

State Vs. Gedeng Sut and ors.

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Court : Guwahati

Decided On : Jun-09-1952

Judge : Thadani, C.J. and Deka, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 299 and 307; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304 and 326

Appeal No. : Criminal Jury Ref. No. 3 of 1951

Appellant : State

Respondent : Gedeng Sut and ors.

Advocate for Def. : H.K. Lahiri and K.P. Bhattacharjee, Advs.

Advocate for Pet/Ap. : D.N. Medhi, Government Adv.

Disposition : Reference rejected

Judgement :

Thadani, C.J.

1. This is a reference made by the learned Sessions Judge, U. A. D., under the provisions of Section 307 (1), Criminal P. C., arising out of a trial held with the aid of a Jury, in which two persons were found guilty unanimously by the Jury. Accused Gedeng Sut, who has appealed, was found guilty under Section 304, part I, Penal Code, read with Section 34, Penal Code, and the accused Kandura Sut

was also found guilty under the same section read with Section 34, Penal Code. Two other accused persons who were also tried along with Gedeng Sut and Kandura Sut, were acquitted by the Jury. The learned Sessions Judge has made this reference being of the opinion that the verdict of the Jury against the accused Kandura is 'unreasonable, inconsistent and altogether' perverse.'

2. The case for the prosecution was that on the morning of 1-4-1951, the deceased Molow Hazarika set out from his house with a plough and a buffalo to cultivate the land in the nearby chapari. He was accompanied by his brother-in-law Saruram Sut and a boy named Bhuban. On arrival at the land, they started to plough it. Shortly afterwards, it is alleged that the accused Gedeng Sut came there carrying a mit-dao and protested against the action of the deceased in ploughing the land which, he alleged, belonged to him, and demanded that the cattle be unyoked, whereupon a scuffle followed between the deceased and Gedeng, in which, it is said, Molow gave two blows to the accused Gedeng. Gedeng, on receiving the injuries, left the place and shortly afterwards returned with four other persons, shouting to the effect that Molow would be done to death that day. Gedeng Sut and Kandura Sut were armed with daos.

3. About this time, the wife of the deceased, Mt. Koa Aiti, was going to the river bed to wash rice and was in the court-yard of Konpai's house. The mother of the deceased, Mt Kusumi, was changing her clothes, and the younger brother of the deceased, called Konpai, was milking cows in the cow-shed. On hearing the threatening shouts of the accused Gedeng, all the three of them,--the mother, the wife and the younger brother of the deceased--proceeded towards the place where the deceased was ploughing; they implored the accused not to attack Molow, but the accused took no notice. Accused Gedeng then struck a blow with a dao on the head of Molow who reeled under the blow; the accused Gedeng then struck him another blow in the region of the waist. As a result of these blows, the hindle of the dao carried by the accused Gedeng dropped to the ground. Molow himself fell to the ground as a result of the injuries, whereupon one of the companions of the accused, called Fedua, asked his sons to finish the deceased. It was at the instigation of Fedua that the accused Kandura dealt a blow with a dao, it is said, upon the deceased's abdomen. After hitting him on the abdomen,

Kandura dealt other blows to Molow on different parts of the body. Shortly afterwards, the accused disappeared. Konpai Hazarika, the younger brother of the deceased then proceeded to lodge a first information report at the Jorhat Police Station. On completion of the investigation, Gedeng Sut and Kandura Sut, and two others were sent up for trial. [4] It seems to us that the main reason for making this reference by the learned Judge was the manner in which the verdict was brought by the Jury--a verdict for which the learned Judge himself was responsible. It appears that the Jury had brought a verdict first against the two accused persons under Section 304, Part I, Penal Code, read with Section 34, Penal Code, and had said that the accused had exceeded the right of private self-defence. The learned Judge, in view of this rider, thought it advisable to question the Jury further, whereupon the Jury omitted the rider that the accused had exceeded their right of private self defence, and informed the Judge that they found the two accused guilty under Section 304, Part I, Penal Code, read with Section 34, Penal Code. The learned Judge found no difficulty in agreeing with the verdict of the Jury as regards accused Gedeng, but with regard to Kandura, he was unable to reconcile himself with the verdict of the Jury. In his letter of reference, the learned Judge has stated :

'It would appear that the Jurors have not been able to bring to bear their minds properly on the real question at issue in this case, and, have, therefore, returned a verdict that is inconsistent with their findings which again are self contradictory. It would thus be apparent that the Jurors were unable to bring an impartial and unbiassed mind on the facts at issue and were swayed more by prejudices than by sound reasonings on the basis of the evidence on the record, and their verdict) cannot, as such, be accepted.'

The learned Judge then proceeded to say :

'The verdict of the Jurors that both Gedeng and Kandura assaulted the deceased and that the other two accused, Fedua and Sani, were not present at the place of occurrence, is neither the prosecution story nor the defence case. The Jurors should have accepted either the one or the other of the two versions of the story. They have erred in not considering the case from this point of view.

In view of the inconsistencies, discrepancies and improbabilities disclosed in evidence and as mentioned in detail in my charge to the Jury, the Jurors should not have believed P. Ws. 1 (Konapai), 2 (Mt. Kusumi), 3 (Mt. Kon Aiti) and 6 (Bhuban) that they saw the occurrence and should have discarded their testimony in this respect and should have held that these witnesses did not see the occurrence and that the story told by them was untrue.

The Jurors should not have believed P. W. 7 (Noga) that all the four accused persons were present at the place of occurrence in view of his attempt at prevarication at several stages during his cross-examination by the defence lawyer. They should not have also believed P. W. 10 (Ghogo) about his story of many persons assaulting one man in view of his admitted enmity with accused Fedus. The discrepancies, inconsistencies and improbabilities in the statement of P. W. 7 (Moga) have been set out in detail in my charge to the Jury. The prosecution story that accused Kandura dealt a dao blow on the abdomen of the deceased, as a result of which entrails came out of the belly, has been disproved by the evidence of P. W. 5 (Dr. Af. N. Sarma). The Jurors should have, accordingly, considered the entire prosecution evidence in this respect to be untrue. I have set out these matters in detail in my charge to the Jury.

Even if the Jury believed that accused Kandura also dealt a dao blow on the deceased, then presumably the said blow being the blow at the back of the chest of the deceased, in view of the evidence of Dr. M. N. Sarma (P. W. 5) that he could not be definite if that blow was sufficient in the ordinary course of nature to cause the death of the deceased, they should have held him to be guilty under Section 326, Penal Code.'

5. We think the learned Judge's reference is vitiated by the predominance which he has given to his own view on questions of fact, for he has repeatedly stated in his letter of reference that the Jury should have done this, that or the other. We have on many occasions laid down the principle which should guide Sessions Judges in making references under Section 307, Criminal P. C. We have repeatedly stated that a reference under Section 307, Criminal P. C., is not called for unless the Judge takes the view that the verdict of the Jury is so unreasonable

that no body of reasonable men could have come to that verdict. In this connection, we have referred to the observations of their Lordships of the Privy Council in a case reported in Ramanugrah Singh v. Emperor, A.I.R. 1946 P. C. 151. We would also point out to the learned Judge that the material words in Section 307, Criminal P. C., are the words that 'he is clearly of opinion that it is necessary for the ends of justice to submit; the case to the High Court.' In the present reference, the learned Judge has not said a word that in his opinion it was necessary for the ends of justice to make this reference.

6. Bearing in mind the observations of their Lordships of the Privy Council to which we have referred, we have read for ourselves the evidence of the prosecution witnesses alleged to have been eye-witnesses to the occurrence. P. W. 1 has clearly stated in his evidence that the accused Kandura not only gave the deceased a blow on the abdomen but also continued to assault him with a dao. P. W. 1 is a brother of the deceased. It is he who lodged the first information report, stating substantially what he has stated in his evidence in Court. If the Jury was satisfied that P. W. 1 was present at the time of the occurrence and that he saw the occurrence and that what he has stated in the F. I. R. is corroborated by his evidence given in Court, can it be said that the Jury was so unreasonable in accepting the evidence of P. w. 1 that no body of reasonable men can be expected to accept it We think not.

We ourselves have read the evidence of P. w. 1 and are unable to find anything in his evidence which discredits the witness. In his letter of reference, the learned Judge has emphasised the fact that in his charge to the Jury he has set out the points which, in his opinion, will justify the conclusion that the evidence of the eye-witnesses was such as could not be relied upon. The learned Judge has referred to certain omissions in the First Information Report. According to the learned Judge, the first informant said a great deal more in his evidence than what he stated in the First Information Report. That may be. We have yet to come across a case in which everything that is stated in Court by a first informant is also stated in the First Information Report. The reasons which the learned Judge has given for discrediting P. w. 1 are reasons which do not appeal to us. It is to be remembered that at a trial held with the aid of a Jury, appreciation of evidence is a matter

entirely for the Jury. If the evidence of P. w. 1 appeared to the Jury to be natural, as it appears to us, it was bound to act upon it. The evidence of P. W. 1 shows that there was a scuffle between Gedeng and the deceased in the earlier part of the incident--a scuffle in which Gedeng received a beating. Gedeng retired, a sorry but an angry man, and brought four other persons with him. This is a very natural sequence, and unless this sequence can be regarded as an unreasonable sequence, we do not think that the Learned Sessions Judge was right in merely pointing out certain omissions here and certain discrepancies there and inviting us to hold that the Jury's verdict was so unreasonable that no body of reasonable men could have come to such a verdict. The evidence of P. ws. 2, 3 and 4 is substantially the same as that of P. W. 1, and we can find nothing in their evidence to warrant the conclusion that the verdict of the Jury was unreasonable.

7. The learned Judge has referred to the fact that the prosecution witnesses have attempted to conceal the dispute over land. That may be. Again we have yet to discover a case in which everything is revealed as an open book. The Jury is entitled to consider the case as a whole and if upon the consideration of the case as a whole, it comes to the conclusion that notwithstanding concealment in regard to certain matters, such as the learned Judge has referred to, the witnesses are credible,--there is no reason why the Jury should not accept their evidence and act upon it.

8. Another reason for the reference given by the learned Judge is that the evidence of P. wS. 2, 3 and 6 was improbable in that they accompanied the accused persons to the place of occurrence and all along entreated them not to attack the deceased. We ourselves cannot see anything improbable in this evidence. If the Jury did not see anything improbable in it, we do not think it can be blamed.

9. The learned Judge has then referred to certain embellishments in the case. We think embellishments are not likely to trouble sensible Jurors as indeed they ought not trouble sensible Judges. Accordingly we decline to accept the reference.

10. It is true that the Jury brought a verdict against Kandura under Section 304, part 1, Penal Code read with Section 34, Penal Code. We think the proper verdict

in respect of Kandura was one of guilty under Section 326, Penal Code, for, it appears that the injury which was sufficient in the ordinary course of nature to cause death was caused by Gedeng. As the learned Judge himself points out, if the case were considered without the question of the applicability of Section 34, Penal Code, the question of the individual liability of Kandura would probably arise. We think the question clearly arose for, the evidence of the prosecution establishes beyond all reasonable doubt that Kandura struck the deceased with a dao, a sharp cutting instrument. We accordingly convict the accused Kandura under Section 326, Penal Code, and sentence him to undergo R. I. for two years.

11. The reference submitted by the learned Sessions Judge is rejected.

Deka J.

12. I agree.

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