

BOMBAY HIGH COURT

Emperor

Vs

Chanbasappa Baslingappa

(Patkar and Barlee, J.J.)

17.09.1931

JUDGMENT

Patkar, J.

1. In this case the accused Chanbasappa Basalingappa, aged twenty-five years, was tried before the learned Sessions Judge of Belgaum on charges under Sections 326 and 307 of the Indian Penal Code with having caused grievous hurt to the complainant Virbhadrā with a scythe or with having attempted to commit the murder of the said complainant on or about August 28, 1930.
2. The offence under Section 307 of the Indian Penal Code was triable with the aid of the assessors before the Sessions Judge of Belgaum whereas the offence under Section 326 of the Indian Penal Code was triable with the aid of a jury. The jury returned a verdict of not guilty with regard to the offence under Section 326 and gave their opinion as assessors in favour of the accused on the charge under Section 307.
3. The learned Sessions Judge disagreeing with the opinion of the assessors convicted the accused under Section 807 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years and a fine of Rs. 1000, in default one year's rigorous imprisonment.
4. The learned Sessions Judge has in the interests of justice made a reference to this Court under Section 307 of the Code of Criminal Procedure with regard to the offence under Section 326 of the Indian Penal Code. The appeal and the reference have been heard together.
5. [After discussing the evidence in the case, his Lordship proceeded.] Making all due allowance for the defects in the prosecution case, we are satisfied that the evidence on behalf of the prosecution is reliable and that the statement of the accused is not true. We think, therefore, that the conviction of the accused under Section 307 of the Indian Penal Code is right. With regard to the sentence, we do not think that it is excessive. We would, therefore, dismiss the appeal.

6. One point remains to be decided. It was suggested in the course of the argument on behalf of the defense that the learned Sessions Judge ought not to have recorded a finding with regard to the offence under Section 307 of the Indian Penal Code which was triable with the aid of assessors, and under Clause (2) of Section 307 of the Criminal Procedure Code he ought to have referred the whole case to the High Court without recording judgment of acquittal or of conviction on any of the charges on which the accused has been tried. It appears clear from Clause (3) of Section 269 of the Criminal Procedure Code that when an accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session with the aid of the jurors as assessors for such of them as are not triable by jury. Therefore, with regard to offences triable by jury and offences triable with the aid of assessors, he must follow the procedure laid down in the Code. Section 807 of the Criminal Procedure Code occurs in Part F of Chapter XXIII which relates to the conclusion of trial in cases tried by jury, and Section 309 of the Criminal Procedure Code is included in Part H which refers to the conclusion of trial in cases tried with assessors. Therefore, with regard to offences triable with the aid of assessors the learned Judge must follow the procedure under Section 309, and in regard to offences triable by jury, where he disagrees with the verdict of the jury, he must follow the procedure laid down in Section 307. It would, therefore, follow that the charges mentioned in Sub-section (2) of Section 307 of the Criminal Procedure Code refer to charges which are triable by jury. We think, therefore, that when a Judge makes a reference under Section 307 with regard to the charges which are triable by jury he is not absolved from the duty of proceeding with the aid of assessors under Section 309 of the Criminal Procedure Code in respect of offences triable with the aid of assessors. This view is consistent with the decisions in the case of *Emperor v. Kalidas*¹ *Emperor v. Vyankatsing*², and *Kamhala Narayan In re*³ The procedure followed by the learned Sessions Judge is, therefore, right.

7. We, therefore, dismiss the appeal of the accused. In the circumstances of the present case it is not necessary to deal with the reference made by the learned Sessions Judge.

Barlee, J.

8. I agree. [His Lordship first dealt with the facts of the case, and then dealt with the point of law as follows:] As regards the point as to whether the learned Sessions Judge should have refrained from convicting the accused and should have submitted the whole case to this Court, I find there is no direct authority. We have been referred to a case, *Emperor v. Kalidas*⁴ There an accused was tried by a Sessions Judge with the aid of a jury for an offence triable by jury and also by the same Judge for an offence triable with the aid of assessors. At the conclusion of the trial the Sessions Judge took the verdict of the jury in respect of the offence triable with jury, and with regard to the other charge took the opinion of the jurors as assessors, and disagreeing with their verdict and opinion, he referred the whole case to the High Court. The High Court up-held the verdict of the jury as regards the offence tried by them; and in regard to other charge returned the case to the

Sessions Judge so that he might deal with it according to law, remarking that the Sessions Judge should not have joined them in the re-ference and that they were not able to deal with them as they were not triable by a jury. Now clearly on this ruling, if the learned Sessions Judge had not decided the case on the charges tried by him with the aid of assessors he would have had to reserve his judgment on them until after the disposal of the reference. In many cases such procedure would put him in an impossible position. In the present case, for instance, were we to find that there had been no attempt of murder, that is if we were to believe the accused's defence, the learned Sessions Judge would have to give judgment in direct opposition to this view, or adopt it against his own judgment. This difficulty can, however, be avoided if we assume that Sub-section (2) of Section 307 of the Criminal Procedure Code refers only to cases in which a Sessions Judge is trying an accused charged with offences triable with the aid of a jury. Such an interpretation appears to be quite legitimate since Section 307 is placed in the part of the Act which refers only to the trial of cases with the aid of a jury.

9. For these reasons I am of opinion that the conviction is correct and I do not think that the sentence is at all too heavy. A fine of Rs. 1,000 is no doubt a very heavy fine; but it must be remembered that the unfortunate complainant has lost his arm and he deserves compensation from the accused. If the accused cannot pay the fine, he will then have to undergo the further sentence of one year's rigorous imprisonment.

Cases Referred.

- 1(1898) 8 Bom. L.R. 599
- 2(1907) 9 Bom. L.R. 1057
- 3(1919, 36 M.L.R. 452
- 4(1898) 8 Bom. L.R. 699