

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

ING KEE and SAM MOY,
Defendants.

ON WRIT OF
ERROR.

BRIEF FOR DEFENDANT-IN-ERROR.

Facts.

The plaintiffs-in-error were convicted of assault with intent to kill, and sentenced to State prison. These defendants came from New York and assaulted a Chinaman in his laundry in Jersey City, the assault being a part of a tong feud among Chinamen of different clans or tongs.

POINT I.

The Court committed no error in its charge.

There is only one question raised in the brief of the appellant and it is an attack on the charge of the Court on the quantum of proof necessary to escape conviction by a defendant if the State has made out a clear case against the defendant.

The purpose of the defense of alibi is to escape conviction, just the same as any defense that is interposed. The charge complained of seems to us to be a correct exposition of the law on alibi. The jury by this charge must acquit the defendants if the defense of alibi is established by such evi-

THE UNIVERSITY OF CHICAGO
LIBRARY

1890

1891

1892

1893

1894

1895

1896

1897

1898

dence and to *such a degree* as will when taken and considered together with all the evidence in the case create a reasonable doubt of the defendant's guilt. The cases cited by appellant relate to charges where the Court directed that the alibi must be established by a preponderance of the evidence. In the case of the *State v. Sahazian*, 119 Atl. 780, relied upon by appellant, the error was in the use of the language "leave the minds of the jury in *doubt* and *uncertainty* whether the defendants were at the place where the crime was committed," while in this case the Court tells the jury that if the defense of alibi is established so as to create a reasonable doubt of the defendant's guilt the defendants must escape conviction.

The analysis of the Sahazian case by the appellant is strained and includes words not condemned in that case. The words "doubt" and "uncertainty" were the words pronounced against and the words "such evidence" and to "such a degree" were not said to have no well settled and legal meaning. The charge must be read as a whole. The Court emphasized by frequently repeating that it was the jury's duty to find the defendant guilty beyond a reasonable doubt. *State v. Guarino*, 143 Atl. 142.

POINT II.

The judgment should be sustained.

Respectfully submitted,

JOHN DREWEN,
Prosecutor of the Pleas,
Hudson County.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

SCOTLAND

IN

SEVEN VOLUMES

THE SECOND

VOLUME

OF

THE

REIGN

OF

CHARLES

THE

FIRST

BY

JOHN

BURNET

OF

SCOTLAND

IN

SEVEN

VOLUMES

THE

SECOND