

(1880) 05 CAL CK 0018

Calcutta High Court

Case No: None

The Government of
Bengal

APPELLANT

Vs

Mahaddi and Another

RESPONDENT

Date of Decision: May 20, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 457
- Evidence Act, 1872 - Section 32
- Penal Code, 1860 (IPC) - Section 302, 304, 325

Citation: (1880) ILR (Cal) 871

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Prinsep, J.

Mahaddi and Panchoo, together with others were charged u/s 149 of the Penal Code, read alternately with Sections 302, 304, and 325 of the Penal Code, that is, with being members of an unlawful assembly at a time when (i) murder, or (ii) culpable homicide not amounting to murder, or (iii) grievous hurt, was caused by some members of that assembly in prosecution of its common object.

2. The jury absolutely acquitted all except Mahaddi and Panchoo, but with regard to these two men the jury unanimously found that they were guilty only u/s 325, Penal Code,--i.e., of having voluntarily caused grievous hurt without grave or sudden provocation. What then followed is thus recorded by the Sessions Judge: "The Court informed the jury that there was no charge under this section, and requested the jury to re-consider their verdict. The jury accordingly retired for that purpose. They returned to Court at twelve minutes to four o'clock P.M. The Foreman stated they were not unanimous in their verdict against the prisoners. The Court requested them to retire again and consider their verdict. The jury returned at five minutes to

four, and the Foreman stated that the jury by a majority (the number being three to two) found all the accused not guilty of all the charges."

3. With regard to the verdict against Mahaddi and Panchoo, the Sessions Judge has further recorded his own opinion that he could not accept that verdict, because "(i) there was no charge against them under this Section (325), and (ii) in his opinion there was no evidence u/s 325 against them."

4. An appeal has been made by Government against the acquittal of Mahaddi and Panchoo, on the ground that the Sessions Judge was bound to accept the unanimous verdict of the jury finding these prisoners guilty u/s 325, Penal Code; that he was not competent to direct them to re-consider their verdict; that that verdict was a good verdict, although the offence punishable u/s 325, Penal Code, did not form the subject of a separate charges and that there was evidence on which the jury might have convicted the prisoners u/s 325, Indian Penal Code.

5. After hearing the Deputy Legal Remembrancer for Government and the Pleader of the prisoners, as well as Mr. Reily as amicus curiae, we are of opinion that, on all these grounds, the Sessions Judge has committed an error of law, and that the unanimous verdict of the jury convicting Mahaddi and Panchoo u/s 325, Penal Code, should have been received.

6. In our opinion, under the terms of Section 457 of the Code of Criminal Procedure, it was competent to the jury to return a verdict of guilty only u/s 325, Penal Code, although that offence did not form the subject of a separate charge, but was entered in a charge coupled with Section 149, Penal Code. Section 457 of the Code of Criminal Procedure enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts, constitute a minor offence. Thus in the present case the prisoners were not charged themselves with having caused the grievous hurt, but were charged with being members of an unlawful assembly, some of the members of which, in prosecution of its common object, caused that grievous hurt. The verdict of the jury was, as we understand it, that there was no assembly, but that the grievous hurt was nevertheless caused by these two prisoners. Section 263 requires that "the jury shall return a verdict on all the charges on which the accused is tried." The requirements of the law are satisfied if, in returning their verdict, a jury acting u/s 457 returns a verdict of conviction of a minor offence forming part of one of the charges. The verdict which the Sessions Judge refused to take was in our opinion a good and legal verdict.

7. Section 263 declares under what circumstances a Sessions Judge may require a jury to retire for further consideration,"--that is to say, when the jury are not unanimous." If the jury are unanimous, the verdict must be received unless it is contrary to law. If the Sessions Judge disagrees with an unanimous verdict which is not contrary to law, he should proceed as laid down in para. 5, Section 263. In the case now before us there is nothing in the verdict convicting the prisoners u/s 325,

Penal Code, which is contrary to law. But as Mr. Reily very properly brings to our notice, the Sessions Judge might have said to the jury that if they were of opinion that the prisoners could be convicted only u/s 325, Penal Code, they must return a verdict of acquittal, because there was no legal evidence to sustain such a verdict. That was not the manner in which the Sessions Judge treated this case as is shown from the extract from the record which has been quoted, but even under such circumstances the Sessions Judge would have acted contrary to law and afforded just grounds for this appeal because there is legal evidence which, if believed, would have been sufficient to sustain the verdict. We refer more particularly to the statements which are declared by witnesses to have been made by the wounded man that his injuries were caused by these two prisoners. These injuries have caused his death, and therefore his statements were legal evidence u/s 32 of the Evidence Act, on which the jury might form their verdict.

8. For these reasons, we direct that the verdict of the jury acquitting Mahaddi and Panchoo be set aside; that in its place the unanimous verdict of the jury convicting Mahaddi and Panchoo u/s 325, Penal Code, be entered on the record; and we do accordingly sentence Mahaddi and Panchoo to seven years" transportation.

9. The Sessions Judge will issue the usual warrants.