State vs Dalsingar Singh And Ors. on 9 March, 1954

Equivalent citations: AIR1954ALL669

JUDGMENT

Roy, J.

1. This is a reference by the Assistant Sessions Judge of Faizabad under Section 307, Criminal P. C. Seven persons were put on trial before him under Section 435, Penal Code. The trial was by a jury. The jury returned a unanimous verdict of guilty. The learned Assistant Sessions Judge disagreed with that verdict and has made the reference on the ground that the verdict of the jury was perverse and was not sustainable upon the evidence that was produced in the case.

2. The case for the prosecution was briefly this : Bhagwati Prasad Singh, a resident of village Pratappur, carried on fairly extensive cultivation in another village Masodha where he has his own "chhawni". The accused are his 'pattidars' who have been continuously litigating with him for several years. On the night of the 16th and 17th of April, 1950, while Bhagwati Prasad Singh had gone to another village to attend the 'tilak' ceremony of his relation, the accused at about midnight entered his 'khalyan' in village Masodha where 14 piles of wheat and other grain were stored and his men Ram Bharose, Bam Dhani and Muttur were keeping watch. They set fire to those piles intending to cause damage to the grain.

Ram Bharose got up and raised an alarm which woke up Ram Dhani and Mattur who also joined in the alarm. Subsequently other people came to the place. It was alleged that the accused standing outside the boundary wall of the "chhawni" threatened those who wanted to extinguish the fire with dire consequences. The result was that almost all the piles of grain were completely burnt down, causing a loss of about Rs. 3,000/-. It was further alleged that the accused ran away when people of village Navada turned up. The complainant returned to Jalal-pur next day where he received information about this arson. He went to the spot and found that almost his entire 'khalyan' had been burnt down. He then lodged the first information report at police station Jalalpur on 17-4-1951, at 7 P.M.

3. The prosecution examined certain witnesses in the case inclusive of Ehagwati Prasad Singh, Ram Bharose, Muttur and Chattarpal. The learned Sessions Judge discussed their evidence in the charge which he laid before the jury and wrongly specified that only three witnesses, namely, Ram Bharose, Muttur and Chattarpal "deposed that the accused actually set fire to the 'khalyan'." We have gone through the evidence of these witnesses and we have not been able to find anywhere in their testimony that they deposed that the accused actually set fire to the 'khalyan'." On the contrary what had been stated by them was that Ram Bharose who was the earliest to rise could not see how the fire was set, and the others who woke up later on only saw the accused persons going out from the 'khalyan' and standing out and threatening those who came there that they would be dealt with

severely if they helped in extinguishing the fire.

This evidence was not laid in its true perspective by the learned Sessions Judge before the jury in drawing their attention to the fact that it was only a circumstantial piece of evidence. The Judge did not also direct the attention of the jury to the fact as to what is required of circumstantial evidence in order to establish a charge against an accused beyond any shadow of doubt. In fact, we find that the charge to the jury was entirely one-sided to which there was a clear misdirection as well as a non-direction. In the concluding portion of the charge the learned Assistant Sessions Judge drew the attention of the jury to the delay in the lodging 01 the first information report, to the fact that the prosecution had not examined a single independent witness, to the fact that it was a dark night and any miscreant who sets fire will in the normal course run away, and also to the fact that Bhagwati Singh had made repeated and futile attempts to get the accused convicted, and that it would not, therefore, be safe to convict the accused unless there was clear, convincing and independent evidence in the case. But, as we have already noticed, the learned Assistant Sessions Judge failed to mention in the charge that the whole case rested upon the circumstantial evidence, and he also erred in specifying in the charge that Ram Bharose, Muttur and Ghattarpal deposed that "the accused actually set fire to the 'khalyan'." In our judgment, the verdict of the jury was considerably influenced by this mis-direction and non-direction.

4. The proper method of approach in matters of references under Section 307, Criminal P. C. recently came to be considered by the Supreme Court in -- 'Akhlakali v. State of Bombay', AIR 1954 SC 173 (A). Their Lordships in referring to the Privy Council decision in -- 'Ramanugarh Singh v. Emperor', AIR 1946 PC 151 (B) where the Privy Council resolved the conflict of authorities which was till then prevalent in India and accepted the view that the High Court will only interfere with the verdict of the jury if it find's the verdict "perverse in the sense of being unreasonable", "manifestly wrong" or "against the Weight of evidence" and quoted the following observation of their Lordships :

> "Under Sub-section (1), two conditions are required to justify a reference. The first, that the Judge must disagree with the verdict of the jury, calls for no comment, since it is obviously the foundation for any reference. The second, that the Judge must be "clearly of opinion that it is necessary for the ends of justice to submit the case" is important, and in their Lordships' opinion provides a key to the interpretation of the section. The Legislature no doubt realised that the introduction of trial by jury in the mofussil would be experimental, and might lead to miscarriage of justice through jurors, in their ignorance and inexperience, returning erroneous verdicts. Their Lordships think that the section was intended to guard against this danger, and not to enable the Sessions Judge and the High Court to deprive jurors, acting properly within their powers, of the right to determine the facts conferred upon them by the Code.
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> If the jury have reached the conclusion upon the evidence which a reasonable body of men might reach, it is not necessary for ths ends of justice that the Sessions Judge should refer the case to the High Court merely because he himself would have reached a different conclusion upon the facts, since he is not the tribunal to

determine the facts. He must go further than that and be of opinion that the verdict is one which no reasonable body of men could have reached upon the evidence. The powers of the High Court in dealing with the reference are contained in Sub-section (3). It may exercise any of the powers which it might exercise upon an appeal, and this includes the power to call fresh evidence conferred by Section 428. The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused.

In their Lordships' view, the paramount consideration in the High Court must be whether the ends of justice require that the verdict of the jury should be set aside. In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial Court, and if the jury take one view of the evidence and the Judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case, a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded :

5. Their Lordships went on to observe that that was the correct method of approach in references under Section 307, Criminal P. C. If the facts, and circumstances of the case are such that a reasonable body of men could arrive at the one conclusion or the other, it is not competent to the Sessions Judge or the High Court to substitute their verdict in place of the verdict which has been given by the jury. The jury are the sole judges of the facts and it is the right of the accused to have the benefit of the verdict of the jury. Even if the Sessions Judge or the High Court would, if left to themselves, have arrived at a different verdict, it is not competent to the Sessions Judge to make a reference nor the High Court to accept the same and substitute their own verdict for the verdict of the jury provided the verdict was such as could be arrived at by a reasonable body of men on the facts and cir-cumstances of the case.

6. Having regard to the position which we have set out above as governing the present case, we are clearly of opinion that the facts and circumstances of the case and the evidence were not properly put before the jury by the learned Assistant Sessions Judge and the charge to the jury suffered both under mis-direction and non-direction which led the jury to come to a conclusion which they may or may not otherwise have arrived at if the evidence had been properly put and the circumstances properly de-tailed. Under these circumstances, we are led to the conclusion that there has not been a proper trial and the case must go back to the lower court for a retrial. Accordingly, we accept the reference for reasons stated by us, but not on the ground on which it has been recommended by the learned "Assistant Sessions Judge, and set aside the verdict of the jury and send hack the case to the lower court for trial in accordance with law.