

Mohiuddin and anr. Vs. Emperor

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Court : Kolkata

Decided On : Apr-08-1930

Reported in : AIR1930Cal437,129Ind.Cas.834

Appellant : Mohiuddin and anr.

Respondent : Emperor

Judgement :

C.C. Ghose, J.

1. In appeal 2 of 1930 the appellant is one Mohiuddin Ahmed and in appeal 3 of 1930 the appellant is one Hemayetuddin Mukhtear. They have been found guilty by the jury in the proportion of 3 to 2 in manner following: the accused Mohiuddin and the accused Hemayetuddin have both been found guilty under Section 120-B read with Section 366, I.P.C., the accused Mohiuddin guilty under Sections 366 and 376, I.P.C. and the accused Hemayetuddin guilty under Section 366/114 I.P.C. The learned Sessions Judge, agreeing with the verdict of the jury, has convicted both the accused under the sections referred to above and he has sentenced them as follows the accused Mohiuddin to suffer rigorous imprisonment for a period of two years on each of the three charges, namely under Sections 366 and 376 (two counts) and to suffer rigorous imprisonment for a period of 18 months under Sections 120-B/366, I.P.C. the sentences to run concurrently: the accused Hemayetuddin to rigorous imprisonment for a period of 18 months on

each charge under Sections 120-B/366 and 366/114, I.P.C., the sentences to run concurrently.

2. Against this conviction and sentence the above appeals have been preferred to this Court. They have been separately argued before us by Mr. Bagram and Mr. Mingail on behalf of the accused Mohiuddin and by Mr. Gregory on behalf of the accused Hemayetuddin and the main point that has been argued in these appeals is that the selection and empanelment of the jury in this case were irregular and unwarranted by law. Various other points were taken and in order to understand these other points, which will be indicated later on, it is necessary to set out the facts shortly.

3. Babu Charu Chandra Roy is a pleader at present, practising at Barisal. From September 1928 to 22nd December 1928 he used to occupy a house at Barisal which was next door to the house of a Deputy Magistrate named Moulvi Panaulla. With him were his wife and his daughter named Sovana, an unmarried girl aged about 13 years and odd months. The adjoining house which was occupied as stated above by Moulvi Panaulla, was only a few cubits off. Moulvi Panaulla had with him his wife named Latifa, and there used to live in Moulvi Panaulla's 'house the accused Mohiuddin who is said to be a cousin of Latifa. It is stated that Latifa, who is a young lady aged about 16 or 17 years, used to come to Babu Charu Chandra Roy's house and visit the latter's wife and daughter and Sovana used to visit Latifa at the latter's house. The ladies of the two houses apparently became very friendly and Sovana was introduced by Latifa to Mohiuddin and to one Golapjan who is Moulvi Panaulla's sister-in-law. On one occasion Mohiuddin, Latifa and Golapjan took Sovana to see an exhibition which was being held in Barisal. On two other occasions these four persons went to a local theatre in the evenings; all four of them going in the same carriage, They returned from the theatre shortly after midnight. It is said that on all these occasions Sovana had her mother's permission to go with Mohiuddin and his party. Be that as may, Mohiuddin and Sovana fell in love with each other and there followed exchange of letters between Sovana and Mohiuddin. These letters, at any rate, a large number of them, are exhibits in this case and have been marked Z. The letters written by Sovana are addressed 'Praner Mohi,' 'Praner Swami' and in such like terms and

they breathe ardent and passionate love. Some of these letters ultimately came to the knowledge of Sovana's father: but before that he had apparently noticed that Mohiuddin was paying undesirable attentions to his daughter Sovana. He thereupon brought the matter to the notice of Moulvi Panaullah and asked him to send Mohiuddin away.

4. This, however, Moulvi Panaullah was for various reasons, not in a position to agree to and Babu Charu Chandra Roy thereupon removed to a house, a short distance away, near the house of one. Bazlur Rahaman, River Police Inspector in Barisal. Meanwhile Mohiuddin used to come and peep through a window into the inner apartments of Charu Babu's house and he renewed sending letters to Sovana through Bazlur Rahaman's servant Ham, It appears Mohiuddin on one occasion sent a gold ring to Sovana which, however, was made over by Sovana to her mother who again made it over to Charu Babu. This fact was brought to the notice of Moulvi Panaulla and the latter eventually i.e., by the middle of April 1929, sent Mohiuddin away to his home in Kuligram in the District of Rangpur. On 30th April 1929 Sovana's father had to leave Barisal on urgent professional work and Sovana and her mother stayed in Barisal. The accused Mohiuddin had returned meanwhile to Barisal and it is alleged that he kidnapped and abducted Sovana on the night of 30th April 1929. At noon on that date Sovana got a letter from Mohiuddin through Hariz saying that he would take her away that night and asking her to be ready. This letter is not forthcoming and a detailed account of how it was got hold of and burnt by the accused Hemayetuddin is given by the witness Sisir Kumar Guha.

5. To continue the story. Sovana describes how she awoke on hearing a noise near her window and how she came out after opening the door of her room. She apparently occupied the room in question by herself. Mohiuddin joined her and there was also a young man named Khaleq, They, i.e. Mohiuddin and Khaleq took her to the house of a constable named Gani. At Gani's house there was present, apparently by previous arrangement the appellant Hemayetuddin. The three, i.e., Mohiuddin, Hemayetuddin and Khaleq left Sovana in the constable's house and went to buy tickets for the steamer journey to Chandpur. Thereafter Mohiuddin and Khaleq came back and took Sovana to the steamer ghat, Hemayetuddin

accompanying the party to the steamer ghat. Mohiuddin and Khaleq and Sovana went to Chandpur by steamer. At Chandpur they got down from the steamer and went by boat to the house of Khaleq's aunt. Mohiuddin and Sovana got into one boat and Khaleq into another. It is alleged that Mohiuddin ravished Sovana in the boat. After a short rest at Chandpur, Mohiuddin and Sovana proceeded to Goalundo by steamer. From Goalundo, they went by train to Niahati andthaneoto Bandel and Howrah. They then went to Balasore and from Balasore to Waltair and Vizagapatam. From Vizagapatam they went to Hyderabad and thence to Bombay. It is not denied that while Mohiuddin and Sovana were together they had sexual intercourse. The father Charu Babu returned to Barisal several weeks after at the conclusion of his professional business and complained before the Magistrate. We will not pause to comment on the extraordinary conduct of the father and we would fain hope that such conduct is rare. However, there was a full and complete investigation by the police with the result that the two accused before us were committed on 30th September 1929 to take their trial in the Sessions Court on the charges mentioned above.

6. I will deal with the question of the constitution of the jury in a few moments but before I do so I desire to say at once that I have perused and re-perused the learned Sessions Judge's charge to the jury and I am satisfied that it is an eminently fair, impartial and dispassionate summing up of the whole case and that everything that could be urged in favour of the accused has been placed before the jury in a thoroughly satisfactory manner. I have listened with very great care to the earnest and vigorous addresses of learned Counsel for the two accused; I was then of opinion and I am still of opinion that many of their points would only be admissible if we were hearing an appeal on facts; that is not the position with reference to these appeals at present and our powers of interference with the verdict of the jury are strictly limited and can only arise if the accused succeed in showing that there are misdirections in the learned Judge's charge to the jury.

7. Now, as regards the question of the constitution of the jury. The accused have raised this question in an affidavit which was put in at the time of the admission of these appeals; they have also taken this point in their grounds of appeal. That affidavit must have been allowed to be put in per incuriam. The deponent of the

affidavit does not say that he knows the English language or he understands the same; indeed, there is internal evidence in the affidavit itself that he does not know English; in these circumstances, the statements in the affidavit in question cannot be relied upon for the purposes of this judgment and we have accordingly excluded the same from our consideration.

8. Mr. Mingail stated before us that he was one of the counsel who appeared before the learned Sessions Judge on behalf of the accused Mohiuddin and that he was in a position to state before us what happened in the Court below at the time of the empanelment of the jury. The matter is of very great importance and we have allowed Mr. Mingail to make a statement from his place at the Bar. Mr. Mingail stated as follows:

Fifteen jurors attended, Charges were read out and the pleas of the accused taken. Before the selection of the jury actually commenced, the learned Public Prosecutor observed to the Court that he would rather have a jury composed of English-knowing people, inasmuch as some of the documents-were in English and they would need to be shown to the jury. The learned Judge agreed to this and on asking me, I said that that course would certainly be desirable from my point of view. One juror was then called. The learned Public Prosecutor objected to this juror being empanelled on the ground that he did not know English, basing his objection on Section 278, Clause (g), Criminal P.C. I protested against this objection maintaining that it could not be sustained under that section, as Clause (g) provided that the objection could only be made if the juror neither understood English nor the language into which it was interpreted. The learned Judge did not pass any order on this at the time. He called out the name of another juror. He said he knew English and he was empanelled. He then called out the names of all the remaining jurors and each one was asked if he knew or could read English. Some said they knew a little, some said they did not know at all. They were all made to sit in the body of the Court. The learned Judge then called out four names from amongst those who were sitting in the body of the Court and put them in the jury box, I believe that the four other jurors who were selected were taken out of those who had said that they knew English.

9. It is important in this connexion to look into the order-sheet of the learned Sessions Judge.

10. The learned Sessions Judge in his order-sheet notes as follows:

When the Court began the selection of the jurors, the learned Public Prosecutor pointed out that there were certain documents in English the identity of the handwriting of which was a fact in issue. The prosecution purpose to examine a handwriting expert, and the jury have to decide on such a question of fact, with the assistance of the evidence of such a witness. It was suggested by the learned Public Prosecutor, and agreed to by the Court, and to the best of my belief by learned Counsel for accused, that it was desirable that the jurors should be able to read English. Amongst the jurors present were a number who could do so. The learned Public Prosecutor actually objected to an individual juror on the ground that he was unable to read English, basing his objection on Section 278(g), Criminal P.C. This was objected to by learned Counsel for the accused, and the Court agreed with his view that objection on these grounds could not be raised under that section. That is as far as the defence objection went, and it was agreed to by the Court, who proceeded to choose the jury from amongst those able to read English.

The defence objected against three jurors individually. One is a Head Master of a School at Sadar, and was said to have stayed with a Hindu pleader of the local Bar, This objection was allowed. Another was said to have had a discussion on the case with another Hindu pleader this objection was considered distinctly weak and was disallowed; the case has been discussed throughout the District, and there are no grounds for assailing the impartiality of this juror even if the facts are as alleged. He comes from the mofussil. A third objection was allowed on the ground that the juror was concerned in a dispute over a hat in which the accused was also concerned. Against the other four jurors selected, no objection was raised, and no objection was raised against the constitution of the jury as a whole. These remarks are considered a necessary part of the order-sheet in view of the petition submitted after the jury had been sworn and the case opened for the Crown. I am satisfied that the accused have been in no way prejudiced.

11. In my opinion, there is no substance in the argument which was sought to be advanced before us that there was no lottery. The record shows that there was a lottery; the only thing that happened was that the Judge proceeded to choose the jury from amongst those able to read English. In doing what he did, the learned Judge did not in my opinion exceed the inherent powers that he had in ensuring a fair trial or infringe in any way the provisions of Section 278, Criminal P.C. It is really not necessary to go to the last clause of Section 278, Criminal P.C., for authority for the procedure adopted by the learned Judge. As far as I can make out, what was done could not possibly raise any question of jurisdiction and it was done with the entire concurrence of learned Counsel for the accused. I deprecate most strongly the attempt to give a communal complexion to the affair in the grounds of appeal in this Court. The learned Sessions Judge Mr. Stork cannot be accused of any bias and the attempt in this Court by means of the said affidavit is incompatible with one's notion of what we are used to in this Court. Each case must depend upon its own facts and I am unable to say that on the facts of this case the learned Judge's action was in any way irregular or contrary to law. I am therefore of opinion that this point about the constitution of the jury which has been urged by both the accused must fail.

12. On behalf of the accused Mohiuddin grounds 3, 6, 9, 10 and ground 4 relating to the question of Sovana's age have been urged before us. Ground 3 relates to Sovana's letters. This ground is inseparably connected with the question of Sovana's age on 30th April when she was taken away by Mohiuddin and during the month of May and until she was recovered. Now the question of Sovana's age is of course all important having regard to the charge under Section 366 and it is dealt with in paras. 7-14 of the learned Judge's charge to the jury. All the material evidence on record was placed by the learned Judge before the jury; the question was viewed in the light of the medical evidence and from various angles and it is difficult to suggest that this portion of the learned Judge's charge suffers either from under-statement or over-statement. A great deal of Mr. Bagram's forensic wrath was centred on Ex. 26 for no earthly reason whatsoever. The jury were left a free hand; the jury were told that it was for them to consider whether the document in question which the prosecution claimed was a horoscope had been manufactured for the purposes of this case and whether Charu Babu's word that it

was a horoscope written by him and containing the dates of the births of his several children could be accepted. What more the learned Judge was to do or could have done has not been made clear to us. Nothing more need be said about this point.

13. On the charge under Section 366 and 376, as indicated above the question of Sovana's age was very material. If in fact Sovana was less than 14 years of age although she had been love smitten and could write the letters referred to above, her consent to the acts referred to in Sections 366 and 376, I.P.C., was in law immaterial; and this question has been brought out prominently in the learned Judge's charge to the jury. The whole of Sovana's present story is referred to in paras. 17-22 in the learned Judge's charge to the jury at very great length and the jury were definitely asked to come to a conclusion having regard to Sovana's letters whether Sovana actually consented to go away with Mohiuddin. Here again the learned Judge has been scrupulously fair to the accused. The question of age and her consent, if any, have an important bearing on the question of the charge under Section 376, I.P.C., and this was dwelt upon by the learned Judge. He points out all the circumstances that could be urged on behalf of the accused, such as Sovana's previous relationship with Mohiuddin, the visits to the theatre, the presentation of the ring and the exchange of letters. The learned Judge goes on to discuss the conduct of Sovana's father up to 31st May 1929 and he has said enough from which the jury could, if they had liked, have drawn an inference that Sovana's father was supremely indifferent and that he gave implied consent to what happened. Lastly there was the question as to whether a marriage has been celebrated between Mohiuddin and Sovana. On this point too, the learned Judge's summing up was adequate, clear and exhaustive.

14. There remains the question of the withholding of certain witnesses by the prosecution. Now it may be said at once that para. 4 of the learned Judge's charge dealing with this point may at first sight be open to certain verbal criticism; but when the facts are gone into and the evidence perused, one must come to the conclusion that there is nothing in that paragraph to which any objection can be sustained in law. In my opinion the jury were given proper directions and no prejudice to the accused has been shown to our satisfaction.

15. Now, as regards the accused Hemayetuddin in addition to the grounds referred to above, grounds 7, 8, 9,10, 11, 12, 13, 14 and 15 in his grounds of appeal were urged. The accused Hemayetuddin was charged with having abetted Mohiuddin in the commission of the offence of kidnapping by taking part in the removal of the girl immediately after she was taken out of her father's house and by procuring steamer tickets for them. The learned Judge in paras. 60-62 has referred to the matter at very considerable length, leaving to the jury to determine for themselves whether or not compulsion was being continuously brought to bear on Sovana in order to prevent her from returning while she had an opportunity. The threat to publish to the world Sovana's letters and thereby bring disgrace on her, was that not compulsion? However, the matter was for the jury and I can see nothing in the charge of the learned Judge to which any exception can be taken by anyone acquainted with the facts. Indeed this portion of the charge was distinctly in favour of the accused Hemayetuddin. Then as regards the charge of conspiracy there was an abundance of material on the record to which the jury's attention has to be directed and the learned Judge did it in an extremely careful and satisfactory manner. The grounds taken on behalf of the accused Hemayetuddin have no substance and must be negatived.

16. On the question of sentence I am unable to reduce the sentence in Mohiuddin's case. I am fully aware that the crime in respect of which Mohiuddin has been convicted would have been impossible, were it not for the negligence, to put it very mildly, of Sovana's parents but I cannot take that fact into consideration for a further reduction of the sentence, because the learned Judge in passing the sentence he did has already taken this and various other circumstances into his consideration.

17. As regards Hemayetuddin, the record shows that he has been throughout the most resourceful ally of Mohiuddin and I fail to find anything on the record which can induce me to order a further reduction in the sentence passed on him. In his case too, the learned Judge has passed a moderate sentence.

18. The result is that both these appeals will stand dismissed. The accused who are on bail must Surrender to their bail bonds and serve out the remainder of the

sentences imposed on them.

Guha, J.

19. I agree.

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