
(1897) 12 CAL CK 0013
In the Calcutta High Court

Biru Mandal and Others

APPELLANT

Vs

Queen-Empress

RESPONDENT

Date of Decision : 06-12-1897

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 297
Penal Code, 1860 (IPC) — Section 143, 147

Citation : (1898) ILR (Cal) 561

Hon'ble Judges : Hill, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee and Hill, JJ.—The appellants in this case were tried by a jury before the Sessions Court at Rajshahye on four charges: (1) dacoity punishable u/s 395 of the Indian Penal Code; (2) theft in a dwelling house, actual and constructive, punishable u/s 380 read with Section 149; (3) rioting punishable u/s 147; and (4) being members of an unlawful assembly, punishable u/s 143 of the Indian Penal Code.

2. The learned Sessions Judge charged the jury by summing up the evidence, but without laying down the law by which the jury were to be guided, as laid down in Section 297 of the Code of Criminal Procedure. The jury, on being asked what their verdict was on the first charge, through their foreman replied that they could give their opinion upon the whole case, but they had not considered their verdict on each charge. Thereupon, as the record shows, the charges were once more read over to the jury, who [563] retired for some time to consider their verdict on each charge separately; and on their return they pronounced a verdict of guilty on the first charge, not guilty on the second charge, and guilty on the third and fourth charges. The learned Sessions Judge, agreeing with the verdict of the jury on the first, third and fourth charges, has convicted the accused under Sections 395, 147 and 143, and has sentenced each of them u/s 395 to rigorous imprisonment for five years.

3. In appeal it is contended by the learned Vakil for the accused that the learned

Judge's omission to explain the law to the jury in this case constitutes a material misdirection, for which the verdict ought to be set aside, and a new trial ordered.

4. The learned Deputy Legal Remembrancer very properly calls our attention to the fact that here the charge to the jury that has been recorded contains, not merely the heads of the charges, but is actually the charge that was read out to the jury and interpreted in Bengali; so that there is no room for any contention that the law might have been explained without the explanation being embodied in the charge to the jury as recorded. But even if there had been any room for a contention of that sort, we should observe that as a rule we expect some statement in the record to show that the law has been explained to the jury. In the present case there can be no manner of doubt, as far as we can judge from the record, that the law has not been explained; and, if that is so, the question is, whether that amounts to a misdirection within the meaning of Section 423, clause (d) of the Code of Criminal Procedure. Perhaps, strictly speaking, the error here is rather of non-direction than misdirection, but we think that the term misdirection in Section 423 includes an omission of this description.

5. It is next necessary to consider whether this absence of direction, that is, this error, is not cured by Section 527, and whether the language of clause (d) of Section 423 stands in the way of our interfering with the verdict. We are of opinion that the effect of the two provisions of the Code of Criminal Procedure which we have just referred to, is to require us, before we interfere with the verdict of a jury, to see whether the misdirection [564} complained of was one of a material character, that is one which has made the verdict erroneous and led to a failure of justice. In the present case we feel no hesitation in answering the question in the affirmative, because the accused were charged with having committed a number of offences which are of a complex character, and it was very necessary therefore that the Judge should have explained to the jury what the elements are which go to constitute each of those offences, and should have clearly placed before them the distinction between them. That the absence of such direction had an effect upon the verdict is clear from the fact that the jury, when they were first asked what their verdict was on the first charge, were unable to say what their verdict was upon each separate charge. Thereupon the only additional direction given to them by the Judge consisted in the reading of the charges, unaccompanied by any explanation of the law. Then the verdict they returned is somewhat inconsistent and not quite intelligible; because while they find the accused guilty on the first charge, that is guilty of the offence of dacoity, they find them not guilty of the offence mentioned in the second charge, namely, theft in a dwelling house. It is difficult to say upon what view of the evidence they returned a verdict of guilty on the first charge convicting the accused of the offence of dacoity, and yet did not convict them of the offence of theft in a dwelling house under the second charge.

6. Having regard to these circumstances we are of opinion that the misdirection in the charge has vitiated the verdict, and has thereby occasioned a failure of

justice.

7. We may add that the view we take in this case is in accordance with that expressed in the case of Wafadar Khan v. Queen-Empress (1894) I. L. E. 21 Cal. 955.

8. The result is, that the convictions and sentence must be set aside, and the case sent back for re-trial.