
(1929) 12 BOM CK 0015

Bombay High Court

Case No: None

Emperor

APPELLANT

Vs

Atta Mohammad

RESPONDENT

Date of Decision: Dec. 6, 1929

Acts Referred:

- Penal Code, 1860 (IPC) - Section 148, 149, 34

Citation: (1930) 32 BOMLR 529

Hon'ble Judges: Viscount Sumner, J; Thankerton, J; Binod Mitter, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Viscount Sumner, J.

As this is a capital case, and as the conviction took place so long ago as February last, their Lordships think it best to give their reasons for the conclusion at Which they have arrived, without taking further time to put them into writing.

2. The appellant's conviction and sentence having been confirmed on appeal, he applied to their Lordships last July for special leave to appeal. His petition was allowed, his point being in substance that he had been convicted without having had a fair opportunity of knowing what the charge was that he had to meet, and particularly of raising defences other than the one raised, or of relying on any circumstances which would have reduced the offence to a minor one. Under those circumstances their Lordships did what they rarely have occasion to do, and advised His Majesty in Council to grant special leave *em abundanti cautela*, so that it might be discussed at length whether he had in truth been deprived of so important an opportunity.

3. Mr. Morey has put the case: before their Lordships, as he always does, with great clearness and fairness. He complains that the charge recorded was that Atta Mohammad and a number of others, seven in all, were members of an unlawful assembly armed with

deadly weapons and that in prosecution of a common object and in furtherance of a common intention, one of the members, Atta Mohammad, caused the death of Ghulam Muhammad, and all were thereby, under Sections 149 and 34 of the Indian Penal Code, guilty of causing the death of Ghulam Muhammad, and thereby committed an offence punishable under Sections 302, 149, 148 and 34 of the Indian Penal Code. Section 34 was introduced by way of amendment or addition afterwards. The phraseology of the charge is common, but it is true that of these sections which are mentioned one after another, some refer to the substance of the offence, and others, or one, at any rate, of them, to the punishment of the offence,

4. As the result of the trial, the appellant alone was found guilty, but he was found guilty of being the intentional cause of the death of Ghulam Muhammad. He appealed, and admittedly his notice of appeal contained no suggestion whatever of the case that is now made on his behalf. He had pleaded an alibi at the trial, and in his grounds of appeal he embodied various criticisms upon the weight of the evidence, and then he added that an assault under these conditions would amount to private defence, and that the offence does not amount to murder and that the sentence called for should have been much lighter.

5. He appeared by an advocate on the appeal and had been legally defended at the trial, and it is as clear as possible that, with full knowledge of the course, which the trial had taken, neither the appellant himself nor those who represented him had any sense whatever of the injustice that is now urged or any idea of his having been deprived of the opportunity of knowing the charge on which he was tried or of raising defences appropriate to that charge. The argument is that because there was no specific mention of Section 300 of the Indian Penal Code as the section under which he was being proceeded against, and because he was charged, as a member of an unlawful assembly, with acting with a common object and in furtherance of a common intention, he being the person who struck the blow, the acquittal of all the other persons put an end to that charge, and the possibility that he might be nevertheless convicted u/s 300 was one that had never been explained to him properly or at all, and one which it must be taken did him the serious injustice of misleading him as to his true position and depriving him of what might have been a successful defence.

6. The proceedings on the appeal, however, make it quite clear that in fact he was deprived of no proper opportunity, that the nature of the charge was quite sufficiently known to him and to the advocate who appeared for him, and that he was unconscious of having suffered any wrong of that kind until the appeal fell into able hands in this country.

7. It is well to add that there has been no complaint that he was not separately indicted, and no reliance has been placed on Section 233 of the Criminal Procedure Code ; the case has been solely put upon departure from the statutory provisions as to stating and explaining the particular charge, which has been proceeded with.

8. Under these circumstances their Lordships think it quite plain that there has been no departure from the requirements of natural justice, and that there has been a trial which in all substance was fair and which has given the prisoner every real opportunity that he required to understand the charge and make his defence.

9. The practice of their Lordships' Board is so well settled with regard to such a case that it is unnecessary to cite authorities or to re-state principles. The most that is said here is that certain statutory requirements of procedure were not satisfied, and as their Lordships have so often had occasion to say, India is provided by law with a complete and carefully devised Criminal Procedure Code applicable to the Courts of criminal review, which have considered this case and the functions of which have been discharged. Their Lordships, in advising His Majesty, do not act in criminal matters as a Court of Criminal Appeal, and are not concerned to regulate procedure of Courts in India or to criticize what is mere matter of procedure. Accordingly, their Lordships find it unnecessary to discuss the points which have been raised as to the propriety of such a form of indictment as this, as to the utility and extent of explanations such as the Code refers to, and as to the validity of such sections as Section 225 as an answer to any irregularity that there may have been. They do not desire it to be understood that they think that the contentions raised on behalf of the appellant on those points could be sustained. No opinion was expressed in the Court below as regards that and the point was never considered there. Their Lordships have, therefore, nothing to say upon the questions except that they are questions for the Indian Courts in the exercise of their criminal jurisdiction.

10. In the complete absence of any substantial injustice, in the complete absence of anything that outrages what is due to natural justice in criminal cases, their Lordships find it impossible to advise His Majesty to interfere. Their Lordships, therefore, will humbly advise His Majesty that for these reasons this appeal must be dismissed.