

Shafi Ahmed Nabi Ahmed and Others - - - - *Petitioners*

v.

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

AND

Anandrao Gangaram Phanse - - - - - *Petitioner*

v.

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

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL ON THE PETITIONS
FOR SPECIAL LEAVE TO APPEAL IN THE ABOVE MATTERS,
DELIVERED THE 5TH NOVEMBER, 1925.

Present at the Hearing :

LORD DUNEDIN.

LORD SUMNER.

SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

Their Lordships have repeatedly announced that in dealing with petitions for special leave to appeal against sentences pronounced in the Criminal Courts of the various Dominions of the King, they will not act as a Court of Criminal Appeal and will not, to use the words of Lord Watson in *Dillet's case* (12 A.C. 459) advise His Majesty to "review or interfere with the course of criminal proceedings, unless it is shewn that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done."

In the present case the first point urged by the petitioners is that there had been such copious and prejudicial newspaper comment on the crime committed that a fair trial by a jury was impossible in Bombay.

It is in the power of the Governor-General of India if he thinks that in the state of public feeling a fair trial could not be obtained in the place where the offence would ordinarily be tried, to order that the trial be held elsewhere. An application was made to him to so order and was refused. To ask the Board to declare that such a refusal of the Governor-General, who had all the advantages of being in the country and of judging of the real state of public feeling, amounted to a violation of the principles of natural justice is nothing less than preposterous, and their Lordships cannot too strongly qualify the impropriety and uselessness of such a demand.

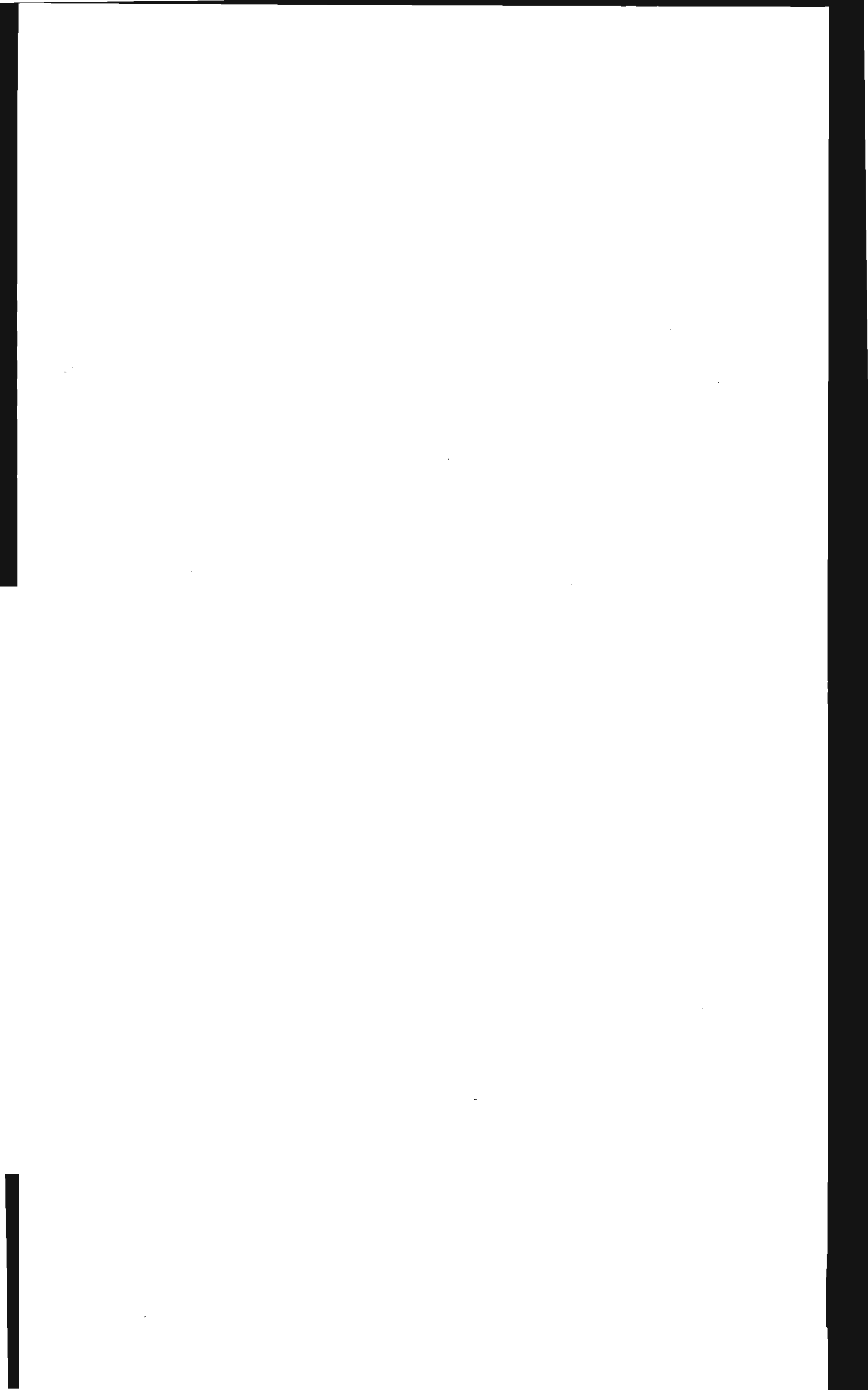
As regards the other grounds in the case of the first six petitioners, they are all questions as to the sufficiency of evidence—fit for consideration by a Court of Criminal Appeal, but falling far short of the definite dictum quoted.

The case of the remaining petitioner which at first sight might seem different, is, when more closely looked at, just the same. He was not present at the scene of the assault and murder and consequently the offence of which he was found guilty was abetment of murder. The point that was sought to be urged by his counsel was that the charge of the learned Judge did not adequately bring home to the jury that abetment of murder could not be properly inferred from a conspiracy to kidnap unless the natural result of the attempt to kidnap was murder. The learned Judge in the course of his charge used these words after explaining Section 111 of the Penal Code :—

“ I merely emphasise once more that the crucial point as regards the applicability of that section is whether that which is done was a probable consequence of the abetment; was it a probable consequence of the conspiracy into which Accused No. 9 had entered that Bawla would be murdered on the night of January the 12th? Unless you can so find, that charge of murder cannot be established.”

And he specially left it to them to say whether after finding conspiracy they “ could go the length of saying that the probable consequence of the conspiracy was the murder of Bawla and the attempted murder of Lieutenant Saegert.” If this were a Court of Criminal Appeal it would be difficult indeed to say that this advice to the jury was not adequate to the situation. Still, it would be a question for a Court of Criminal Appeal. Here the moment that adequacy is raised in reference to such advice the case of the petitioners is gone; for who could possibly say that the adequacy or otherwise could amount to a “ disregard of the forms of process or violation of the principles of natural justice ”? The averment fails, just as the averments in the other cases failed.

Their Lordships will humbly advise His Majesty to refuse the prayer of all the petitioners.



In the Privy Council.

SHAFI AHMED NABI AHMED AND OTHERS

vs.

THE KING-EMPEROR

AND

ANANDRAO GANGARAM PHANSE

vs.

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[DELIVERED BY LORD DUNEDIN.]

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