

(1902) 08 CAL CK 0013

Calcutta High Court

Case No: Criminal Revision No. 755 of 1902

Narayan Changa

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Aug. 21, 1902

Judgement

Prinsep and Mitra, JJ.

The Assistant Sessions Judge, in a trial of the Petitioners under charges of rioting (Section 147) and rioting armed with deadly weapons (Section 148) as well as other charges connected with injuries caused in the course of that rioting, recorded a verdict of the jury convicting the Petitioners of charges connected with rioting, but acquitting them of the other charges. It appears that the Assistant Sessions Judge stated that in the first instance the jury were not unanimous and that after retiring they returned, delivered an unanimous verdict and after delivering a verdict convicting the Petitioners of the charges of rioting, the foreman of the jury attempted to say something. He was stopped by the Judge and it is this matter which has led to the proceedings now before us. The Assistant Sessions Judge attempts to justify his conduct by stating that, when the verdict of the jury had been so delivered, it was unnecessary to hear anything further from them. We cannot agree in this view. After the delivery of a verdict by a jury, it may be their desire to add a recommendation to mercy and in this country it is specially undesirable to stop the jury at such a stage of the proceedings, for it may so happen that before the verdict is recorded, the foreman, of the jury may make some observation in respect of that verdict which may show the presiding Judicial Officer that the jury have not properly understood the case and then it would be the duty of the Sessions Judge not to record the verdict, but to recharge the jury so as to lay the case properly before them. In this particular case, although we have not the statement of the foreman as to what he was about to say, or had said in a manner inaudible to the Sessions Judge, the Sessions Judge has recorded that the pleaders of both sides, who apparently heard the words, agreed as to what was said and we thus learn that, after the delivery of verdict convicting the accused of rioting and rioting armed with

deadly weapons, the foreman of the jury added "the land and the crops are all theirs," meaning thereby that they belonged to the accused. If the Sessions Judge had heard this remark, he would certainly not have passed the extreme sentence provided by the law and we further find that on the facts of this case, these words are very material because they would seem to show that the case for the prosecution was not regarded by the jury as established or, indeed, true. It would be for the jury, in this case, to determine whether the accused who were not the aggressors had or had not exceeded the right of private defence of their property. In this view, we think that the Petitioners have been seriously prejudiced. We accordingly direct that a new trial be held.