Privy Council Appeal No. 11 *of* 1934.

Sheo Swarup and others - - - - - - - *Appellants*

v.

The King-Emperor - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 26TH JULY 1934.

Present at the Hearing:

LORD BLANESBURGH.
LORD THANKERTON.
LORD RUSSELL OF KILLOWEN.
SIR JOHN WALLIS.
SIR SHADI LAL.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

This appeal was brought by special leave from a judgment of the High Court of Judicature at Allahabad, which reversed an order of acquittal passed by the Sessions Judge of Cawnpore. The appellants (and others) were charged with murder and other offences, alleged to have been committed during the Cawnpore riots in March, 1931. The trial commenced before the Sessions Judge with the aid of three assessors; one of the assessors fell ill during the trial, which was duly continued with the aid of two assessors. The Sessions Judge, agreeing with the two assessors, found the accused not guilty of any of the offences charged against them, and acquitted all of them. The Sessions Judge formed a clearly expressed opinion that the evidence against the accused was wholly unworthy of belief. It will be sufficient to cite one passage in his judgment in which he says :—

> "I think I have said sufficient to show that the whole case is riddled with perjury, and in the circumstances if any particular witness could not be shown on his statement and his previous statements to be definitely a

liar, it would be impossible to have any confidence in what he said. For the same reason, I do not think it necessary for me to give in detail the evidence against any accused person. It does not matter how many witnesses mentioned any of the accused when none of them can possibly be believed. It is unfortunate that terrible crimes of this kind should have been committed and that nobody should be punished for them, but it would be equally terrible if the innocent suffered for the guilty. I have considered seriously whether I should not proceed against some of the witnesses for perjury, but, on the whole, as they have already been victims of much cruelty, I think it would be unreasonable to take any action against them."

Under section 417 of the Code of Criminal Procedure (hereinafter referred to as " the Code ") the Local Government directed the Public Prosecutor to present an appeal to the High Court from the order of acquittal so far as concerned nine of the accused, and an appeal was accordingly presented. Of these nine persons, three absconded, and the appeal proceeded against the six others who are the present appellants.

On the hearing before the High Court it was contended on behalf of the present appellants that on an appeal from an order of acquittal on a matter of fact it is not open to the appellate Court to interfere with the findings of fact of the trial Judge, unless it can be said that those findings could not have been reached by him had it not been for some perversity or incompetence on his part. The High Court declined to accept this view. They held that no condition was imposed on the High Court in such an appeal. They accordingly reviewed all the evidence in the case, and having formed an opinion of its weight and reliability different from that of the trial Judge, they acted upon that opinion and convicted the present appellants.

A petition was subsequently presented to His Majesty in Council for leave to appeal, upon the ground that conflicting views had been expressed by the High Courts in different parts of India upon the question whether upon an appeal from an order of acquittal on a matter of fact an appellate Court has the power to interfere with the trial Judge's findings of fact if the special circumstances indicated above do not exist. Upon the humble advice of their Lordships leave to appeal was granted in order that the difference of judicial opinion, which it was alleged existed, might be resolved. It is perhaps unnecessary to add that but for the desirability of establishing unanimity as to the powers of an appellate Court on the hearing of such an appeal, no leave to appeal could properly have been sought.

The case has now been fully argued before their Lordships' Board, and it appears to them that the answer to the question in issue depends upon the construction of the Code. The relevant sections are six in number. Section 404 provides that no appeal shall lie from a judgment or order of a Criminal Court except as provided for by the Code or other law. Section 410 gives the right to appeal to the High Court to any one convicted on a trial held

by a Sessions Judge or Additional Sessions Judge. Section 417 enables the Local Government to direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. Section 418 provides that an appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only. The Code contains certain provisions for the summary dismissal of appeals, and section 422 provides that if the appellate Court does not dismiss the appeal summarily, proper notices of the time and place of hearing shall be given to the appellant and the other parties to the appeal. Section 423 runs thus :—

> " (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417 the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—
>
> " (*a*) in an appeal from an order of acquittal, reverse such order and direct that further enquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law ;
>
> " (*b*) in an appeal from a conviction (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, subsection (3), not so as to enhance the same ;
>
> " (*c*) in an appeal from any other order, alter or reverse such order ;
>
> " (*d*) make any amendment or any consequential or incidental order that may be just or proper.
>
> " (2) Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

It will be observed that upon the express terms of the Code (1) an appeal lies from any order of acquittal passed by any Court other than a High Court ; (2) such an appeal (the trial not being by jury) will lie upon a matter of fact ; (3) on such an appeal the Court may reverse the order of acquittal, find the accused guilty and pass sentence on him. There is no indication in the Code of any limitation or restriction on the High Court in the exercise of its powers as an appellate tribunal. Further, it is to be observed that no distinction is drawn as regards the powers of the High Court in dealing with an appeal, between an appeal from an order of acquittal and an appeal from a conviction.

Many authorities were cited to their Lordships which undoubtedly reveal differences of views as to the powers of the

High Court in dealing with an appeal from an order of acquittal on a matter of fact. No useful purpose will be served by examining this long list of decisions. It will suffice if their Lordships state the conclusion which they have reached as the result of careful consideration of the full arguments which were addressed to them.

There is, in their opinion, no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered," or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.

Their Lordships only desire to add that while the judgment of the High Court does not state in express terms that these principles have been acted upon, they have no reason to think that the High Court failed to take all proper matters into consideration in arriving at their conclusions of fact.

In the result, this appeal should be dismissed and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SHEO SWARUP AND OTHERS.

v.

THE KING-EMPEROR.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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