

(1868) 07 CAL CK 0032

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Chandrakant Chuckerbutty

RESPONDENT

Date of Decision: July 13, 1868

Judgement

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 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.

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

3. 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.

4. 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.

5. 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, 5 W. R., 45. As it appears to me, the utmost which this decision lays down is, that this Court as a Court of Revision 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."

6. 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. The 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.

¹Professional communications.

[Sec. 24:--A Barrister, Attorney, Vakeel shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment. The privilege, however is that of the client, and if any party to a suit shall give evidence therein, at his own instance, he shall be deemed thereby to have waived his privilege and to have consented to the disclosure by such Barrister, Attorney, or Vakeel, of any matter as aforesaid, which may be relevant, and which the Barrister, Attorney, or Vakeel, would have been bound to disclose, but for the privilege of his client and the Barrister, Attorney, or Vakeel shall be bound upon examination to disclose any such matter.]