The court-fees payable to the Government will come out of defendant No. 1 in this case. We certify for two counsel and an agent in this appeal.

Appeal allowed.

Agent for the appellant: *M.S.K. Sastri.*

Agent for the respondent: *Naunit Lal.*

AKHLAKALI HAYATALLI

v.

THE STATE OF BOMBAY.

[B. K. MUKHERJEA and N. H. BHAGWATI JJ.]

1953

Dec. 9.

Criminal Procedure Code (V of 1898 as amended), s. 307—Reference to High Court—Proper approach—Jury—Sole Judges of facts—Provided verdict could be arrived at by reasonable body of men.

The proper method of approach in the matters of references under s. 307 of the Criminal Procedure Code as finally settled is that the High Court will only interfere with the verdict of the jury if it finds the verdict perverse in the sense of being unreasonable, manifestly wrong or against the weight of evidence.

If the facts and circumstances of the case are such that a reasonable body of men could arrive at one conclusion or the other, it is not competent to the Sessions Judge or the High Court to substitute their verdict in place of the verdict which has been given by the jury. The jury are the sole judges of the facts and it is the right of the accused to have the benefit of the verdict of the jury. Even if the Sessions Judge or the High Court would, if left to themselves, have arrived at a different verdict, it is not competent to the Sessions Judge to make a reference nor to the High Court to accept the same and substitute their own verdict for the verdict of the jury provided the verdict was such as could be arrived at by a reasonable body of men on the facts and circumstances of the case.

Ramanugrah Singh v. *Emperor* (A. I. R. 1946 P. C. 151) referred to.

CRIMINAL APPELLATE JURISDICTION. Criminal Appeal No. 76 of 1953.

Appeal by special leave against the Judgment and Order dated the 16th June, 1952, of the High Court of Judicature at Bombay in Criminal Jury Reference No. 58 of 1952.

on the right arm pit, on the front side of the shirt and on the right thigh. There were also blood stains on the right side collar and on the back of the shirt.

The defence put up by the appellant was that he was a fruit broker and after collecting his dues from the Crawford market up to 11 p.m., he came to the corner of Dhobi Street, when he heard the shouts, "chor, chor" and he also then shouted "chor, chor" and ran after the person who was running away in order to catch him. When he reached the junction of Nagdevi Cross Street he fell down and the person who was running ahead of him rushed into a gutter. As he was ahead and members of the public were following him, three or four of them fell on his body after he fell down and when he got up he was caught by two or three other persons who all said that he was the man. Sub-Inspector Chawan was one of these persons. Chawan was suspected to be his accomplice, but someone said that he was a police officer and Chawan was then released. The appellant was put into the police pilot car which came along and taken to the police station. He was then taken to the scene of the offence and a panchnama was drawn there. He was again brought to the police station thereafter and was made to sit in the charge room. As he was feeling very hot, he removed his shirt and kept it by his side. In the meanwhile, a police constable came there and gave him a blow on his nose saying, "Do you think this is your father's residence that you removed your shirt?" He thereupon started bleeding from his nose, and due to that bleeding his shirt and trousers were stained with blood. The same constable then asked him to put on the clothes and took him to his officer. He produced the appellant before D. I. Kakatkar who there noticed his clothes. The panchas were then called and a panchnama was drawn up in which the blood stains on the shirt and trousers were noted.

The appellant was tried by the Additional Sessions Judge and a common jury. The prosecution called the evidence of the complainant Abdul Satar, Babu Adam and Sub-Inspector Chawan. Evidence was led of an identification parade which was held in the

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hospital where Abdul Satar was taken from the scene of the offence and it was proved that Abdul Satar identified the appellant at that identification parade. Evidence was also led of the panch witness who deposed to the panchnama noting the blood stains on the shirt and the trousers of the appellant.

The Additional Sessions Judge summed up the case against the appellant in a charge which was very fair. The charge was not attacked before the High Court nor before us as containing any misdirections or non-directions to the jury such as to vitiate the verdict. The jury after due deliberation could not be unanimous and pronounced a verdict of not guilty against the appellant by a majority of six to three. The Additional Sessions Judge did not accept the verdict of the majority. He disagreed with the verdict and thought that it was necessary for the ends of justice to submit the case to the High Court and accordingly by an order of reference dated the 22nd April, 1952, submitted the case to the High Court under section 307 of the Criminal Procedure Code.

It is significant to note that prior to the enactment of Bombay Act VI of 1952, sections 305 and 306 of the Criminal Procedure Code were applicable to the Court of Sessions for Greater Bombay. It was intended as stated in the objects of the Bill to provide for a case of disagreement with a unanimous verdict of the jury and enable the Sessions Judge for Greater Bombay to make a reference under section 307 of the Criminal Procedure Code even in the case of a unanimous verdict with which he disagreed. In making the amendment however by the Bombay Act VI of 1952 the Legislature took away the powers of the Sessions Judge of Greater Bombay to discharge the jury and order a retrial of the accused by another jury even in the case of a majority verdict so much so that even in a verdict of five to four which was not till then an effective verdict the case would have to be submitted to the High Court under section 307 of the Criminal Procedure Code,

The High Court heard the reference and came to the conclusion after discussing the evidence on the record that no other conclusion was possible for a reasonable person except that the appellant was the assailant of Abdul Satar. The High Court accordingly convicted the appellant of the offence under section 326 of the Indian Penal Code and sentenced him as above. The appellant obtained special leave to appeal from this court on the 4th February, 1953, and hence this appeal.

There were various circumstances brought out in the evidence of the prosecution witnesses which were particularly relied upon by the defence. The prosecution frankly admitted that it had failed to prove any motive for the commission of the offence by the appellant. Abdul Satar had not stated anywhere before he gave evidence in the Sessions Court that he had any conversation with the appellant as to why the latter was inflicting the injuries on him. He however stated for the first time in the Sessions Court that he asked the appellant as to why he was stabbing him and the appellant replied that he was doing it at the instance of a friend of his. Abdul Satar then stated that he was on inimical terms with one Sulaiman and it was at the instance of Sulaiman that the appellant inflicted the injuries on his person. This was characterised by the defence as a pure after-thought in order to supply a motive for the commission of the offence by the appellant and it was urged that if Abdul Satar was capable of inventing a story for supplying the motive for the commission of the offence by the appellant he could not certainly be relied upon even in the identification of the appellant by him.

The weapon of offence was also not found upon the person of the appellant and in spite of a search being made for the same was not discovered by the police either at or near the scene of the offence. Neither Babu Adam nor Sub-Inspector Chawan deposed to having seen the knife in the hands of the appellant. It was only Mohamed Safi, a witness who was dropped by the prosecution and was examined by the defence,

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but treated as a hostile witness even by the defence, who stated that he saw a knife in the hands of the appellant. If Babu Adam's evidence was to be accepted Mohamed Safi was not telling the truth and if Mohamed Safi's evidence was to be accepted Babu Adam was not telling the truth. This conflict of evidence was therefore rightly commented upon by the defence.

The identification parade also was challenged as not proper because it was alleged that mostly ward boys were mixed up with the appellant when the identification parade was held. No questions were addressed in the cross-examination of prosecution witnesses in regard to this aspect of the case and the Additional Sessions Judge observed to the jury that in the absence of such cross-examination, not much reliance could be placed on this criticism of the identification parade. It may be noted in passing that even the High Court observed that "the parade was not as satisfactory as we expect parades to be in such cases" and further observed that the only effect of that fact would be to put them upon guard with regard to the evidence of Abdul Satar and they should not proceed to act upon that evidence unless it was corroborated.

The blood stains on the shirt and the trousers of the appellant were not observed in the first instance by either Babu Adam or Sub-Inspector Chawan and it was only when the second panchnama was made at about 1-30 a.m. on the 26th August, 1951, after the appellant was brought back to the police station from the scene of the offence that these blood stains were noticed and were noted in the panchnama. The existence of these blood stains was urged as corroborative of the testimony of Abdul Satar in so far as he stated that the appellant caused the injuries on his person. The defence story of the police constable having dealt a blow on the nose of the appellant which led to the bleeding of the nose and the blood stains on the shirt and the trousers of the appellant was sought to be negatived by pointing out the improbability of the police constable having acted in that manner within

the very precincts of the police station. The prosecution theory might possibly have explained the blood stains in the right arm pit, in front of the shirt as well as on the trousers. But the blood stains on the back of the shirt could not be easily explained. The blood stains on the back of the shirt could certainly be explained by the defence theory and that was a circumstance which was relied upon by the defence as maring the defence version probable.

These were the circumstances which were before the jury when they deliberated upon the question of the criminality of the appellant, and the only question which we have to consider is whether the verdict which they arrived at by a majority of six to three was such as no reasonable body of men could arrive at on the record of the case. The proper method of approach in the matter of references under section 307 of the Criminal Procedure Code was laid down by the Privy Council in *Ramanugrah Singh* v. *Emperor*(1), where the Privy Council resolved the conflict of authorities which was till then prevalent in India and accepted the view that the High Court will only interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong" or "against the weight of evidence". The observations of their Lordships of the Privy Council on the principle underlying section 307 of the Criminal Procedure Code may be aptly quoted here :—

"Under sub-section (1), two conditions are required to justify a reference. The first, that the Judge must disagree with the verdict of the jury, calls for no comment, since it is obviously the foundation for any reference. The second, that the Judge must be "clearly of opinion that it is necessary for the ends of justice to submit the case" is important, and in their Lordships' opinion provides a key to the interpretation of the section. The legislature no doubt realised that the introduction of trial by jury in the mofussil would be experimental, and might lead to miscarriages of justice through jurors, in their ignorance and inexperience,

(1) (1946) A.I.R. 1946 P. C. 151.

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returning erroneous verdicts. Their Lordships think that the section was intended to guard against this danger, and not to enable the Sessions Judge and the High Court to deprive jurors, acting properly within their powers, of the right to determine the facts conferred upon them by the Code. If the jury have reached the conclusion upon the evidence which a reasonable body of men might reach, it is not necessary for the ends of justice that the Sessions Judge should refer the case to the High Court merely because he himself would have reached a different conclusion upon the facts, since he is not the tribunal to determine the facts. He must go further than that and be of opinion that the verdict is one which no reasonable body of men could have reached upon the evidence. The powers of the High Court in dealing with the reference are contained in sub-section (3). It may exercise any of the powers which it might exercise upon an appeal, and this includes the power to call fresh evidence conferred by section 428. The court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused. In their Lordships' view, the paramount consideration in the High Court must be whether the ends of justice require that the verdict of the jury should be set aside. In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial court, and if the jury take one view of the evidence and the judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded."

We are of the opinion that this is the correct method of approach in references under section 307 of the Criminal Procedure Code. If the facts and circumstances of the case are such that a reasonable body of men could arrive at the one conclusion or the other, it is not competent to the Sessions Judge or the High Court to substitute their verdict in place of the verdict which has been given by the jury. The jury are the sole judges of the facts and it is the right of the accused to have the benefit of the verdict of the jury. Even if the Sessions Judge or the High Court would if left to themselves have arrived at a different verdict it is not competent to the Sessions Judge to make a reference nor to the High Court to accept the same and substitute their own verdict for the verdict of the jury provided the verdict was such as could be arrived at by a reasonable body of men on the facts and circumstances of the case.

Having regard to the position which we have set out above we are clearly of the opinion that on the facts and circumstances of the case before us there were enough materials before the jury which would enable the jury to come to one conclusion or the other in regard to the criminality of the appellant. Six out of the nine jurors came to the conclusion that the appellant was not guilty of the offence with which he was charged. Three out of the nine jurors came to an opposite conclusion and it is impossible in the circumstances of the case for us to characterise the one or the other of the conclusions reached by the members of the jury as perverse in the sense of being unreasonable or manifestly wrong or against the weight of evidence. The verdict reached by the majority was certainly a verdict which upon the evidence on record a reasonable body of men could have reached and in our opinion the reference was not competent.

The result therefore is that the appeal will be allowed, the judgment of the High Court on reference set aside, the majority verdict of the jury Pronouncing the appellant not guilty of the offence with which he was

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charged accepted and the appellant acquitted and discharged and forthwith set at liberty.

Appeal allowed.

Agent for the respondent: *G. H. Rajadhyaksha.*

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Dec. 18.

COMMISSIONER OF INCOME-TAX/EXCESS PROFITS TAX, BOMBAY CITY

v.

MESSRS. BHOGILAL LAHERCHAND including BATLIBOI & CO., BOMBAY.

[MEHR CHAND MAHAJAN, S. R. DAS, GHULAM HASAN and JAGANNADHADAS JJ.]

Indian Income-tax Act (XI of 1922), s. 42(1)—Scope of.

A Hindu undivided family was carrying on business in Bombay, Madras and the Mysore State, being treated as a single assessee and its relevant accounting period was 10th October, 1941, to 8th November, 1942. During this period, the Mysore branch purchased goods from the Bombay head office and the Madras branch of the value of Rs. 2 lakhs odd. The Income-tax Officer estimated these purchases of the Mysore branch in British India at Rs. 3 lakhs and its profits at Rs. 75,000 on the sale of these goods in Mysore. In view of the provisions of s. 42 of the Indian Income-tax Act, half of this profit, *i.e.*, to the extent of Rs. 37,500, was deemed to accrue or arise in British India because of the business connection of the non-resident branch in British India:

Held, that, on the facts and circumstances of the case, the Income-tax Officer was right in applying the provisions of s. 42 (1) of the Income-tax Act and holding that Rs. 37,500 were profits deemed to accrue in British India and in including in the assessment a portion thereof.

Held also, that s. 42 sub-ss. (1) and (3), cover cases of both residents as well as non-residents.

Commissioner of Income-tax v. *Western India Life Insurance Co.* [1945] (13 I.T.R. 405) dissented from. *Sutlej Cotton Mills Ltd.* v. *Commissioner of Income-tax, West Bengal* (A.I.R. 1950 Cal. 551), *Commissioner of Income-tax/Excess Profits Tax, Madras* v. *Parasuram Jethanand* (A.I.R. 1950 Mad. 631), *Commissioner of Income-tax, Bombay* v. *Ahmedbhai Umarbhai & Co.* ([1950] S.C.R. 335), referred to.