In Re: Umar Sobani

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Court : Mumbai

Decided On : Oct-11-1926

Reported in : AIR1927Bom163; (1927)29BOMLR196

Judge : Shah and Fawcett, JJ.

Appellant : In Re: Umar Sobani

Judgement :

Shah, J.

1. The papers relating to the inquisition touching the death of Umar Haji Yusuf Sobani have been submitted to this Court by the Coroner. In his letter of reference the Coroner has stated that the jury have returned a verdict which, in his opinion, is 'antagonistic with the evidence given by well-known medical men and with the circumstantial evidence in the case.' Notices were ordered to be issued by this Court to the parties who appeared on the record to be interested in the inquisition, namely, the Police Commissioner, the widow of the deceased, and the brother of the deceased. Before us now there is no appearance on behalf of the brother of the deceased, but the learned Advocate General has appeared on behalf of the Police Commissioner, and Mr. Velani has appeared on behalf of the widow of the deceased.

2. As apparently this is the first case of its kind in which the Coroner has submitted the papers in order that the inquisition may be either amended or quashed, it is

desirable to refer briefly to the nature of the powers which this Court has with reference to the inquisitions of the Coroner and to the procedure to be followed.

3. In the main we are regulated by the provisions of the Coroner's Act (IV of 1871). In this Act there is no provision enabling the Coroner to refer the matter to this Court. Section 29 provides that :-

No inquisition found upon or by any inquest shall be quashed for any technical defect.

In any ease of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, aud the same shall forthwith be amended accordingly.

4. In saying that there is no provision in the Act enabling the Coroner to refer the papers to this Court, I do not wish to be understood as laying down that in no case can he do so. But the normal procedure, to my mind, would be that any party interested in, or affected by, the inquisition may apply to this Court for either amending or quashing the verdict of the jury. In the present case, as I have already indicated, no such application was made before this day. It may have been due to the understanding of the parties that as the Coroner had submitted the papers to this Court, it was not necessary to do so. But ordinarily I should say that cognizance of such proceedings could be properly taken on the application of any party affected by the inquisition.

5. The extent of our powers is indicated primarily by the provisions of Section 29 of the Coroner's Act of 1871. I may point out that under 'the Letters Patent of 1823 Establishing the Supreme Court of Judicature at Bombay' it was provided as follows (p. 10):-

That the said Chief Justice and the said Puisne Justices shall, severally and respectively, be, and they are, all and every of them, hereby appointed to be Justices and Conservators of the Peace, and Coroners, within and throughout the Settlement of Bombay, and the Town and Island of Bombay, and the Limits thereof,... and to have such Jurisdiction and Authority as our Justices of our Court

of King's Bench have and may lawfully exercise, within that part of Great Britain called England, as far as Circumstances will admit.

6. When the Indian High Courts Act was passed in 1861, under Section 9 of that Act (24 & 25 Vie. c. 104), all the power and authority vested in the Supreme Court and in the Sudder Adawlut were reserved to the High Court, subject to the provisions of the Letters Patent and subject and without prejudice to the legislative powers of the Governor General of India in Council. Under the present Government of India Act, Section 106, Sub-section (1), the same powers are continued, subject, of course, to the provisions of any Letters Patent or to any statutory provision. Thus, this Court has, subject to the provisions of the Coroner's Act, all the powers which the Court of King's Bench had with reference such inquisitions when this High Court was constituted. It is not necessary for the purposes of this case to attempt to define exactly the extent of those powers. But it is clear from Section 29 of the Act that the power to amend the inquisition is restricted to cases of technical defects: and as regards quashing the inquisition it is definitely provided that it shall not be quashed for any technical defect. But there is no provision as to when and on what grounds it may bo quashed. We have, therefore, to be guided by the powers which were exercised by the Court of King's Bench in England when the High Court was constituted.

7. The learned Advocate General in this case has not made any application with reference to this inquisition on behalf of the Police Commissioner. Mr. Velani, however, has made an application on behalf of the widow of the deceased to amend or quash the inquisition on two grounds. First, it is contended that the inquisition should be amended on the ground that the verdict of the jury is opposed to the weight of the evidence, in so far as it does not definitely find that the opium was self-administered and not administered by any other agency to the deceased. Secondly it is urged that the inquisition should be quashed on the ground that some of the jurors were friends of the brother of the deceased, and that has vitiated the verdict of the jury. This application is not opposed by the Advocate General,

8. As regards the first ground I may state that it does not constitute a technical defect in the inquisition ; and it is not a ground for amending it. The question is whether we should quash the inquisition on this ground. I am of opinion that we should not. It involves appreciation of evidence. I doubt whether in England the Court of King's Bench would quash it on such a ground. The statement of the law in para. 650 at p. 285 of Halsbury's Laws of England, Vol. VIII, and the report of The Queen v. Ingham (1864) 5 B. & S257 appear to support this view : nor is the present case like the case of The Queen v. Carter, (1876) 45 L.J.Q.B. 711 where evidence as to how poison was administered was excluded, though it was available. Taking the provisions of 50 & 51 Vic. c. 71, Section 6(1) (6), on this point as a guide, and not as defining the powers of this Court or as conferring them, I am not satisfied that it is necessary to interfere in this case. The said provisions are as follows :-

6,-(i.) Where Her Majesty's High Court of Justice, upon application made by or under the authority of the Attorney General, is satisfied either ... (6.) where an inquest has been held by a coroner that by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise, it is necessary or desirable, in the interests of justice, that another inquest should be held, the court may ... quash the inquisition on that inquest...

9. There is no such express provision in the Coroner's Act with reference to the powers of this Court to quash the inquests of the Coroner. Having regard to the ground upon which we are asked to interfere, it seems to us to be sufficient to say that it is neither necessary nor desirable in the interests of justice to order a fresh inquest. The main ground upon which the application is based is that the verdict of the jury is unfair to the widow in so far as it leaves the question as to whether she administered the opium to the deceased at large contrary to the weight of the evidence. The verdict of the jury is in these terms :

I. Death was due opium poisoning;

II. In the absence of direct evidence we cannot determine whether opium was self-administered, administered by a foreign hand or taken accidentally.

10. In terms it does not purport to find anything against the widow. The jury affirm their inability to come to a definite conclusion as to how opium came to be administered. That inability may or may not be justified on the evidence. We do not consider it necessary in this case to examine the evidence nor to determine that question. But there is no suggestion, either in the verdict or on the record, so far as we have seen, that this dose of opium was administered by the widow; and there is no reason why this verdict should be interpreted by the widow or by anyone as really affecting the widow. No doubt the question is left open so far as this inquisition is concerned. But that by itself is not a sufficient ground to justify our going into the evidence, nor do we think that in the interests of justice it is necessary in this case to do so. It may be that in a given case, where on substantial grounds an interference is needed, it may be necessary to quash the inquisition. But in this case, if we would yield to the application of the widow to go into the evidence, we would not be in a position to amend the inquest but would have to order a fresh inquest which in my opinion, is wholly uncalled for and unnecessary under the circumstances of this case, Therefore, the first ground of the application fails.

11. As regards the second ground, it is clear that there is no suggestion on this record that any of the jurors were friends of the brother of the deceased. In fact, the Coroner has observed in his charge to the jury that he took particular care to set aside those who were known to be the friends of the deceased. Even now when this ground is stated before us by the learned counsel for the widow, there is no statement on oath that any particular juror was a friend of the deceased or of his brother. I do not wish to be understood as accepting the position that, even if that had been made out, it would necessarily be sufficient to justify the quashing of the inquisition. But assuming that it may be a possible ground for the application, there is no basis on the materials before us for putting forward such a ground.

12. I would, therefore, decline to interfere, and direct the papers to be returned to the coroner.

Fawcett, J.

13. This is practically a case before us in the form of a reference by the coroner in a letter to the Clerk of the Crown. The coroner is of opinion that the proper verdict should have been one of death by self-administered poison, namely opium, and that the verdict of the jury was insensate and against the weight of the evidence. Our powers in a matter of this kind have been very clearly stated in my learned brother's judgment, and I do not propose to travel over the same ground again. In my opinion, it is difficult to say that a reference of this kind can properly come from a coroner. It is rather analogous to the case where a Sessions Judge disagrees with the verdict of the jury, but express provision is made in Section 307 of the Criminal Procedure Code for his referring the case to this Court for decision. There is no corresponding provision of this kind in the Coroner's Act, nor does the English law on the subject afford any precedent for such a procedure. The nearest reported case that I have been able to find to the present one is that mentioned in Halsbury's Laws of England, Vol. VIII, at p. 285, namely, R. v. Wood (1908) 73 J.P. 40. In that case it was held that 'an inquisition may be quashed upon the application of the police authorities made with the acquiescence of the coroner, on the suggestion of the coroner's jury that they are dissatisfied with the verdict returned by them '. But that is a very different case to the present one. First of all there is no application by the police authorities to quash the inquisition, although they support the coroner's view. But a more important difference is that the jury in this case are not questioning their own verdict. There is, of course, the provision in Clause 27 of the Letters Patent of this Court, by which this High Court is created a Court of reference and revision from the criminal Courts subject to its appellate jurisdiction, but that cannot apply here, for the coroner's Court cannot be said to be a criminal Court within the meaning of that clause. Nor does the further provision in that clause about the Sudder Foujdari Adawlut apply, for there was no provision under which there was an appeal from the coroner's Court to the Sudder Foujdari Adawlut. Accordingly, I think, We could only interfere not upon any reference by the coroner himself, but upon an application by a party affected by the inquisition. In the present case, the widow of the deceased has, through her counsel, asked to be allowed to make such an application, and we have heard the learned counsel who appears for her as to the grounds for such an application and the law applicable to it. I have not much to add to what my learned brother has said on this

question.

14. As regards the proposal that we should amend the inquisition by inserting some expression of opinion that the widow is not affected by the jury's verdict, it is, in my opinion, impossible for Us to accede to such a request. First of all, we must be guided by what has been laid down in England in regard to the exercise of this special jurisdiction. It is quite clear that amendments of inquisitions are ordinarily limited to correcting technical defect in the inquisition. Originally inquisitions used to bo quashed because of technical defects, and this naturally gave rise to considerable inconvenience, which was remedied by Section 2 of the Coroner's Act, 1843 (6 & 7 Vic. c. 83). That section is reproduced in Halsbury's Laws of England, Vol. VIII, foot-note at p. 282. In 1848 a similar provision was enacted for India in Section 3 of Act IV of 1848, and this Act recites in the preamble ;-

Whereas it is expedient to make provisions for supporting Coroner's Inquisitions, and for preventing the same from being quashed on account of technical defects:

15. Then follow provisions which are substantially reproduced in Section 29 of the present Coroner's Act. That supports the view that amendments should only be made in cases where there is some technical defect such as is referred to in the second paragraph of Section 29. To exercise this power of amendment, or express an opinion of our own in this conflict between the coroner and the jury would, in my opinion, be travelling outside the proper limits in such a matter.

16. I now come to the question whether the King's Bench in England would quash an inquisitiou on such a ground as is put before us. So far as regards its common law jurisdiction, I agree with my learned brother that authority seems clearly against quashing an inquisition on the ground that the findings of the jury are against the evidence in the case. This is referred to in the beginning of paragraph G50 at p. 285 of Volume VIII of Halsbury's Laws of England. The King's Bench in England has wider jurisdiction than we have, because the common law jurisdiction has been supplemented by statutory powers of interference given in the Coroner's Act, 1887 (50 & 51 Vic. c. 71). Section 6 of that Act empowers the High Court in England, on an application made by or under the authority of the Attorney General, to quash an inquisition in certain circumstances, which include, the Court being

satisfied that it is necessary or desirable in the interests of justice that another inquest should be held. Even assuming that, in the exercise of the discretion vested in us under the ordinary common law jurisdiction, we have similar powers, I agree with my learned brother that the present is not a case where it can be said that to have been established that it is necessary or desirable that another inquest should be held. I can quite understand the grievance of the widow in this case, but, on the other hand, we have the fact that the inquisition itself does not refer to her and does not make any allegation against her. The record also shows that no one went into the witness-box to give evidence even suggesting that she had administered opium to the deceased. The mere fact that the jury did not express an opinion on the question how the opium got into the deceased's body is not in itself sufficient ground for saying that the whole of this inquiry of the Coroner, which occupied several days, should be quashed and that we should order another inquest in the matter. As I have already stated, the authorities for holding that the King's Bench will not interfere where the ground alleged is the verdict being against the weight of the evidence, show that the same view would probably be taken by that Court under Section 6 of the Act of 1887.

17. As regards the suggestion that there was misconduct on the part of the jury or members of the jury, I agree with my learned brother. In England the King's Bench have quashed inquisitions where there has been misconduct on the part of the jury, but in the present case no adequate ground has been shown for holding that there was any such misconduct as would justify our interference.

18. I, therefore, agree with the order proposed, by my learned brother.