

1890

NOV. 21.

15 B. 514.

[514] APPELLATE CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*APPEL-
LATE
CRIMINAL.

QUEEN-EMPRESS v. BASTIANO BIN ALEXANDER SILVA.*

[21st November, 1890.]

15 B. 514.

Assessors—Trial with the aid of assessors—Commencement of the trial with the aid of assessors—Criminal Procedure Code (Act X of 1882), ss. 268, 272, 284, 285.

The accused was committed for trial to the Sessions Court on a charge of murder. He pleaded not guilty to the charge, and claimed to be tried. Thereupon the Sessions Judge chose two assessors; but as one of them was ill, his attendance was at once dispensed with, and the Sessions Judge proceeded with the trial with the aid of the other assessor only.

Held, that this procedure was illegal and contrary to ss. 284 and 285 of the Code of Criminal Procedure (Act X of 1882).

The attendance of one of the assessors having been dispensed with before the commencement of the trial, the Sessions Judge ought to have chosen another assessor in his place.

A trial in the Sessions Court "with the aid of assessors" does not begin with the reading of the charge, as the assessors are chosen under s. 272 of the Code of Criminal Procedure (Act X of 1882) only if the accused does not plead to the charge or claims to be tried.

[F., 25 B. 694 (696) = 3 Bom. L.R. 274; R., 35 M. 701 = 12 Cr. L.J. 271 = 10 Ind. Cas. 380 = (1911) 2 M.W.N. 311; 11 Cr. L.J. 724 = 8 Ind. Cas. 874 = 13 O.C. 337.]

THIS was an appeal by the Local Government against an order of acquittal in the case of *Queen-Empress v. Bastiano bin Alexander Silva*.

The accused was committed for trial to the Court of Session on a charge of murder under s. 302 of the Indian Penal Code.

The accused pleaded not guilty to the charge, and claimed to be tried.

Thereupon two assessors were chosen, but as one of them was ill, his attendance was at once dispensed with, and the Sessions Judge proceeded with the trial with the aid of the other assessor alone. The Sessions Judge, agreeing with the assessor, found the accused not guilty of the offence charged, and acquitted him.

Against this order of acquittal, the Local Government appealed to the High Court.

Shantaram Narayan, Government Pleader, for the Crown.

Shamrav Vitthal, for the accused.

OPINION.

[515] PER CURIAM.—We are of opinion that the order of acquittal must be reversed and the accused re-tried. After the accused had claimed to be tried, the Sessions Judge chose two assessors. The record shows that, as one of them was suffering from fever, the Sessions Judge at once dispensed with his attendance, and proceeded with the trial with the aid of the other only. This proceeding was clearly opposed to ss. 284 and 285 of the Code of Criminal Procedure. It cannot be said that in this case the assessor who was suffering from fever was prevented "in the course of" the trial from attending throughout it, for his attendance was

* Criminal Appeal, No. 314 of 1890.

dispensed with before the commencement of the trial with the aid of assessors. It is only when proceedings are commenced at which the assessors can give their aid that the trial with their aid, as contemplated in ss. 268 and 284, can be said to have commenced. As the assessors are chosen under s. 272 only if the accused has refused to or does not plead to the charge or claims to be tried, it is clear that in a Court of Session the trial "with the aid of assessors" does not commence with the reading of the charge. When the Sessions Judge found that one of the assessors chosen by him could not attend at the trial, he clearly ought, in compliance with s. 284, to have chosen another in his place.

We set aside the proceedings of the Sessions Judge as illegal, and direct that the accused Bastiano be retried by the Court of Session. As the present Sessions Judge has already expressed an opinion on the merits of the case, we think it advisable that the accused be tried before another Sessions Judge.

Order of acquittal set aside.

15 B. 516.

[516] REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

IN RE JAMNADAS DULABDAS.* [1st December, 1890.]

Bombay District Municipal Act (Bombay Act VI of 1873), s. 33—Sanad under the City Survey Act (Bombay Act IV of 1868)—The right of the Municipality to call for the production of the sanad.

Under s. 33 of the Bombay District Municipal Act (Bombay Act VI of 1873) a Municipality has no right to insist on the production of a *sanad* issued under s. 10 of the City Survey Act (Bombay Act IV of 1868) before granting permission to build.

[F., 19 B. 27 (30).]

APPLICATION under s. 435 of the Criminal Procedure Code (Act X of 1882).

On the 13th September, 1889, the applicant gave notice to the Municipality of Surat of his intention to build a new house on the foundations of an old one which had been pulled down by orders of the Municipality on account of its dilapidated state.

On the 27th September, 1889, the Municipality called upon the applicant to produce the *sanad* issued to him under the City Survey Act (Bombay Act IV of 1868).

On the 27th February, 1890, the applicant applied for permission to rebuild his house, but without producing the *sanad*. The Municipality replied that until the *sanad* was produced, his application would not be granted.

On the 3rd April, 1890, the applicant furnished the Municipality with a plan of the proposed building, and renewed his application for leave to rebuild his house, stating that he had no *sanad* with him. On the 10th April, 1890, the Municipality replied to the same effect as they had done to his former applications.

* Criminal Revision, No. 288 of 1890.

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