CALCUTTA HIGH COURT

Emperor

Vs

Madan Mandal

(Holmwood and Sharfuddin, JJ.)

03.12.1913

JUDGMENT

Holmwood and Sharfuddin, JJ.

1. This is a reference from the learned additional Sessions Judge of the 24-Perganas and an application for admission of appeal by one Kala Chand Mandal in a case in which the Jury have unanimously found the accused Kala Chand guilty of an offence under Section 304 first part of the Indian Penal Code and the Judge has Sentenced him to transportation for life, and in the case of the other four accused persons has referred the verdict of the Jury convicting them under Section 326 of the Indian Penal Code to us on the substantial ground that the verdict is illegal inasmuch as the accused were charged under Section 304 read with 149 and Section 326 read with 149 and the Jury unanimously acquitted them under Section 148 and the Judge agrees with that unanimous finding of the Jury.

2. In his letter of reference the Judge says that the finding of the Jury was, he supposed, based on his direction that if the common object of the assembly was only to eject trespassers from their field, it was not an unlawful assembly, he thinks that that view is correct and that the four accused who did not use spears ought to be acquitted. But in the end of his letter of reference, he says, that if the Jury's finding is accepted that none of the accused had any justification for beating Adel and Panchu and they all in fact beat them, he thinks that the finding of guilty under Section 326 as against Madan, Dabiraddi, Syam Chand and Suk Chand should be altered to one under Section 326 read with Section 149.

3. Now, this reference of the learned Judge read with, his charge to the Jury has thrown the whole case into a hopeless complication. At the outset the learned Judge was not right in charging the Jury that Adel and Panchu trespassed into Madan's land without explaining to the Jury the distinction between civil trespass and criminal trespass. If, as the learned Judge says, Adel and Panchu went and cut the bund for the purpose of saving their own house from flood they could not be held guilty either of criminal trespass or mischief. The learned Judge must know that

criminal trespass depends on the intention of the offender and not upon the nature of the act; and when the man's intention is to save his family and property from imminent destruction it cannot be said that because he commits civil trespass on his neighbour's land and cuts a portion of his neighbour's property, which he ordinarily would not he justified in doing, he is guilty of any criminal offence. We can have no doubt as the learned Judge has himself said, that the verdict of the Jury acquitting the accused of the charge of rioting was due to this misdirection. But the verdict of the Jury was unanimous and the Judge has agreed with it. Therefore he can make no reference under Section 307 with regard to the verdict on the charge of rioting and as a matter of fact he has not done so. Our hands therefore are tied. Upon this reference we cannot consider the question of rioting again, and a fortiori we cannot consider any charge made by implication under Section 149, so that we are left with this result, as the learned Judge appears to have seen himself, that the verdict of the Jury under Section 326 was practically a judgment of acquittal, inasmuch as there being no charge under that section independently there can be no verdict given upon it. If authority is required for that proposition it is to be found in the case of *Reazuddi v. King-Emperor*[1] That decision followed the decision in the case of *Panchu Das v. Emperor*[2] though the proposition laid down in the latter case is the necessary converse and corollary to the proposition laid down in the former. Had the Local Government appealed before us we could of course have dealt with the Judge's misdirection and with any consequent failure in justice which might appear to have occurred. But on a reference under Section 307 we are bound to weigh the opinion of the Judge and the Jury, and we have no power to interfere with the unanimous verdict of the Jury with which the Judge agrees; and the only verdict with which the Judge disagrees is the verdict which on the face of it is illegal and void and must be set aside. We are unable to see our way to substitute anything for this offence of which the Jury appear to have thought that the four accused might be guilty, because we are precluded now from considering the question of rioting or the question of any separate act of causing hurt with which the accused were never charged.

4. The result is that upon the reference we must set aside the verdict as against Madan Mandal, Sukchand Mandal, Dabiruddi Mandal and Syam Chand Mandal and direct their acquittal and release.

5. As regards the case of Kala Chand Mandal (appeal 993 of 1913) we can see no reason whatever for differing from the verdict of the Jury or for modifying the sentence which has been passed upon him by the learned Sessions Judge. Leaving out of account the Judge's erroneous view of the law of trespass the case was one in which the accused might have been convicted of wilful murder as he inflicted no less than 15 spear wounds, ten upon Adel and five upon Panchu and if the view of the learned Judge, that he went after Panchu to another place and deliberately speared him at a different time in a different place, be accepted it would only serve as an aggravation of his offence. We are not therefore inclined to admit his appeal which will accordingly be summarily dismissed.

Cases Referred.

1(1912) 16 C.W.N. 1077
2(1907) I.L.R. 34 Calc. 698