
(1871) 02 CAL CK 0001

Calcutta High Court

Case No: Criminal Appeal No. 784 of 1870

Amiruddin

APPELLANT

Vs

The Queen

RESPONDENT

Date of Decision: Feb. 25, 1871

Final Decision: Dismissed

Judgement

Norman, Offg. C.J.

1. 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.

2. 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*³, where this distinction is adverted to.

3. 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 prosecution, and upwards

of thirty for the defence--we think that a Judge sitting with assessors would have failed in his duty, or at least showed a want of sound discretion, if he had not indicated the matters necessary to be established by proof in order to convict the prisoner of the offence or offences charged. With full notes of the evidence and all the documents before him, we should have been surprised if we had found that the Judge had failed to assist the assessors by reminding them of the results of the evidence, and pointing out the bearing of the several parts of such evidence on the questions to be considered.

4. In cases of trial by jury, the summing up is all-important, because there is no appeal from the decision of a jury. In order to know what is the proposition which the jury have affirmed, what it is that they have really decided in finding a verdict of guilty, it is generally necessary to look to the questions left to them by the Judge in summing up; and, therefore, in order that it might appear whether the conviction is legal and proper, it was necessary in the Code of Criminal Procedure to provide that in trials by jury a statement of the Judge's direction should form part of the record. A provision to that effect is contained in section 379. In trials before a Judge sitting with assessors, there is an appeal on the facts. The Appellate Court can examine the grounds of the finding of the Judge and assessors. It is, therefore, not necessary to preserve any record of the discussion between the Judge and the assessors. But because the Code is silent as to such discussion, it does not follow that nothing of the sort is to take place. Mr. Ghose urged that the object of appointing assessors was to assist the Judge, not for the Judge to assist, or by such assistance to influence, the assessors. But the real object of appointing assessors is to assist the Court, and the discussion and statement of points by a Judge sitting with assessors cannot be said to be otherwise than in furtherance of the object of getting the best assistance for the proper adjudication of the case.

5. Mr. Ghose next contended that as there is no record of the Judge's summing up to the assessors, the Court is not in a position to know how far the assessors may have been influenced by the Judge's observations, and that therefore less weight is to be attributed in this case than in ordinary cases to the fact that the assessors have concurred with the Judge in finding the prisoner guilty.

6. Mr. Ghose further contended that the assessors had given no reasons for their opinion,--the last observation is not quite well founded. The assessors do not merely find the prisoner guilty. The first assessor, with whom the other concurs, says:--"I think 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." It is clear then that the assessors knew what were the points which they had to consider, and there is nothing on the record to lead us to think that they did not form an independent judgment on the evidence.

7. Mr. Ghose next pointed out, that all the acts with which the prisoner is charged took place more than three years ago. He contended that by English law, as embodied in Statute 7 Will. III, c. 3, s. 5, no person can be indicted or prosecuted for treason, unless

within three years after the commission of the offence. He argued that this law had been introduced as part of the law of England, at least as regards persons liable to be tried in the High Court in its Original Criminal Jurisdiction, by the Charter, and that before the passing of the Penal Code, the English law of treason was applicable to offences committed against the sovereign by Natives of India otherwise than within the limits of the town of Calcutta; and that if this provision was in force at the time of the passing of the Penal Code, it has not been repealed by anything in that Code.

8. The answer to this argument is that the offences with which the prisoner stands charged are not treason or misprision of treason, to which alone the provisions of 7 Will. III, c. 3, s. 5, are applicable, but offences against the Penal Code.

9. In taking upon itself the administration of criminal justice in Bengal, Behar, and Orissa, the English Government, so far from abrogating the existing law of the land, and introducing English criminal law, undertook to administer the law as it stood,--that is the Mahomedan criminal law, subject to such modifications as might be found necessary. Accordingly, we find that crimes committed by Natives of India against the State, as by levying war against the Crown and the like, outside the town of Calcutta, were formerly punished, not as treason under English law, but as offences against the law of the land,--i.e., Mahomedan law, after taking the futwas of the Mahomedan law officers. See the case of Meerza Beg, who was declared liable to tazeer at the discretion of the rulers of the country, and sentenced to death, in 1799--Harington's Analysis, Volume I, pages 336--340, note; Regulation IV of 1799.

10. The special limitation of the period of prosecution in cases of treason and misprision of treason, under Statute 7 Will. III, c. 3, s. 5, is an exception to the general rule in criminal cases, and in enacting section 121 of the Indian Penal Code, the Legislature has not thought fit to limit in any way the period within which a prosecution for an offence against that enactment may be commenced, and consequently such limitation does not form part of the Penal Code under which the prisoner has been convicted by the Sessions Judge and assessors.

11. Mr. Ghose next objected that the Calcutta Gazette of the 16th of June 1858, and the Gazette of India of the 30th January 1864 and of the 9th of November 1868, had been improperly received in evidence.

12. They are, however, clearly admissible in evidence, u/s 8 of Act II of 1855, to prove the proclamation and official communications of the Government relating to the war on the frontier.

13. By section 6, the Court is bound to take judicial notice of the commencement, continuation, and termination of hostilities between the British Crown and any other State, and is empowered to resort to appropriate books and documents of reference. It is to this end that the Exhibit D. 1, a printed official letter from the Secretary to the Government of

the Punjab to the Secretary to the Government of India, also objected to by Mr. Ghose, is admissible in evidence. Of course it is not evidence of the facts mentioned in detail by the writer of the letter.

14. These several documents are evidence, and may be referred to u/s 6, Act II of 1855, as to the commencement and continuation of the war between the Government and the Mahomedan fanatics on the frontier, at Malka, Sittana, Umbeyla and other places.

15. Mr. Ghose next objected that there had been an irregularity in the trial, because the Government Gazettes and the letter of the Secretary to the Government of the Punjab were not read at length and interpreted to the prisoner in open Court in a language understood by him, which he contended was required by the 200th section of the Code of Criminal Procedure.

16. Section 200 relates to the oral evidence of the witnesses. As to the documentary evidence, we are of opinion that although, undoubtedly, a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet, put in, as these Gazettes were, for the purpose of merely giving formal proof of that which was an incontestable fact, that the Government was issuing proclamations as to the war on the frontier, it would not be necessary to interpret them at length. It would be sufficient if the prisoner was made to understand what they were, and for what purpose they were used.

17. To interpret them at length from beginning to end would have been a mere useless waste of time, and would have probably embarrassed the prisoner, because it would be difficult, or almost impossible, to make him understand that the detailed statements read to him were not being used against him as proof of the several detailed facts stated therein. "We have no reason to believe that the prisoner was not made fully aware of their nature, and of the object with which they were put in, and it is stated in the proceedings that the prosecutor addressed the Court in Urdu, a language understood by the prisoner.

18. Mr. Ghose next referred to the 28th section of Act II of 1855, and contended that the prisoner being charged with treason no offence charged against him could be proved by the evidence of a single witness. It is not necessary to discuss or determine what rule of evidence applies to trials for offences against the State under the Penal Code. Even if the Statute 7 Will. III, or the earlier English law, applied, which it certainly does not, the evidence we have to deal with is sufficient in quantity to satisfy the strictest rule.

(After noticing the objections by the counsel for the prisoner to the admission in evidence of two letters produced against the prisoner, and stating the facts relating to them, His Lordship proceeded):--

Mr. Ghose argued that the discredit thrown on the evidence for the prosecution by the falsity of this part of the case ought to lead us to disbelieve the rest of the evidence against the prisoner.

To that there are two answers: first, that though we distrust the evidence relating to the two letters very much--though we could not rely upon it or accept it as true, it is not proved to be false; secondly, the facts to which those letters relate are isolated and stand quite apart from the general content of the evidence. Omitting, as we have, all further allusion to the evidence of the witnesses who speak to the letters, the general case against the prisoners stands untouched. Suppose it be true that Tafiula concocted the letter produced by him to ruin a man whom he considers to be his enemy, there is no ground for supposing that other witnesses wholly unconnected with him are not speaking the truth.

(His Lordship here commented on the evidence of the witnesses in detail, lastly of one Martaza, and proceeded):--

Mr. Ghose's chief point as to the evidence of Martaza was that the offence was not shown to have taken place since the commencement of 1862, when the Penal Code came into operation. But, according to the evidence, Martaza was only four or five months with the crescentaders, and while at Malka, he heard of the affair at Tupi Miani, which took place in 1863. Martaza seems to have come straight from the prisoner's house. This would make it probable that it could hardly have been much earlier than the middle of 1862, when Martaza left the prisoner's house, and that Martaza and the witnesses are right when they put his departure from that house about eight years before the trial, or in other words in the middle of 1862.

Mr. Ghose attempted to show that there were discrepancies in the evidence of these witnesses. But the evidence as regards Martaza appears to us to be reliable.

(His Lordship continued to comment on the evidence of the witnesses in detail, and proceeded):--

This evidence appears to us abundantly sufficient to justify the finding of the Judge and assessors that the prisoner is guilty on the 6th charge,--viz., that he abetted the waging of war against the Queen by engaging in a conspiracy with Ibrahim Mandal and others, and in pursuance of that conspiracy instigated Martaza, Manulla and others to the waging of such war.

19. The next subject we propose to consider is the 13th charge, which relates to the collecting of money to forward the objects of the conspiracy.

(After further commenting on the evidence in detail, His Lordship proceeded):--

The evidence seems to us full and clear. The Judge and assessors could scarcely have come to any other conclusion than that at which they arrived,--viz., that the 13th and 15th charges were brought home to the prisoner.

(After further commenting on the evidence in detail, His Lordship proceeded):--

The prisoner is shown to belong to a peculiar sect distinct from the great classes, Sunnis and Shias, to which the Mahomedans of this country chiefly belong, to be a religious enthusiast, a zealot who goes round from village to village telling people to fast and pray, not to commit evil, to abstain from superstitious observances such as offerings at the tombs of Saints, to give alms, to go on pilgrimages, and to contribute, if but a handful of rice out of each meal, to the expenses of war against infidels. It cannot be supposed that a man of such character would be guilty of the dishonesty of habitually appropriating the collections so made to his own purposes. Unless we are to assume that he was guilty of embezzlement, the money collected must have been forwarded by the prisoner to the heads of the conspiracy.

20. I think then that it is impossible to say that the Judge and assessors were not right in convicting the prisoner on the 14th charge.

21. It is not necessary to go into the other charges which are merely subordinate.

22. Great stress was laid by Mr. Ghose on the fact of the animosity or supposed enmity arising out of religious differences of certain persons named Abbas Ali, Tafiulla, Nasral-Huq and Itwari.

23. But the evidence in this case shows graver motives than even the hot dispute on matters of ceremonial such as "ameen" "ruffadeen" "buratikhana" for the hostility which many of his neighbours may entertain towards the prisoner.

24. He is shown to have worked on the feelings of boys of fifteen or sixteen, many of whom were enticed away from their homes and induced to join in the jihad. Some of these have been followed, and have been brought back by their parents. Of those who persevered considerable numbers appear never to have returned or been heard of again. These, no doubt, if not killed in battle, have either perished from exposure or disease, or fallen in conflicts with jealous or hostile tribes on the North-west frontier.

25. The offences of which the prisoner has been convicted, are punishable under the 121st section of the Indian Penal Code with death or with transportation for life with forfeiture of property. The sentence of transportation for life, with forfeiture of property, appears to us to be proper. We reject the appeal.

¹ 7 Will. II., c. 3, s. 5.--* * * From and after the said 25th day of 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 done within the Kingdom of England, 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.

² Act II of 1856, 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."

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

The 14th April 1869.

The Queen v. Joge Poly, Appellant.

Appeal No. 114 of 1869, from the order of the Sessions Judge of Dinapore, dated the 26th January 1869.

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 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.

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.