of Jury—Procedure in Revision.*

The question whether a communication between the accused and a witness is privileged, is a question of law for the Judge to decide. Communications between mookhtears and their clients are not privileged within section 24 of Act II. of 1855. The High Court sitting as a Court of Revision cannot interfere to set aside a verdict of acquittal by a jury, on the ground of misdirection by the Judge.

THIS case was called for by the Court, under section 404 of Act XXV. of 1861.

Chandrakant had been charged with forgery of a receipt, by ante-dating it, with the intention of defrauding the Land Mortgage Bank. The evidence relied on against the accused was the evidence of a witness, who stated that, on the day previous to that on which the document was filed in Court, he had seen the same in the hands of the accused, who showed it to him. On examination it appeared that this witness was, at the time he saw the document, acting as mookhtear of the accused, and it was objected that the showing of the document, if it were shown, was a privileged communication. The jury were told to determine whether, in their opinion, the evidence of the witness showed that what he detailed had taken place between a client and his mookhtear; and it was unanimously found by the jury, that either it was a communication by the accused to his mookhtear as such, or the story of the witness was utterly incredible. The Judge was of opinion that the communication was privileged. A verdict of acquittal was, therefore, recorded, and the accused was discharged.

Baboos *Ashutosh Dhur*, *Chandra Madhab Ghose*, and *Dwarkanath Bhuttacharjee* for the prisoner.

Baboo *Jagadanand Mookerjee* (Junior Government Pleader) for the Crown.

GLOVER, J.—This was a case of forgery in the matter of a receipt, and "the main proof against the accused" (I quote the Sessions Judge's words) "was the evidence of a witness who declared that on the day previous to that on which the document

* Revision under section 404, Code of Criminal Procedure, of proceedings held before the Sessions Judge of East Burdwan, on a charge of forgery.

was filed in Court, he had seen the same in the hand of the prisoner, who had showed it to him."

The Judge, on the prisoner's objection that the substance of the above statement was privileged—the deponent having been at the time of the alleged occurrence the prisoner's mookhtear—put it to the jury to say, whether the communication between the two was as between mookhtear and client, and on the jury finding that it was, he directed the jury to find a verdict of acquittal, on the ground that there was no evidence to support the case for the crown.

It appears to me that the Judge in this direction to the jury made two grave mistakes.

In the first place, the question as to whether the communication, which was alleged to have taken place between the accused and the witness was one as between mookhtear and client, was not a matter for the jury's consideration at all,—it was a point of law for the Judge to decide.

And, secondly, if he had decided, instead of letting the jury do so, that it was such a communication, he was wrong in telling the jury that the communication was privileged. Section 24, Act II. of 1855 says, that barristers, attorneys, and vakeels shall not disclose any communication, &c., &c. From the position of the word "attorney" in the sentence, it is clear that attorneys of the High Court only are meant, and not mookhtears who, if included in the privilege, would naturally follow in their proper order after vakeels. There is, therefore, by law no privilege as to communicating between mookhtears and their principals, and the witness's testimony ought to have been received and laid before the jury. The jury might of course have given what weight they pleased to it; but it is wrongly kept back from them.

The question remains as to whether this Court can interfere in cases where a verdict of acquittal has been recorded, and order a new trial on the ground of misdirection; and in support of the proposition we have been referred to the case of the *Queen* v. *Gorachand Gope.* (1) As it appears to me, the utmost which this decision lays down is, that this Court as a Court of Revision

(1) 5 W. R., 45.

1868

QUEEN v. CHANDRA-KANT CHUCKER-BUTTY.

can interfere with and set aside a verdict of acquittal illegally come to by a Sessions Judge and assessors, and either pass such order as may be legally proper, or order a new trial. The case in question came before the High Court from the Judge of Mymensingh—a non-jury district—and the decision seems to have reference solely to cases tried with the aid of assessors. At all events the only mention therein of a jury is to be found in page 48, where the Court say: "as a Court of Revision, the Court cannot reverse the finding of a jury."

I take the precedent of Gorachand Gope's case, therefore, to refer solely to non-jury trials, and I do not see that this Court has any power to interfere with, or to set aside verdicts of acquittal come to by a jury, notwithstanding that such verdicts have been come to in consequence of misdirection on the part of the Judge.

LOCH, J.—The question raised in this case is of much importance. The question is this: If a prisoner be acquitted by a jury owing to a misdirection in his charge by the Judge, can the High Court as a Court of Revision quash the proceedings, and order a new trial? The judgment in Gorachand Gope's case is pressed upon our attention as supporting the view that this Court can interfere. That case was tried with assessors, and the Court as a Court of Revision held, that even when a party had been acquitted, the Court might set aside the judgment of acquittal for ever in point of law. There is, however, one passage in that judgment which appears to draw a distinction between cases tried by assessors and by a jury, and it is in the following words: "As a Court of Revision, the Court cannot reverse the finding of a jury." In these words reference appears to be made to the proviso in section 406, which lays down that the Sudder Court, in any case revised under Chapter XXIX of the Criminal procedure Code, shall not be competent to reverse the verdict of the jury. This appears to be conclusive that a High Court as a Court of Revision cannot reverse the verdict of the jury, and the fact that the verdict has been come to through the misdirection of the Judge to the jury does not, in my opinion, give the Court any power of interference. I concur with my colleague in thinking that the Judge was in error in his summing up, and that owing to that error the prisoner was acquitted by the jury.